

## "GROSSRAUM" AND "REALM"

New Terms for International Law

By DR. CARL SCHMITT

*The following article dealing with new developments in international law is not easy reading. Dr. Schmitt, since he is a German professor, writes in a rather difficult style; moreover, where common language is not yet adapted to modern developments, he has coined a number of new terms. After all, there are some ideas which cannot be expressed in words of one syllable. Great revolutions, such as the one through which mankind is now passing, create new conditions and bring into the limelight old ones hitherto not clearly recognized. Since most of the recent revolutionary forces have come from either Russia or Germany, these languages have contributed more than any others towards the new political vocabulary of the world. "Lebensraum" is one such addition. The idea of "Lebensraum" is as old as history: Rome fought Carthage, American settlers the Indians—for "Lebensraum." But what was a political reality from time immemorial has not become a political term until now.*

*In the following pages Dr. Schmitt offers two new political terms: "Grossraum" and "realm." We believe that he deals here with problems of interest to those who, in the midst of this war, are giving serious thought to the organization of future peace. Of course the author must expect opposition from the adherents of the traditional school of international law; nevertheless we think that even they will find stimulation in his reasoning.*

*"Grossraum" literally means "great space." Dr. Schmitt uses the term to indicate large political areas under the leading influence of one particular nation. His term for these nations is "realm" (Reich). For example, the Americas are in his terminology a "Grossraum," and the United States is the "realm" within this "Grossraum."*

*Dr. Schmitt has during the last twenty-five years been a professor at the Universities of Strassburg, Greifswald, Bonn, Cologne, and Berlin. He has published a great many important books and articles on acute problems of international and German law, in which fields he is considered one of the leading and most original minds in Germany.—K.M.*

### THE MONROE DOCTRINE

In the modern history of international law the American Monroe Doctrine is the first and so far most successful example of the *Grossraum* principle in international law. It is therefore a singularly important precedent. From it we must proceed when discussing the international legal aspect of the *Grossraum*.

There can be no question of taking the Monroe Doctrine as it is and simply transferring it to other countries and times. Our task is rather to make

clear to what extent it is an internationally useful legal concept. We do not intend to increase the voluminous literature on the Monroe Doctrine by a further treatise but rather to show the essence of the Doctrine in all its simple greatness. We shall therefore discuss neither the question whether the Monroe Doctrine is a "legal principle" or only a "political maxim" of the United States Government, nor whether it has a "quasi-legal" or "semi-legal" character. We will limit ourselves to three simple and incontestable facts:

1. Probably all important textbooks and encyclopedias of international law deal with the Monroe Doctrine, irrespective of whether they affirm or deny its "legal" aspect. It appears in every important system of international law.

2. In practical negotiations of international agreements the United States have, since the first peace conference at the Hague (1899), prevailed with great success, especially against British opposition, in always having the proviso of the Monroe Doctrine expressly or tacitly recognized.

3. The statutes of the League of Nations in Geneva in Article 21 recognize the precedence of the proviso of the Monroe Doctrine over its own rules.

#### CHANGING INTERPRETATION

A difficulty is to be found in the inconstancy of the Doctrine's meaning. Originally a principle directed against intervention of European powers in the American hemisphere, it later became the justification for the intervention of the United States in other American states and most recently in European and Asiatic affairs. In this way the Monroe Doctrine has been invoked for a policy of strict isolation and neutrality for the USA as well as for a policy of intervention reaching across the Atlantic and Pacific Oceans. In 1923 Secretary of State Hughes gave a very significant reply to the question regarding the real content of the Monroe Doctrine, when he declared that its purport could be defined, interpreted, and sanctioned solely by the Government of the United States of America.

It is decisive for us that the original Monroe Doctrine of 1823 is the first declaration in the history of modern international law referring to a political sphere of interest and setting up for this sphere the principal of non-intervention by outside powers. It refers specifically to the "Western Hemisphere" of the world.

The true and original Monroe Doctrine was directed against the monarchic-dynastic principle of legitimacy. This latter gave the sanctity of law to the then existing *status quo* in the distribution of power and frontiers. It made absolute and legitimate monarchy the standard of international legal order. On this basis it justified at that time the intervention of European powers in Spain and Italy and should logically also have led to intervention against the revolutionary rise of independent states in Latin America. The nations of the Americas, however, since they no longer felt themselves to be subjects of European powers and refused to remain the field of foreign colonization, did not permit any intervention on the part of Europe. In a political *Grossraum* that had become conscious of itself Europe was not to interfere by insisting on old titles of ownership and on the *status quo*.

Here we have the essence of the original Monroe Doctrine, a true *Grossraum* principle. Three factors have come together: a politically awakened population, a political idea, and a political area governed by this idea and excluding foreign intervention. To repeat, it is not the Monroe Doctrine as such but rather its essence, the idea of creating an international law of the *Grossraum*, which can be transferred to other geographical spheres, other historical situations, and other political groupings. Its applicability to Central and Eastern Europe is not affected by the fact that since 1823 conditions in Europe as well as America have changed considerably, and that, with regard to the character of the basic political ideas, the fronts have actually been reversed. The western Democracies are now in the position of the former European monarchies of the Holy Alliance. The monarchic-dynastic principle has now become a liberal-democratic and capitalistic principle of legitimacy.

#### THE "LIFE LINES" DOCTRINE

Next we turn to a doctrine which is frequently mentioned in the same

breath with the Monroe Doctrine, the doctrine of the "Safety of the British Life Lines." It is the antitype of the original Monroe Doctrine. The latter had in view a coherent geographical entity: the Americas. The British Empire, on the other hand, is not a continent, but a political combination of possessions scattered over every continent—Europe, America, Asia, Africa, and Australia. The original Monroe Doctrine was intended to exclude the intervention of European powers in the Americas in order to defend a new political idea against the powers upholding the legitimacy of the *status quo*. The principle of the "Safety of the British Life Lines," however, from the viewpoint of international law, is nothing but an attempt to use the idea of the legitimacy of the *status quo* for the preservation of existing possessions.

In order to have a case, an empire scattered over the face of the earth must prove its continuation as such to be in the interest of humanity. For the lawyer of such an empire, particularly the specialist in international law, it is therefore more natural to think in terms of communication lines rather than geographical areas. Characteristic of this peculiarity in the British way of thinking is the pronouncement of an eminent British expert, Sir William Hayter, who openly said that the British Government could permit revolutions in Greece and Bulgaria; but that in Egypt there must be peace and order, so that the great lines of communication of the Empire, especially the route to India, might not be disturbed.

The vital interest of sea lanes, air lines, pipe lines, etc., from the viewpoint of the scattered British Empire cannot be denied. But while the problems of the American Monroe Doctrine have been treated in innumerable publications, there are hardly any works of international jurisprudence devoted to the great problem of the "Safety of the British Life Lines." Only here and there can one find statements, often in the form of legal

reservations, expressing this Doctrine. Take, for instance, the decisive passage in the note addressed to the American Ambassador in London on May 19, 1928, by the British Secretary for Foreign Affairs, which contains the British reservations to the Kellogg Pact. Here it is clearly stated that there are areas in the world, the welfare and integrity of which are of special and vital interest to the peace and security of Great Britain. Any intervention in these areas could not be tolerated by the British Government, which could only sign the Kellogg Pact if this were clearly understood.

An interesting conflict arose when the Monroe Doctrine of America and the Life Line Doctrine of Great Britain clashed in the case of the Panama Canal. Here the opposing interests of the two worlds became apparent. The struggle ended with a complete victory for the United States and the Monroe Doctrine, which, as a concrete *Grossraum* principle, proved superior to England's universal claim.

### FREEDOM OF THE SEAS

England never abandoned her struggle. For instance she has always insisted on the freedom of the seas. "Freedom" in every case of political importance meant to her the understandable, specifically British imperial interest in the world's great lines of communication. Hence "freedom of the seas," according to a formulation by Wheaton-Dana, famous through its citation in the *Miramichi* case (British prize court decision of November 23, 1914), means: "the sea is *res omnium*, the common field of war as well as of commerce." As long as England rules the seas, the freedom of the seas is limited by and coincides with the interests of British naval warfare, which claims the right of the belligerent power to control the trade of neutrals. "Freedom of the Dardanelles" means unrestrained use of these straits for British warships in order to be able to attack Russia in the Black Sea, and



so on. Behind these terms implying freedom for all mankind one can always perceive the peculiar connection that drives the interests of a geographically non-coherent empire toward legal formulations of a universal and generalizing nature. This cannot simply be explained as cant, or deceit, or by similar expressions. It is an example of the inevitable co-ordination of certain ways of thinking in international law with a certain kind of political existence.

### *THE REALM, A NEW LEGAL CONCEPT*

On the basis of our discussion of the Monroe and Life Line Doctrines we now introduce the conception of a "realm" as a specific term of international law. Realms in this sense are those leading powers whose political ideas radiate into a definite, large, geographical sphere, which on principle exclude the intervention of outside powers in this sphere, and which raise themselves above the state borders as well as above the population frontier of a single people. A sphere is not identical with the realm, nor is a realm simply an enlarged state; nor is every state or every people within the sphere a part of the realm. No one, for example, in acknowledging the Monroe Doctrine, would declare Brazil or the Argentine to be a part of the United States of America.

The introduction of this term of international law is a necessity. The future of international law depends on properly recognizing the actual determining forces in the relations between nations and on making them the starting-point for discussion and formulation. Such forces are no longer "states," as in the eighteenth and nineteenth centuries, but "realms." The important point is to set up in place of what used to be the main conception of international law—namely the state—a higher, more realistic, and more modern conception, which would be useful in international law.

### *THE STATE, OBSOLETE BASIS OF INTERNATIONAL LAW*

Present international law, developed in the eighteenth and nineteenth centuries and carried over into the twentieth century, is nothing but a law of states. In spite of certain modifications it recognizes only states as subjects of international law. In its eyes, realms do not exist. Nevertheless, through the ages leading powers were a political and historical reality; there was, for example, a "Concert of the European Powers" and, in the system of Versailles, we had the "Allied Powers." Legal terminology clung to the general term "state" and to the legal equality of all independent and sovereign states. In its theories international jurisprudence ignored the differences in rank between the various states.

The frank recognition of these differences was also avoided by the League of Nations, although in Geneva the false character of the slogan of equality in international law was particularly obvious in view of the patent hegemony of England and France. Traditional international law is based on the presumption that all members of the international legal community are "states" with certain concrete and definite characteristics.

### *BALANCE OF POWER AS GUARANTEE*

International law as it has been until now saw its real guarantee, not in an intrinsic idea of justice nor in an international consciousness of what is right (they both proved to be non-existent during the Great War and in Versailles), but—again in full harmony with the interests of the British Empire—in a balance of power among the states. The fundamental idea is that the power of the many large and small states is maintained in perpetual balance, and that whichever state becomes too powerful and hence dangerous to international law will be automatically confronted by a coalition of the weaker states.

This fluctuating, constantly moving, and therefore extremely unsteady balance can at times really offer a guarantee, that is to say when there is a sufficient number of strong neutral powers. The neutrals become in this way not only the impartial witnesses in a war between other powers, but also the true guarantors and preservers of international law. In such a system of international law there is exactly as much real law as there is real neutrality. It is no accident that the League of Nations has its seat in Geneva, and it is for as good a reason that the Permanent International Court is at the Hague. But neither Switzerland nor the Netherlands are strong neutrals who could in an emergency defend international law alone and unaided. If there are, as in the last year of the Great War, no more strong neutrals, there is in practice no more international law.

#### A WEAK CENTRAL EUROPE THE PREREQUISITE

Traditional international law is based furthermore on the unspoken but — during the past centuries — essentially correct presumption that this balance of power shifted around a weak Central Europe. It could really only function if a number of medium-sized and small states could be played against each other here. Clausewitz, the soldier and thinker, has hit the nail on the head when he said that the numerous German and Italian states of the eighteenth and nineteenth centuries were used as the small and medium weights to be thrown, now on this, now on that side of the scales to maintain a balance between the great powers. A strong political power in Central Europe was bound to destroy this kind of international law. The jurists of such a law could therefore maintain and in many cases genuinely believe that the Great War of 1914-18, directed against a strong Germany, was a war of international law itself, and that the apparent destruction of the political power of Germany in 1918

was "a victory of international law over brute force." It is necessary, not only for political-historical but also for jurisprudential discussion and research to remember these circumstances in order properly to comprehend the present turning-point. For today, in the face of a new, strong Germany, this host of international conceptions directed against a powerful Germany is being mobilized again in full force by the western Democracies and all the countries influenced by them.

#### GROSSRAUM AND REALM

Not all nations are able to pass the test of creating a good modern state machinery, and very few are equal to a modern war on the strength of their own industrial and technical power of production. In order to qualify today for a first-rank position in international law a nation must have a huge measure not only of "natural" or innate attributes, but also of conscious discipline. It must have a heightened ability of organization, and the faculty to create alone and unaided the complicated machinery of a modern community and to hold it firmly together. Traditional international law has entirely overlooked this fact. The task of modern international jurisprudence is to formulate the conception of a concrete order of *Grossraums* which does justice to the large spaces of our present world as well as to our new conception of state and people. This can only be the conception of the realm.

Four different kinds of possible legal relations would result here: first, between the different *Grossraums* as such, since these are, of course, not meant to be hermetically sealed blocs, but rather to enjoy economic and other exchanges — in this sense, a "world-trade"; secondly, between the leading realms; thirdly, between the people within each *Grossraum*; and finally — on condition of non-intervention of outside powers — between the peoples belonging to different *Grossraums*.

The limitations of the former conception of international law are manifested by the fact that it focused its attention entirely on the territory of a state. The more far-reaching problems of political reality such as *Grossraums*, claims of intervention, prevention of intervention of outside powers, zones on the high seas (zones of administration, danger zones, blockades, stoppages of marine traffic, convoys), problems of the colonies (which are, after all, state territories in a quite different sense and with a quite different constitution from the motherland), protectorates, dependencies — all this fell a victim to the practice of indiscriminate "either/or" and to the simple classification of all territories as "state territory" or "not state territory," in which latter case it had no legal standing. Borders are identified with border lines. The possibility of real (not only inter-state) borders and border zones is excluded from the thinking of jurists who see only states, and who fail to recognize that there are in reality many hybrid structures, neither purely intra-state nor purely extra-state. Even neutral buffer states, whose significance is that of an intermediate zone and which owe their existence to agreements between realms, are treated as sovereign states and on the same level with these realms.

#### FIXED BORDERS AND ZONES OF EXPANSION

The old system of international law, recognized in Europe under the leadership of England and France, was based on the differentiation between an orderly European sphere of states and a non-European sphere, free for European expansion. The non-European sphere was without a master. It was semi- or uncivilized territory, waiting for colonization, subject to seizure by European powers, which indeed became realms through the possession of such oversea colonies. All realms of this international system had huge territories for expansion at their disposal:

Portugal, Spain, England, France, and Holland in their oversea colonies; the Habsburg monarchy in the Balkan possessions of the Ottoman empire (which did not belong to the society of international law); and the Russian realm in Ottoman possessions as well as in Siberia and Eastern and Central Asia. Prussia was the only power which was merely a state, and which, if it expanded in territory, could only do so at the expense of its neighbors belonging to the European society of international law. Hence it was a simple matter to give Prussia the reputation of being a disturber of the peace and a brutal aggressor, although its territory was small and very modest in comparison to that of the realms.

#### NEW CONCEPTIONS IN A CHANGING WORLD

While the European states were still expanding into colonies, the emancipation of those colonies was beginning. In the same measure in which the oversea colonies detached themselves from European leadership, the state system of Europe, which was mainly built up on oversea expansion, began to change. The War of Independence of the United States and the Monroe Doctrine not only freed a huge part of the world from the apron-strings of Europe; they also created the first modern *Grossraum* banning outside intervention. In 1905 the second non-European realm appeared, Japan.

The development of the world in recent times seems to point strongly to the formation of further such spheres. It is the duty of the international jurist to recognize and to point out that the world has entered a new phase of international relations. He must, as we have attempted here, analyse this phase and bring order into its conceptions. He must see to it that theory does not lag too far behind reality. The enumeration of future realms and *Grossraums* and their borders, however, is not his task. This he can leave to the statesman and the prophet.