THE PROPOSED AUSTRO-GERMAN

CUSTOMS UNION.

by

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A.B., University of Kansas, 1930.

Submitted to the Department
department of Political Science and
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degree of Master of Arts.

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This thesis is a study of one of the many unsuccessful European attempts at economic cooperation, namely, the attempt of Austria and Germany to enter into a customs union. The Vienna Protocol of March 19, 1931, set forth the principles upon which the customs union was to be established. To understand the motives which prompted this Protocol and to appreciate the effect of its announcement upon European countries, it is necessary to have some knowledge of the political and economic situation which grew out of the World War. An attempt has been made, in the introductory chapter, of this study, to set forth a brief survey of that situation.

Few, if any, events since the World War have created greater surprise and concern among European nations than did the announcement of the Vienna Protocol. A storm of protest arose from the enemies of Germany and Austria. Among the accusations which were hurled at these two countries was the charge that Austria's entrance into the proposed customs regime would violate the obligations she had assumed in the Treaty of St. Germain (1919) and in the First Geneva Protocol of 1922. The dispute over this point became so grave that the
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PREFACE

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the matter was referred to the League of Nations and by that body to the World Court. Before the Court delivered its advisory opinion, pressure was brought to bear upon Austria and Germany to renounce the proposed customs regime.

Although insufficient time has elapsed to point out with any degree of certainty the influence which the Austro-German project may have had upon more general schemes for European cooperation, some speculations are ventured in Chapter IV regarding the future of European unity. These speculations are the personal opinion of the writer.

Acknowledgment is made to Prof. Herman B. Chubb, member of the Political Science Faculty at the University of Kansas, whose kindly counsel and valuable criticism have made this study possible.

May, 1931

E. C. R.
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EUROPEAN ATTEMPTS AT ECONOMIC COOPERATION

Austria and Germany announced in the Vienna Protocol of March 19, 1931, their intention of entering into a customs union. This decision to abolish trade barriers on their common frontier was an attempt on the part of Austria and Germany to cooperate in economic matters. Numerous other attempts had been made by European countries to improve economic conditions, but all such attempts had failed to correct the difficult situation which grew out of the World War.

Nationalistic Tendencies in Europe Since the World War.

At the close of the World War there swept over Europe a wave of extreme nationalism. European states—old and new alike—developed a mania to become self-sufficing. Post-war hatreds and fears prevented the re-establishment of normal, commercial contacts. In order to build up domestic industries and to become economically independent, countries prohibited the free importation and exportation of goods by the erection of tariff walls and the adoption of other restrictive measures. The movement, once begun, gathered momentum rapidly. A tariff barrier erected on one frontier simply brought retaliatory legislation
from the country whose export trade was adversely affected, until Europe was a network of veritable Chinese walls. Export and import prohibitions became a matter of reprisals. Great Britain's import prohibitions on German dyestuffs caused Germany to adopt similar measures in regard to coal. In turn, France retaliated by a prohibition on German scrap-iron, and this restriction on French import trade simply led to similar measures in other countries. 1.

In spite, however, of these nationalistic tendencies which have obstructed commercial intercourse and hampered the economic rehabilitation of Europe, there has been evident, during this same post-war period, an unprecedented degree of international cooperation, directed toward the betterment of economic conditions. Such attempts at economic collaboration - most of them unsuccessful - have been both bilateral and multilateral in nature, and have been conducted within and without the League of Nations. A brief summary of these attempts will serve to give perspective to a study of the Vienna Protocol itself.

Early Attempts at Cooperation Outside the League of Nations.

The first and only auspicious European attempt, outside the framework of the League, to deal with economic problems by concerted action was the Genoa Conference of 1922, which was called for the specific purpose of adopting measures to aid in the economic reconstruction of the continent. So intense were post-war animosities, at that time, that the conference was practically doomed to failure before it met. A second type of international economic cooperation carried on outside the League, has been through agencies set up before the War, namely, certain of the international public and private unions. "Of far greater immediate significance for the welfare of Europe than either the oratory of the Genoa Conference or the continuous activities of all these organizations, had been that form of international cooperation which is represented by the negotiation of bilateral commercial treaties." ¹ These negotiations have been significant in that they have always been undertaken for the avowed purpose of reaching agreements that should be of common economic

¹ Rappard, William E.: Uniting Europe, p.140.
benefit. Negotiations, however, have been conducted in a spirit of distrust that failed to secure for the parties concerned the greatest economic advantage. So great has been the fear of insecurity and so keen the desire to protect domestic industry that all these negotiations have been characterized by a reluctance to enter into long-term agreements granting most-favored-nation treatment; and, although these bilateral commercial negotiations have been frequent and numerous, they have resembled a sort of "international war more than pacific cooperation." Relief from the post-war economic situation has, therefore, not been secured by European states through these various efforts at economic cooperation outside the League.

Attempts at Cooperation Within the League.

The League of Nations has, from the very beginning of its existence, been interested in the economic sphere. A provisional Economic Section did work of public interest before the League was formally in being. The present Economic Committee was given permanent status by Council action on Sept.10,1923, when it was changed from a provisional organization

1. Ibid., p.142.
to one with a term of office "until further order".¹ It has worked in close harmony with the Financial Committee and has cooperated with the International Labor Organization, the International Chamber of Commerce, the International Institute of Statistics, and other bodies in a program which has included the following subjects: import and export prohibitions and restrictions; customs formalities and nomenclature; economic tendencies liable to influence world peace; a study of the most-favored-nation clause; and a variety of other questions. Of this whole program of activities in the economic field, no phase has been more important than the efforts which have been directed toward the removal of trade barriers.

A whole series of international conferences—the Brussels Financial Conference in 1920, the Conference at Cannes in 1922, the International Conference on Customs Formalities in Geneva in 1923, the Stockholm Conference of the International Chamber of Commerce in 1927, and the Interparliamentary Conference in Paris in 1927—condemned the erection and maintenance of trade barriers.² So little were

the recommendations of these conferences heeded, and so serious were the results of European commercial policies that the Sixth Assembly of the League decided to convene a World Economic Conference "to bring about a general exchange of views on existing economic difficulties and the means of overcoming them - to evoke collective opinion on the conditions, principles and guaranties which might serve as a starting point for the improvements and progress necessary to restore greater freedom of international commerce".¹ This conference, the outstanding multilateral attempt at economic cooperation, met in Geneva from May 4-23, 1927. It was officially attended by 190 delegates and 157 experts from 50 countries, and a number of other countries were represented by unofficial observers. After a consideration of the tariff situation, this conference pronounced as its verdict that tariff walls were too high and that the time had come "to move in the opposite direction". It urged that nations attempt by unilateral, bilateral, and multilateral action to remove all restrictions to free trade.

². Ibid. p. 196.
The recommendations of the World Economic Conference received their first consideration at the Diplomatic Conference on Import and Export Prohibitions and Restrictions, held in Geneva in October and November of 1927. At this conference a convention was adopted in which the contracting parties agreed to abolish, within six months after the coming into force of the convention and subject to duly specified exceptions, all existing import and export prohibitions and restrictions and not thereafter to impose new ones. 1. Certain countries pointed out that they could agree to such a convention only with reservations. These reservations were considered at a supplementary conference in July, 1928, and certain ones of them were embodied in a supplementary agreement to the original convention. 2. M. Colijn, president of the conference, considered the adoption of this Convention for the Abolition of Import and Export Prohibitions and Restrictions "a great step ... towards the freedom of trade recommended by the International Economic Conference of May 1927." 3. Unfortunately, the conditions of ratification, upon which the convention was to come into force, failed

2. For full text of this supplementary agreement see League of Nations Treaty Series, XCVII, pp. 437-455.
of fulfillment. Although seven countries agreed in June, 1930, to abide by the provisions of the 1 convention, only four of them were European Powers, and one of these, Portugal, later denounced it. 2

Although unable to bring into effect among themselves this general convention for the abolition of import and export prohibitions and restrictions, seventeen European states on July 8, 1928, entered into, and in September, 1929, put into force agreements for the suppression of export prohibitions and export duties on hides, skins, and bones. 3 The entry into force of these agreements was, as M. Serruys, president of the conference, said, "The first concrete result of concerted action on tariff questions, as recommended by the Economic Conference." 4

Unfortunately, the agreements applied to only a very limited number of commodities.

...Just as these multilateral attempts to put into effect the recommendations of the World Economic Conference fell short of any substantial

achievement, so, too, did unilateral action by individual states fail to remedy the European tariff situation. Immediately following the 1927 Conference tariffs were quite stable. This cessation of tariff increases was, however, of short duration, and in 1929 tariffs were higher than they had been in 1927. This state of affairs provoked discussion in the Tenth Assembly of the League and resulted in the adoption of resolutions that nations by concerted action should agree not to raise their protective tariffs for two or three years, and that a Diplomatic Conference be called with a view to concluding such a tariff truce. The League further recommended that the negotiations should not be left entirely to experts but that the governments should participate more directly.

The outgrowth of these resolutions was the First Conference for Concerted Economic Action, which convened in Geneva on February 17, 1930. The Conference was officially attended by delegations from 30 countries, of which fifteen were represented by Ministers of Commerce and nearly all others by the

highest officials responsible for commercial policy.

The Economic Committee of the League had prepared a draft convention for the conclusion of a general tariff truce which was to form the basis of discussion in the plenary conference. From the very beginning of the conference there was opposition to this draft convention. The French delegation was particularly opposed to it and finally submitted a compromise plan. Instead of providing for a general tariff truce, the French plan allowed existing duties to be increased and new ones to be imposed during the life of the proposed convention, such action to be subject only to notification. In case such action should be taken by any party to the convention, aggrieved states might demand negotiations and, if not satisfied with the results of the negotiations, denounce the convention. The French plan also provided that states might submit lists of commodities which should be excepted from the provisions of the convention. This "exceptions clause" was strongly opposed but, with only minor modifications, it was embodied in the convention which was finally adopted.

This convention, effective only until April 1, 1931, and for successive periods of six months after that date until denounced, divided states into two groups. It provided that those countries which consolidated their tariffs by treaty should not denomnace these bilateral treaties for one year. In case any of these countries found it necessary to impose new duties or increase existing ones, they should notify the other parties to the convention and negotiate with any states demanding negotiations. Countries which did not employ tariff consolidations should not increase their protective duties during the life of the convention. Increases in the fiscal duties of these countries should be subject to the requirements regarding notification and negotiation.

This Conference also drew up a Program of Future Negotiations and a Final Act. The former, along with a questionnaire, was submitted for study to the governments concerned; the latter recommended that the Economic Organization of the League investigate means of establishing close cooperation between European and overseas countries. ¹

To follow up the work of this first conference a Second Conference for Concerted Economic Action was held at Geneva in November of 1930. This conference concerned itself primarily with a study of the replies which had been received to the questionnaire regarding future negotiations on economic questions. Although these communications showed a unanimity of opinion that the tariff situation was deplorable and that something needed to be done, few of them proposed concrete remedial action. The Economic Committee recommended to the conference for special consideration the proposals of the British and the Dutch governments. The former provided for all around reduction of rates by multilateral agreements; the latter for bilateral agreements between free trade and protectionist states. As in the first conference, the French delegation opposed the various plans which were advanced for tariff reduction, and, by insisting on the discussion of non-tariff questions as "prerequisite to customs reduction", was largely responsible for the failure of the conference to advance any nearer a tariff.

truce. Although the time for the ratification of the Tariff Truce, as the Commercial Convention was commonly called, was extended and, although the whole question was again considered at a second session of the conference in March, 1931, and later by the Council, the Truce never became operative.

Regional Conferences.

During the same period in which the League so unsuccessfully tried to have a tariff truce adopted, certain efforts outside the League were also directed toward the economic recovery of the continent. At the Oslo conference (December, 1930) six European states agreed not to increase tariffs for one year without notification, and went on record in favor of further negotiations and in support of future international efforts for tariff reduction. 2

Regional conferences of eastern and southeastern European states were held at Bucharest, Sinaia, and Warsaw in August 1930. 3 These countries demanded


3. The countries which participated in these conferences were as follows: (1) At Bucharest - Hungary, Rumania, and Jugoslavia; (2) At Sinaia - Rumania, and Jugoslavia; (3) At Warsaw - Belgium, Esthonia, Latvia, Poland, Czechoslovakia, Hungary, Rumania, and Jugoslavia. Ibid., p. 221.
agricultural credits and preferential treatment of their products by the industrial states of Europe, and applied to the Second Conference for Concerted Economic Action (Geneva, November, 1930), to the World Wheat Conference (Rome, March-April, 1931), and to the Grain Conference (London, May, 1931) for such preferential treatment. These conferences, unable to reach general agreements on the subject, recommended bilateral action through diplomatic channels.1 The unconditional interpretation of the most-favored-nation clause and hostility of third states, both of which greatly hamper the negotiation of such bilateral preferential agreements, made the recommendations of these various conferences difficult, if not impossible, of fulfillment.

Briand's Plan for a European Union.

Another movement directed toward the betterment of economic conditions on the continent, during this same period, has been the Pan-Europa movement. Although a Pan-Europa has been the ideal of dreamers and philosophers for centuries, the modern Pan-Europa

1. Ibid. p. 323.
movement was launched by Count Coudenhove-Kalergi, and brought into the realm of practical politics by Aristide Briand. In the summer of 1929 it was rumored that Briand would propose a plan for the economic union of Europe at the September meeting of the League Assembly. These press reports were confirmed by him, on July 18th, in the Chamber of Deputies. On September 5th Briand mentioned in the Assembly of the League his intention of submitting the question of European union to the representatives of other European members of the League, and later invited the heads of the other twenty-six European delegations to a luncheon, at which, on September 9th, views were exchanged on the proposed scheme of union. At this meeting Briand was asked to send to all European governments a memorandum setting forth his proposal in greater detail, so that the governments might study the question before the Eleventh League Assembly in September, 1930.

In compliance with this request, Briand, on May 17th, 1930, released to the governments of all European states members of the League of Nations a

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1. N.Y. Times, Aug. 11, 1929, IX, 1:3.
2. N.Y. Times, Sept. 6, 1929, 1:1.
memorandum setting forth his own views and those of his government on the question of a European federal union. Only the most tentative and general sort of a plan for union was set forth in this communication, but several points were made quite clear. The European association must be developed within the framework of the League of Nations as a kind of "regional agreement" provided for in Article XXI of the Covenant, and it must neither conflict with nor weaken the authority of the League. Although it was, at first, to be confined to European states members of the League of Nations it "could not oppose any ethnic group, on other continents or in Europe itself, outside of the League of Nations, any more than it could oppose the League of Nations." And, finally, the "federal bond sought for between European Governments" must not "affect in any manner the sovereign rights of the states, members of such a de facto association." In the light of these three reservations, Briand suggested that a general pact might be drawn up under which the signatory powers would undertake to make regular contacts for the

1. For full text of this memorandum see "Memorandum on the Organization of a Regime of European Federal Union", International Conciliation (Special bulletin), June, 1930, or N.Y. Times, May 18, 1930, p. 30.
purpose of discussing European problems. The machinery which Briand suggested might be necessary for this European union consisted of (1) a directing organ, or a "European Conference", composed of representatives of all European states and presided over by a president elected annually and functioning in rotation; (2) an executive organ, or a limited committee the president of which should also function in rotation; and (3) a secretariat, connected at first with the presidency of the executive committee, but later to be established in Geneva where both the conference and the committee were to hold their meetings. The memorandum stressed the necessity of subordinating economic union to political union, on the ground that "all possibility of progress toward economic union" was "strictly determined by the question of security." The tasks, which it was suggested this association of European states might undertake, included the following: lowering of tariffs; coordination, regulation, and improvement of the means of communication and transit; encouragement of credit for the development of undeveloped states; labor and health problems; intellectual cooperation,
and the more frequent contact and exchange of views between European states.

The replies to this memorandum were unanimous in the opinion that closer cooperation between European states was desirable and expressed a willingness to participate in a conference at which the possibilities of association should be considered. The governments were also unanimous in their agreement with the three reservations set forth in Briand's memorandum, namely, that a European union must not (1) interfere with the League of Nations, (2) oppose other ethnic groups, or (3) impair the sovereignty of participating states. Although agreed on these points, the replies showed great divergence of opinion on other points, particularly regarding the methods by which the proposed aims might be achieved. Almost one-half of the states objected to an

organization separate from the League, on the ground that such an organization would necessarily conflict with and impair the usefulness of League machinery. A large number also took exception to the French contention that political cooperation had to precede economic cooperation and that economic cooperation depended on further guarantees of security. Other points brought out in these replies were (1) the impossibility of avoiding intercontinental rivalry; (2) the necessity of removing present inequalities of European states; (3) the desirability of including Russia and Turkey in any scheme of European union; and (4) the inadvisability of setting up the type of machinery suggested in the Briand memorandum.

A brief but comprehensive summary of these replies was prepared by Briand and presented, in the form of a report, to the representatives of European states members of the League of Nations on September 8, 1930. On the following day this group decided that a separate organization should not be set up, but that European cooperation should be placed within the framework of the League and that the proposal of European union be brought

before the League Assembly. Several days later (September 11), after Briand had explained the scheme to the Assembly, that body adopted resolutions inviting the "Governments of European states members of the League of Nations" to pursue the enquiry of European union and report to the next Assembly.

In compliance with these resolutions, representatives of the states concerned met on September 23 and organized a Commission of Enquiry for the European Union. At this meeting M. Briand was elected chairman for the first year. The selection of Sir Eric Drummond, Secretary-General of the League of Nations, as Secretary of the Commission was an important step in coordinating the work of the Commission with that of the League. Under the direction of Secretary-General Drummond a special committee of the League Secretariat was formed to do the preparatory work for the second meeting of the Commission which was set for January 19, 1931.

1. For text of these resolutions see N.Y. Times, Sept. 9, 1930, l:1.
2. For text of these resolutions see Monthly Summary of the League of Nations, X, No. 9, (Sept., 1930), p. 199.
3. For minutes of this meeting see Official Journal, 11th yr., No. 12, (Dec., 1930) pp. 1750-1761. For sake of brevity this commission will be referred to as the Commission for European Union.
At the first meeting of the Commission (September 23, 1930) it had been decided that the initial material for study should be the French Memorandum and the replies to it, and that the Secretary should collect all further useful information before the next session. In accordance with this request the Secretary-General submitted a report describing the work done by the Economic and Financial Organization of the League, the Organization for Communications and Transit, and the Health Organization, and a memorandum from the Director of the International Labor Office with similar information about labor questions. At this session the Commission for European Union considered the work of the First and Second Conferences for Concerted Economic Action, and recommended that the Tariff Truce Convention be put into effect. The Commission also recommended a conference of European grain-exporting countries to study means of disposing of the existing surplus grain; decided to study the world economic crisis; adopted a manifesto aimed at war talk; decided to

invite Russia, Turkey, and Iceland to subsequent meetings; and set up three committees (a wheat committee, an agricultural credits committee, and a committee on general organization of European union), all of which were to report at the May session of the Commission.

There was probably no better proof of the importance attached to this January meeting — really the first meeting of the Commission for European Union to consider economic problems — than the fact that of the 27 countries represented, 23 were represented by their Premiers or their Foreign Ministers. Although no steps were taken toward the immediate amelioration of economic conditions, machinery was set up to study some of the economic problems needing urgent attention.

It was at this stage of the Pan-Europa movement that two European countries, on the plea that all efforts at European economic collaboration had failed to achieve definite remedies for Europe's serious economic conditions, took matters in their own hands and sought to remedy their own situation by forming a customs union. Austria and Germany, on March 21st, announced to the world that for
economic reasons of urgent necessity they had entered into a pact to abolish customs duties on their common frontier. It is this pact—The Vienna Protocol of March 19, 1931—than which no other single attempt at economic collaboration has ever created greater interest and concern among European powers, that we propose now to examine.
CHAPTER TWO.

THE VIENNA PROTOCOL.

When the Foreign Minister of Germany, Dr. Julius Curtius, visited in Vienna early in March, 1931, it was known that the purpose of his visit was to seek cooperation with Austria in economic matters. The precise results of this conference with Dr. Johann Schober, Foreign Minister of Austria, were not known, however, until some weeks later when it was rumored that Germany and Austria were about to announce their entrance into an agreement looking toward the establishment of a customs union. These rumors were confirmed in official communiques, released simultaneously in Berlin and Vienna on the afternoon of March 21st. Great Britain, France, and Italy, as well as all states bordering on Austria and Germany, were officially notified of the pact on that day and were invited to join the proposed customs union.


In this agreement, the Vienna Protocol of March 19, 1931, Germany and Austria set forth the principles upon which they had agreed to enter

1. N.Y. Times, March 22, 1931, 1:8
into immediate negotiation of a treaty to assimilate the tariff and economic policies of the two countries.¹

A tariff law, looking toward the complete abolition of all export and import duties between the two countries, was to be agreed upon and put into operation by the two governments concurrently with the treaty and for the period of its duration. Agreement was also to be reached as to the categories of goods and the period of time for which internal customs duties might be necessary, and provisional arrangements were to be made regarding the turnover tax and the exchange of goods for which monopolies and excise duties prevailed in either country. Import, export, and transit prohibitions were to be abolished, except such as might "be requisite for reasons of public security, public health or matters of a similar nature" to be specified in the treaty. In order to ensure the uniform execution of the tariff law and the traffic regulations, special measures were to be enacted by the two governments, but there was to be no fusion of the customs administrations. Each country was to retain complete control within its own boundaries. German authorities were to levy and administer the customs duties

¹ For the full text of this protocol see Appendix, No. 1, p. 141.
within Germany, and Austrian authorities were to have exclusive control within Austria. Each country was also to bear the cost of its own customs administration. Any special expenses arising out of the application of the treaty were to be deducted from the customs receipts before they were apportioned between the two countries in accordance with a fixed quota. In determining this quota, special care was to be taken not to prejudice liens upon customs revenues which might exist in either country. The pact further provided that each country was to maintain its independence and the right to conclude commercial agreements with third states. In negotiating with third states neither Austria nor Germany was to violate the interests of the other, and, whenever possible, such negotiations with third states were to be conducted jointly. In such a case the two governments were to sign separate treaties with the third party and put them into effect at the same time by the simultaneous exchange of ratifications. Existing commercial agreements, concluded by Austria and Germany with third states, were to be brought into harmony with one another and the purpose of the treaty. Any differences of
opinions as to interpretation and application of the treaty, and failure to reach the special agreements provided for in the treaty were to be submitted to an arbitral committee on which the two countries should have equal representation. In case either party should feel that such an arbitral decision impaired its vital economic interests, that party could terminate the treaty on six months' notice. For no other reason could the treaty be terminated during the first three years of its operation, but, after this initial period, it could be terminated on other grounds upon one year's notice. To this treaty third states were invited to adhere.

**The Vienna Protocol in the Light of Austria's Recent History.**

Probably no single event since the close of the World War has received so much attention from European countries as did this proposal of Austria and Germany to enter into a customs union. As soon as the proposal was announced, even before the text of the protocol was published, there broke from European states, particularly from France, the most violent protests and condemnations that have been leveled at any country for some
years. Immediately this proposal to establish a customs union was regarded as the first step toward Anschluss, the political union of Austria with Germany. In order to understand the fear that such a political union might be attempted and the determination of certain powers that it should never come to pass, we need to review briefly Austria's post-war history.

At the close of the World War the old Hapsburg Empire was torn asunder and in its place were created the independent states of Austria, Hungary, and Czechoslovakia, with certain portions of the old Empire going to Jugoslovakia, Rumania, and Poland. Whereas the former Austro-Hungary had been a largely self-supporting, highly inter-dependent economic unit, with a population of 51,390,233 and an area of 261,027 sq. mi., the new Austrian Republic is a small, mountainous, landlocked state, with a population slightly over 6,000,000 and an area of 32,377 sq. mi. \(^1\) It was cut off from the best agricultural land of the old Empire, deprived of its coal deposits, and its trade routes were severed. Its economic situation was, therefore, extremely

difficult, and, rather than attempt to exist as an independent state, Austria decided to become a part of a larger economic unit by forming a political union with Germany. Historically, too, there were ties which bound them together and, on the basis of President Wilson's Fourteen Points, Austria's decision to unite with Germany seemed quite logical, since her population was, for the most part, German. Accordingly, on November 12, 1918, the Provisional National Assembly of the New Austrian Republic adopted a draft constitution which declared that German-Austria formed "an integral part of the German Republic". It further declared that special laws should "govern the participation of German-Austria in the legislation and administration of the German Republic", and should "determine the force of laws and customs of the German Republic in German-Austria".1 When the Constituent Assembly met in Vienna early in March, 1919, a law was passed proclaiming German-Austria a democratic republic and declaring again that German-Austria was a part of the German Reich.2

1. Full text of this provision will be found in Graham, Malbone W.: New Governments of Central Europe, (1924), p. 508.
The provisional constitution of the German Reich, issued in January, 1919, also spoke of union between Germany and Austria, providing that, if German-Austria should join the German Reich, it should be entitled to take part in the "States' Committee, with a representation to be fixed by Imperial Law". Until that time German-Austria should take part as a "consulting voice in the deliberations".

At the suggestion of France, the Principal Allied and Associated Powers, sitting in the Peace Conference at Paris, vetoed this union between Austria and Germany. Their action was based largely upon fear. They felt that, should this union be allowed, Germany would emerge from the war a large power, extending to the Brenner pass and to the South Tyrol on Italy's frontier, standing, so they believed, a constant menace to the future peace of Central Europe. They, therefore, incorporated into the Treaty of Versailles a provision (Article 80) which prohibited union between Germany and Austria. In this article Germany undertook to acknowledge and respect the independence of Austria within the

1. Ibid., p. 300.
frontiers that should be set up, and agreed that this independence should be inalienable except with the consent of the League Council. ¹

On July 31, 1919, soon after the Treaty of Versailles was signed, but before it went into effect by the deposit of ratifications, the new German constitution was drafted at Weimar. This document provided, in the second paragraph of Article 61, that German-Austria should, after it had joined the German Reich, "have the right to participate in the Council of the Reich with such a number of mandates" as should "correspond to the size of the population. Until that time the representatives of German Austria" should "have an"advisory vote". ² This constitution also provided, in the second paragraph of Article 178, that the provisions of the Treaty of Peace signed at Versailles on June 28, 1919, should not be affected by the constitution. ³

The Supreme Council of the Allies immediately took alarm at Article 61 of the Weimar constitution. On September 2nd, a note was sent to Germany in

¹ For full text of this Article see Appendix, No. 2, p. 146.
² For full text of this Article see A League of Nations, II, No. 6, p. 368.
³ Ibid, p. 399.
which it was pointed out that the second paragraph of Article 61 was in violation of Article 80 of the Peace Treaty, and that, unless this paragraph were suppressed within fifteen days, the Allies would be compelled to undertake further occupation of the right bank of the Rhine.\(^1\) The German Government at first maintained that the second paragraph of Article 178 in their constitution made unnecessary any statement regarding Article 61. The Allies, however, persisted in their demands until the German Government agreed to declare Paragraph 2 of Article 61 null and void. On September 22nd, Baron Kurt von Lersner, head of the German Peace Mission at Versailles, signed the protocol annulling the objectionable part of Article 61.\(^2\)

In the meantime, there had been incorporated into the Treaty of St. Germain, the peace treaty with Austria, a provision prohibiting the union of Austria and Germany. Article 88 of that document reads as follows:

The independence of Austria is inalienable otherwise than with the consent of the Council of the League of Nations. Consequently, Austria undertakes in the absence of the consent of the said Council to abstain from any act which might directly or indirectly or by any means whatever compromise

\(^1\) For full text of this note see League of Nations, II, No.6, pp. 368-369.
\(^2\) Ibid. p 369.
her independence, particularly, and until her admission to membership of the League of Nations, by participation in the affairs of another Power. 

At the time the Austrian National Assembly signed this treaty a resolution of protest was adopted against the "violation of Austria's right of free disposal of herself". This resolution declared that Austria's union with Germany was an absolute necessity and expressed the hope that when the hatred of war had died down this union would be consummated. Two provinces - Salsburg and Tyrol - went so far as to order plebiscites on the question of union, but, although the vote was overwhelmingly in favor of union with Germany, the results of such plebiscites meant nothing in the face of the opposition of the Supreme Council of the Allies. The Supreme Council went so far as to force the new Austrian state to change its name from German-Austria to the Federal Republic of Austria.

During 1920-21 Austria's economic conditions became more and more serious. She had been kept alive, immediately after the war, by public and private loans and by charity, but the further funds of which she was in need were not forthcoming. In

2. N.Y. Times, Sept.8, 1919, 1:2.
desperation Austria appealed to the Supreme Council of the Allies. That body referred her to the League of Nations. Even the League took no action until after Chancellor Seipel of Austria had visited in Verona, Prague, and Berlin, and had indicated Austria's willingness to enter into a customs and monetary union with one of her neighbors. Fear that such a union was about to be formed with Italy brought the powers to a serious consideration of Austria's plight. Under League auspices an Austrian reconstruction program was worked out, the basis of which was three protocols signed at Geneva on October 4, 1922. The first of these protocols was important in that it set forth once more that Austria was to remain an independent state. Great Britain, France, Czechoslovakia, and Italy, the powers that were guaranteeing the major portion of the Austrian reconstruction loans, declared in this protocol that they would "respect the political independence, the territorial integrity, and the sovereignty of Austria", and that they would "not seek to obtain any special or exclusive economic or financial advantage calculated directly or indirectly to compromise that independence". The government of Austria undertook, on its part, "not
to alienate its independence" and to "abstain from any negotiations or from any economic or financial engagement calculated directly or indirectly to compromise this independence". The loans which were advanced to Austria to carry out this reconstruction program were guaranteed by an annuity provided by the receipts of the customs and the tobacco monopoly.

For the period 1922-1926, during which the League reconstruction program was being carried out, Austria lost some interest in the Anschluss question. Conditions in Austria gradually improved, whereas in Germany they became so bad with the inflation of the mark that it was an advantage for Austria to be separate from Germany. After 1926 the movement came to the fore again, the Schubert musical festival in 1928 being particularly seized upon as an occasion for speeches and demonstrations in favor of Austro-German union. For some years there have been certain organizations, among them the Deutsch-oesterreichische Arbeitsgemeinschaft (German-Austrian Labor Association) and the Deutsch-oesterreichische Volksbund (German-

Austrian Popular Union), which have openly worked for such union. 1. The governments of the two countries have also instituted certain steps which secure some of the benefits of actual union. Frontier and passport regulations have been simplified, the penal codes of the two countries have been brought into harmony with one another, certain other laws and judicial procedure have been standardized, and a close connection has been established between the educational institutions. 2. When one adds to these steps Austria's constant plea that she must become a part of a larger economic area in order to live, it is no great wonder that European powers branded the proposed customs union as another step toward Anschluss.

Press Comment on the Proposed Customs Union.

Although Germany and Austria hastened to inform the powers that political union was not being attempted and that they were simply taking a practical step toward the realization of Briand's

plan for a union of European states, their assurances did not quiet the storm. Germany was far more bitterly assailed than Austria. The charge against Germany was that she was attempting to realize a Mitteleuropa such as Friedrich Naumann, one of the most extreme advocates of a German hegemony, had advocated before the close of the World War.\(^1\). The industrially greater Germany, it was charged, would simply absorb little Austria and stand as a danger to the security of Central Europe. To France this pact was a first move against the peace treaties and the status quo. Although the French press also charged that the establishment of a customs union would be a violation of Austria's treaty engagements, it was not this charge - the only one that proved of ultimate significance - which received most attention. In fact, according to the French press Germany was the culprit and bore the brunt of the attack.

Particularly bitter, too, were the French charges that Germany and Austria had presented the world with a fait accompli. Dr. Schober pointed:

\(^1\) See Naumann, Friedrich: *Central Europe.*
out that no effect of surprise was intended. According to his statement, Germany and Austria had expected to bring forward their plan at the next meeting of the Commission of Enquiry for European Union, which was scheduled for May, 1931. Germany, however, suddenly remembered that the preparatory committee of this Commission was to meet in Paris on March 24th, and felt that European states should be informed of the Austro-German agreement before that time. It was, therefore, agreed by Austria and Germany to make the announcement simultaneously before the 24th in Paris, Rome, and London, and to empower their ministers in other countries to make it on the same date. Dr. Schober also pointed out that other countries knew of the agreement almost as soon as did the governments concerned. The decision which Dr. Curtius and Dr. Schober had reached early in March was agreed to by the German Government on March 18th and by the Austrian Government on March 19th. The Austrian Parliament was notified through its main committee on March 20th, and on March 21st most of the other states were informed. In making this statement Dr. Schober said, "Perhaps in consideration of the fact that there was no treaty and that we had
agreed only on principles this announcement was not necessary. I also do not know whether two other European States would feel obligated to tell all Europe about it and all they had discussed together. Our two States did it to avoid the impression of preparing a surprise, so that nobody could reproach us." 1. But this statement did not silence the opponents of the proposed scheme.

Almost as violent as this denunciation of Germany and Austria was the French press attack upon M. Briand and his foreign policy. The Nationalist press took for its text "If we had not evacuated Mainz this would never have happened." 2. To this it added that Briand's "peace" talk and his proposals for economic union had only strengthened Germany's position in regard to the proposed economic union with Austria. Only on March 3rd, the very day on which Dr. Curtius had arrived in Vienna to negotiate this pact; and only eighteen days before it was officially announced, Briand had assured the Chamber of Deputies that all danger of Anschluss had passed. 3. Now he

1. N.Y. Times, Mr. 31, 1931, 11:2.
2. Ibid., Mr. 24, 1931, 12:3.
3. Ibid., Mr. 29, 1931, IX, 1:1.
was accused of having been the dupe of the Germans. So violent were these attacks upon Briand, and so united was French public opinion on the point that the proposed union must never be accomplished, that he finally announced to the Senate that he would do all in his power to prevent the consummation of the Austro-German plan.

In marked contrast to the violence of the French press was the calmness of most British newspapers. The most serious criticism the English press had to offer was in regard to the manner in which the pact was negotiated and announced. The suddenness of its announcement had so greatly surprised and disturbed Europe that England feared the prospects of the Disarmament Conference of February, 1932, had been imperilled. The time of its announcement was also criticized, for coming immediately upon the heels of the London Naval Conference, it was feared this pact might endanger the Franco-Italian Naval Agreement.

In Germany, where the announcement of the pact was as much of a surprise as elsewhere in the world, the press devoted much space to a discussion of the agreement and, for the most part, showed complete
approval. The entrance into this agreement was hailed as the "first autonomous act of Germany since the World War", and as one that marked the beginning of a new economic era. When it was realized in Germany how France and some other countries were affected, there was some criticism of the government for its failure to soften the diplomatic blow which had provoked so much antagonism in various European capitals.

In Austria the press comment was also on the whole favorable. Most of the unfavorable comment was restricted to newspapers of the clerical wing of the Christian Social party, and was a reflection of the personal enmity that exists between ex-Chancellor Seipel and Dr. Schober. The newspapers which opposed the proposed customs union were repovved in an official communique on April 12th for the stand they had taken. There was also opposition to the proposed customs union among industrial leaders, but this too was suppressed.

1. Manchester Guardian Weekly, Mr. 27, 245:1.
3. N.Y. Times, Mr. 25, 13:6.
In spite of this governmental attempt at suppression of unfavorable comment, the press attacks continued so hostile toward Dr. Schober that he finally presented his resignation early in September. ¹

Among other European countries press comment on the proposed customs union was abundant and varied. The greatest opposition, next to that of France, came from France's satellites - the Little Entente and Poland. Hungary, which was regarded as the most logical adherent to such a union was, on the whole friendly but cautious in its comments. ² The Italian press also came out against the proposed regime but its opposition was by no means as violent as that of France.

**Governmental Action on the Proposed Customs Union.**

The governments were no slower at coming into action regarding the proposed Austro-German customs union than was the press. On March 22nd, the day after the Vienna Protocol was officially announced the French, Italian, and Czechoslovak ministers in Vienna delivered warnings to the Austrian govern-

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¹ Ibid, Sept. 6, 1931, 6:2.
² Ibid, Mr. 23, 1:8.
ment that the proposed customs union would constitute a breach of Austria's international engagements and asked that Dr. Schober supply them with further details regarding the project.¹ No. official reaction from European powers reached the Foreign Office in Berlin the first day after the pact was announced, but on March 23rd Dr. Curtius received the ambassadors of Italy, Great Britain, and France to talk over the proposed union.²

The French government had insisted that England should join France, Italy, and Czechoslovakia in lodging a joint protest in Vienna, but Mr. Arthur Henderson, Foreign Minister of Great Britain, who was in Paris at the time the Austro-German agreement was announced, refused to do this. After studying the protocol, he decided that the question of its compatibility with Austria's treaty obligations was a matter for the Council of the League to study. Following his decision to make this suggestion to Austria and Germany, he had a conference with M. Briand the morning of March 25th. Early in the

¹ Manchester Guardian Weekly, Mr. 27, 1931, 245:1.
² N.Y. Times, Mr. 24, 1931, 1:5.
afternoon of the same day the following official
communique was released from the British embassy
in Paris:

The British and French Foreign Ministers
considered this morning the situation created
by the proposed Austro-German Customs Union.
Mr. Henderson informed M. Briand that he had
drawn the attention of the German and Austrian
Governments to the anxiety which has been
manifested in many quarters as to the conformity
of the proposed treaty with existing obligations.
He had expressed the strong hope that before
they proceeded further in the negotiation of the
proposed Customs union opportunity would be given
to the Council of the League of Nations, under
whose auspices the Protocol of 1922 was negotiated,
to assure itself at the May meeting that the
proposals were not contrary to the engagements
given by Austria in that instrument.

A communique released from the French Foreign
Office at the same time made no reference to the
conversation between M. Briand and Mr. Henderson,
but referred to a conversation which M. Briand
had had with Victor Berard and Paul Boncour,
presidents of the Foreign Affairs Commissions of
the Senate and the Chamber of Deputies. After
pointing out the measures which M. Briand had taken
to bring to the attention of Austria and Germany
the necessity of respecting existing treaty engagements,
this communique continued, "In indicating to the

1. Manchester Guardian Weekly, Mr. 27, 1931, 245:1.
presidents of the two commissions the position taken by the French Government in this affair, the Minister of Foreign Affairs called attention to the fact that as Protocol 1 of Oct. 4, 1922, relative to a plan for financial aid to Austria, had been established by the League of Nations and remained under its safeguard it was impossible that the Council of the League of Nations should not be called on to give its opinion before the project in question should be carried any further. 1

Mr. Henderson's proposal that the question be submitted to the League was transmitted to Dr. Bruening in Berlin on March 25th by Sir Horace Rumbold, British Ambassador, and to Dr. Schober in Vienna by Sir Eric Phipps, the British Minister. 2. Sir Eric Phipps was asked by Dr. Schober to inform Mr. Henderson that the Austrian Government was fully convinced that the agreement between Germany and Austria was within the frame of the First Geneva Protocol of 1922. The Austrian Government, however, had no objection to an examination of

1. N.Y. Times, Mr. 26, 1931, 1:1.
2. Manchester Guardian Weekly, Mr. 27, 1931, 245:1.
the agreement from a legal standpoint by the signatories of the First Geneva Protocol, although it believed such an examination from the political standpoint was not called for in view of the purely economic character of the agreement. Dr. Schober also stated that the Austrian Government did not plan any fait accompli. ¹

Chancellor Bruening in his reply to Mr. Henderson pointed out to Ambassador Rumbold that the Vienna Protocol "was in keeping with the letter and spirit of the Geneva protocol and that it was the opinion of the Reich Government and the government of Austria that there was no occasion for the Council to occupy itself with the subject." ² He went on to say that, if other governments insisted on examining the agreement from a juridical aspect, neither Austria nor Germany had any reason to fear the investigation. An examination of the agreement from a political standpoint, however, he regarded as inadmissible, on the ground that the pact was purely of an economic nature. It was also pointed out to Ambassador Rumbold

¹. N.Y. Times, Mr. 26, 1931, 12:2.
². Ibid., Mr. 26, 1931, 1:1.
that the Austro-German negotiations of the treaty would necessarily continue, although they could not be concluded for another two or three months because of the mass of technical details that had to be adjusted. 1.

Thinking that the German Government had misunderstood his request, Mr. Henderson telegraphed to Berlin on March 26th, saying that he had simply suggested that before Germany and Austria proceeded further the Council of the League should be given opportunity to assure itself that the proposed treaty was not contrary to the First Geneva Protocol of 1922. He pointed out that it was possible that the Council would seek the aid of the Permanent Court of International Justice on so technical a juridical question, and this procedure he would support. The German Government replied, on the same day, that Mr. Henderson's proposal had been perfectly understood; that the German Government saw no reason for the matter being referred to the Council of the League, since the proposed treaty was not contrary to the First Geneva Protocol; 1.

1. Ibid.
that the Powers were, of course, at liberty to refer the treaty to the Council; but that the German Government reserved complete liberty of action regarding any procedure which might be suggested by the Council. 1.

It was not only the executive branches of the governments which concerned themselves with the proposed customs union. The debates in the French Senate and Chamber were most bitter. On March 26 the Tariff Commission of the Chamber of Deputies voted unanimously a resolution that the government should protest vigorously against any proposed customs union between Austria and Germany, and proposed as a means of pressure and retaliation that the commercial treaty of 1926 and that of 1929 with Austria be denounced. 2. Briand approved the passage of this resolution in a speech before the Senate on March 28th, pointing out that France's commercial treaties with Austria were based upon a definite economic situation and that, should this situation be modified, there would have to be a revision of the whole question. He pointed out

1. Ibid., Mr. 31, 1931, 1:3.
2. Ibid., Mr. 27, 1931, 14:4.
that Germany and Austria had both been notified that France considered they had no right to enter into the proposed customs union and that France would do all in her power to prevent its accomplishment. He issued a warning to Germany that for the moment she must be considered outside the group of those powers who were working for European union, and added, "It is evident that a halt has come to our relations with Germany". In closing this speech, which had been a defense of his foreign policy, he promised, "If I remain at my post I shall continue the action which I have begun to a conclusion; that is to say, to obtain that these two countries will not persevere in their intention to violate their solemn engagements". 1

The House of Commons in England had also discussed the proposed customs union on March 25th, 2, and on March 30 called upon Mr. Arthur Henderson to make a statement regarding the whole question. The debate here was in sharp contrast to that in the French Chamber and Senate, and, instead of being called upon to defend his foreign policy, Mr. Henderson

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1. Ibid., Mz. 29, 1931, 1:7.
2. Ibid., Mr. 26, 1931, 12:3.
was simply called upon to give the House of Commons information on the question. In his speech he set forth what communications there had been between him and the French, German, and Austrian Governments on the question; revealed his intention of notifying the Secretary-General of the League of his desire to have the Council study the compatibility of the proposed agreement with Austria's treaty obligations; and gave his promise to support a reference of the question to the World Court, in case the Council should want an advisory opinion.¹

Even this decision to submit the matter to the Council of the League did not stop discussion of the question. Dr. Edward Benes, Foreign Minister of Czechoslovakia, who had come out against the proposed customs union as early as March 24th, on March 31st denounced, before the Foreign Affairs Committee of the Czechoslovak Parliament, the proposed plan in a speech that was regarded as the most outspoken criticism that had been expressed by any European statesman. He pointed out that Czechoslovakia could not enter such a union.

¹. For summary and excerpts of Henderson's speech before the House of Commons see Ibid., Mr.31, 1:3.
because of the "inevitable consequence of combat with all States which refused to renounce their most-favored-nation rights." There was also, according to Benes, political reasons why Czechoslovakia had to oppose entrance into such a union, "since Czechoslovakia would as a State and race gradually lose its political freedom in a sea of 85,000,000 people". 1

Dr. Benes was also responsible for the calling of a conference of the Little Entente in Bucharest early in May to establish a uniform attitude on the proposed customs union before the Council meeting. At the final session of the Little Entente, on May 5th, a resolution was adopted expressing hostility toward the Austro-German project.

There had been some speculation as to which Article of the Covenant Mr. Henderson would invoke in making his request that the question of the Austro-German customs union be put on the agenda of the Council. When the letter from the British Government was received in Geneva on April 13th,

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2: Ibid., My. 6, 1931, 11:3.
it was discovered that no Article of the Covenant had been invoked.

Two days after Henderson's request was received in Geneva a wire was received from Dr. Curtius asking that the whole question be put on the agenda of the Commission of Enquiry for European Union which was scheduled to meet in Geneva on May 15th, immediately before the meeting of the Council on May 18th. It had been known that he would make this request. In a speech before the Reichrat on March 31st, in which he agreed to submit the question to the League, as Mr. Henderson had proposed, Dr. Curtius had said he would request that the Commission for European Union also study the question.1.

The Vienna Protocol before the Commission for European Union.

The Commission for European Union which met in Geneva September 15th decided at its first meeting to leave all discussion of the Austro-German customs union until the Council had taken up the question. On the following day, however,

Dr. Curtius and M. Briand clashed on the subject during a discussion of customs unions in general. Dr. Curtius presented a long argument in favor of customs unions as a means of solving Europe's economic problems. Although he stated specifically that he was not referring to the proposed Austro-German project, his speech implied that the Austro-German proposal was an example of the method of economic cooperation he was advocating. M. Briand, in the midst of his reply to this speech, said flatly that France condemned the proposed Austro-German plan and could not accept it. In a brief and rather curt reply Dr. Curtius informed M. Briand that the Council, not the Commission, was the body to discuss the legality of an Austro-German customs union. When Dr. Curtius was reminded that it was he who had raised the question in the Commission, he denied it so emphatically that M. Briand adjourned the meeting to check the discussion before the situation should become more tense. The proposed customs union was not again directly discussed in any of the sessions which followed, but it was touched upon indirectly in a discussion of the counter-proposals which were advanced as a means
of dealing with Europe's economic problems.

France, Russia, and Italy submitted to the Commission their ideas of how European states might cooperate to deal with the grave economic situation that had led Austria and Germany to enter into negotiations for a customs union. By far the most comprehensive of these plans was that of France. It was released to all members of the Commission in the form of a memorandum on May 14 and discussed by Briand on May 16.

This plan, which envisaged a gradual coordination of the whole economic structure of Europe until tariff barriers should be lowered and Europe functioned as a unit, suggested (1) that the surplus grain problem in Central and Eastern Europe be solved through the negotiation of preferential agreements between agricultural and industrial states; (2) that the economic situation in industrial states be solved through an extension of the cartel system; (3) that European financial resources be made available to countries in need of capital through the medium of a League bureau or under the supervision of the Financial Committee; and (4) that states come to the immediate aid of
Austria by undertaking a study of new treaties providing for a larger sale of Austria's products. In offering this plan as a substitute for the Austro-German proposal, Briand pointed out that the proposed customs union raised the dangerous question of national frontiers and caused a feeling of apprehension and distrust, whereas his plan offered no political dangers and would not shake that international confidence so necessary to European security. 1.

France's proposal was followed by one from Italy that suggested European states seek relief from the economic crisis through the negotiation of direct accords based upon the special conditions of exchange between states, and conceived in such a way that each contracting party would gain immediate tangible advantages. 2. This proposal was, therefore, one for a system of preferential agreements.

On May 18th, Maxim Litvinoff, Soviet Commissar for Foreign Affairs, after branding tariff barriers, industrial cartels, and preferential systems as political expedients that intensified Europe's difficulties, proposed an economic non-aggression

1. N.Y. Times, My. 15, 1931, 1:8, My. 17, 1931, 2:3.
2. Ibid., My. 17, 1931, 1:8.
pact in which the contracting parties would undertake "not to adopt in their relations with each other any discrimination whatsoever". 1.

The Vienna Protocol before the Council of the League

When the question of the Austro-German customs union came up for discussion in the League Council on May 18th, Mr. Henderson stated briefly his reasons for having referred the matter to the Council, pointed out that the question before the Council was of a juridical nature, and then introduced a resolution that the World Court be asked to give an advisory opinion on the following question:

"Would a regime established between Germany and Austria on the basis and within the limits of the principles laid down by the Protocol of March 19th, 1931... be compatible with Article 88 of the Treaty of Saint-Germain and with Protocol I. signed at Geneva on October 4th, 1922?" 2.

In the discussion which followed the

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1. For full text of Litvinoff's proposal see Ibid., May 19, 1931, p.6.
introduction of this resolution, M. Briand, M. Grandi, and M. Benes spoke against the proposed customs union. The French point of view had already been presented to the Council members in a memorandum released on May 17th. 1 The French stand was amplified and clarified in the Council discussion during which opposition to the Austro-German proposal centered around four main points. It was charged that the realization of an Austro-German customs union would (1) violate Austria's treaty obligations, (2) harm Austria from an economic standpoint, (3) intensify rather than alleviate the general European economic situation, and (4) lead to the political union of Austria and Germany. 2.

The argument advanced to show that a customs union between Austria and Germany would be a violation of Austria's treaty agreements was as follows: In the Treaty of St. Germain Austria agreed not to alienate her independence otherwise than with the consent of the Council of the League of Nations.

1. For full text of this memorandum see Ibid., pp. 1163-1172.
2. Ibid., pp. 1088-1091, 1163-1172.
In the First Geneva Protocol of 1922 Austria again agreed not to alienate her independence and further agreed (1) to abstain from negotiations and engagements that would directly or indirectly compromise this independence, and (2) not to violate her economic independence by granting to any state a special regime or exclusive advantages that would threaten her independence. The independence referred to was not only political independence but independence "in all its aspects and especially economic independence", and this independence Austria could not compromise without the consent of the Council. If the Vienna Protocol were carried out Austria's independence would be in danger. Certain features of the proposed customs regime, particularly the provision regarding negotiation of commercial treaties with third states, would limit Austria's freedom of action. In negotiating such treaties she would be compelled to regard Germany's vital interests and to participate in joint negotiations. She would, therefore, be dependent upon Germany in commercial matters. The provision regarding denunciation of the proposed
treaty would be of doubtful value to Austria as a means of making her independent of Germany in her commercial policy. Her commercial interests would become so fused with those of Germany that she might after three years no longer be in a position to avail herself of this theoretical right to denounce. This dependence upon Germany would be a restriction upon Austria's economic independence, hence an alienation of that independence which was declared inalienable in 1919 and 1922. The establishment of a customs union would be a further violation of Austria's treaty obligations in that it would constitute a special regime and would give Germany exclusive advantages, since German products would eventually enter Austria free of duties. An expressed willingness to enter into similar agreements with third states would not make the proposed arrangement with Germany less of a special regime. A statement of intentions would be far from equivalent to the conclusion of such agreements. In order not to make the arrangement with Germany a special regime it would be necessary to have successfully concluded negotiations with third states before
the entry into force of the agreement with Germany. Anyone of the powers toward whom Austria assumed obligations in 1922 would have a right to protest at Austria granting to any state or group of states a special regime or exclusive advantages such as Austria would grant Germany in the establishment of a customs union. Since Austria agreed not to negotiate and contract obligations such as she assumed under the Vienna Protocol without the consent of the Council, her establishment of the proposed customs union, for which she did not obtain such consent, would be a violation of her treaty obligations.

The argument that a customs union would be harmful to Austria from an economic viewpoint was developed as follows: Agriculture, it was said, is much more highly protected in Germany than in Austria. In order to assimilate the tariffs of the two countries the protection of agriculture would have to be lowered in Germany or raised in Austria. In the first case agriculture would suffer a severe depression in Germany; in the latter case the standard of living would be considerably raised in Austria. An increased
cost of living would prove fatal to Austrian industries whose low wage scale is dependent on the low cost of living. Should the cost of living rise, wages would have to rise, and the increased cost price of Austrian goods would make it impossible for Austria to compete with other Danubian and Balkan countries in the foreign market. Moreover, the industries of Austria, which are, on the whole, more highly protected than those of Germany would suffer for another reason. An assimilation of the tariffs would probably mean that the protection of Austrian industry would be lowered to the German level. This would be an additional blow to Austrian industries already menaced by the increased cost prices that would result from an assimilation of the agricultural tariffs. The result would inevitably be closed factories and increased unemployment. Even the provisional tariffs on certain Austrian goods would not change the ultimate result. The very fact that such tariffs were provisional would be an admission that the industries so protected would eventually have to give way to the stronger industries of Germany. The inequalities in the
two economic systems would simply mean an absorption of the one by the other. Moreover, the establishment of an Austro-German customs union would make Austria a part of an economic system to which she does not naturally belong. Austrian goods naturally flow east and southeast to countries which are Austria's source of supply, rather than toward Germany. A change in these natural trade relationships, through the artificial forces of a customs union with Germany, would necessarily be an economic detriment to Austria.

Several arguments were advanced by France, Italy, and Czechoslovakia to show that a customs union between Austria and Germany would intensify rather than elevate the general European economic situation. In the first place, it was said, there would be a denunciation of existing commercial treaties. This argument centered around the application of the most-favored-nation clause. It was pointed out that nations having commercial treaties with Austria and Germany would demand the same advantages that Austria and Germany would accord each other. The contention on the part of Austria and Germany that the most-favored-nation clause could not
apply to customs unions would be purposeless, because nations in general did not consider customs unions such an exception. Even the statement of the Economic Committee before the Council in 1929 that customs unions were by tradition considered exceptions to most-favored-nation treatment could not be considered as having definitely established that principle, because the Committee had at the same time admitted that the question was controversial. This difference of opinion regarding the application of the most-favored-nation clause would lead to disputes that would result in a denunciation of existing commercial treaties. If the proposed Austro-German arrangement should not be a complete customs union but a special economic arrangement with temporary barriers there would be all the more danger of nations demanding most-favored-nation treatment and denouncing their treaties with Austria and Germany if such treatment were not accorded them. If new treaties were negotiated to take the place of those that were denounced, the new treaties would probably set up higher tariff barriers then existed under the old ones
and thus hamper the free flow of goods still more. In the second place, it was said, the higher customs barriers in Austria which would result from an assimilation of the German and Austrian tariffs would re-act unfavorably upon the trade of other European countries and be elements of disturbance rather than of pacification. In the third place, established currents of trade would be disturbed. Neighbors of Austria and Germany would have their foreign markets taken by Austrian and German goods. Czechoslovak trade, according to M. Benes, would suffer in particular. Czechoslovakia's exports to Austria would be suppressed by German goods, and Austria's goods would substitute a large part of Czechoslovakia's exports to Germany. A transfer of these eastern and southeastern goods to other markets would disturb conditions in the markets to which the transfer were made, and would create, during this transitional stage, conditions that could only accentuate the general European depression. In the fourth place, the establishment of an Austro-German customs union would lead to the setting up of rival customs unions or economic
bloes. Europe would be divided into two hostile camps that would wage economic war and destroy all that had been achieved in getting European states to cooperate and live peaceably together. In the fifth place, Czechoslovakia would be in a state of dependence upon the customs union as regards access to the sea. Practically all of her export trade would have to pass through the customs territory, the administrative measures of which might seriously handicap the transfer and sale of Czechoslovak goods. All of these economic disturbances, which would result from the realization of the Austro-German plan, could only intensify the economic crisis and in turn lead to serious political consequences.

Several arguments were advanced by the opponents of the Austro-German plan to substantiate their contention that a customs union would lead to political union. The statements of Austria and Germany that their aims were economic in nature and that political union was not intended were regarded as insufficient guarantees that political union would not result. Grandi and Beneš both pointed out that political and social events could not be controlled by a statement of intentions or by words.  

1. Ibid., pp. 1073, 1076.
No matter how sincere the aims of Austria and Germany might be an economic union would, it was said, lead to political consequences which it would be difficult if not impossible to avoid. Political union would be an inevitable consequence of economic union, because the partners to the customs union would be of such unequal strength. Germany with a population nine times as large as that of Austria and proportionately superior in other respects would simply absorb little Austria. Historical precedents were also called forth to bolster up this argument. It was pointed out that Prussia had been instrumental in breaking up an attempt of France and Belgium to establish a customs union in 1840. Prussia's argument at that time had been that such a union would jeopardize Belgium's independence and neutrality and that she would in time become a French province. Prussia's arguments regarding Belgium, it was said, would now apply to Austria. The old German Zollverein which preceded the political union of the German states was also cited as an example of what course a customs union between Germany and Austria would take. Furthermore, it
was said, political union had to be regarded as an inevitable result because Germany and Austria had for ten years openly worked to achieve union, and certain prominent Germans had admitted that economic union was impossible without political union. Dr. Schüller, economic adviser to the Austrian Government at the time the Vienna Protocol was negotiated, was quoted as having made such a statement in speaking of the Salzburg Protocol which he had helped negotiate before the close of the World War as a basis for Austria-German union at the close of the War. The Salzburg Protocol was serving as a model for the treaty which Austria and Germany were negotiating under the Vienna Protocol. Since it had been intended as the basis for the complete union of Germany and Austria there was, according to the opponents of the Vienna Protocol, every reason to believe that the new treaty looked toward the same end.

In addition to the arguments they advanced against the proposed customs union, the opponents of such a union once more criticized the manner in
which the Vienna Protocol had been negotiated. They pointed out that there would have been no reason for secrecy if the purpose of the Protocol were in conformity with the international obligations of Austria and with the principles of the League and the Commission for European Union.

Dr. Schober and Dr. Curtius resented the discussion of the economic and political phases of the question and repeatedly maintained that the question before the Council was strictly one of Austria's treaty obligations. Their answers to all of the arguments except the legal aspect of the question were, therefore, very brief. In reply to the warning that most-favored-nation treatment would have to be accorded third states, Austria and Germany simply replied that they could not accept this viewpoint regarding the application of the most-favored-nation clause. To the argument that Austria would not benefit from a customs union with Germany the answer was made that that was a question for Austria herself to decide, and that Austria certainly would not have negotiated with Germany had she not expected economic advantages to result from the proposed customs
union. In answer to the charge that the establishment of the customs union would not improve European conditions in general, Austria and Germany pointed out that they had never maintained that their project was the only means of salvation. They maintained, however, that customs unions could go hand in hand with other international schemes of cooperation.

To the charge that the plan had been negotiated in a clandestine manner Dr. Schober simply replied that the charge had been refuted long ago and that he should like to ask whether other countries were in the habit of publishing draft treaties before they were negotiated. To refute the charge that the proposed customs union was a first step toward political union, Austria and Germany insisted, as they had from the very beginning, that their aims were strictly economic in nature. They attempted to prove that political union did not necessarily follow economic union by using some of the same historical examples that France had used in attempting to show that political unions did grow out of customs unions. They
pointed out that France had maintained in 1840 that Belgium's independence and sovereignty would not be impaired by her entrance into a customs union with a much stronger state, as France. Even the old Zollverein, they pointed out, had had so little effect upon member states that they waged war against one another, and the existing customs unions between (1) Lichtenstein and Switzerland and (2) Luxembourg and Belgium were positive proof that political union did not result from economic union.

To the legal aspect of the question Curtius and Schober devoted somewhat more time. To refute the charge that the proposed customs union would be a violation of Austria's treaty engagements they reasoned as follows: In signing the First Geneva Protocol Austria assumed no obligations beyond those imposed by the Treaty of St. Germain, namely that she would not alienate her independence. The proposed customs union would not deprive Austria of that independence because she would in no way limit her freedom of action nor be dependent upon Germany in her
commercial policy. Austria would maintain her own customs administration. The original tariff duties and all alterations in them would be binding upon Austria only when approved by her Parliament. Austria would not be deprived from negotiating independently with third states. Joint negotiations would be undertaken only if the Austrian Parliament considered it expedient, and even then separate treaties would be negotiated and would be binding upon Austria only when approved by her Parliament. "In no way would the Austrian Government be under obligation ... to consider exclusively the interests of Germany in the event of common negotiation". Differences of opinion would be referred to an arbitral committee on which both would be equally represented, and if Austria felt that a decision of the arbitral committee had infringed her vital economic interests she could denounce the treaty on six months' notice. Austria would have the same legal means to protect her independence that Germany would have and to assume that she would not use them would be "contrary to all probability

1. Ibid., p. 1070.
and experience". Moreover, a treaty negotiated for a three-year period could not, from a legal point of view, be considered an alienation of Austria's independence. In fact, Austria's treaty obligations had been constantly kept in mind and, in order not to infringe them, a scheme on lines of absolute equality had been worked out. If the interpretation of the Geneva Protocol were pushed so far that Austria lost all freedom of action in her foreign relations she would be deprived of her independence, which the signatories to the Geneva Protocol were obligated to respect as much as Austria was obligated not to alienate.

Neither Schober nor Curtius opposed reference of the question to the World Court. Following Dr. Schober's acceptance of the resolution, Mr. Henderson said he was uncertain whether Dr. Schober had accepted the suggestion that no further steps be taken to establish the customs union until the Council had acted upon the advisory opinion of the Court. He, therefore, asked Dr. Schober point blank whether negotiations would stop pending Council action on the Court decision. 1.

1. Ibid, p. 1074.
Dr. Schober replied that he had twice accepted Mr. Henderson's suggestion and that he could therefore again assure Mr. Henderson that no further steps would be taken in the negotiations with Germany. When Dr. Curtius accepted Mr. Henderson's resolution he said very emphatically that Austria and Germany would consider it inadmissible for the Council to examine the question further if the Court should find the proposed customs union compatible with Austria's treaty obligations. For the Council to consider whether the plan implied a disturbance of the good understanding of Europe, once the legal aspect had been settled, would according to Curtius, be regarded by Germany and Austria as implying that they had inferior legal status. M. Morinkovitch of Jugoslavia and M. Briand took exception to Curtius' statement. They pointed out that it was not a question of Austria and Germany's prestige or standing before the League, but that any member of that body could bring before the Council any question it wished considered. M. Marinkovitch further pointed out that the League machinery had been set up for the specific purpose of
preventing any country from insisting that a question concerned only itself. Although Curtius stated a second time that Austria and Germany would regard it as intolerable for the Council to reprove them "with having caused a disturbance of the peace through the Vienna Protocol" if the Court decided Austria's legal obligations had been complied with, it was very clear when Mr. Henderson's resolution was finally adopted (May 19) that the Council reserved to itself complete freedom of action.

The resolution that was adopted, besides asking for an advisory opinion on the legality of the proposed Austro-German customs union, instructed the Secretary-General of the League to supply the Court with whatever information it desired, to represent the Council before the Court if necessary, and to request that the Court treat the request for an advisory opinion as urgent.

Article 36 of the World Court Statute provides that the jurisdiction of the Court shall extend to "all cases which the parties refer to it", and particularly to matters
involving the interpretation of treaties and conventions. 1. Since the interpretation of three legal documents was involved in this dispute, it is easy to understand why the League Council turned to the Court for an advisory opinion.

CHAPTER THREE.

THE VIENNA PROTOCOL BEFORE THE WORLD COURT.

On May 19, 1931, the Secretary-General of the League, Sir Eric Drummond, addressed a letter to the Registrar of the World Court submitting the request of the Council for an advisory opinion on the question embodied in the Council Resolution of that same day, namely, the compatibility of the proposed Austro-German customs union with Austria's treaty obligations. In the same communication the Secretary-General, in conformity with Council instructions, informed the Registrar that the Council should like to have the request treated as urgent, that he would "be prepared to furnish any assistance" the Court might require, and would, if necessary, "arrange to be represented before the Court". 1

On May 21st the Registrar, Mr. Hammerskjold, at the direction of the President of the Court, went to Geneva and called together at the Secretariat of the League the German delegate and the delegates of the governments that were bound by

the First Geneva Protocol of 1922. The purpose of this meeting was to get a consensus on four questions. The first point on which M. Hammerskjold wanted an expression of opinion was the date on which the Court's opinion should be returned to the Council. Those present felt that the Council should be in possession of the advisory opinion before its next regular meeting in September, and that the Court should, therefore, render its decision at least by September 1st. The second point on which M. Hammerskjold asked an expression of opinion had to do with the special and direct communications. Under the Rules of the Court all states likely to furnish information on a question are notified by special and direct communication that the Court is prepared to receive written or hear oral statements on the question before it. The question raised by M. Hammerskjold was whether these special and direct communications should be addressed to a very limited number

1. Delegates from Germany, Austria, Great Britain, Spain, France, Italy, and Czechoslovakia were present. See Ibid., pp. 687-691.
of states, for example, those that were bound by the First Geneva Protocol of 1922; or whether the communications should be sent to a larger group, for example, those bound by the Treaty of St. Germain. M. Basdevant, delegate from France, suggested that this matter be left to the discretion of the Court, and expressed the opinion that, regardless of the number of governments that received these special and direct communications, the number that would participate in the case would not differ. The third point discussed was the filing of written briefs or statements with the Court. The general feeling was that the early date on which the Court's opinion was desired made it wise to allow only a single written statement to be filed by each interested party, rather than two statements as the Rules of the Court permit. July 1st was suggested as the final date on which these briefs should be deposited. The fourth point on which those present at this meeting were asked to express an opinion was the date on which public hearings should begin. The date for which preference was expressed
was July 20th.

On the basis of this informal conversation the President of the Court on May 27th issued an order in which he stated (1) that the governments bound by the Treaty of St. Germain, the First Geneva Protocol of 1922, and the Vienna Protocol of March 19, 1931, were to receive the special and direct communications which would entitle them to file written statements with the Court;¹ (2) that July 1, 1931, was the final date for filing such statements; and (3) that any state which had filed a written statement within the time limit would be permitted to take part in the public hearings.² On the same day that this order was issued, the states entitled to deposit written briefs were notified of that privilege and of the privilege of designating agents to represent them before the Court. These states were asked to indicate as soon as possible(1) whether they would

1. Included in this group were the Australian Commonwealth, Austria, Belgium, Great Britain, the Dominion of Canada, China, the Republic of Cuba, Czechoslovakia, France, Germany, Greece, India, Italy, Japan, Nicaragua, the Dominion of New Zealand, Poland, Portugal, Roumania, Siam, the South African Union, Spain, and Jugoslavia.

deposit written statements, (2) whether they wished to take part in the public hearings, and (3) their choice of an agent. ¹

Appointment of Agents and Filing of Written Briefs.

Austria was the first state to reply to this communication. On June 3rd Dr. Schober informed the Registrar that Austria would participate in the case and that Dr. Erich Kaufmann, Professor of Law at the Universities of Bonn and Berlin, would serve as Austria's agent before the Court. At a later date Hans Sperl, Professor of Law at the University of Vienna, was named by Austria as an assistant agent. On June 4th Germany indicated her intention of filing a written brief and of taking part in the oral proceedings. As her agent she designated Dr. Viktor Bruns, Professor of Law at the University of Berlin. On the following day, in a communication which specified that Czechoslovakia would file a written statement, M. Miroslav Plesinger Bozinov, envoy extra-ordinary and minister plenipotentiary at the Hague, was named as Czechoslovakia's

¹. Ibid, pp. 693-695.
agent. Nothing was said regarding Czechoslovakia's desire to attend the public sessions of the Court until some weeks later when the written brief of Czechoslovakia was filed. At a still later date Czechoslovakia named M. Jean Kromar, Professor of Law at Charles University of Prague, as counsel. A letter from M. Briand, under date of June 10th, gave notice that France would file a brief and participate in the oral pleadings. M. Jules Basdevant, of the faculty of Law at Paris, was named agent, and M. Paul Boncour, deputy, was designated as counsel. Italy was the last country to indicate an intention of participating in the case. On June 30th she deposited a written statement declaring that she would take part in the hearings, and named M. Massimo Pilotti, first president of the Court of Appeal, as her counsel and agent. Later M. Vittorio Scicolca, Minister of State and Professor of Law at the University of Rome was named as a second counsel. ¹

The Hearings Before the Court.

The Court took up the question of the proposed Austro-German customs regime in an extraordinary session which began on July 16th. All fifteen judges were present. On July 20th the oral arguments began.

(a) The Question of ad hoc Judges.

Before proceeding to the main question the Court took up the matter of ad hoc judges. Article 31 of the Statute of the Court provides that a judge who is of the same nationality as one of the parties before the Court may retain his seat on the bench during the case. It further provides that, if only one of the parties to a case has a judge of its nationality on the bench, the other party may appoint a judge for that case only. If, however, several parties to the case are of the same interest, they are to be considered as one party and are, therefore, entitled to only one judge. This provision, at first applicable to contentious cases only, was made applicable to advisory opinions in Rule 71 of the Court.¹.

¹ For Article 31 and Rule 71 see Statute of the Court, Permanent Court of International Justice, Series D, No.1, (Second Edition), pp. 15, 47.
In this particular case Austria raised the question of \textit{ad hoc} judges. Germany, France, and Italy were represented on the bench by Judges Schücking, Fromageot, and Anzilotti respectively, but neither Austria nor Czechoslovakia was represented. The Registrar of the Court had informed the agents of the five interested parties, on July 18th, that the Court would hear their observations on this question before hearing the pleadings of the case proper, \textsuperscript{1} whereupon the agent of the Czechoslovak Government immediately replied that, if \textit{ad hoc} judges were to be allowed, his government would appoint one. \textsuperscript{2}

At his request Dr. Kaufmann, the Austrian agent, was allowed to speak first so that he might explain why Austria was requesting an \textit{ad hoc} judge. His explanation was followed by a statement, on the part of M. Plesinger - Bozinov, giving Czechoslovakia's reasons for wanting representation. Following these two statements, the German, French, and Italian agents presented

\textsuperscript{1} Ibid., p. 731.
\textsuperscript{2} Ibid p. 188.
their views on the question. Austria maintained that she and Germany were not parties to a common cause and that she was, therefore, entitled to a judge. 1 Germany sustained this contention on the ground that Austria was a party to the Treaty of St. Germain and the First Geneva Protocol, whereas Germany was not. 2 Czechoslovakia maintained that she was not of the same interest as France and Italy. 3 France, in part, supported this contention and held the view that Austria and Czechoslovakia should each appoint a judge or that neither should, since their claims were equally well founded. 4 Italy shared the view that both or neither should appoint a judge, and pointed out that the countries which had signed the First Geneva Protocol did not form a unit with common obligations. 5

The Court, on July 20th, denied this application on the ground that all parties that came to the same conclusion had to be considered in

1. Ibid., pp. 201-204.
2. Ibid., pp. 205-206.
3. Ibid., pp. 204-205.
4. Ibid., pp. 206-208.
5. Ibid., pp. 208-209.
the same interest. Austria and Germany came to one conclusion, namely, that the proposed customs union was not incompatible with Austria's treaty obligations. They were, therefore, parties in the same interest. France, Czechoslovakia, and Italy arrived at the opposite conclusion, namely, that the proposed customs union was incompatible with Austria's international obligations. Czechoslovakia was, therefore, a party in the same interest as Italy and France. A dissenting opinion was handed down by Judges Adatci, Rostworowski, Altamira, Anzilotti, and Wang. They were of the opinion that Austria was a party to the dispute, and that Germany was not, and that Austria should, therefore, be allowed to appoint a national judge.

The oral arguments on the case began on the afternoon of July 20th and continued through August 5th. The five parties supported and amplified the written statements they had filed with the Court and attempted to refute the

arguments advanced by their opponents. Much that was set forth was a repetition of what had been said in May before the Council at Geneva.

(b). The Austro-German Contention.

Germany and Austria opened the case and advanced the following contention in support of the proposed customs union: It was only her legal independence that Austria had agreed not to alienate. The word "independence" was used in the same sense in the treaty of St. Germain in which it is used in the recognition of new states. By tradition the recognition of new states is expressed by recognizing their independence and their territory. The admission by the signatories of the Treaty of St. Germain that Austria is an independent state had the same effect as the recognition of a new state's independence. It was this same legal independence to which the First Geneva Protocol of 1922 referred. In signing it Austria merely confirmed her existing obligations; she assumed no new ones. An alienation of independence implies a
complete transfer of sovereignty to another state. To compromise independence means to submit to the will of another state to such an extent that the substance of sovereignty is impaired. Even the submission to another state's will does not mean that the submitting state has compromised its independence if the power to alter the situation has been retained. There is, moreover, a difference between a state which gives up certain functions of sovereignty and one which contracts not to exercise them. To be independent a state does not need to exercise all its sovereign powers through its own organs. The modern trend is to transfer the exercise of certain sovereign powers to international organizations. This international coordination of activities, while placing restrictions upon the independence of the participating states, is generally acquiesced in as not constituting an impairment of independence. The proposed customs union would neither alienate nor compromise Austria's independence, because it would be based upon equality, reciprocity, and arbitration. The power to denounce the customs regime would
leave Austria, as well as Germany, in full possession of her sovereignty. Austria would not be subject to Germany's will, nor would she cede to Germany a single particle of her sovereignty. In fact, the capacity to contract international agreements which limit the independence of states is an attribute of sovereignty, or a manifestation of independence, not an alienation of independence. Acceptance of the opposite point of view, namely, that a state must exercise all its sovereign powers through its own organs, would mean that Austria's weak position from an economic viewpoint would be indefinitely prolonged. The establishment of the proposed customs union, on the other hand, would mark the beginning of a new era of economic relations in Europe and would be entirely compatible with the idea of a general European union. 1

(c). The French-Italian-Czechoslovak Contention.

France, Czechoslovakia, and Italy advanced the following argument in opposition to the proposed customs union: The independence which

Austria agreed not to alienate was not alone her legal independence, for the First Geneva Protocol refers specifically to her economic independence. In fact, the incidents which led up to the inclusion of Article 88 in the Treaty of St. Germain and to the signing of the First Geneva Protocol indicate clearly that the Allied and Associated Powers had in mind more than legal independence when they recognized Austria's independence and declared it inalienable except with the Council's consent. Furthermore, Austria not only agreed not to alienate her independence, but also to abstain from all acts which would compromise, impair, or endanger it. It would, therefore, follow that the proposed regime would be incompatible with Austria's treaty obligations if it alienated, compromised, impaired, or endangered her independence. Although the proposed customs union would not necessarily involve an alienation of Austria's independence, it would place her in a position of dependence in the exercise of her sovereign rights. Austria would lose her sovereign power to legislate for
herself and to negotiate by herself in tariff matters. The customs law and the customs tariff could be changed only with Germany's consent, and in the negotiation of commercial treaties with third states Germany's interests would have to be safeguarded. The provisions for equality, reciprocity and arbitration would be only nominal. The actual inequalities of Austria and Germany from an economic point of view would make it impossible for Austria to remain on an equal footing with Germany. Moreover, the arbitral commission would exercise certain political powers. In all cases in which the two states could not agree regarding the special measures that would have to be enacted to put the customs regime into operation the arbitral commission would have power to work out a compromise. Austria would no longer be exercising through her own organs certain of her sovereign rights pertaining to her economic policy. There would be the substitution of another will for that of Austria, hence an alienation of Austria's economic independence. The provision regarding denunciation after a period of three years would not safeguard Austria
for two reasons. In the first place, there
would be such a fusion of the economic interests
of the two countries during this period that
Austria could not release herself from the
domination of Germany. In the second place,
denunciation could occur only by the passage
of a law in the country denouncing the treaty.
The Austrian constitution does not confer upon
the National Parliament the power to denounce
treaties in this manner, hence there is serious
doubt whether Austria could free herself of
the proposed treaty in case she wished to do
so. Since Austria would no longer be in a position
to exercise certain sovereign powers, since she
could not remain on an equality with Germany,
and since the establishment of a customs union
would lead to consequences from which Austria
could not extricate herself, the proposed customs
regime would compromise Austria's independence
and therefore be incompatible with her treaty
obligations. 1.

The Decision of the Court.

On September 5th the Court held a public

1. Ibid., pp. 102-183, 325-479, 545-591.
sitting for the delivery of its opinion. By a vote of eight to seven the proposed Customs Pact was held incompatible with the First Geneva Protocol of 1922. The eight judges who constituted the majority were Altamira (Spain), Anzilotti (Italy), de Bustamante (Cuba), Fromageot (France), Guerrero (Salvador), Negulesco (Rumania), Rostworowski (Poland), and Urrutia (Colombia). Seven of these judges—all except M. de Bustamante—also declared that the proposed regime was incompatible with Article 88 of the Treaty of St. Germain. Judge Anzilotti, while agreeing in the operative part of the Court's opinion, was unable to agree with the grounds on which it was based and, therefore, delivered a separate opinion. The seven judges who were unable to concur in the opinion of the Court delivered a joint dissenting opinion in which they concluded that the proposed regime was compatible with both Article 88 of the Treaty of St. Germain and the First Geneva Protocol. 1 The judges who concurred in this dissenting opinion were Adatci

(Japan), Van Eysinga (The Netherlands), Hurst (Great Britain), Kellogg (United States), Rolin-Jaequemyns (Belgium), Schücking (Germany) and Wang (China).

The Majority Opinion.

The opinion of the Court was based on the following reasoning: Austria occupies a sensitive position in Europe and her existence as a separate state is "an essential feature" of the settlement that followed the World War. In view of this circumstance Article 88 was incorporated in the Treaty of St. Germain, and the Geneva Protocol signed in October, 1922. While Article 88 and the First Geneva Protocol do not completely veto Austria's freedom of action, they do obligate her to abstain from certain acts without the consent of the League Council. The Vienna Protocol made no provision for the consent of the Council to the establishment of the proposed customs union. The Court is not called upon to decide "the conditions under which the Austro-German customs union might receive the consent of the Council", but only whether Austria could, without the consent
of the Council, conclude the proposed customs regime without violating her treaty obligations. The phrase "independence of Austria" as used in the Treaty of St. Germain means "the continued existence of Austria within her present frontiers as a separate State with sole right of decision in all matters economic, political, financial, and other ... these different aspects of independence being ... one and indivisible." The term "alienation", as used in Article 88 of this same treaty, means the loss or modification of independence that would result from the submission of Austria's sovereign will to that of another power. Austria's further obligation to abstain from acts which would compromise her independence refers to acts calculated to endanger her independence "in so far ... as can reasonably be foreseen". While the obligations which Austria assumed in the First Geneva Protocol "fall within the scope" of Article 88, of the Treaty of St. Germain they constitute obligations which are valid and binding in themselves. In addition to agreeing that she will not alienate her independence, Austria, in the First Geneva Protocol, undertakes to abstain (1)
"from any negotiations or from any economic and financial engagement calculated directly or indirectly to compromise that independence", and (2) from violations of her economic independence "by granting to any state a special regime or exclusive advantages calculated to threaten this independence". The regime that the Vienna Protocol contemplates fulfills all the requirements of a customs union. It is the regime as a whole, not the separate provisions of the Protocol, with which the Court is concerned. The establishment of this customs union could not be considered an alienation of Austria's independence, because Austria would not cease to exist as a separate state within her present frontiers. Strictly speaking Austria's independence would not even be endangered. The proposed regime would not, therefore, be incompatible with Article 88 of the Treaty of St. Germain. The customs union would, however, constitute a special regime, in that it would give Germany advantages not granted to third powers. "Considered as a whole from the economic standpoint" it would constitute an
act "calculated to threaten Austria's independence" and would, therefore, be incompatible with the obligations which Austria agreed to in the First Geneva Protocol in regard to her economic independence. 1.

Judges Guerrero, Rostworowski, Fromageot, Altamira, Urrutia, and Negulesco attached a memorandum to this opinion in which they declared that the proposed customs union would also be incompatible with the Treaty of St. Germain. They based this decision on the ground that, since the proposed regime would threaten the economic independence of Austria, it would "constitute an act capable of endangering the independence of that country and would, accordingly, be incompatible with Article 88 of the Treaty of St. Germain". 2.

The Dissenting Opinion.

The opinion of the minority differed from the opinion of the Court on several points. In the first place, the dissenting judges refused to accept the definition of independence set forth

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1. For the opinion of the Court see "The World Court's Advisory Opinion on the Austro-German Customs Union case". (Bulletin), The American Foundation., Dec. 1, 1931, pp. 12-19.

2. Ibid., p. 19.
by the majority, namely, that the independence of Austria means "the continued existence of Austria within her present frontiers as a separate State with sole right of decision in all matters economic, political, financial, or other". They defined an independent state by stating what it is not. "A state," they said, "would not be independent in the legal sense if it was placed in a condition of dependence on another Power, if it ceased itself to exercise within its own territory the summa potestas or sovereignty, i.e. if it lost the right to exercise its own judgment in coming to decisions which the government of its territory entails". The minority went on to say that restrictions upon a state's liberty of action to which the state agreed did not affect its independence, provided the state did not "thereby deprive itself of its organic powers". It was pointed out that there is a real difference between alienation of independence and voluntarily accepted restrictions upon the exercise of sovereign power; that restrictions on the exercise of independence, or upon the
"power incidental to sovereignty" result from membership in the League of Nations and from practically all treaty engagements; but that these restrictions do not entail an alienation of independence. The minority agreed with the opinion of the Court that the word "compromise", as used in the Treaty of St. Germain, means "involve danger to", "endanger", or "imperil", but concluded that, before an act could be considered as one compromising the independence of Austria, it had to be one "which would imperil the continued existence of Austria as a State capable of exercising within its territory" all of its organic powers.

The dissenting opinion also differed with the Court on the matter of the First Geneva Protocol. The minority held that Austria assumed no new obligations when she signed this Protocol; that she only renewed her pledges in language appropriate to the occasion; and that the provision that Austria should not "violate her economic independence by granting to any State a special regime or exclusive advantages" was no more than a repetition of the obligations contained
in Article 88. To substantiate this point the minority opinion set forth five reasons. In the first place, it was said, the plain meaning of the language and the structure of the paragraph do not imply any extension of Austria's obligations. In the second place, it would have been contrary to the general interest to have imposed additional restrictions upon Austria in 1922. The only way Austria could meet the interest payments on the Reconstruction loans was by stimulating her commerce. Therefore, it was to the interest of all countries guaranteeing these loans to leave Austria complete freedom of action in commercial matters, subject to no restriction except that she must do nothing to endanger her future existence. Thirdly, the minutes of the meetings in Geneva in 1922 contain nothing which would indicate a desire to extend Austria's obligations. In the fourth place, all the obligations which Austria had to accept temporarily in connection with the Reconstruction scheme were embodied in Protocols II and III of October 1922. There was no reason why an economic restriction which
formed no part of the Reconstruction program should, at that time, have been embodied in a Protocol of unlimited duration. In the fifth place, no extension of Austria's obligations was necessary. Her existence had been secured in the Treaty of St. Germain "so far as it could be secured by Treaty stipulations". On the basis of this interpretation of the First Geneva Protocol the minority of the Court held that any act which would violate the obligations Austria assumed in this Protocol would necessarily violate Article 88 of the Treaty of St. Germain, and that, if the Vienna Protocol were not incompatible with Article 88, it could not be incompatible with the First Geneva Protocol.

The dissenting opinion also took exception to the statement of the Court that what had to be considered was "not any particular provision of the Protocol of 1931, but rather the Protocol as a whole", and that as a whole the regime threatened Austria's economic independence. The dissenting judges pointed out that they were unable to accept this view if it meant that customs unions in general threatened the independence of the states
concerned, because (1) historical precedence gives no evidence from which to draw such a conclusion, and (2) all customs unions are different and each has, therefore, to be considered on its own merits. Neither did the minority accept the view that the Vienna Protocol, taken as a whole, could be regarded as incompatible with Austria's treaty obligations if no single provision of it were incompatible. The dissenting judges failed to find in an analysis of the Protocol any provision of which the consequences would threaten Austria's independence or be "inconsistent with the maintenance of Austria's position as a separate and independent State".

The minority of the Court thus differed from the majority in the importance they attached to the provisions in the Vienna Protocol for equality, reciprocity, and arbitration. The minority opinion concludes with the statement that since the non-reciprocal restrictions in the Treaty of St. Germain and in Protocols II and III of Geneva (1922) were not considered incompatible with Austria's sovereignty it would follow, a fortiori, that a customs regime, "organized on a basis of
parity and reciprocity", would not "prejudice the
independence of Austria" and would, therefore,
be compatible both with Article 88 of the Treaty

Judge Anzilotti's Opinion.

Judge Anzilotti, while concurring in the
operative part of the Court's opinion, reached
his decision on entirely different grounds set
forth in a separate opinion. Judge Anzilotti
did not agree with the Court that the proposed
regime was incompatible with Austria's obligations
because it constituted a special regime and granted
Germany exclusive advantages. In his opinion
the whole case turned on the second part of Article
88 in the Treaty of St. Germain, in which Austria
undertook in the absence of Council consent "to
abstain from any act which might directly or in-
directly or by any means whatever compromise her
independence". According to Judge Anzilotti,
Article 88 obligated Austria to abstain from two
kinds of acts, namely, (1) acts of alienation of
independence, and (2) acts which would expose

1. For text of dissenting opinion see Ibid.,
pp. 20-27.
Austria's independence to danger. He pointed out that the First Geneva Protocol imposed no additional obligations on Austria; that it was not important whether the proposed customs union constituted a special regime or granted exclusive advantages; that Austria was, in fact, not obligated not to grant a special regime or exclusive advantages; that she was only obligated not to grant a special regime or exclusive advantages calculated to threaten her independence; and that this obligation was covered by the provision of Article 88 in which Austria agreed "to abstain from any act which might ... compromise her independence".

In answering the question whether the proposed customs union would compromise Austria's independence and, therefore, be incompatible with her obligations, Judge Anzilotti pointed out that the question derived its importance from the fact that the proposed regime was between Austria and Germany. He stated that Austria's independence had been guaranteed, not in her own interest, but in the general European interest and for the specific
purpose of preventing political union between Austria and Germany. He further pointed out that Austria's right to enter into customs unions in general could not be denied; that a similar union with Czechoslovakia would not raise "the slightest difficulty"; that Austria's right to enter into this particular customs regime depended "on considerations ... for the most part, if not entirely, of a political and economic kind"; and that the Court could, therefore, refuse to give its opinion on the question. Judge Anzilotti went on, however, to answer it and, in so doing, took into account the movement for political union between Austria and Germany and the "great disproportion in the economic strengths" of the two countries. In the light of these considerations, Judge Anzilotti concluded that, while economic union does not necessarily lead to political union, it would in this particular case "turn the scales in favour of that movement", and, that from this point of view, the proposed Austro-German customs regime had to be "considered a fact which might compromise Austria's independence within the meaning of Article 88 of the Treaty of St. Germain".
Judge Anzilotti did not attach any great importance to the provisions of the Vienna Protocol for equality, reciprocity, and arbitration, because "man's will ... has only a limited influence over social forces like those which are urging Austria towards fusion with Germany, and in all probability the consequences of the union would ensue despite the precautions taken in the Protocol".

Judge Anzilotti admitted that there was some contradiction in requiring a State to exist and at the same time making it extremely difficult for it to do so. He could not, however, from a legal point of view, admit that the proposed regime was not an act which came within the scope of the second sentence of Article 88 in the Treaty of St. Germain, and one from which Austria was obliged to abstain without the consent of the Council. It therefore followed, from M. Anzilotti's interpretation of the First Geneva Protocol, that the Proposed regime would also be incompatible with that Protocol. 1.

1. For full text of Anzilotti's opinion see Ibid., pp. 28-29.
CHAPTER FOUR

CONCLUSIONS

CRITICISM OF THE COURT DECISION

The Court's opinion, announced on September 5th, was a keen disappointment to Austria and Germany. It was interpreted as meaning that Austria and Germany would be unable to effect a customs union until 1943, when Austria shall have repaid the loans upon which the First Geneva Protocol is based.¹ The Court was charged with having acted as a political body, and there was some demand, on the part of the German press, that Germany should withdraw from both the League of Nations and the World Court. The German and Austrian press took some satisfaction in pointing out that the judges of most of the great powers saw nothing in the proposed customs regime that would violate Austria's treaty obligations. It was also pointed out that, since the Court had allowed itself to become involved in a political dispute, the United States would hesitate longer before entering the World Court. The press of the United States, which had been favorable toward the idea of an Austro-German customs union, joined that of the continent in criticizing the

¹. N.Y. Times, Sept. 6, 1931, 6:3.
Court for its action in this case. The division of the Court and the closeness of the vote (8 to 7) were seized upon as the principal grounds for criticism. The division of the Court was said to be representative of the differences in the French and German viewpoints on the question of treaty revision and the status quo, and it was pointed out that the French point of view had been triumphant. Individual judges were charged with having voted according to the political interests of the countries they represented. The friends of France, it was pointed out, had pronounced against the Austro-German proposal, and those of Germany had dissented from this pronouncement.

An analysis of the division of the Court fails to disclose any such political alignment. It is, of course, true that Dr. Schücking, the German judge, voted with the minority, and equally true that M. Fromageot of France voted with the majority. On the same side with the French judge is also found M. Rostworowski of Poland and M. Negulesco of Rumania, the judges from two of France's allies. Aside from these four judges it would be difficult to see any relation between the
votes of the judges and the political interests of their respective countries. It is true that Italy argued against the Austro-German project before the Court and that M. Anzilotti voted on the same side of the question as did the French judge, but one could hardly maintain that Anzilotti's opinion was representative of any pro-French or anti-German feeling in Italy. In fact, Franco-Italian relations were most strained in the summer of 1931, and Italy has not proved wholly unsympathetic with the German point of view regarding treaty revision and the status quo. The vote of the Spanish judge likewise fails to be representative of relations between his country and France. Even more difficult would it be to explain from a political standpoint the votes of Judges de Bustamante, Guerrero, and Urrutia, from Cuba, Salvador, and Colombia, respectively. Those who accused the Court of political bias failed to point out why the Latin American countries, represented by these three judges, should be particularly interested in blocking Austro-German attempts at union, or what political grounds they might have for supporting the French point of view.
It is equally difficult to explain what political basis there might have been for the votes cast by the minority. In this group is found M. Rolin-Jaequemyns of Belgium. Although he represents a country which speaks the French language and has, since the World War, entered into a military alliance with France, he could find nothing about the proposed Austro-German customs regime that would violate Austria's treaty obligations. The judges from China and Japan also voted with the minority. Why these countries should be especially interested in seeing Germany and Austria unite the critics of the Court have failed to indicate. It would also be no easy task to prove that Mr. Kellogg and Sir Cecil Hurst were influenced by political considerations in finding no legal obstacles to an Austro-German customs union. Neither the United States nor Great Britain can be said to have been especially hostile toward France. Furthermore, if the judges gave expression to the political interests of their countries, there remains the mystery of why the judges from Salvador, Colombia, Cuba, and the United States - particularly the latter two - should not have supported the same side of the
question. Other mysteries which need to be explained, if the Court's decision was a political one, are (1) why one of the original guarantors of the Reconstruction loans and of Austria's independence (Great Britain) should be interested in seeing Austria and Germany assimilate their tariffs, while two others (France and Italy) should be opposed to such an assimilation, and (2) why Belgium and Spain, both of whom adhered to the Geneva Protocols, should have been interested in opposite sides of the question.

The division of the Court was also said to be the result of the difference between the Nordic and the Latin points of view. An attempt to prove this contention soon leads one into difficulties. There are some judges (Wang and Adatci) who are neither Latin nor Nordic, and Rostworowski of Poland, who voted with the Latin judges, can hardly be considered a Latin. To take care of those exceptions by a further classification into a Nordic-Oriental combination versus a Latin-Slav bloc does not throw any particular light on the vote. There still remains to be explained (1) what similarity there might be in the Nordic
and Oriental points of view that would have caused the Nordic and Oriental judges to see this question in the same way, and (2) why Nordic and Oriental judges do not agree on all questions that are brought before the Court.

It is equally impossible to prove that this case represents a clash between legal systems. The charge was made that those judges who were schooled under the Roman and civil law saw justice on one side of the question, while those who were trained under the codes of Germany and France and the common law of England took the opposite view. John W. Davis, formerly American Ambassador at the Court of St. James, has said regarding this charge that, "without stopping to show how impossible it is to apply this classification to the diverse systems of the various countries in question, it is enough to say that the most microscopic analysis of these various opinions would not enable one ignorant of the personality of the author to say under which, if either, system he was trained." 1.

It is worthy of note that all of these charges against the Court were made before the text of the advisory opinion was available. No one knew what reasoning the Court had employed in arriving at its conclusions. The decision was taken to mean that the Court had adopted an unfavorable attitude toward the proposed customs union. Those who believed a customs union between Austria and Germany would be a step toward better economic conditions in Europe could not understand why the Court should have failed to use this opportunity to further the cause of European cooperation. They, apparently, did not realize that the Court was not asked to pass on the desirability of an Austro-German customs union, but that it had simply been asked to pronounce on the compatibility of certain legal documents. There were also those enemies of the Court, particularly in the United States, who labelled this a political decision, not because they failed to understand the issue involved, but because they saw in this case just one more opportunity to spread unfavorable propaganda relative to the World Court.

The publication of the full text of the
Court's opinion fails to disclose any justification for the criticism which was directed against the Court for the stand it took on this question. An analysis of the three opinions shows that the question of the desirability of the proposed regime did not enter into the Court's decision. The eight to seven vote should need no other explanation than that it was representative of honest differences of judgment. Lack of unanimity is quite usual in judicial tribunals. That even the most able and politically unbiased judges may differ widely is perhaps nowhere better illustrated than by the Supreme Court of the United States with its long list of five to four decisions. It is impossible to say for certain whether or not the prestige of the Court has suffered because of this advisory opinion. It was predicted that Germany would lose all faith in international machinery if the Court's findings were not favorable to the Austro-German proposal, and, as indicated above, certain shades of the press recommended Germany's withdrawal from the Court.

at the time the opinion was announced. If Germany has lost faith in the Court and intends to withdraw because of this particular decision, it would seem she would have taken some action before the time of this writing (May 1932). Probably the best indication of whether countries feel the Court is politically minded and whether they have lost confidence in its findings will be their willingness or reluctance to have important questions considered by it in the future.

If any criticism at all were to be brought against this advisory opinion it might be the charge that the majority sinned on the side of brevity. Immediately after stating that the proposed regime would neither alienate nor endanger Austria's independence within the meaning of Article 88 of the Treaty of St. Germain, the opinion of the Court goes on to say that the proposed customs union constitutes a "special regime" and affords Germany advantages which are withheld from third powers. From this statement the opinion immediately proceeds to the conclusion that if the proposed regime "be considered as a whole from the economic standpoint adopted by
the Geneva Protocol of 1922, it is difficult to maintain that this regime is not calculated to threaten the economic independence of Austria and that it is, consequently, in accord with the undertakings specifically given by Austria in that Protocol with regard to her economic independence. The Court thereupon immediately pronounces the proposed customs union incompatible with Austria's obligations under the First Geneva Protocol. This part of the majority opinion would be more forceful and convincing if the Court set forth some reasons for believing that a special regime granted to Germany would threaten Austria's economic independence. The opinion of the Court also fails to go into detail on one other point. As the dissenting judges pointed out, the majority opinion fails to show why the regime as a whole would threaten Austria's economic independence when no single provision of the Vienna Protocol would. It has been pointed out that the pronouncement regarding the regime as a whole was in reality a judgment of the details "since by these details the regime itself is defined". 1 There is, however,

as stated above, nothing in the Court's opinion to show what the effects of the regime, as a whole, would be, other than the bare announcement that the customs union would endanger Austria's economic independence.

A reading of the majority opinion also seems to reveal a slight inconsistency in the Court's reasoning. An independent state is said to have "the sole right of decision in all matters economic, political, financial or other with the result that that independence is violated, as soon as there is any violation thereof, either in the economic, political, or any other field, these different aspects of independence being in practice one and indivisible." The Court found that the proposed customs regime would violate Austria's economic independence. It would seem to follow, from the Court's definition of independence, that a violation of Austria's economic independence would be a violation of her independence within the meaning of Article 86. The Court did not, however, so decide. Their decision seems, therefore, not to rest upon the idea that the different aspects of independence are one and indivisible. This inconsistency disappears to a very large extent when we realize that of the seven judges who concurred
in the majority opinion, which set forth this definition of independence, six specifically stated that they considered the proposed customs union incompatible also with Article 88 of the Treaty of St. Germain.

**Renunciation of the Vienna Protocol.**

As pointed out above, the Court's opinion was in no way a pronouncement against the idea of an Austro-German customs union. It was simply a statement that Austria would have to secure Council consent before she could enter into the particular customs regime in question. That consent was never asked. On September 3rd Dr. Schober and Dr. Curtius renounced the Vienna Protocol before the Commission for European Union, in session at Geneva. As early as August 29th there were rumors that the Austrian government would renounce the project even if the World Court should decide that it did not contravene Austria's treaties. ¹ These rumors continued through the next few days, hence there was no reason for surprise when actual renunciation came on September 3rd.

¹ N.Y. Times, Aug. 30, 1931, 1:2.
In order to understand why Germany and Austria gave up their project before the Court's decision was definitely announced it is necessary to know something of the European financial situation in the summer of 1931. In May, just at the time the proposed customs union was to be discussed by the Commission for European Union and by the Council, the Austrian government had to rush to the rescue of the Creditanstalt, the most important private banking institution in Austria. This bank had incurred losses totalling approximately $20,000,000. Over $8,000,000 of these losses were due to the taking over, at the end of 1929, of the insolvent Bodencreditanstalt, another important banking institution.

Further heavy losses were incurred during 1930 and 1931 when a number of commercial undertakings in which the bank was interested became insolvent. Only the prompt advance, in May 1931, of $23,000,000 by the Austrian government and by certain other banks saved the Creditanstalt from collapse.

It happened that Italy had called a meeting for May 15 of the international committee which
controls Austria's League loan, to consider the effect of the proposed Austro-German customs union upon the securities Austria had given for the loan she had obtained in 1922. Instead of considering the question of whether the proposed Austro-German customs union endangered the security of the League loan, this committee deliberated Austria's appeal for an immediate loan to save the Creditanstalt and to keep it operating. 1

The International Committee of Control approved this request, and, upon the Committee's recommendation, the Bank for International Settlement announced that it was prepared to arrange a $14,000,000 credit for Austria for a period of three months to meet the crisis. 2 The outcome of these arrangements was that the Bank for International Settlement and ten central banks put $14,000,000 of foreign exchange credits at the disposal of the Austrian National Bank to relieve the strain to which the Austrian government had been put when it advanced that sum to the Creditanstalt.

1. Ibid., My.13, 1931, 12:2.
2. Ibid., My.19, 1931, 1:7.
Austria's request for an additional $21,000,000 loan through the issuance of three-year treasury notes did not progress so satisfactorily. Although the International Committee of Control approved the request there was a good deal of delay about placing the loan. The French banks insisted that the loan should be international in character. It was quite generally rumored that French aid would depend on Austria's renunciation of the proposed customs regime. Just what France's terms really were was not known for some time, but the delay in securing this loan caused further withdrawals from the Creditanstalt. In order to stop these withdrawals and to aid in securing the necessary funds the Austrian government on June 17th guaranteed all foreign liabilities of the Creditanstalt. It was immediately evident that the guaranteeing of these liabilities had precipitated a cabinet crisis and that the whole cabinet would have to resign. Dr. Schober thereupon went to Sir Eric Phipps, the British minister, and declared that, if the money which the Austrian government had already advanced to the Creditanstalt were not received before the Cabinet resigned,
there would be a public panic. Dr. Schober had on the same day (June 17) received a communication from Dr. Alfred Gruenberger, Austrian minister in Paris, in which France's terms were set forth. Dr. Gruenberger had been unable to see either M. Briand or his first assistant, but a subordinate French official had stated the conditions upon which France would advance money. These conditions were (1) that Austria renounce the proposed customs union with Germany {2) that Austria ask a League investigation of her financial situation and agree in advance to accept the advice of the League, and (3) that Austria agree not to conclude future treaties affecting the political or economic situation in Europe. 1. Dr. Schober disclosed the French terms to the British minister and to Sir Howard Kindersley of the Bank of England, with the result that, a few hours after the Schober-Phipps-Kindersley conference, the Bank of England offered Austria a $21,000,000 advance. This advance was made for a short period (7 days technically), with the understanding that it would be renewed as long as necessary and that it should be repaid out of

the international loan which was being arranged.

Almost immediately after the financial crisis in Austria there came a financial crisis in Germany which led to one in England. Toward the end of August, the financial situation in England had become so acute that England had to ask repayment of the $21,000,000 she had advanced to Austria. Austria, therefore, had to turn once more to France, and her desperate need for a loan made it impossible for her to refuse the French demands that she abandon the proposed customs union in exchange for financial aid. The renunciation was, accordingly, made on September 3rd.

Dr. Schober's statement of renunciation was made in the Commission for European Union immediately after the Sub-Committee on Coordination had reported to the Commission the findings of various committees which had investigated "economic relations and industrial organization, credit problems, agricultural questions, unemployment", and a number of other matters. In this statement of renunciation there was, of course, no reference to the fact that French financial pressure had been brought to bear upon Austria. Dr. Schober in a discussion of the

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sub-committee's report merely pointed out (1) that this report was in harmony with the motives which led Austria and Germany to propose the customs union; (2) that Austria and Germany knew from the beginning that their scheme could only be realized "on condition that other States were prepared to participate in it"; (3) that the Austrian government was aware "from the events of the past few months that, contrary to its desire, the formation of the proposed customs union might raise obstacles to confident cooperation between European nations"; and (4) that the Austrian government, therefore, "declared itself willing to drop the proposed Customs union".

Dr. Schober closed by saying that he hoped his declaration would help bring about "the necessary general appeasement" and create an atmosphere in which governments would be able to "cooperate constructively". 1.

Dr. Curtius followed Dr. Schober's statement with one that was very similar, stressing somewhat more the fact that the Commission for European Union had before it "certain schemes of a more

1. Ibid., p. 224.
general character", and that it was the desire of Austria and Germany to cooperate in these schemes. Dr. Curtius also pointed out that Austria and Germany were dropping their plan with the expectation that the Commission would carry its work to a "successful outcome". 1

Counsel Action on the Court's Opinion.

This renunciation of the proposed customs union made unnecessary any further action by the League Council. When the question came up in that body on September 7th the Council merely noted the advisory opinion of the Court, which had been communicated to the Secretary-General by the Registrar, and decided that there "could no longer be any occasion for it to proceed further with the consideration of this item on its agenda." 2

What the outcome of this Austro-German attempt at economic cooperation would have been had these two countries not been in such desperate financial straits it is impossible to say. France would, however, still have had a means of defeating it. The Court had declared that Austria would have

1. Ibid., p. 224.
to secure Council consent before she could enter into the proposed regime with Germany. Such consent would most assuredly not have been granted had Austria asked for it. All action by the Council is by unanimous consent, hence one vote could have prevented favorable action on Austria's request. France's attitude on the whole question can leave no doubt whatever that she, at least, would have withheld her approval. Neither is there any question of what stand Czechoslovakia would have taken on the matter. How the other Council members would have felt about granting Austria this request one can not know. Italy was the only other country that had opposed the project before the World Court, and would probably have refused her consent had the question ever come up in the Council. Italy has, however, displayed such a faculty for doing surprising things that one feels much less certain in predicting her action on any given question.

France's Attitude on European Cooperation.

It may seem that France's attitude in regard to this customs project to which other European
powers were invited to adhere, was not in keeping with her stand on the question of closer European union. Her attitude was, however, not entirely inconsistent with the program she had been endorsing. France has always insisted that the solution of other questions is prerequisite to a lowering of tariffs. For that reason she refused to talk in terms of a general European tariff truce at the First and Second Conferences for Concerted Economic Action. It will also be recalled that France's scheme for a European union, set forth in Briand's memorandum of May 17, 1930, stressed the fact that political union must precede economic union. The term "political union" as Briand used it, did not imply the creation of a super-state. It referred rather to international political agreements that would so effectively guarantee the peace of Europe that a feeling of security would result. Only then, according to France, when nations no longer fear one another will they be willing to talk about lowering the tariff walls which have grown out of international fears and hatreds.

Practically the entire world disagrees with
France on the subject of further guarantees of security, particularly on the argument that they are necessary before there can be economic cooperation. There is, however, something that can be said in defense of France's attitude. It is unquestionably true that she is entirely sincere in all her talk about "security". Her attitude rests upon a very genuine fear of Germany. After having her territory invaded and devastated twice within a fifty-year period, France has vowed that it must never happen again. France sees only two ways of keeping her vow. Either she must have international guarantees of her security, or she must keep Germany in a position that will make it physically impossible for her to strike. It was this fear of Germany that formed the basis of France's drive against the Austro-German proposal. In France's opinion the customs union would have been a step toward a stronger Germany, and France fears that a stronger Germany would endanger the peace treaties and upset the status quo. Whether France is right or wrong in this attitude is beside the point. The fact remains that she has a deep fear of Germany, and until
France is made to feel secure she will be unwilling to talk about any kind of economic union.

**Franco-German Relations.**

The attitude which France took toward this customs union and the feeling which French criticism engendered in Germany illustrate very forcibly the true state of Franco-German relations. Until a spirit of good will and understanding can be built up between these two countries, there is little hope of any solution for Europe's problems. A few statesmen of both countries have realized the necessity of establishing amicable intercourse. Unfortunately, the two who did most to further the cause - Gustav Stresemann and Aristide Briand - died when their work was barely begun. Whether equally able and enlightened men will carry forward this program of Franco-German understanding and of general European peace remains to be seen. One wonders whether this rift over the proposed customs union would have occurred had a man of Stresemann's caliber been the Chancellor or the Foreign Minister in Germany during the spring and summer of 1931. His statesmanship would
lead one to believe that he would have informed France of Germany's intentions in a manner that would have prevented the storm of protest which arose in France. Since Stresemann's death national feeling in Germany has risen to a high pitch against the peace treaties, and, with one of Germany's major political parties openly advocating their repudiation, France has become increasingly apprehensive of German policy.

**France's Dominant Position on the Continent.**

The attitude of France toward Germany and toward the schemes which are brought forward for European collaboration cannot be disregarded. France is such a dominant factor in the commercial intercourse of European states that she cannot be left out of any general scheme of cooperation. Moreover, she has been, and still is, in a position to dictate, through her financial power, the lines along which economic problems shall be attacked. Practically all of the European countries are dependent upon France's financial resources, and France has not been loath to make these resources serve political ends. Hence when France refuses
to endorse a European project that scheme is practically doomed.

It may be that France will appreciate the viewpoint of other European powers only when she is driven to it through economic necessity. Since 1928 France has been the only European country that has enjoyed anything that even borders on prosperity. For some time after her neighbors had felt the depression very keenly, France had not even begun to feel its effects. Her people were employed and her industries were operating. She has, therefore, not been in a position to sympathize with the situation in other countries. The general economic crisis is finally beginning to be felt in France. As her economic conditions become worse it may be that she will see the necessity of closer cooperation with the whole of Europe.

Other Schemes for European Cooperation.

Whenever France does reach the place where she will seriously push a program of economic cooperation it will probably not be in the form of a European customs union. In opposing the Austro-German customs union she had to take a
stand against customs unions in general. The alternative that she endorsed most favorably was an extension of the cartel system. In supporting this program France points out that the present European difficulty is due to improper relations between supply and demand. Free trade, it is urged, would be a step toward greater anarchy in production. France desires, therefore, to retain her tariffs, at least for the present time, and would encourage the cartel movement which is primarily concerned with the control of production and the rationing of markets. France tried to get the World Economic Conference (1927) to endorse various types of international industrial agreements "as a means of organizing the economic interdependence of the world", and sought to have the League assume control of international cartels. 1 The conference did neither, but instructed the Secretariat to become a fact-finding and fact-publishing body on the subject. Since 1929 this information has been published annually. The League is, therefore, establishing its authority

to deal with the question of cartels and may do much toward eliminating some of the evils of the system.

While the cartels do control production, several arguments may be advanced against them. First, they make for high tariffs. Most of the cartel agreements are for short periods of time. It is, therefore, of distinct advantage for the participants to have a high tariff which they can use for bargaining purposes when such agreements are renewed. In the second place, cartels protect only the member firms but not the industry as a whole. Thirdly, they encourage and keep alive ineffective producers. For these reasons the cartel is a rather unsatisfactory method of international cooperation. Until the movement is much more stabilized and until some means of regulating the formation and operation of cartels is worked out, there is little hope that this method of international cooperation will result in any lowering of the tariff walls or in freer commercial intercourse.

Another scheme which has been advanced as an alternative to customs unions is a system of preferential agreements between the agricultural states of eastern and southeastern Europe and the
industrial states of the west. These agreements would be based upon a quota system that would regulate both production and distribution. The most-favored-nation clause prevents the realization of such an arrangement. Countries having most-favored-nation treaties with the states that would benefit from a preferential system insist that the most-favored-nation clause would entitle them to preferential treatment. Such an application of the most-favored-nation clause would defeat the very purpose of preferential arrangements. Until nations with most-favored nation treaties are willing to forego the benefits that would be granted the agricultural states by these agreements, there is no hope whatever that Europe's situation can be improved by this method.

Another scheme which has been brought forward as an alternative to an Austro-German customs union has been the creation of a Danubian federation, or a Danubian customs union, which would include Austria and make her a part of her former economic structure. Those who support this project point out that, until conditions are stabilized in the Danubian basin, the general European situation
cannot improve. This scheme, however, also presents difficulties. The question arises whether Austria would join any union or federation that excluded Germany. In the second place, the intense antagonisms of these Danubian countries toward one another make cooperation extremely difficult. Moreover, there is always the question of how other European powers, particularly France and Italy, would view a Danubian union or federation.

**The Future of the Austro-German Movement.**

Whether Austria and Germany will permanently drop the idea of a customs union probably depends to a very large extent on the success of other schemes for European cooperation. There can be no doubt that the regime which was envisaged by the Vienna Protocol was given up for the simple reason that neither Austria nor Germany could for financial reasons afford to continue supporting it. Dr. Curtius also made it quite plain that they were giving up their project pending fertile results from the Commission for European Union. There are, of course, certain forces which will
continue to work for a closer union between Austria and Germany. In the first place, there are the ties of language and blood. Then there is the feeling that a grave injustice was done Austria and Germany in not allowing them to unite at the close of the World War and a feeling that this injustice must be righted. And, finally, there remains Austria's plea that she cannot survive as an independent state and that she must become a part of a larger economic unit. It will probably be this factor more than any other that will spur Austria on to closer union with the one country which is willing to cooperate with her. There can be no doubt that Austria has been kept alive since the War by foreign aid and the League of Nations, and, while a League investigation into Austria's "capacity to live" answered the question in the affirmative, Austria has not given positive proof that she can exist without continued assistance from outside. Austria's appeal for further foreign aid in the summer of 1931 brought to light in a rather forceful manner the true state of her affairs. It is true that this crisis did not necessarily disprove the
findings of the League committee, for conditions were abnormal the world over during 1931. It did, however, well demonstrate how difficult it will be for Austria to weather any future economic disturbance. Before Austria can emerge from her impoverished condition she must at least have the opportunity of less restricted trade with her neighbors. If the tariffs barriers which have been erected against her were removed, it might be that Austria could live without artificial respiration. If that time should ever come and Austria were convinced that she could exist without becoming part of a larger economic area, she it might be that would prefer to remain an independent state and would cease talking about economic and political union with Germany.

The Importance of International Machinery.

The history of the Austro-German customs union proposal shows us only too plainly the lack of understanding that exists among European nations, and the long road that needs to be covered before one can expect anything like international cooperative undertakings that will
make for a general reduction of tariffs and a return to normal trade relationships. This project must have convinced even the most optimistic how little has really been accomplished in the way of general European union. As Dr. Schober said, one would have "imagined that the Pan-European ideal already was firmly enough rooted to make impossible such spitefulness " as that which was displayed after the announcement of the Austro-German proposal. 1 On the other hand, the history of this project shows us just as plainly that some very definite progress has been made in international cooperation, and illustrates especially the value of the international machinery which has been set up since the World War. The whole Austro-German affair was one that in the days before the War might have led to far more serious consequences than it did. It was one of those matters in which each side is determined that its point of view must triumph. Austria and Germany were determined to carry through their plans and were not hesitant about telling other nations that they had no right to meddle with the project. Opposed to Austria and Germany

1. N.Y. Times. Apr. 6, 1931, 1:3.
were nations that were equally determined that Austria and Germany should not carry through their scheme. Relations were so strained that they might well have led to an ultimatum and its usual consequences had there not been another method of dealing with the question. Reference of the matter to the League of Nations immediately satisfied all the opponents of the project, and also proved satisfactory to Austria and Germany. The subsequent suggestion, in the League Council, that the dispute be referred to the World Court was accepted by the representatives of the interested parties without any opposition whatsoever. It is true that one cannot say how much influence the Court and the League would have had in the settlement of this dispute if other factors had not entered in. It must be admitted that French financial pressure, rather than the League of the Court, was responsible for the Austro-German abandonment of the project. The fact remains, however, that European powers have set up international machinery to deal with disputes which may arise. Before the World War differences of opinion were commonly settled by a clash of
armed forces. That nations should turn to a judicial body rather than an army for an interpretation of legal documents is indicative of some progress in the field of peaceful cooperation. Perhaps nothing better demonstrates the part the World Court plays in the peaceful settlement of European disputes than the unanimous agreement that the Court was the proper body to inquire into the legal aspects of this question. The part which the League Council played in the affair was not without significance. It brought together the Foreign Ministers of all the interested parties and gave them an opportunity of discussing all phases of the question. These direct contacts were far more satisfactory than a prolonged correspondence could have been. Reference of the question to the League also injected into the affair an element of delay. This was important in that the opponents to the proposed customs union no longer felt that some hasty step was necessary to prevent the consummation of the Austro-German plan. It also gave time for the violence of the storm to subside. The League
machinery also proved important in this instance because it served as a medium through which to set in motion counter-schemes for economic cooperation. League machinery was set to work as never before to study every phase of Europe's economic ills and to work out some remedy for them. It is to this machinery that one can look with some hope for the future. It is capable of investigating scientifically all of Europe's problems. But more important than that, through the contacts which it makes possible, it is creating a broader international point of view and is building up a spiritual unity between nations which are now highly individualistic. With the advent of international understanding economic strife, which is only one of the outward signs of international misunderstanding, will gradually disappear.
APPENDIX

No. 1.

THE VIENNA PROTOCOL, signed at Vienna on March 19, 1931.

In pursuance of the conversation which took place in Vienna at the beginning of March, 1931, the German Government and the Austrian Government have agreed to enter forthwith into negotiations for a treaty to assimilate the tariff and economic policies of their respective countries on the basis and within the limits of the following principles.

I.

(1) While completely maintaining the independence of the two States and fully respecting the obligations undertaken by them towards other States, the treaty is intended to initiate a reorganization of European economic conditions by regional agreements.

(2) More especially both Parties will, in the treaty, unconditionally declare their willingness to enter into negotiations for a similar arrangement with any other country expressing such a desire.

II.

(1) Germany and Austria will agree on a tariff law and a customs tariff which shall be put into force in both customs areas concurrently with the treaty and for the period of its validity.

(2) During the validity of the treaty, amendments to the tariff law and customs tariff may only be effected by agreement between the two Parties.

III.

(1) As long as the treaty remains in force, the exchange of goods between the two countries shall not be subject to any import or export duties.

(2) In the treaty the two Governments will come to an agreement as to whether internal customs duties will be necessary, and, if so, for what specified categories of goods and for what period.
IV.

In the treaty the two Governments will reach an agreement for a provisional arrangement regarding the turnover tax and the exchange of those goods for which, at the present time, monopolies or excise duties prevail in either of the two countries.

V.

(1) The Customs Administration of each of the two countries shall be independent of that of the other and shall remain under the exclusive control of its own Government. Furthermore, each country shall bear the expenses of its own Customs Administration.

(2) Both Governments, whilst fully respecting the above principle, will enact special measures of a technical character to provide for the uniform execution of the tariff law, the customs tariff and the other tariff regulations.

VI.

(1) In the German customs area the customs duties shall be levied by the German Customs authorities and in the Austrian customs area by the Austrian Customs authorities.

(2) After deducting the special expenses arising out of the application of the treaty, the amount of the duties received shall be apportioned between the two countries according to a quota.

(3) In the agreements to be reached regarding this point, care will be taken not to prejudice the liens on customs revenues existing in either country.

VII.

(1) No import, export or transit prohibitions shall exist as between Germany and Austria. Such exceptions as may prove to be requisite for reasons of public security, public health or matters of a similar nature shall be specified in the treaty as precisely as possible.
(2) In place of the Agreement on the Diseases of Animals concluded between Germany and Austria on July 12th, 1924, the two Governments will conclude and put into force as soon as possible, and in any case not later than one year after the entry into operation of the treaty, a fresh agreement regulating the traffic in animals and animal products between Germany and Austria in accordance with the regulations which govern internal traffic in Germany and Austria, the same conditions being given.

VIII.

The rights appertaining to individual and juridical persons of the one Party in the territory of the other in respect of domicile, industry, taxation, etc., shall be regulated in the treaty on the basis of the relevant provisions of the Austro-German Commercial Treaty now in force. On the same basis regulations will also be agreed upon concerning railway and shipping traffic between the two Parties.

IX.

(1) Each of the two Governments, even after the entry into operation of the treaty, shall retain in principle the right to conclude commercial treaties with third States on their own behalf.

(2) In the relevant negotiations with third States, the German and the Austrian Governments will see that the interests of the other contracting Party are not violated in contravention of the tenor and purpose of the Treaty to be concluded.

(3) So far as it seems opportune and possible with a view to effecting a simple, speedy and uniform settlement of the commercial relations with third States, the German Government and the Austrian Government will conduct joint negotiations for the conclusion of commercial treaties with third States. Even in this case, however, Germany and Austria will each on its own behalf, sign and ratify a separate commercial treaty and will only arrange for a simultaneous exchange of the ratifications with the third State in question.
X.

The two Governments will, at a suitable time, take the steps necessary to bring into accord with one another and with the tenor and purpose of the treaty to be concluded, the existing commercial treaties concluded by Germany and Austria with third States so far as they contain tariff rates fixed by commercial treaties with other countries or so far as they will interfere with the execution of the existing import and export prohibitions and other regulations for the exchange of goods.

XI.

(1) To ensure a smooth working of the treaty, an Arbitral Committee composed of members of the two Parties on the lines of complete parity shall be provided for. This Committee will have to deal with the following matters:
   (a) settlement by arbitration of differences of opinion arising between the two Parties as to the interpretation and application of the treaty;
   (b) to bring about a compromise in cases where the treaty provides for a special agreement between the two Parties or in which, according to the tenor of the treaty, the realization of the intentions of the one Party depends upon the consent of the other, provided that in such cases agreement can not be reached between the two Parties.

(2) A decision of the Arbitral Committee in cases (a) and (b) referred to above shall have binding effect on both Parties, a majority of votes being sufficient. The President of the Committee shall have a casting vote. Complete parity in choosing the President shall be provided for in the treaty.

(3) Should either of the Governments be of the opinion that a decision of the Arbitral Committee in any of the cases mentioned under 1(b) infringes its vital economic interests, it shall be entitled to terminate the treaty at any time on giving six months' notice. Such notice of termination may also be given during the first period of three years mentioned under XII (2).
XII.

(1) The treaty to be concluded shall be ratified and shall enter into operation at the end of a period to be fixed in the treaty which extends from the date of the exchange of ratifications.

(2) The treaty may be denounced at any time upon one year's notice, but not so as to terminate it before the end of the third year after its entry into operation except in the case mentioned under XI (3).

(3) Notice may only be given in virtue of a law of the country denouncing the treaty.
No. 2.

ARTICLE 80 of the treaty of Versailles, (1919).

"Germany acknowledges and will respect strictly the independence of Austria, within the frontiers which may be fixed in a Treaty between that State and the Principal Allied and Associated Powers; she agrees that this independence shall be inalienable, except with the consent of the Council of the League of Nations."

No. 3.


"The independence of Austria is inalienable otherwise than with the consent of the Council of the League of Nations. Consequently Austria undertakes in the absence of the consent of the said Council to abstain from any act which might directly or indirectly or by any means whatever compromise her independence, particularly, and until her admission to membership of the League of Nations, by participation in the affairs of another Power."
THE FIRST GENEVA PROTOCOL of October 4, 1922.

Declaration.

The Government of His Britannic Majesty, the Government of the French Republic, the Government of His Majesty the King of Italy, and the Government of the Czechoslovak Republic,

Of the one part,

At the moment of undertaking to assist Austria in her work of economic and financial reconstruction,

Acting solely in the interests of Austria and of the general peace, and in accordance with the obligations which they assumed when they agreed to become members of the League of Nations,

Solemnly declare:

That they will respect the political independence, the territorial integrity and the sovereignty of Austria;

That they will not seek to obtain any special or exclusive economic or financial advantage calculated directly or indirectly to compromise that independence;

That they will abstain from any act which might be contrary to the spirit of the conventions which will be drawn up in common with a view to effecting the economic and financial reconstruction of Austria, or which might prejudicially affect the guarantees demanded by the Powers for the protection of the interests of the creditors and of the guarantor States:

And that, with a view to ensuring the respect of these principles by all nations, they will, should occasion arise, appeal, in accordance with the regulations contained in the Covenant of the League of Nations, either individually or collectively, to the Council of the League, in order that the latter may consider what measures should be taken, and that they will conform to the decisions of the said Council.
The Government of the Federal Republic of Austria;

Of the other part,

Undertakes, in accordance with the terms of Article 88 of the Treaty of Saint-Germain, not to alienate its independence; it will abstain from any negotiations or from any economic or financial engagement calculated directly or indirectly to compromise this independence.

This undertaking shall not prevent Austria from maintaining, subject to the provisions of the Treaty of Saint-Germain, her freedom in the matter of customs tariffs and commercial or financial agreements, and, in general, in all matters relating to her economic regime or her commercial relations, provided always that she shall not violate her economic independence by granting to any State a special regime or exclusive advantages calculated to threaten this independence.

The present Protocol shall remain open for signature by all the States which desire to adhere to it.

In witness whereof the undersigned, duly authorized for this purpose, have signed the present Declaration (Protocol I).

Done at Geneva in a single copy, which shall be deposited with the Secretariat of the League of Nations and shall be registered by it without delay, on the fourth day of October, one thousand nine hundred and twenty-two.

(Signed) Balfour.  (Signed) Seipel.
(Signed) G. Hanotaux.
(Signed) Imperiali.
(Signed) Kromar.
(Signed) Pospisil.
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