



1989

U.S. Nonrecognition of the Soviet Occupation of Lithuania

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U.S. NONRECOGNITION
OF THE
SOVIET OCCUPATION OF LITHUANIA

by

Robert A. Vitas

A Dissertation Submitted to the Faculty of the Graduate School
of Loyola University of Chicago in Partial Fulfillment
of the Requirements for the Degree of
Doctor of Philosophy

January

1989

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Finally, this study is dedicated to three people. First, as with my master's thesis, to my parents. Second,

to the memory of the late Mr. Loy Wesley Henderson, who served his country at the U.S. State Department for thirty-nine years. Without him, there may never have been any nonrecognition policy and, hence, there would not have been any dissertation.

VITA

The author, Robert A. Vitas, is the son of Jonas Vitas and Grace (Memenas) Vitas. He was born 12 September 1962 in Chicago, Illinois.

His elementary education was obtained in the parochial schools of Chicago. His secondary education was completed in 1980 at Brother Rice High School in Chicago.

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Lituanus published his article, "The Polish-Lithuanian Crisis of 1938: Events Surrounding the

Ultimatum," in the summer of 1984, and his translated and annotated document, "The Polish Ultimatum to Lithuania: The Despatch of Lithuanian Minister J. Baltrusaitis in Moscow," in the winter of 1985. Air University Review published his book review essay, "Is Democracy in Danger?" in its November-December 1985 issue. That journal, along with one in Presidential Studies Quarterly, has published an individual book review by the author. The author is co-editor with Sam C. Sarkesian of the book, U.S. National Security Policy and Strategy, published in 1988 by Greenwood Press.

Mr. Vitas presented a paper at the Fifth International Lithuanian Symposium on Science and Creativity in Chicago in November 1985. He served as a panel discussant at the 1987 and 1988 annual meetings of the Midwest Political Science Association in Chicago. He served as rapporteur at the workshop, "U.S. National Security Strategy: New Challenges and Opportunities," sponsored in 1988 by the IUS and the US Army.

In August 1984, Mr. Vitas was granted an assistantship in political science at Loyola University of Chicago, enabling him to complete the Master of Arts in May 1986. In August 1987, he was granted a Schmitt Dissertation Fellowship for 1987-1988, which enabled him to complete his dissertation for the Degree of Doctor of Philosophy in January 1989. The present dissertation earned a prize from

the Lithuanian Catholic Academy of Sciences in Rome in 1988.

Mr. Vitas was appointed vice president of the Lithuanian Research and Studies Center in September 1986. He assumed the additional duties of executive director in July 1988. He lectured in political science at Loyola in the autumn of 1988.

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CHAPTER I

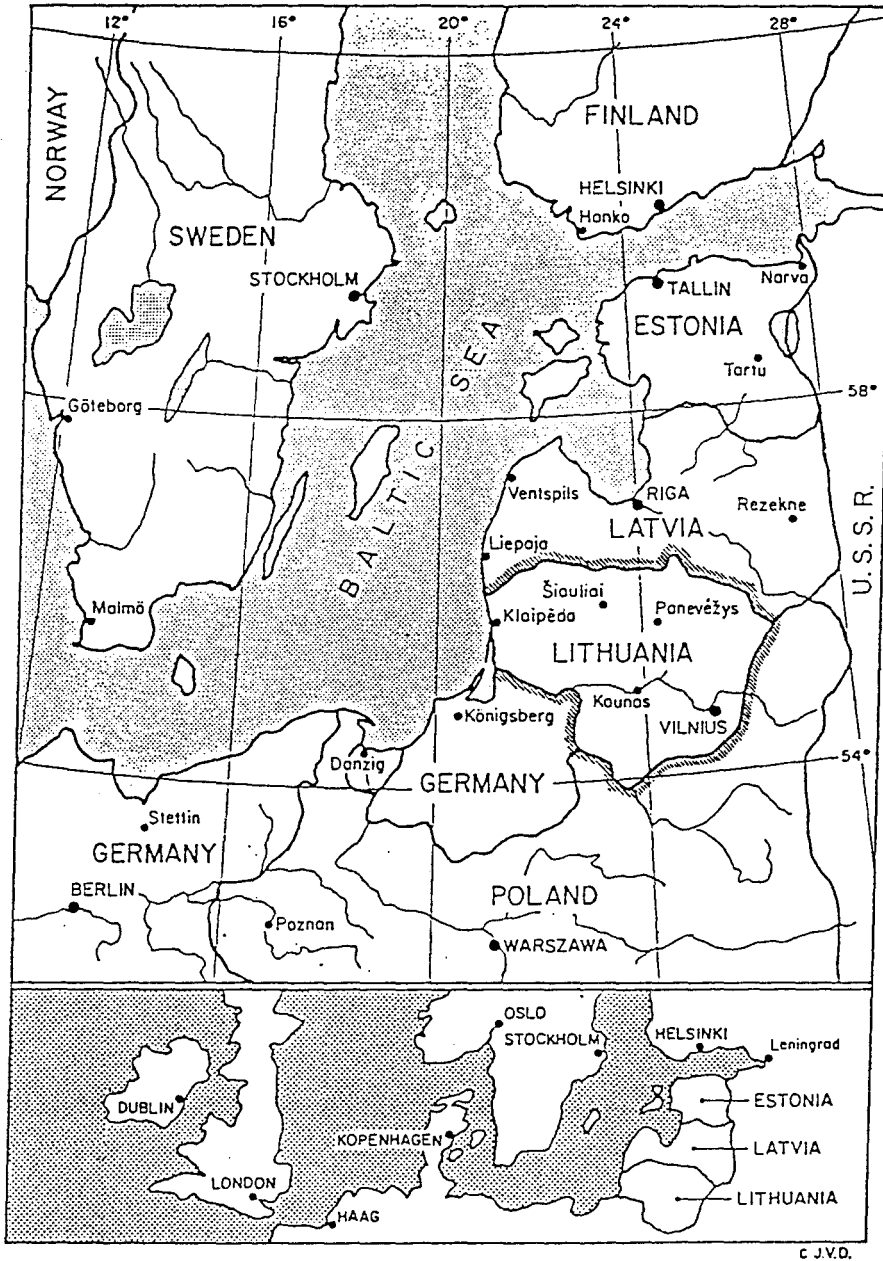
INTRODUCTION

A. THE UNFINISHED WAR

As the Second World War was a continuation of the unfinished business of World War I, so, too, the contemporary geo-political situation is very much a reflection of the global conflict of the 1940s. To the many who had to flee to distant shores, World War II is still very much a daily experience; exile is a reminder of the battles that raged around them. To this day, the conflict has an impact upon people of all backgrounds and in all places, be it in an ethnic neighborhood in urban America or on maneuvers with the US Army's Berlin Brigade.

One daily reminder of World War II in the United States is the anomalous presence of the Lithuanian Diplomatic Service. The members of the service, ministers and consuls, defend the interests of the Lithuanian nation whenever and wherever possible, and are living symbols of that nation's aspirations for freedom and the resumption of sovereignty. One reason that the Service still exists may

FIGURE 1-1: MAP OF THE BALTIC AREA



SOURCE: Milda Danys, DP: Lithuanian Immigration to Canada After the Second World War (Toronto: Multicultural History Society of Ontario, 1986), p. 2.

be found in a postwar memorandum issued by the Supreme Committee for the Liberation of Lithuania, which states:

Determined to fight on uncompromisingly until the exercise of the sovereignty of the Lithuanian State is restored, the Lithuanian people will consider null and void and not binding any and all decisions made without the participation of their lawful representatives, and which might prejudice or deny the basic rights of Lithuania and her vital interests.¹

Be that as it may, it is practically not within the power of the Lithuanian people to decide their own governmental or national fate. Thus it is not according to the discretion of that people that the Lithuanian Diplomatic Service continues to function. The necessary discretion lies elsewhere. As legal scholars and diplomats are aware, international law, both statutory and customary, is not carved in stone. Law among nations is interpreted by those nations themselves, in each respective capital. In the US, it is Washington which determines the existence of the Lithuanian Diplomatic Service -- and the juridical existence of the Lithuanian state.²

¹ Supreme Lithuanian Committee of Liberation, Memorandum on the Restoration of Lithuania's Independence (np: Lithuanian Executive Council, 1950), p. 15.

² For accounts in US-Lithuanian diplomatic history, see David Martin Crowe, Jr., The Foreign Relations of Estonia, Latvia, and Lithuania, 1938-1939, Ph.D. dissertation, University of Georgia, 1974; William Morris David, Jr., The Development of United States Policy Toward the Baltic States, 1917-1922, Ph.D. dissertation, Columbia University, 1962; Constantine R. Jurgela, Lithuania and the United States: The Establishment of State Relations (Chicago: Lithuanian Research and Studies Center, 1985).

In order to understand the paradox of a practically non-existent state possessing diplomatic representation in the US, it is necessary to understand the circumstances of the Second World War, and Washington's application of international law thereto.

At the outset of the Second World War, following the dissolution of Poland by Germany and the Soviet Union, the Kremlin issued an ultimatum to Lithuania demanding the formation of a new government and the entry of an unlimited number of Soviet troops into the country. This was in line with the plan adopted in a secret protocol to the Molotov-Ribbentrop non-aggression pact of 23 August 1939. The Lithuanian government, having decided that opposition would be futile, reluctantly decided to accept the ultimatum. In procedures which violated Lithuanian constitutional law, a new Soviet regime was installed in the provisional capital of Kaunas in June 1940. The Seimas (parliament) was dissolved the following month, and was succeeded by a "People's Seimas," which petitioned the Kremlin for entry into the USSR. The Supreme Soviet obliged on 3 August 1940.^a

^a George F. Kennan writes:

It is ironic to reflect that these little countries, the first to establish normal relations with Moscow, should also have been, together with Poland, the first to be swallowed up again by Moscow . . .

See his Russia and the West Under Lenin and Stalin (Boston: Little, Brown, 1961), p. 172.

The implications for Lithuanian municipal law were enormous. The prime minister, Antanas Merkys, who was acting as president in the wake of the departed President Antanas Smetona, was forced to both appoint a new government and transfer the presidency to a Soviet sympathizer. The dissolution of the Seimas, rump elections to a new one, the promulgation of various decrees, and the method of incorporation into the Soviet Union were all in violation of Lithuanian law. Due to these violations, the nonrecognition policy announced by the United States on 23 July 1940 was valid and legitimate, for it was the USSR, and not the US, which was interfering in the internal affairs of another country.

B. US APPLICATION OF INTERNATIONAL LAW

The struggle for national self-determination has been a major component of the twentieth century's history. While geo-physically unequal, states, great and small, have claimed moral and intrinsic equality, as well as the right to rule themselves under international law. The process of creating states and governments has necessarily touched upon the question of recognition extended to these new entities. Traditionally, effective administrative control over a territory and population, and the capacity and willingness to discharge international obligations have sufficed to receive recognition, though there is never any obligation to

extend recognition. Usually, in the case of a new government which comes to power through extra-constitutional means, political factors outweigh legal ones in the decision to recognize. Recognition has not usually been utilized as a moral tool. Further, recognition does not necessarily translate into approval of the new regime.

The Japanese conquest of Manchuria and the creation of the puppet state of Manchukuo in 1931-1932 added a new factor to recognition. Secretary of State Henry Stimson announced that the United States would not recognize the new regime and situation in Manchuria, as it had come to power in violation of the Kellogg-Briand Pact and accepted principles of international law. The League of Nations agreed with him and, subsequently, Latin American governments took the lead in formally making nonrecognition a principle of international law.

Nonrecognition is mainly a moral sanction possessing relatively little concrete impact. However, the declaration of nonrecognition is a positive reaffirmation of the international legal order, namely that illegal actions cannot be the source of legal title to territory and power. The displaced regime possesses juridical continuity in the eyes of those not recognizing the new rulers.

Nonrecognition as applied to Lithuania means that the independent prewar government of that country possesses a vestige of international legal personality. There is no

legal foundation to the country's incorporation into the USSR; it is null and void. Lithuania is considered to be under a military occupation, with the occupant possessing limited rights and obligations under the Geneva Conventions. The events which occurred there in the summer of 1940 are deemed to be manifestations of a misrepresentation of sovereignty by the Soviet-installed Lithuanian government. Further, the sovereignty of the prewar regime has been suspended, and can be exercised following the occupant's evacuation.

When Lithuania and the other Baltic States of Latvia and Estonia were occupied by the Soviet Union in 1940, the act was met by the protests of Lithuanian-Americans and the Lithuanian minister to the United States, Povilas Zadeikis. On 15 July 1940, Loy Wesley Henderson, assistant chief of the State Department's European Affairs office, authored a memorandum where he asked if the United States would fight Hitler, while ignoring Stalin's aggression. The day the document was written, President Franklin Roosevelt, who stated that Lithuania's sovereignty had been temporarily suspended, issued Executive Order 8484, which froze Baltic assets in this country, making them inaccessible to Soviet authorities. On 23 July, Undersecretary of State Sumner Welles, in an announcement condemning the occupation, implied the application of the Stimson Doctrine of nonrecognition to the Baltic situation.

Despite Soviet protests, Washington proceeded to implement nonrecognition vis-a-vis the Baltic States. Though Antanas Smetona, the Lithuanian president, was allowed to live in the US only in a private capacity without the possibility of heading a government-in-exile, Lithuanian diplomats and consuls retained their formal status. US-Lithuanian treaties were considered to be in force, but suspended. Official personnel were supported in their activity from the frozen assets. Further, consuls possessed standing in courts to defend their country's economic interests from the Soviets.

It was in this area that nonrecognition had the greatest impact. American courts, taking the executive's nonrecognition policy into account, held that an unrecognized government possesses no standing in court. Hence, the nationalization decrees promulgated in the Baltic in 1940 were considered to be without legal effect in the US, and the Kremlin could not claim Baltic assets and property. Thanks to nonrecognition, actual physical resources were kept out of reach of the occupant. The Stimson Doctrine thus became both a moral and practical tool in the condemnation of illegal aggression.

C. WARTIME EXPEDIENCY WEAKENS THE POLICY

One year following the incorporation of the Baltic States, Germany, breaking the Molotov-Ribbentrop Pact,

attacked the Red Army. The US, UK, and USSR now had a mutual enemy in Adolph Hitler. As the Wehrmacht advanced eastward, the Soviet Union was able to attract sympathy and support in the West, with the unintended result that Soviet aggression of 1939-1940 was deemphasized.

The Atlantic Charter was signed by President Roosevelt and British Prime Minister Winston Churchill on 14 August 1941. It embraced the principle of self-determination vis-a-vis European territorial changes and forms of government. Stalin initially announced his acceptance of the Charter's principles, but, as the tide of the war shifted in his favor, he indicated that he would not be bound by them. The western allies, seeing that they could practically do little on behalf of eastern Europe, declared that the Charter was not a formal treaty, and that there would be no predetermination of the postwar Europe situation. In other words, all settlements would be negotiated following the successful conclusion of hostilities.

The negotiations over the Anglo-Soviet treaty of alliance of 1941-1942 witnessed a fight between east and west over the nonrecognition policy. Stalin pressed Churchill for recognition of the Soviet regimes in the Baltic. In turn, the prime minister asked the Roosevelt administration to moderate its stance, which Washington refused to do. Following US-UK tensions at a time when the

war itself was at stake, Stalin agreed to drop the matter of nonrecognition, and a simple treaty of alliance was signed on 26 May 1942. The policy condemning Soviet aggression had survived this assault when political expediency would have dictated its retreat.

The wartime conferences at Moscow, Teheran, and Yalta did not alter the nonrecognition policy, but they also did not alter the fact that the Soviets controlled eastern Europe. Indeed, Roosevelt stressed the importance of friendly contacts and concessions as strategies in placating Stalin and mitigating his rule over the continent. In employing this approach, the president even jokingly informed Stalin that he was sure the Baltic people would vote to remain in the USSR -- provided that there would be a vote. Stalin, of course, refused to discuss the matter. With the Baltic used as a bargaining chip, nonrecognition failed to win liberation for the area.

The postwar Potsdam declaration of 3 August 1945 did not repudiate nonrecognition, but did not support it either. Königsberg and the adjacent area was turned over to Moscow for its administration. It is difficult to see how the "adjacent area" could not have included Lithuania. As the war had approached its conclusion, the West did not press Stalin for concessions in eastern Europe. Some commentators believe that even broken agreements would have strengthened the status of the Baltic States. As it turned out, the Cold

war was merely an afterthought.

D. INCOMPLETE IMPLEMENTATION OF THE POLICY

Since the Second World War, numerous statements, resolutions and certifications have reaffirmed the policy of nonrecognition, even to the point of maintaining a Baltic desk at the State Department, noting the policy on official maps, and forming an Ad Hoc Congressional Committee on the Baltic States and Ukraine in the House of Representatives. Of course, the existence of the policy has had some effect upon US-USSR relations. Protests during 1940-1941 from the Kremlin went unheeded by Washington. The war crimes trials at Nuremberg also saw a reservation attached to the indictment, which did not agree with the use of the phrase "Soviet Socialist Republic" in conjunction with Lithuania, Latvia, and Estonia. The US and Soviet Union have clashed over the Baltic at numerous conferences and negotiations.

Practically, however, the routine of international intercourse has not been interrupted by the policy, with nonrecognition not hindering US-USSR dealings regarding specific issues and individuals. The diplomacy of the early 1940s and the detente of the 1970s proceeded in spite of nonrecognition. In short, it is unavoidable to deal with the Soviet regimes in the Baltic, due to the necessary requirements of diplomacy, political expediency, and the lack of tools for concrete action.

Several case studies have indicated why nonrecognition cannot be perfectly implemented. The cases described in this study are: postwar repatriation, the Simas Kudirka incident, the Helsinki accords, and the activity of the US Office of Special Investigations. Among US officials who are supposed to be apprised of the policy, it has sometimes either been ignored or unknown. Nonrecognition has also often been submerged under the issues of asylum, political persecution, diplomacy, and the prosecution of war criminals. Indeed, during the Helsinki negotiations, the policy itself was called into question by several senior officials. Finally, Baltic diplomats have unavoidably been able to play a limited role in defending the interests of their nations -- and their independent governments.

Be that as it may, the policy has not been forgotten. This conclusion can be reached when noting its various reaffirmations, and the controversy surrounding even perceived attempts to undermine it. Unfortunately, it is too often invoked in a pro forma declaration only after it has been violated -- and then only after the matter has come to the public's attention. Though the policy has been designed to protect people, it has not always proved successful at this task.

Initially, only diplomatic officers commissioned as of 15 June 1940 could succeed Baltic ministers who died. The advent of the 1980s witnessed a rebirth of the policy,

the means of supporting it, and the people who embody it. 1980 saw the pooling of the frozen assets of Lithuania, Latvia, and Estonia into a single fund. This money continues to support diplomatic and consular facilities. Further, President Jimmy Carter waived the rule that only officers active in 1940 could succeed as charge d'affaires. When Stasys Lozoraitis, Jr., who was not a commissioned officer in 1940, succeeded Dr. Stasys Backis as charge d'affaires in Washington in 1987, the Carter policy was successfully implemented for the first time. Prior to this policy switch, consular officers had continued to be appointed with little difficulty, for they filled honorary posts, with no authority to defend their nationals in court.

Does a state exist because of recognition, or because of fulfilling certain requirements of statehood? For the Lithuanian nation, statehood, though occasionally interrupted, has existed since the thirteenth century, both in the national consciousness, as well as in the formal trappings of government. Its manifestations have occurred even under occupation. Despite practical limitations, international law recognizes all states as morally and juridically equal. The United States recognizes Lithuania, Latvia, and Estonia as legitimate members of the international community, despite the fact that their sovereignty has been suspended.

Obviously, the Soviet presence in the Baltic cannot

be ignored indefinitely. Yet, under the law, the presence of Soviet authority could only be legitimated in three ways: prescription, that is, the lack of opposition; validation by the residents; formal validation by the international community. None of these methods have been employed. Hence, Washington is not being unreasonable in maintaining a policy of not recognizing the legitimacy of the Soviet government in the Baltic.

The nonrecognition policy finds its roots in traditional American foreign policy which, eschews a Machiavellian approach.⁴ Values are ultimately at the heart of nonrecognition. Of course, morality, in order to be effective, may need power to back it up. This lack of power is where nonrecognition has fallen short for nearly five centuries. However, nonrecognition was limited in scope from its very inception. Nonrecognition has proceeded as far as originally intended. In other words, it was

⁴ Others view foreign policy, in general, differently: Most writers in the modern tradition of political theory, and many contemporary students of international politics, have conceived of international relations on the analogy of the state of nature. States are pictured as purposive and autonomous agents coexisting in an anarchic environment without significant social, political, or economic activity and devoid of stable expectations regarding the agents' behavior with respect to one another. According to the most extreme views, like Hobbes', moral judgements are inappropriate in such an environment.

See Charles R. Beitz, Political Theory and International Relations (Princeton, NJ: Princeton University Press, 1979), p. 179.

always meant to be primarily a moral statement supporting Baltic sovereignty. Actual sovereignty must be reconstituted by the Balts themselves.

In another sense, nonrecognition is active intervention, for it asserts the rule of law, regardless of how imperfectly enforced. The Stimson Doctrine is not gathering dust on diplomatic shelves. Nonrecognition is, and always has been, a long-term policy. It has yet to reach its logical conclusion in the restoration of the Baltic States. Thus, in terms of its original purpose, it has been successful. In terms of its goal, it is incomplete.

E. METHODOLOGICAL QUESTIONS

It will be the purpose of this study to systematically examine the official US policy of nonrecognition of the Soviet occupation of Lithuania. The cases of the other Baltic States of Latvia and Estonia are usually one and the same. Thus the reader should not be surprised if all three countries are often approached as a single unit.

The nonrecognition policy, in essence, refuses to recognize *de jure*, that is as a matter of right, the regime functioning in the Lithuanian SSR and its governmental acts. As far as the US is concerned, the only legitimate Lithuanian government is its independent one, which

functioned from 1918 to 1940.

This study aims to link the nonrecognition policy to: 1) US public policy making processes and implementation; 2) US interpretation and application of international law; and 3) the development of the policy to the present day. The first two links can be viewed in light of theoretical development to discover common and deviating aspects of the Lithuanian case from theory. The last link wishes to ground the study in contemporary public policy, to more fully understand if policy is merely a practical instrument, or if it also possesses some normative, ethical, and moral dimension.

This unique official policy as applied to Lithuania has never been systematically studied in this particular fashion by the academic community, in either the English or Lithuanian language. It is thus another purpose of this study to fill the scholarly vacuum.

The issues involved, of course, have been addressed by many individuals: scholars, participants, observers, arguing the American, Lithuanian, and Soviet points of view. However, these merely provide pieces of a grand puzzle which no one has yet constructed. The problems with these pieces are as follows:

- 1) They are often quite small, sometimes just a few sentences in a book or article, which are minimally comprehensible when not viewed in the general context of

events.

2) Bias takes two forms.

A) Memoirs, biographies, and historical accounts are often written by participants or other individuals who wish to present information from a particular perspective.

B) Some accounts of the nonrecognition policy are written by Soviet scholars, who paint a fascist portrait of independent Lithuania in order to discredit the regime, and who misrepresent the manner of occupation in order to legitimize it.

These factors create obstacles which obscure objectivity. Objectivity can be attempted, however, by piecing many of these diverse -- and often contradictory -- pieces together. Research to date has demonstrated the value of critically viewing and synthesizing large quantities of data.

A reservation, though, must be immediately noted. There should be no doubt in the mind of the reader that the author of the present study condemns the Soviet occupation of Lithuania as illegal, and lauds the US government for maintaining the policy of nonrecognition. This certainly colors the basis of his approach to the subject. Be that as it may, this should not impede an objective study of the strengths and weaknesses, and the successes and failures, of the policy.

The study commences with an examination of the events which gave birth to the nonrecognition policy, that is, the occupation and incorporation of Lithuania by the Soviet Union. It is this subject which the following chapter addresses.

CHAPTER II

THE TWILIGHT OF INDEPENDENCE 1939-1940

A. PRELUDE TO OCCUPATION

In order to fully understand the circumstances which led to the US nonrecognition policy, it is first necessary to acquire a familiarity with the events which led to the extinction of Lithuania's independence. Lithuania's major diplomatic difficulty during the interwar period was the Vilnius dispute. Vilnius had been the ancient capital of Lithuania during the time of the Kingdom and Grand Duchy. Wars with Muscovy in the sixteenth century forced Lithuania to seek aid from her old ally, Poland. Poland, however, agreed to give aid only in return for a political union with Lithuania. After a series of high-level maneuvers, the Union of Lublin was signed in 1569, creating the unified Kingdom of Poland and Lithuania. Gradually, Vilnius became polonized and more cosmopolitan. Poles came to outnumber Lithuanians, while the latter continued to predominate in the countryside. The partitions of Poland and Lithuania in 1772, 1793, and 1795 by Prussia, Russia, and Austria placed Lithuania under Czarist rule.

At the conclusion of World War I, new states began carving niches for themselves on the European continent. Two such countries were the formerly united Poland and Lithuania. Immediately upon reconstitution, both sides clashed over Vilnius and its surrounding territories. Lithuania declared her independence on 16 February 1918. This was followed by two years of turbulence. The vanquished Germans retreated and the Bolsheviks entered the Vilnius territory in late 1918. Polish and Lithuanian volunteers drove the Red Army out of Lithuania -- Poland entering Vilnius first on 19 April 1919. During the summer of 1920, the Bolsheviks reoccupied the territory. Subsequently, Russia concluded an armistice with Lithuania, turning over to her the capital and surrounding areas. The peace treaty caused renewed fighting to break out between Poland and Lithuania. Finally, after much maneuvering-- including the intervention of the League of Nations -- the Treaty of Suvalkai was signed on 7 October 1920; the Vilnius territory was to remain in Lithuanian hands.

The situation was to change with lightning speed. Just two days after the signing of the treaty, Polish general Lucjan Zeligowski, with Polish strongman Marshal Jozef Pilsudski's blessing, staged a rebellion and led Polish forces back into the eastern third of Lithuania, occupying Vilnius. The Lithuanian counterattack was halted by an order of the League of Nations; diplomatic efforts

failed to bring Vilnius back to Lithuania, which set up a provisional capital in Kaunas. The Conference of Ambassadors recognized the existing situation in 1923.

The interwar years were to see continuing tensions between the two countries over the Vilnius question. Lithuania would not officially renounce the capital; Poland would not relinquish the predominantly Polish city. A stalemate ensued for eighteen years, despite secret and sometimes high-level contacts between the belligerents. Nothing appeared able to break the deadlock, which included the lack of diplomatic relations and a technical state of war. An administration line was created between the two antagonists. Diplomats on the continent saw the unresolved situation as a tinderbox ready to ignite; they hoped for a resolution to the conflict. Their wish came true in March 1938. A border incident in which a Polish soldier was killed was followed by Warsaw's ultimatum demanding the restoration of diplomatic ties. Seeing the massing of Polish troops along the administration line, the Lithuanian government acquiesced. This was, in many respects, the actual start of the Second World War for the country.

Adolph Hitler decided to add the Klaipeda (Memel) Territory to his empire in March 1939. An ultimatum was issued to the Lithuanian government demanding its cession to Germany. The Lithuanian government, feeling powerless against the military might of the Third Reich, grudgingly

accepted Hitler's ultimatum. On 22 March 1939, a treaty was signed by both governments which "reunited the Territory with the Reich." The Germans moved into the area very quickly, indicating premeditation, and Lithuanian private citizens, government agencies, and military components suffered many losses in the sudden move to Lithuania-Major.¹

The nation was forced to adjust to the economic dislocation which emerged following the ultimatum. In addition, approximately twelve thousand refugees from the Klaipeda Territory had to be absorbed. Lithuania was simultaneously maneuvering through the troubled continental political situation brewing before the outbreak of outright hostilities. Despite external pressure, Prime Minister Jonas Cernius was charged by President Antanas Smetona with executing a policy of strict neutrality.²

Another problem was constructed by Berlin and Moscow:

When German Foreign Minister Ribbentrop signed the famous Russo-German Non-Aggression Pact on August 23, 1939, the public announcement of the pact made no mention of a secret protocol signed between the two parties the same day. By terms of this secret protocol the Baltic area, including Finland, Estonia, Latvia, Lithuania, and the entire

¹ Juozas Audenas, Paskutinis posedis: Atsiminimai (Final Meeting: Reminiscences) (New York: Romuva, 1966), p. 127; Julius P. Slavenas, "Klaipeda Territory," Encyclopedia Lituanica, 1973, vol. 3, p. 137.

² U.S. House of Representatives, Third Interim Report of the Select Committee on Communist Aggression, 83rd Congress, Second Session (Washington: U.S. Government Printing Office, 1954), pp. 154-155.

territory of the Polish Republic, was partitioned between the U.S.S.R. and Nazi Germany. The northern boundary of Lithuania provided the dividing line between the two spheres of interest. The Vilnius area was recognized as part of Lithuania. Finland, Estonia, Latvia, and the Polish territories east of the line of the rivers Narev, Vistula, and San were declared the spheres of influence of the U.S.S.R., whereas Lithuania and the Polish territories west of these rivers would constitute the German sphere of influence. The ultimate fate of Poland was also sealed in this secret protocol, which provided that "whether the interests of both parties make the maintenance of an independent Polish state desirable can be determined only in the course of further political developments." . . . Later Germany traded [Lithuania] away . . . to . . . the U.S.S.R.^a

^a Bronis J. Kaslas, "The Lithuanian Strip in Soviet-German Diplomacy, 1939-1941," Journal of Baltic Studies, 4,3 (Fall 1973), 211. See also George F. Kennan, Russia and the West Under Lenin and Stalin (Boston: Little, Brown, 1961), pp. 329-336; Domas Krivickas, "Formalities Preliminary to Aggression: Soviet and Nazi Tactics Against Lithuania and Austria," Baltic Review, 5 (June 1955), 5-22; Krivickas, "Lithuania's Struggle Against Aggression and Subjugation," in Twenty Years' Struggle for Freedom of Lithuania, ed. Juozas Audenas (New York: ELTA, 1963), pp. 126-131; Krivickas, "Naciu-sovietu pakto teisines ir politines pasekmes po 40 metu" ("Legal and Political Consequences of the Nazi-Soviet Pact After 40 Years"), in Lituanistikos instituto 1981 metu suvaziavimo darbai (Proceedings of the Institute of Lithuanian Studies 1981), ed. Ina C. Uzgiris (Chicago: ILS, 1985), pp. 83-104; Krivickas, Soviet-German Pact of 1939 and Lithuania (Hamilton, Ontario: Federation of Lithuanian-Canadians, 1959); August Rei, Nazi-Soviet Conspiracy and the Baltic States: Diplomatic Documents and Other Evidence (London: Boreas, 1948), pp. 37-39, 45, 49-52; US Department of State, Nazi-Soviet Relations 1939-1941: Documents from the Archives of the German Foreign Office, ed. Raymond James Sontag and James Stuart Beddie (Washington: US Government Printing Office, 1948), pp. 76-78, 107-108; Leonhard Vahter, "Molotov-Ribbentrop Pact of August 23, 1939," Baltic Review, 18 (November 1959), 58-64. Following the conclusion of World War II, the Soviets or their agents published accounts of the pact from their own viewpoint, denouncing documents released by Washington. See, for example, Falsifiers of History: An Historical Document on the Origins of World War II (New York: Committee for Promotion of Peace, c. 1948), 48 pp.; Soviet Information

This opened the way for the dissolution of Poland. On 1 September 1939 the German blitzkrieg began swallowing the country. The Red Army moved into the Polish-occupied vilnius territory on the 17th of that month. Ten days later, the two powers carried out the "fourth partition" of Poland according to the terms of the secret protocol. Lithuania was immediately mobilized, albeit temporarily, and began absorbing and interning Polish refugees and military personnel. In October, the Kremlin placed pressure on Kaunas to sign a mutual assistance pact, allowing the establishment of four Soviet bases in Lithuania. For the tiny country, this was a two-edged sword. On the one hand, Lithuania, under the provisions of the pact, received most of the Vilnius territory -- the territory for which it had been fighting nineteen years. On the other hand, the Soviet bases were Trojan horses in the subsequent occupation of the country.⁴

Bureau, Falsificators of History (An Historical Note) (Washington: Information Bulletin of the Embassy of the USSR, 1948), 61 pp.

⁴ For accounts of these events, see Audenas, p. 150; Adolfs Klive, "Pacts of Mutual Assistance Between the Baltic States and the USSR," Baltic Review, 18 (November 1959), 31-40; Stasys Rastikis, Ivykiai ir zmones: Is mano uzrasu (Events and Personalities: From My Notes), ed. Bronius Kviklys (Chicago: Academic Press, 1972), p. 44; Rastikis, Lietuvos likimo keliais: Is mano uzrasu (On the Roads of Lithuania's Destiny: From My Notes), ed. Jonas Dainauskas (Chicago: Academic Press, 1982), p. 225; Adolfas Sapoka, Vilnius in the Life of Lithuania (Toronto: Lithuanian Association of the Vilnius Region, 1962), pp. 153-161. Many military officers and citizens did not understand why

Technically, the Treaty on the Transfer of Vilnius and Soviet-Lithuanian Mutual Assistance, signed at Moscow on 10 October 1939, was intended solely to guarantee Lithuania's borders -- with the help of fifty thousand Soviet troops. Article VII stated that the treaty had no effect upon sovereign rights or internal affairs. The following article wrote that the treaty would come up for review in fifteen years. On 14 November, the first of twenty thousand Red Army soldiers entered Lithuania.

Soldiers also entered the other Baltic States, under terms of mutual assistance pacts concluded at the same time. Ostensibly, the Soviet troops were there to guarantee the independence of the three countries. However, as Pakstas writes, this was not to be:

In November, 1939, the mechanized units of the Russian army (about 70,000) were already established in . . . the three Baltic countries. Juridically the Baltic states were in the position of Cuba or Egypt, but the "protecting" partner was not the law-abiding Anglo-Saxon or Yankee.⁵

Lithuania did not invade and take back the Vilnius territory when Poland was attacked and Berlin was urging Kaunas to move. This, though, would have violated Smetona's policy of strict neutrality. See Vaclovas Sliogeris, Antanas Smetona: Zmogus ir valstybininkas. Atsiminimai (Antanas Smetona: Person and Statesman. Reminiscences) (Sodus, MI: Juozas J. Bachunas, 1966), pp. 135-136.

⁵ Kazys Pakstas, "The Baltic Victims of the Present War," World Affairs Interpreter, 12, 1 (April 1941), 36-37. See also Bronis J. Kaslas, ed., The USSR-German Aggression Against Lithuania (New York: Robert Speller & Sons, 1973), pp. 149-151; Benedict V. Maciuika, ed., Lithuania in the Last 30 Years. Subcontractor's monograph prepared in the Division of the Social Sciences at the University of Chicago. HRAF Subcontract HRAF-1 Chi-1 (New Haven, CT: Human

B. THE SOVIET UNION INTERVENES

The final cabinet meeting of independent Lithuania took place during the night of 14-15 June 1940. The president himself was presiding, for the government was considering an ultimatum from Moscow. The ultimatum included a demand for the arrest of Interior Minister Brigadier General Kazys Skucas for allegedly ordering the kidnapping of Red Army soldiers stationed in Lithuania, though it was apparent that they had themselves deserted. Another point of the ultimatum was permission to allow an unlimited number of Soviet troops into Lithuania for the purpose of "guaranteeing" the Soviet-Lithuanian mutual assistance pact. Finally, the Kremlin called for the formation of a government acceptable to it. Divisional General Stasys Rastikis, former commander-in-chief of the army, was invited to the meeting and appointed prime minister. He began forming a government, but word soon arrived from Moscow that Rastikis was unacceptable. Following further discussion, the cabinet decided that President Smetona should leave the country and turn

Relations Area Files, 1955), pp. 70-72. For an overview of the prewar military situation in the Baltic, see Edgar Anderson, "Die militarische Situation der Baltischen Staaten" ("The Military Situation in the Baltic States"), Acta Baltica, 8 (1968), 106-155; Anderson, "Military Policies and Plans of the Baltic States on the Eve of World War II," Lituanus, 20, 2 (Summer 1974), 15-34.

presidential power over to Prime Minister Antanas Merkys, who had been appointed to succeed Prime Minister Cernius on 22 November 1939.

The Red Army began occupying Lithuania -- and the other Baltic States, who had been induced by similar ultimatums -- on 15 June 1940. This was managed on the scene by functionaries from the Soviet Commissariat for Foreign Affairs. In Lithuania it was Vladimir Dekanazov, assisted by the Soviet minister to Kaunas, Pozdniakov. In Latvia it was Andrei Vishinsky, while Andrei Zhdanov managed the takeover in Estonia.

Prime Minister Merkys was forced two days later to name communist sympathizer and journalist Justas Paleckis as new prime minister and de facto president, though, as will be seen below, Merkys' action did not conform with the requirements of Lithuanian constitutional law.⁶

⁶ For accounts of events surrounding the occupation, see Bronius Ausrotas, Sunkių sprendimų metai (Year of Difficult Decisions) (Chicago: Lithuanian Book Club, 1985), pp. 182-226; William J.H. Hough, III, "The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory," New York Law School Journal of International and Comparative Law, 6, 2 (Winter 1985), 370-384; Petras Maciulis, Trys ultimatumai (Three Ultimatums) (Brooklyn: Darbininkas, 1962), pp. 77-122; Thomas Remeikis, "The Decision of the Lithuanian Government to Accept the Soviet Ultimatum of June 14, 1940," Lituanus, 21, 4 (Winter 1975), 19-44; Leonardas Simutis, Amerikos lietuvių taryba: 30 metų Lietuvos laisvės kovojė 1940-1970 (Lithuanian American Council: 30 Year Struggle for the Liberation of Lithuania 1940-1970) (Chicago: LAC, 1971), pp. 11-15; Antanas Steponaitis, Tevyneje ir pasauly: Prisiminimai ir apybraizos (In the Homeland and the World: Reminiscences and Sketches) (Brooklyn: Franciscan Press, 1962), pp. 196-225; Supreme Lithuanian Committee of

As far as public Soviet justifications were concerned, the occupation was necessary, because the Baltic states were engaged in a secret military collaboration in violation of the Baltic-Soviet mutual assistance pacts. Indeed, it was asserted that the occupation was benign and designed to preserve the Baltic States:

The U.S.S.R. never, either in words or in deeds, threatened the independence of the Baltic countries. On the contrary, she was herself interested in their independence. There was therefore no reason whatever for the formation in the Baltic States of various blocs and coalitions directed ostensibly against "threats on the part of the U.S.S.R." In any case, none of these blocs and coalitions could have defended the Baltic States had the U.S.S.R. really desired to violate their independence.⁷

Liberation, Appeal to the United Nations on Genocide (np: Lithuanian Foreign Service, nd), pp. 6-10; US Senate, Committee on Foreign Relations, Consular Convention with the Soviet Union. Hearings on Executive D, 23 January, 3, 17 February 1967, 90th Congress, First Session (Washington: US Government Printing Office, 1967), pp. 416-454; US Department of State, "Case Studies in Soviet Colonialism," Soviet Affairs Notes, 249, 22 November 1960, pp. 15-24; Mykolas Vaitkus, Milziniu rungtynese 1940-1944: Atsiminimai (The Contest of Giants 1940-1944: Reminiscences) (London: Nida, 1972), pp. 61-109.

⁷ Soviet Information Bureau, The Soviet Union, Finland and the Baltic States (np: Soviet War News, 1941), p. 6. For the Soviet view of the occupation, see J. Blieka, et al., eds., Tarybu Lietuvos valstybes ir teises dvidesimtmetis (Two Decades of Statehood and Law in Soviet Lithuania) (Vilnius: State Political and Scientific Press, 1960), pp. 18 ff.; Mecislovas Gedvilas (first Soviet Lithuanian interior minister), Lemiamas posukis: 1940-1945 metai (Decisive Turn 1940-1945) (Vilnius: Vaga, 1975), pp. 28-179; E. Jacovskis, et al., eds., Tarybu valdzios atkurimas Lietuvoje 1940-1941: Dokumentu rinkinys (Reconstitution of Soviet Rule in Lithuania 1940-1941: Documentary Collection) (Vilnius: Mintis, 1965), pp. 61 ff.; Vytautas Kancevicius, ed., Lithuania in 1939-1940: The Historic Turn to Socialism (Vilnius: Mintis, 1976);

It soon became, obvious, however, that it was the Soviet Union's intent to liquidate Lithuania's independence and incorporate the country.^a

C. LITHUANIA'S INCORPORATION INTO THE USSR

The new Lithuanian government created under the direction of Dekanazov was a mixture of patriots and communist sympathizers. However, there was no question that it would perform at the will of the Kremlin. On 19 June, a number of communists jailed by Smetona for their agitation were released from imprisonment and communist-sponsored public rallies were held. That day the Lithuanian

Kancevicius, 1940 metu birzelis Lietuvoje (June 1940 in Lithuania) (Vilnius, Mintis, 1973); Lithuania: The Road to Independence 1917-1941. A Documentary Survey (Moscow: Novosti, 1987), pp. 56-80; Kostas Navickas, The Struggle of the Lithuanian People for Statehood (Vilnius: Gintaras, 1971), pp. 139-156; Navickas, TSRS vaidmuo ginant Lietuvu nuo imperialistines agresijos 1920-1940 metais (The Role of the USSR in Defending Lithuania From Imperialist Aggression 1920-1940) (Vilnius: Mintis, 1966), pp. 268-329; A. Butkute-Rameliene, Lietuvos Komunistu Partijos kova uz Tarybu valdzios itvirtinima respublikoje 1940-1941 m. (The Fight of the Communist Party of Lithuania for a Soviet Government in the Republic 1940-1941) (Vilnius: State Political and Scientific Press, 1958); Antanas Snieckus (longtime leader of the Lithuanian Communist Party), Su Lenino veliava. Straipsniai, kalbos ir pranesimai I: 1927-1969 (With Lenin's Flag. Articles, Addresses and Reports I: 1927-1969) (Vilnius: Mintis, 1977); B. Vaitkevicius, Tarybu Lietuva: Praeties ir dabarties bruoza 1940-1980 (Soviet Lithuania: Sketches of the Past and Present 1940-1980) (Vilnius: Mokslas / Science, 1980), pp. 16-39; Antanas Venclova, Vidurdienio vetra (Midday Storm) (Vilnius: Vaga, 1969), pp. 11-93.

^a Soviet military maps printed in 1939 already indicated Lithuania and the other Baltic States as components of the USSR.

Nationalist Association, President Smetona's political faction which had ruled Lithuania since the coup of 17 December 1926, was outlawed. On 25 June, Interior Minister Mecislovas Gedvilas announced that the Communist Party would be the only legal political party and entered it in the register of societies and associations. Three days later came the legalization of the Young Communist League. The Seimas (Parliament) was dissolved on 1 July. The following day the Lithuanian army was renamed the People's Army, and would later become the 29th Territorial Corps of the Red Army; political commissars joined the ranks. Nationalization and collectivization of property were also begun.⁹

On 5 July, the government announced that elections to a People's Seimas would be held on the 14th of that month. Acting President Paleckis published the new electoral law the following day. Only candidates of the

⁹ Algirdas J. Kasulaitis, Lithuanian Christian Democracy (Chicago: Leo XIII Fund, 1976), p. 153. See also P. Dicus, "Tarybine zemes reforma Lietuvoje 1940-1941 metais" ("Soviet Land Reform in Lithuania 1940-1941"), Lietuvos TSR Mokslu Akademijos darbai (Proceedings of the Lithuanian SSR Academy of Sciences), Series A, 1 (1958), 19-30; A. Jefremenka, "Kolukiu kurimasis Tarybu Lietuvoje 1940-1941 m." ("The Establishment of Collective Farms in Soviet Lithuania 1940-1941"), Lietuvos TSR Mokslu Akademijos darbai (Proceedings of the Lithuanian SSR Academy of Sciences), Series A, 2 (21) (1966), 211-223; L. Truska, "Visuomenes klasines sudeties pakitimas Lietuvoje socializmo statybos metais 1940-1941 m." ("The Change in the Class Structure in Lithuania While Building Socialism 1940-1941"), Lietuvos TSR Mokslu Akademijos darbai (Proceedings of the Lithuanian SSR Academy of Sciences), Series A, 2 (19) (1965), 193-211.

Communist Party¹⁰ were allowed to run, and there would be only as many candidates as there were seats in the Seimas. Because only 15-20 percent of those eligible actually voted on election day, the voting was extended to 10:00 pm the following day. The official tally stated that 1,386,469 (95.51%) individuals voted to elect seventy-nine Seimas deputies.¹¹

The People's Seimas convened in the Kaunas State Theater on 21 July 1940. Red Army soldiers, secret police agents, members of the Soviet legation, and representatives from Moscow sat among the deputies, some of whom had been elected against their will. Their names commanded respect among the citizenry, and it was thought by the Soviets that their presence would give the proceedings at least superficial legitimacy. The convocation was marked by almost continuous shouting and turmoil. During the voting, non-deputies raised their hands and resolutions were recorded as having passed unanimously. Only two were

¹⁰ Officially called the Union of Working People of Lithuania.

¹¹ Maciuika, pp. 73-74; US House of Representatives, Communist Takeover and Occupation of Lithuania. Special Report No. 14 of the Select Committee on Communist Aggression (Washington: US Government Printing Office, 1955), pp. 12-13. The reporting of the election results sometimes went to rather interesting extremes. For example, on 16 July, one newspaper reported that some areas had a 138% voter turnout. The following day, Vilniaus balsas (Voice of Vilnius) reported that some Vilnius precincts saw a turnout of 133%. See Albertas Gerutis, "Occupied Lithuania," in Lithuania 700 Years, 2nd rev. ed., ed. Albertas Gerutis (New York: Manyland, 1969), p. 273.

passed. The first declared that the Soviet system would be introduced into Lithuania; the second requested admission into the Soviet Union.¹²

The following month, the second resolution was presented by a Lithuanian delegation to the Supreme Soviet of the USSR, which admitted the Lithuanian SSR into the nation on 3 August. On the 24th of that month, a new constitution was promulgated for Lithuania, and Justas Paleckis was named chairman of the Presidium of Lithuania's Supreme Soviet.¹³

It was no surprise that Germany, the Soviet Union's ally in dividing eastern Europe, did not hinder Soviet

¹² Liudas Dovydenas, Mes valdysim pasauli: Atsiminimai II (We Will Rule the World: Reminiscences II) (New York: Romuva, 1970), p. 284; Gerutis, p. 276; Kaslas, pp. 237-243. For copies of the polemic addresses made at the People's Seimas, along with analysis from the communist perspective, see R. Sarmaitis, ed., Revoliucinis judejimas Lietuvoje: Straipsniu rinkinys (Revolutionary Movement in Lithuania: Collection of Essays) (Vilnius: State Political and Scientific Press, 1957), pp. 535-582. Similar events were occurring in Latvia and Estonia at the same time. Indeed, the wording of the resolutions was almost identical. See August Rei, Nazi-Soviet Conspiracy and the Baltic States: Diplomatic Documents and Other Evidence (London: Boreas, 1948), p. 5

¹³ On 30 August 1942 in Kaunas, after the Germans had invaded and occupied Lithuania, ten members of the People's Seimas issued a public declaration repudiating the elections and the incorporation process. They cited threats against them and their families. See Conference of Free Byelorussians, Estonian World Council, Lithuanian World Community, World Congress of Free Ukrainians, World Federation of Free Latvians, To the United Nations General Assembly: A Resolution with Appended Documents Concerning the Decolonization of the Union of Soviet Socialist Republics (Toronto / New York: Joint Committee / Ukrainian Research Institute, 1978), pp. 109-111.

actions in the Baltic States. On 22 July, the Lithuanian minister to Berlin, Kazys Skirpa, handed a letter of protest regarding Soviet activities to Ernst Woermann, director of the political department of the German foreign ministry. Woermann transmitted the letter to Foreign Minister Ribbentrop with a request for instructions. The Latvian minister presented a similar letter that day. Two days later, Woermann returned these letters and refused to accept one from the Estonian minister. By the middle of the following month, German legations in the Baltic States were converted to consulates.¹⁴

August Rei, former president of Estonia, wrote of the incorporation:

Every observer who followed with any attention the so-called "incorporation" of the Baltic States into the Soviet Union in the summer of 1940, was aware from the very first that this was an act of violence brutally disregarding both international law and the agreements then in force, even though terrorist methods were applied in such a manner as to suggest that the nations concerned had themselves freely renounced their political independence, declared themselves Soviet Republics and applied for admission to the Soviet Union as federal States.¹⁵

¹⁴ US Department of State, Documents on German Foreign Policy 1918-1945, Series D (1937-1945), Vol. X: The War Years June 23 - August 31, 1940 (Washington: US Government Printing Office, 1957, pp. 264, 267, 286, 483.

¹⁵ Rei, p. 5. The incorporation is elaborated upon in Algirdas Budreckis, Soviet Occupation and Annexation of the Republic of Lithuania June 15 - August 3, 1940 (New York: American Lithuanian National Association, 1968); Juozas Kajeckas, "The Lithuanian Annexation," Baltic Review, 1, 4-5 (July-August 1946), 214-216; Johannes Klesment, "The Crime: Seizure and Forced 'Incorporation,'" Baltic Review, 1

It was thus -- at bayonet point -- that Lithuania became the fourteenth Soviet Republic.

D. IMPLICATIONS FOR LITHUANIAN MUNICIPAL LAW

Prior to entering upon a discussion of international law and its interpretation by the US in the case of Lithuania, it may be useful to see how the incorporation, from its inception, was illegal and could in no way legitimately set the stage for the events of the summer of 1940.

On 15 June 1940, prior to leaving the country, President Antanas Smetona signed an order, by the authority vested in him by Article 71 of the Constitution, which gave Prime Minister Antanas Merkys the authority to act on his behalf as acting president¹⁶ under Article 72. This

(December 1953), 5-14; Krivickas, "Lithuania's Struggle Against Aggression and Subjugation," , pp. 132-137; Vaclovas Sidzikauskas, "On the Seizure and Forced Incorporation of the Baltic States by the USSR," Baltic Review, 4 (April 1955), 76-79; Julius Smulkstys, "The Incorporation of the Baltic States by the Soviet Union," Lituanus, 14, 2 (Summer 1968), 19-44; Rein Taagepera, "De-Choicing of Elections: July 1940 in Estonia," Journal of Baltic Studies, 14, 3 (Fall 1983), 215-246; Albert N. Tarulis, Soviet Policy Toward the Baltic States 1918-1940 (Notre Dame: University of Notre Dame Press, 1959), pp. 200-256; V. Stanley Vardys, "Aggression, Soviet Style, 1939-40," in Lithuania Under the Soviets: Portrait of a Nation, 1940-65, ed. V. Stanley Vardys (New York: Praeger, 1965), pp. 47-58.

¹⁶ J. Ziugzda, ed., Lietuvos TSR istorijos saltiniai IV: Lietuvos burzuazijos valdymo metai (1919-1940) (Sources in the History of the Lithuanian SSR IV: Lithuania During the Years of Bourgeois Rule (1919-1940)) (Vilnius: State Political and Scientific Press, 1961), p. 773.

presented a problem to the Soviets, however, in attempting to present the governmental changes to follow as legal. Under Articles 71, 72, and 102 of the 1938 Constitution, the prime minister is not the president, but merely an acting president whose powers are limited. Under these provisions, Merkys did not possess the authority to appoint a new prime minister (whose office automatically reverted to the deputy prime minister) or to approve a new cabinet. He could only do this if the president died or resigned, and Smetona had done neither. In addition, he most certainly could not transfer the presidency to anyone else solely by his own decree.

Yet, the Soviets needed at least the pretense of governmental continuity. Thus the law was subject to broad interpretation by the Kremlin's emissary, Dakanazov. Two days after Smetona's departure, it was publicly announced that the government considered the president's action a resignation.¹⁷ That day, Merkys appointed a new cabinet and

¹⁷ Gediminas Galva, Ernestas Galvanauskas: Politine biografija (Ernestas Galvanauskas: A Political Biography) (Chicago: Academic Press, 1982), pp. 412-413; Konstantinas Rackauskas, Lietuvos konstitucines teises klausimais (On Questions of Lithuanian Constitutional Law) (New York: Author, 1967), pp. 60-61; Leonas Sabaliunas, Lithuania in Crisis: Nationalism to Communism, 1939-1940 (Bloomington: Indiana University Press, 1972), pp. 187-188; US House of Representatives, Communist Takeover and Occupation of Lithuania, p. 11; B. Vaitkevicius, ed., Lietuvos TSR istorija IV: 1940-1958 metai (History of the Lithuanian SSR IV: 1940-1958) (Vilnius: Mokslas, 1975), p. 9; Ziugzda, IV, p. 775.

named Paleckis prime minister and acting president.¹⁸

Alexander Shtromas succinctly passes judgement on what has been described in this chapter:

Illegal governments, by means of illegal decrees, ordered elections which were carried out by illegal methods. The results of these "elections" were the "People's" Diets, legally invalid bodies that passed decisions which even legally constituted parliaments had no constitutional authority to enact.¹⁹

In other words, when the United States refused to recognize the incorporation of Lithuania into the Soviet Union, it was not merely interfering in the internal affairs of the Soviet Union, or even mouthing abstract concepts of international law. On the contrary, the US could look to clear violations of Lithuanian municipal law as the sandy foundation upon which the Lithuanian SSR was constructed and subsumed. It is

¹⁸ V. Stanley Vardys, The Catholic Church, Dissent and Nationality in Soviet Lithuania (Boulder, CO: East European Quarterly, 1978), pp. 42-43; Ziugzda, IV, p. 776. See also Lietuvos TSR Teisingumo Ministerija (Lithuanian SSR Ministry of Justice), Lietuvos TSR istatymu, Auksciausiosios Tarybos Prezidiumo isaku ir Vyriausybes nutarimu chronologinis rinkinys I: 1940-1947 (Chronological Collection of the Laws of the Lithuanian SSR, Decrees by the Lithuanian SSR Supreme Soviet, and Decisions of the Lithuanian SSR Government I: 1940-1947) (Vilnius: State Political and Scientific Press, 1956), pp. 5-83. For a discussion of these events from the Soviet perspective, which glosses over constitutional irregularities, see J. Zinkus, ed., Lietuvos TSR (Lithuanian SSR) (Vilnius: Mokslas, 1980), pp. 198-200. Mykolas Romeris discusses these questions in terms of the 1922 Constitution, which was vague regarding presidential succession. See his Lietuvos konstitucines teises paskaitos I (Lectures in Lithuanian Constitutional Law I) (Kaunas: Law Faculty of the University of Vytautas the Great, 1937), pp. 276-277.

¹⁹ Alexander Shtromas, "Political and Legal Aspects of the Soviet Occupation and Incorporation of the Baltic States," Baltic Forum, 1, 1 (Fall 1984), 36.

this basis which grants legitimacy and validity to the nonrecognition policy.

We have seen the foundations of this policy in terms of Lithuanian domestic affairs. It is now necessary to examine the policy from its roots in public international law. This is the subject of the following chapter.

CHAPTER III

INTERNATIONAL LAW AND THE LITHUANIAN SITUATION

A. SELF-DETERMINATION

The emergence of the European nation-states in the nineteenth century, and the decolonization of Africa and Asia which began in the middle of this century, point up the importance of the concept of self-determination as the basis for the existence of states, as well as the relations among them. Obviously, in geo-physical terms, not all states are equal, for "the survival of small states depends to-day, as in the past, on the policy the dominant great powers adopt."¹ However, intrinsically, as far as the law of nations is concerned,

the principle of equality is not affected by differences of power, and it precedes the idea of self-determination. It is a basic principle of international law, and goes back to the time when a state was personified in the person of its ruler or sovereign body.²

When examining the development of international law

¹ Alfred Cobban, The Nation State and National Self-Determination (New York: Crowell, 1970), p. 290.

² Cobban, p. 303.

since the Second World War, it is apparent that self-determination has been an explicit consideration in interstate relations. To demonstrate this, the following passage is quoted in extenso:

The Second Inter-American Conference of Foreign Ministers, held in July, 1940, in Havana, Cuba, confirmed the right of self-determination in Latin-American countries. The Third International Conference of Jurists held in August, 1943, in Mexico City, reaffirmed it. The Charter of the United Nations (Articles 1(2) and 55) consider the right of peoples to self-determination as a basic pre-requisite for the maintenance of friendly and peaceful relations among nations. The British-Egyptian agreement of February 12, 1953, granted the right of self-determination to the Sudanese people, and Sudan became an independent state. The resolution adopted by the Asian Socialist Conference held in Rangoon in January, 1952, emphasized the right of self-determination for Asian peoples. The Inter-American Conference held in Caracas in March, 1954, also stressed this right as essential for the maintenance of international peace and order. The Pacific Charter of September 8, 1954, reaffirmed the right of self-determination to all nations of the world, and the Afro-Asian Conference held in April, 1955, in Bandung, demanded the right of self-determination for all Afro-Asian peoples.³

The United Nations has on numerous occasions declared the importance of self-determination for the successful maintenance of the global community.⁴

³ Antanas Trimakas, "The Soviet Disregard of the Right of Peoples to Self-Determination," Baltic Review, 16 (April 1959), 38.

⁴ Trimakas, p. 41. It is ironic that the first bilateral treaty embodying the principle of self-determination was the Estonian-Russian peace treaty of 2 February 1920. Article II wrote:

On the basis of the right of all peoples freely to decide their own destinies and even to separate themselves completely from the State of which they

B. RECOGNITION

Recognition in inter-state relations deals with the existence of a new state or government, and the decision whether or not to enter into relations with it. Recognition, in and of itself, is not a legal matter, but rather "a political act with legal consequences."⁵ Legal effects stem from this political act, as when national courts depend upon executive policy for determining judgements in cases involving foreign governments, property, or nationals. There is never any duty to recognize another state or government and, when dealing with the idea of implied or tacit recognition, "there must be a very clear indication of intent to recognize."⁶

When the recognition of a completely new state is at issue, the important factors to examine are the possession of a distinct territory and population, the presence of a government which has effective control over both, is not

form a part, a right proclaimed by the Socialist Republic of Soviet Russia, Russia unreservedly recognizes the independence and autonomy of the State of Estonia, and renounces voluntarily and forever all rights of sovereignty formerly held by Russia over the Estonian people and territory. . .

See E. Krepp, Security and Non-Aggression: Baltic States and U.S.S.R. Treaties of Non-Aggression (Stockholm: Estonian Information Centre / Latvian National Foundation, 1973), p. 7. See also G. Mennen Williams, "Global Self-Determination and the Baltic States," Baltic Review, 31 (April 1966), 3-6.

⁵ Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law, 4th ed. (New York: Macmillan, 1981), p. 90.

⁶ von Glahn, p. 91. His emphasis.

itself controlled by outside forces, and has the capacity to responsibly enter into foreign relations. These, once again, are matters of fact, not law.⁷

Recognition of governments differs from that of states. Unless there are political objections to recognition, there are three objective tests that must be successfully met. First, the government must possess de facto administrative control. Second, there must be an absence of meaningful resistance to it. Third, it must have the backing of a substantial segment of public opinion. Beginning with the second half of the nineteenth century, a fourth, subjective, test was applied, namely, the capacity and willingness to discharge international obligations. Thus the United States and Cuba, for example, have obligations toward each other as states under customary international law, treaties, and international agreements, regardless of the differences between their governments.⁸

It must be noted that recognition has two degrees. "Recognition is either definite and complete (de jure) or provisional or limited to a certain juridical relation (de

⁷ L. Thomas Galloway, Recognizing Foreign Governments: The Practice of the United States (Washington: American Enterprise Institute for Public Policy Research, 1978), p. 3; von Glahn, p. 92.

⁸ Gerard J. Mangone, The Elements of International Law, rev. ed. (Homewood, IL: Dorsey Press, 1967), p. 52; von Glahn, pp. 98-100.

facto)."⁹ De jure recognition is retroactive from the date of the actual independence of a state. De facto recognition is either expressed or implied, such as in an agreement with a limited or provisional purpose.¹⁰

Recognition is a matter not only in regard to new states and governments, but also to changes within governments.

Normally a state does not concern itself legally with a change of government in another state. When a change of government occurs in a foreign state that is in accord with the domestic law of that state, the legal relationship between the two governments remains unaffected. For example, Great Britain does not recognize a new government in the United States whenever a new President is elected.

However, under established principles of international law, the legal relationship between two states is affected if a government assumes power in a manner that violates domestic law. When such a change of government occurs, the question of recognition of the new government is said to arise.

The line between a lawful and an unlawful change of government is not always clear, and problems may arise in determining whether a particular change of government raises the question of recognition.¹¹

⁹ Institut de Droit International (Institute of International Law), Resolution, American Journal of International Law, 30 (1936), supplement, p. 185.

¹⁰ Institut de Droit International, supplement, p. 185. As the US did with Israel, it is possible to recognize a new state de jure, while granting de facto recognition to a provisional government. See von Glahn, p. 96.

¹¹ Galloway, pp. 3-4. Galloway also writes that following the recognition of a state, it retains its identity regardless of any internal organizational or governmental alterations, even if extreme. In another technical point, he adds that recognition does not necessarily lead to diplomatic relations, though that is the

When an extra-constitutional change occurs, political factors often overshadow legal factors, depending upon the interests of the recognizing government. In practice, both law and politics are blended in a decision. The three major approaches to recognition reflect the interplay between politics and law. They are the traditional approach, the Estrada Doctrine, and the Tobar or Betancourt Doctrine.¹²

The traditional approach deals with the standard objective and subjective tests, namely control of territory and government, public acquiescence, and indication of willingness to discharge international obligations. This approach is flexible and depends mainly upon political interests. Recognition may either be deemphasized, or it may be used as a bargaining chip in seeking elections, economic advantage, or greater civil liberties. Recognition may even be withheld until certain conditions are met. An example is the US refusal to recognize the Albanian government after the Second World War, which is still in effect.

The second approach to recognition was announced by Don Genaro Estrada, Mexico's foreign minister, in 1930. Under this approach, extra-constitutional acquisition of

normal procedure. The United States has recently moved to merge the two actions in an effort to deemphasize recognition. See his p. 3.

¹² Galloway, p. 5. The following passage is distilled from his pp. 5-10.

power is not subject to consideration. New states are recognized, but governmental changes of any kind do not affect inter-state relations.

The Estrada Doctrine embraces the principle of unfettered national sovereignty and rejects interference with the domestic affairs of one state by another through the granting or withholding of recognition. States that have adopted the Estrada Doctrine often say they recognize states, not governments; however, as a practical matter, many states depart from the doctrine whenever they perceive a major political advantage in using the recognition instrument.¹³

Developed by a foreign minister of Ecuador, the Tobar Doctrine takes exactly the opposite approach. It refuses to recognize any government which comes to power through extra-constitutional means. Free elections must be held, for coups and revolutions are unacceptable, even if the citizenry constitutionally approves the change. Though operative for a time in South America -- and applied by the United States as the Wilson Doctrine from 1913 to 1929-- the Tobar Doctrine has met with little acceptance.¹⁴

For the most part, recognition has not been utilized as a moral tool to sanction unconstitutional behavior. Indeed, as far as the US Department of State and most international law texts are concerned, recognition does not necessarily translate into approval of a regime.¹⁵

¹³ Galloway, p. 9.

¹⁴ Galloway, p. 10; von Glahn, p. 99.

¹⁵ Galloway, p. 2.

No rule of law has ever ascribed anything like a sacred character to the constitution of any country. No rule of the law can be held to deprive a people of its right to change its form of government, whether by ballot or by bullet, nor does any existing rule maintain that such a change must be the handiwork of a majority in any nation.¹⁶

Most scholars assert, thus, that recognition is a matter of fact and politics, not of law or morality. In fact, relations and trade can exist between two governments that do not recognize each other. On the other hand, two governments that recognize each other may lack formal relations and even engage in trade interdiction and economic warfare.¹⁷

Recognition of foreign governments, for all its long history and frequent use, has little substantive content. . . . One might logically inquire why states attach importance to [recognition]. The answer appears to be that the importance attached to recognition derives in part from the weight of tradition and in part from the sense of legitimacy recognition confers.¹⁸

This cursory look at the concept of recognition has paved the way for an examination of a matter more directly affecting relations between the United States and Lithuania since the summer of 1940, namely the explicit nonrecognition of the Soviet occupation of Lithuania. The use of nonrecognition by the US did not begin with the Lithuanian occupation, but actually commenced about a decade earlier in

¹⁶ von Glahn, p. 99.

¹⁷ Galloway, pp. 11-12; von Glahn, p. 101.

¹⁸ Galloway, pp. 11-12.

conjunction with events in Asia. It is this, in the context of the Stimson Doctrine, that we now turn to.

C. THE STIMSON DOCTRINE

In the early 1930s, Japan and China were at war. Japan had been the aggressor, attacking the Chinese province of Manchuria. The beginning of 1932 saw a culmination of the fighting. As Japan established effective control in Manchurian areas, it replaced Chinese authorities with puppet agencies acting as autonomous local administrative bodies. On 17 February, the "Supreme Administrative Council" was established at Mukden, which issued a declaration of independence the following day and established the new state of Manchukuo. Huan-tung, a former emperor of China who had been dethroned as a boy in 1912, was asked to become the leader of the new state; he accepted. 9 March 1932 saw an Organic Law promulgated as the Constitution.¹⁹

US Secretary of State Henry L. Stimson began responding to the Manchurian situation in January, prior to the official formation of Manchukuo. On 7 January, he dispatched a note to China and Japan, which stated that the

¹⁹ Robert Langer, Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice (Princeton: Princeton University Press, 1947), p. 57. His pp. 50-56 recount the troubled history of Manchuria in the late nineteenth and early twentieth centuries, which involved competition among, and interference from, Russia, China, and Japan.

United States:

cannot admit the legality of any situation de facto nor does it intend to recognize any treaty or agreement entered into between those Governments [of China and Japan], which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial or administrative integrity of the Republic of China . . . and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the [Kellogg-Briand] Pact of Paris of August 27, 1928

²⁰

16 January saw the Japanese reply, which asserted that treaties relative to China must occasionally be applied with an eye toward the changing situation. Tokyo added that the confusing state of affairs in China could not have been foreseen by diplomats signing international agreements.²¹

The following month saw the Assembly of the League of Nations responding to events in Manchuria. On 24 February, the Assembly adopted the Lytton Report on Manchuria, which contained a statement of recommendations based upon the idea that China possesses sovereignty over Manchuria. In addition, the recommendations dealt with behavior toward the new regime in Manchuria:

²⁰ Langer, p. 58. See also Bronis J. Kaslas, The Baltic Nations - The Quest for Regional Integration and Political Liberty (Pittston, PA: Euramerica, 1976), p. 276; E. Krepp, Security and Non-Aggression: Baltic States and U.S.S.R. Treaties of Non-Aggression (Stockholm: Estonian Information Centre / Latvian National Foundation, 1973), p. 30.

²¹ Langer, p. 60.

The recommendations made do not provide for a mere return to the status quo existing before September, 1931. They likewise exclude the maintenance and recognition of the existing regime in Manchuria, such maintenance and recognition being incompatible with the fundamental principles of existing international obligations . . . The Members of the League . . . will continue not to recognize this regime either de jure or de facto.²²

League actions were based upon Article Ten of the organization's Covenant which read, in part, that "the Members . . . undertake to respect and preserve as against external aggression the territorial integrity and the existing political independence of all Members . . ." ²³ With Japan abstaining, on 11 March 1932 the League unanimously resolved "that it is incumbent upon the Members . . . not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant . . . or to the Pact of Paris."²⁴ On the following day, Secretary Stimson stated that "this action will go far towards developing into terms of international law the principles of order and justice."²⁵

²² Langer, p. 69.

²³ Vaino J. Rusmandel, "The Continued Legal Existence of the Baltic States," Baltic Review, 12 (7 November 1957), 66.

²⁴ Kaslas, The Baltic Nations, p. 276.

²⁵ Kaslas, The Baltic Nations, pp. 276-277. See also Edgars Dunsdorfs, The Baltic Dilemma: The case of the de jure recognition by Australia of the incorporation of the Baltic States into the Soviet Union (New York: Speller, 1975), p. 286; Quincy Wright, "The Legal Foundations of the Stimson Doctrine," Pacific Affairs, 8 (1935), 439-446. For

As far as the development of nonrecognition is concerned, the Latin American nations have taken the lead in incorporating "the principles of order and justice" into international law. This is most probably rooted in Latin America's general approach to its own regional law.

[Former Chilean member of the World Court Alejandro Alvarez] mentions some five principal characteristics of American international law. These are: 1. a sentiment of continental solidarity; 2. an American juridical conscience; 3. an American moral conscience; 4. pacifism, idealism, and optimism; and 5. "Respect for law and international morality, condemning all violation of their precepts."²⁶

Indeed the years immediately following the Stimson Doctrine saw Latin American diplomats embracing it in actual regional conflicts.²⁷ During the 1933 Chaco War between Bolivia and

the historic development of the law prohibiting forcible seizure of territory from its European origins up to the Stimson Doctrine, see William J.H. Hough III, "The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory," New York Law School Journal of International and Comparative Law, 6, 2 (Winter 1985), 305-351.

The US maintained its stance with regard to Manchuria. In a 6 October 1938 note from Washington to the Japanese government citing Japanese violations of the open door policy in Manchuria, the phrase ". . . the regime now functioning in Manchuria . . ." was utilized. See Press Bureau of the Chinese Delegation [to the League of Nations], Japanese Aggression and the League of Nations, 1939, IV (Geneva: Press Bureau, 1939), p. 47. See also p. 57.

²⁶ H.B. Jacobini, A Study of the Philosophy of International Law as Seen in the Works of Latin American Writers (The Hague: Martinus Nijhoff, 1954), p. 128.

²⁷ However, it was actually the League of Nations which first intervened in a Latin American dispute by invoking the Stimson Doctrine. In a dispute between Peru and Colombia over the Leticia district, the League Council on 18 March 1933 adopted a report which recommended that Peru evacuate

paraguay, the representatives of the other nineteen American states issued the following statement:

The American nations . . . declare that they will not recognize any territorial arrangement of this controversy which has not been obtained by peaceful means nor the validity of territorial acquisitions which may be obtained through occupation or conquest by force of arms.²⁸

The Chaco Declaration inspired Argentina's foreign minister, Dr. Saavedra Lamas, who suggested that a formal treaty be constructed. On 10 October 1933 at Rio de Janeiro, the "Anti-War Treaty of Non-Aggression and Conciliation" was signed by Argentina, Brazil, Chile, Mexico, Paraguay, and Uruguay. The first two articles of what is usually referred to as the Saavedra Lamas Anti-War Treaty spell out the nonrecognition of territorial and juridical arrangements carried out through the use of force.²⁹ Two months later, the Seventh Inter-American Conference met at Montevideo and signed the "Convention on the Rights and Duties of States." Article Eleven broadened the meaning of the use of force:

. . . whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a State is inviolable and may not be the object of military occupation nor of other measures of force imposed by other States directly

the district and urged League members not to recognize "any situation, treaty or agreement" contrary to the Covenant or the Kellogg-Briand Pact. See Langer, pp. 69-70.

²⁸ Langer, p. 68.

²⁹ Langer, pp. 75-76.

or indirectly or for any motive whatever even temporarily.³⁰

The Eighth Inter-American Conference in 1938 at Lima reaffirmed the principle of nonrecognition. However, this time the Latin American diplomats went one step further, not merely stating that nonrecognition was a duty, but also declaring on 22 December that it is "a fundamental principle of the Public Law of America."³¹ "It can therefore be maintained that the Stimson doctrine of nonrecognition represents a basic principle of regional inter-American law."³²

D. NONRECOGNITION

Nonrecognition has usually been employed as an expression of moral disapproval. It is rarely concretely disruptive to the recipient or indicative of the actual strength of the nonrecognizing government. However, the act

³⁰ Langer, p. 77. See also Kaslas, The Baltic Nations, p. 277.

³¹ Langer, p. 79.

³² von Glahn, p. 325. See also Stasys Backis, "Lietuvos valstybes tarptautine teisine ir politine padetis," in Lietuva okupacijoje: Pranesimai Pasaulio Lietuviu Bendruomenes Seimui apie okupuotos Lietuvos gyvenimo kaikurias sritis (Lithuania Under Occupation: Reports to the Congress of the Lithuanian World Community on Several Aspects of the Life of Occupied Lithuania), ed. Jonas Balkunas (New York: Organizing Committee, 1958), p. 122.

possesses definite legal and political consequences.³³ "While non-recognition assumes in specific instances a negative form, it is in fact a positive affirmation of the validity of the existing legal order, as contrasted with acts of violence destructive of that order."³⁴

Under nonrecognition, acts contrary to international law are null and void, and cannot be a source of justification for the aggressor. Illegality cannot be a source of legality (ex iniuria non oritur). Such a policy "is an attempt to carry over into the domain of international law viewpoints and judgements of a moral or ethical character which have become deeply rooted in municipal and constitutional law."³⁵ In the global arena, nonrecognition "prevents any law-creating effect of prescription."³⁶ In other words, the occupation of territory, for example, does not necessarily lead to title of ownership.

Nonrecognition is applied in several ways.³⁷ First,

³³ William L. Tung, International Law in an Organizing World (New York: Crowell, 1968), p. 54; von Glahn, pp. 107-108.

³⁴ Malbone W. Graham, "What Does Non-Recognition Mean?" Baltic Review, 1, 4-5 (July-August 1946), 171.

³⁵ Graham, p. 171. See also H. Lauterpacht, Recognition in International Law (Cambridge: Cambridge University Press, 1947), p. 420.

³⁶ Rusmandel, p. 49.

³⁷ The following passage is derived from Graham, pp. 171-174.

it may be applied to subjects of international law, either new states or new regimes in old states, when their existence is brought about by illegal means. For the latter, both international and the municipal law of the country in question must be examined in order to determine if succession has been properly executed.³⁸ Second, nonrecognition may also be directed against treaties or agreements if it is determined that they violate international norms. This is especially true if one of the parties to an agreement is, itself, unrecognized.

Third, it may also be applied to situations. An objective legal criterion must be examined in this case. For example, violations of treaty provisions would bring about a situation wherein norms have been broken. Accepted principles of international law, in the absence of specific treaty obligations, could also be utilized to examine a situation to determine if it is illegal and, hence, subject to nonrecognition.³⁹ As a corollary, nonrecognition has been expanded to cover treaties, persons, consular exequaturs, currency, passports, postage stamps, membership in international public unions, prize court decisions, and

³⁸ von Glahn writes that nonrecognition of a state itself is ineffective and disadvantageous, in that one's interests and citizens cannot be adequately protected in the nonrecognized state. See his p. 92.

³⁹ As will be seen in the next chapter, the US invoked the principle that it is opposed to the threat or use of force. The Welles statement of 23 July 1940 did not cite any specific treaties.

assets.

It should be noted that nonrecognition of a lawful act does not impair its validity or render it legally ineffective. It is significant only in regard to unlawful acts, "to prevent the validation of what is a legal nullity."⁴⁰ Also, while "logically and practically . . . it is not possible to recognize more than one government at a time in one state,"⁴¹ it is often unavoidable to continue personal and business relations, as well as some official contact with the unrecognized regime.⁴² Further, an unrecognized power still possesses obligations in the occupied territory. Langer draws an analogy between hostile territorial transfer and belligerent occupation. The occupant possesses no sovereignty over the area in question and cannot annex it during wartime. However, it is incumbent upon him to continue competent administration and normal existence.⁴³

There is no obligation of nonrecognition in general international law. Concomitantly, silence in the face of an annexation, for example, does not necessarily imply

⁴⁰ Lauterpacht, p. 413.

⁴¹ Thomas M. Franck and Michael J. Glennon, Foreign Relations and National Security Law: Cases, Materials and Simulations (St. Paul, MN: West, 1987), p. 431.

⁴² This even for the sake of possessing an observation point or for staging underground action against the occupant. See Langer, p. 287.

⁴³ Langer, p. 106.

recognition of the new situation. "International law does not recognize the formula of qui tacet, consentire videtur (he who is silent seems to agree)."⁴⁴

As long as . . . recognition has not been withdrawn [from the old regime], it is still effective. The withdrawal of recognition must not necessarily be explicit; however, because of its far-reaching consequences, it may be inferred only from acts which are unequivocally, and not by mere implication, expressive of the intention of the state in question. Of course, de jure recognition, but not de facto recognition, of the new authority replacing the state from which recognition is withdrawn, has also the effect of a withdrawal of recognition.⁴⁵

There are several effects which flow from a policy of nonrecognition. The legal status of the government of the still recognized regime, its treaties with the non-recognizing government, and diplomatic and consular representation is preserved. Legal acts are accorded full legitimacy and, conversely, the legal acts of the unrecognized regime are not. The recognized power is thus guaranteed legal continuity. Nationals of the recognized regime are accorded separate status and the protection of their governmental and diplomatic authorities. Property is also protected from claims by the unrecognized regime.⁴⁶

⁴⁴ Boris Meissner, Die Sowjetunion, die Baltischen Staaten und das Voelkerrecht (The Soviet Union, the Baltic States, and International Law) (Cologne: Verlag Politik und Wirtschaft, 1956), reviewed by Jonas Maziulis, Baltic Review, 7 (16 June 1956), 78.

⁴⁵ Rusmandel, pp. 49-50. Also Lauterpacht, pp. 406, 416-421.

⁴⁶ Graham, p. 174.

In the North Sea Continental Shelf case,⁴⁷ the International Court of Justice formulated the conditions necessary to create a positive rule of customary international law:

First, it must be ascertained whether there has been a constant and uniform usage. Such usage must include consistent repetition, a sufficient degree of generality and a certain lapse of time. Second, those states acting in accordance with the claimed prescription must do so because they regard their adherence to it as being a legal duty incumbent upon them as members of the international community, that is, in conformity with the ancient Roman maxim "opinio iuris sive necessitatis."⁴⁸

Nonrecognition of territorial acquisition through conquest has seen consistent repetition by states. This is visible, for example, in the postwar reconstitution of Albania, Austria, Czechoslovakia, Ethiopia, and Poland. The United Nations has also reacted negatively to postwar territorial occupations by Israel in 1967, by Morocco and Mauritania in the Western Sahara in 1975, by Indonesia in East Timor in 1976, by Vietnam in Cambodia in 1979, and by the USSR in Afghanistan that same year. Further, nonrecognition as a principle has been adopted by the Inter-American Conference on Problems of War and Peace in its Declaration on Reciprocal Assistance and American Solidarity in 1945, by the Organization of American States and the

⁴⁷ North Sea Continental Shelf (W.Ger. v. Den.; W.Ger. v. Neth.), 1969 I.C.J. 3 (Judgement of February 20).

⁴⁸ Hough, p. 449.

Organization of African Unity in their charters, and by the UN General Assembly in 1970, acting upon a recommendation by the UN Special Committee on Principles of International Law Concerning Friendly Relations and Cooperation.⁴⁹

To see if nonrecognition meets the requirement for a sufficient degree of generality, one can examine the practice of states and discover that the principle is universally applied. It is not limited to a specific group of states. The lapse of time can be seen in view of the fact that no major nation has yet recognized the legitimacy of the Soviet occupation of Lithuania since 1940. In addition, there are now about six other areas of controversy where the legality to territorial title has been denied for a decade or more.⁵⁰

The World Court's second major point is that a rule must be considered legally incumbent, not merely politically expedient. Nonrecognition had, indeed, been mainly a political instrument through the Ethiopian and Manchurian controversies of this century. However, in view of the above discussion, especially when the policy has been applied for more than ten years, it is difficult to see it as politically expedient. In most cases, including that of the Baltic States, it would be politically more convenient

⁴⁹ Hough, pp. 449-450, 460, 465.

⁵⁰ Hough, pp. 466-467.

to recognize the new status quo.⁵¹

Thus, recent state practice, measured by the standards of the International Court of Justice, backed by the generally conforming practice of international organizations, expressed in conventional law such as the U.N. Charter, and supported by a considerable volume of national court decisions, would form a strong case for asserting the existence of a new customary rule in international law proscribing the forcible seizure of territory and requiring the nonrecognition of any claim to title based uniquely on such a tour de force.⁵²

E. NONRECOGNITION AND LITHUANIA

If indeed the events described in chapter two happened as they did, then the incorporation of Lithuania into the Soviet Union occurred via facti, that is without any legal foundation whatsoever. Thus the incorporation is null and void (nul et non avenue). International law does not allow one state to eliminate the constitution and laws of another; the former cannot occupy the latter without freely given consent.

It is of no consequence that the Soviets claim "historical importance" to the previous union of Lithuania to Russia. Further, the true national will and sovereign aspirations of the citizenry have been expressed in the emergency diplomatic powers conferred upon the Lithuanian

⁵¹ Hough, p. 467.

⁵² Hough, p. 468. See also Baltic Committee in Scandinavia, Memorandum Regarding the European Security and Cooperation Conference and the Baltic States (Stockholm: BCS, 1972), p. 4.

minister in Rome, Stasys Lozoraitis, shortly before the occupation, the president's exit from the country, the 1941 revolt, the eight year postwar partisan movement, and Lithuanian diplomatic protests and activities to the present day. Meissner writes that the Soviet argument that Russia was too weak in 1920 not to recognize Lithuanian independence is fiction. Many times the Soviet Union expressis verbis (with clear words) stated its recognition. Even on 13 July 1940, before the formal incorporation, Soviet President Kalinin greeted President Justas Paleckis. The illegal aggression cannot easily be hidden.⁵³

By way of nonrecognition, Lithuania has not disappeared in the juridical sense and has retained some vestige of international personality, subject to international rights and obligations. No international act, no formal treaty or agreement, and no peace or armistice has legally changed the status of independent Lithuania.⁵⁴ This has come about not merely because of the Lithuanian actions

⁵³ Backis, pp. 119-120; Meissner, in Maziulis, pp. 77-78; Hugo Vitols, "L'Annexion de la Lettonie par L'Union Sovietique et le Droit" ("The Annexation of Latvia by the Soviet Union and Law"), Baltic Review, 1, 4-5 (July-August 1946), 199. See also Supreme Lithuanian Committee of Liberation, Memorandum on the Restoration of Lithuania's Independence (np: Lithuanian Executive Council, 1950), pp. 58-82.

⁵⁴ Backis, p. 118; Meissner, in Maziulis, p. 309; Kazys Sidlauskas, "Supreme Committee for Liberation of Lithuania As Representative of Lithuanian National Interests," in Twenty Years' Struggle for Freedom of Lithuania, ed. Juozas Audenas (New York: ELTA, 1963), p. 97; von Glahn, p. 118.

cited above, but because of the attitude of the members of the world community:

By its refusal to recognize the Soviet rule in Lithuania as legal, the family of Western nations has assumed quasi-judicial rights "as bearers of international functions." not only in the interest of Lithuania and their own political expediency but also in the interest of the international community as a whole and the law which regulates the intercourse among nations. The Western nations are thereby applying "a rule protecting the continual existence of states against illegal acts," thus "upholding the principle of the legal continuity of an illegally suppressed state even as a mere ideal notion" -- a practice which "acquires a wider meaning of action not only in defense of an individual state, but, indeed, of international law itself."⁵⁵

However, in the final analysis, the arbitrary act of nonrecognition on the part of the international community is not sufficient to guarantee legal continuity. The legal principle that prevents the fruits of illegal acts to be legalized is really the foundation of nonrecognition and the continued existence of Lithuania.⁵⁶

⁵⁵ Martin Brakas, "Lithuania's International Status: Some Legal Aspects 2," Baltic Review, 38 (August 1971), 12. See also Hough, p. 481. Graham, p. 173, writes:

A special situation arises when third parties, which have conformed their foreign policy to the relations established between two countries by treaty, are faced by a unilateral violation of such treaty by one of the contracting parties. The mere fact of such unilateral violation does not require the party to conform its policy to the accomplished fact. Such is believed to be the situation confronting the United States in the light of the violation of the fundamental treaties of peace between the [USSR] and the three Baltic States.

⁵⁶ Krystyna Marek, Identity and Continuity of States in Public International Law (Geneva: Librairie E. Droz, 1968), p. 414.

Finally, a number of commentators have pointed out that Lithuania, notwithstanding the formal annexation, is legally still under occupation by the Soviet Union's armed forces. The occupation, whether one considers it of the military or belligerent (enemy) variety, must be recognized as fact. The annexation, however, is null and void.⁵⁷ No occupational authority possesses the legal competence to transfer sovereignty over the area in question. International law does not permit annexation, even where domination is effective, for effectiveness is a necessary, but not sufficient precondition for absorption; it requires finality:

Of the three stages of the process of final conquest which are distinguished by international law -- namely, invasion, occupation, and transfer of sovereignty over occupied territory by a treaty

⁵⁷ Vytautas Vaitiekunas, Lithuania (New York: Assembly of Captive European Nations, 1965), pp. 19-21. Marek, p. 398, writes that Lithuania, occupied before war touched her territory, is under a military, not belligerent, occupation. On the other hand, Brakas, p. 38, writes that "Lithuania was annexed during the war and on the basis of the events of the German-Russian war, the Hague Regulations apply." Brakas asserts that the Hague Convention V of 1907 regarding the Rights and Duties of Neutral Powers and Persons in War on Land should be applied to Lithuania because she was a neutral, not an enemy, country before and during the German occupation. The occupant's rights in such a case are not as great as they are when occupying enemy territory. Citizens and official organs abroad, as well as the state itself, are beyond the occupant's reach. The right of annexation is not acquired over neutral territory, only enemy territory, unless a treaty is duly executed. With the end of war comes the end of the occupant's rights and obligations. Though the status quo ante bellum should have been restored, the Soviets are still present in Lithuania. See Martin Brakas, "Lithuania's International Status: Some Legal Aspects 1," Baltic Review, 37 (October 1970), 48-54.

of cession concluded with the legitimate sovereign or by subjugation of an enemy state in war without such a treaty of cession -- Lithuania's present status still is in the stage of war occupation, no transfer of sovereignty having taken place by any legally valid means.⁵⁸

In creating a quisling government, the Soviets were responsible for a misrepresentation of sovereignty (detournement de souverainete). The rights and obligations of that government do not extend beyond those enumerated for an occupant in the Hague Convention. The rights of an occupant certainly do not extend to a new oath of allegiance, the holding of elections, introduction of new criminal and civil law, expropriation of property, conscription, and deportation. Thus the 3 August 1940 decision by the USSR Supreme Soviet transforming the occupation into an act of internal Soviet public law was an exercise in illegal annexation.⁵⁹ Further, as Marek points out:

for the continuity of a State, as for its birth, its reason of validity must be directly rooted in international law; it cannot be situated within the legal order of another State. Its basic norm cannot be the concretisation on a lower level of a

⁵⁸ Brakas, p. 14. Also Backis, p. 120; Conference of Free Byelorussians, Estonian World Council, Lithuanian World Community, World Congress of Free Ukrainians, World Federation of Free Latvians, To the United Nations General Assembly: A Resolution With Appended Documents Concerning the Decolonization of the Union of Soviet Socialist Republics (Toronto / New York: Joint Committee / Ucrainica Research Institute, 1978), p. 19.

⁵⁹ Meissner, in Maziulis, pp. 76-77; Konstantinas Rackauskas, "Power Politics vs. International Law," Baltic Review, 14 (1 August 1958), 72-73.

basic norm of that other State.⁶⁰

In sum, then, the military occupation of Lithuania did not confer any title of territory to the Soviet Union and did not legally extinguish the independent government of the nation, despite the proclamation of annexation, which, itself, overstepped the authority of the occupant. Sovereignty persists as long as it is evident that the occupation is challenged by those living under it. In turn, sovereignty can be effectively exercised as soon as the occupying forces are withdrawn from the country.⁶¹

⁶⁰ Marek, p. 396.

⁶¹ Sidlauskas, p. 96; Vitols, pp. 202-203. Marek, p. 416 writes that should:

effective restoration take place within a reasonable time, this would not mean the creation of new states; on the contrary, it would mean the restoration of the old, pre-annexation States which would have survived the illegal acts committed against them, with their full international standing -- rights and obligations -- unimpaired.

Now, of course, almost a half century after the occupation, it would be impossible to actually restore the independent state of Lithuania as it existed before World War II, with authority flowing back from the Lithuanian Diplomatic Service to a newly reconstituted government. Regardless of nationalist aspirations toward independence, a whole new state would be created, possessing a socio-economic orientation different from its predecessor. It is doubtful that the current head of the diplomatic service in exile, whose authority ultimately stems from a May 1940 presidential order, would be obeyed by officials in Lithuania. Most likely, he, along with Lithuanian diplomatic and consular personnel, would submit to the direction of Lithuanian officials.

F. SOVIET PERSPECTIVES ON INTERNATIONAL LAW

While the principle of nonrecognition helps determine the legal view toward the situation in occupied Lithuania, the Soviets have not always interpreted international law in the same manner, especially when dealing with its own foreign and military actions. It should thus not be surprising that the USSR disagrees with the current US policy toward Lithuania.

Formally, of course, when examining the ideological roots of the Soviet regime, one finds a benign interpretation of foreign relations. On 14 June 1902, Lenin's program for the Russian Social Democratic Party appeared in Iskra. Among other planks in the platform, Lenin wrote of "the acknowledgement of the right to self-determination for all nations entering into the composition of the state."^{e2} By self-determination, he meant a separate political existence. Fourteen years later, in 1916, Lenin wrote that "a victorious proletariat cannot impose happiness on any nation whatever without thereby undermining its own victory."^{e3}

Appropriate for this study is a quote from Lenin wherein he specifically mentioned annexation and incorporation:

^{e2} Albert N. Tarulis, Soviet Policy Toward the Baltic States 1918-1940 (Notre Dame: University of Notre Dame Press, 1959), p. 5.

^{e3} Tarulis, p. 7.

If a small or weak nation is not accorded the right to decide the form of its political existence by a free vote -- implying the complete withdrawal of the troops of the incorporating or merely strong nation -- then the incorporation is an annexation, i.e. an arbitrary appropriation of a foreign country, an act of violence.⁶⁴

Even following the Russian Revolution, L. Kamenev, one of the founders of the Soviet state, wrote in Izvestiia on 24 January 1918 that "Poland, Lithuania, Latvia, and the Ukraine answered this definition [of illegal annexation] perfectly; these territories were forcibly annexed and forcibly detained by Tsarist Russia."⁶⁵

One of the most famous of Lenin's pronouncements is his Decree on Peace issued 8 November 1917, which echoed previous utterances:

By annexation or seizure of foreign territory the government understands, in accordance with the sense of justice of democracy in general, and of the laboring classes in particular, the incorporation into a large or powerful state of a small or weak nationality, without the definitely, clearly, and voluntarily expressed consent and desire of this nationality . . .

If any nation whatsoever is retained as part of

⁶⁴ Kaarel R. Pusta, "The Problem of the Baltic States," Baltic Review, 1, 2-3 (March 1946), 111.

⁶⁵ Tarulis, p. 8. Tarulis, p. 6, writes: Evidently Stalin, too, was a "chauvinist," since Lenin accused Stalin of a spiteful attitude toward "social nationalism" and laid squarely in his lap the blame for harsh measures against nationalism in Georgia in 1922. Lenin called it a "truly Great Russian nationalist campaign." Finally, he undoubtedly referred to Stalin when he spoke of "brutal Great Russian Derzhimordas" and Russified non-Russians who like to exaggerate when it comes to 100% Russian attitude. . . . In general, Lenin was strongly critical of hypocrisy in the matter of national self-determination.

a given state by force, if despite its expressed desire -- whether expressed in the press, in popular assemblies, in the decisions of the political parties, or by rebellions and insurrections against national oppression -- it has not the right of choosing freely -- the troops of the annexing or, generally, the more powerful nation being completely withdrawn and without any pressure being brought to bear -- the constitutional forms of its national existence, then its incorporation is an annexation, that is, seizure and coercion.⁶⁶

One week later, on 15 November, Lenin as chairman of the Council of Commisars and Stalin as commissar for nationalities issued a Declaration on the Rights of Nationalities, which recognized equality, sovereignty, and the right of self-determination, secession, and possession of separate statehood by national minorities.⁶⁷

Even during the heat of the Second World War, after the Nazis had forced the Soviets to retreat from Lithuania, Moscow criticized Hitler for dictating the terms of the treaty transferring Klaipeda to Germany in March 1939 under the threat of invasion. Concurrently, however, Stalin claimed that

during the last years of their existence the Governments of Latvia, Lithuania, and Estonia showed by all their behaviour that they were prepared to aid Hitler in every way, and to make it easy for him to seize the Baltic States. . . . Although the separation of the Baltic States from Russia [following World War I] had resulted in

⁶⁶ Tarulis, p. 11.

⁶⁷ Trimakas, p. 39. See also Kazimierz Grzybowski, Soviet Public International Law: Doctrines and Diplomatic Practice (Leyden, The Netherlands: A.W. Sijthoff, 1970), pp. 130-131.

considerable political, economic and strategic inconveniences, the Soviet Government had loyally recognised and given juridical sanction to this separation with equal loyalty and respected the independence and the integrity of these States.⁶⁸

Finally, Article Seventy of the Soviet Constitution states that "the [USSR] is an integral, federal, multinational state formed on the principle of socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics." Article Seventy Two guarantees that "each Union Republic shall retain the right freely to secede from the USSR."⁶⁹

Notwithstanding the expressed Soviet attitudes above, there is another side to the ideological foundation of Soviet foreign policy. Going back to Lenin's work at the turn of this century, one can see qualifications to a policy of national self-determination. In Iskra in 1903, Lenin

⁶⁸ Soviet Information Bureau, The Soviet Union, Finland and the Baltic States (np: Soviet War News, 1941), pp. 1, 3, 5. The 2 August 1940 issue of Pravda reproduced an address by People's Commissar for Foreign Affairs Molotov before the Seventh Session of the Supreme Soviet the previous day. He said that Russia acted under duress in 1920 when signing the Baltic peace treaties. Russia was militarily weak and the Western imperialists had separated the Baltic States from their homeland.

⁶⁹ Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, adopted at the Seventh (Special) Session of the Supreme Soviet of the USSR, Ninth Convocation, on October 7, 1977 (Moscow: Novosti, 1977). See also Jaan Pennar, "Reflections on Union Republics in the New Soviet Constitution With Special Reference to Their Sovereignty and National Language," Lituanus, 25, 1 (Spring 1979), 15.

wrote that "unconditional acknowledgement of the struggle for the freedom of the right to national self-determination does not obligate [the Social Democrats] to support all demands for it . . . A Marxist cannot acknowledge the demand for national independence unconditionally."⁷⁰ New "class" states were to be created as sparingly as possible. Indeed, Lenin spoke out against secession and nationalism, because class conscious workers would not desire it. Lenin suggested a "voluntary union" during World War I.⁷¹ Finally, after the Bolsheviki had been in power for about one year, Izvestiia published a rather menacing statement on 25 December 1918: "Estonia, Latvia, and Lithuania are directly on the road from Russia to Western Europe and are, therefore, a hindrance to our revolution . . . [T]his separating wall has to be destroyed."⁷²

Soviet official, Victor P. Karpov, has written:

From its very inception the Soviet state proclaimed peaceful coexistence as the basic principle of its foreign policy. . . . The . . . policy is not a tactical move on the part of the Soviet Union. Our desire for peace and peaceful coexistence springs from the very nature of our socialist society in which there are no social groups interested in profiting by means of war or by the arms race.⁷³

⁷⁰ Tarulis, p. 21.

⁷¹ Tarulis, p. 22.

⁷² Tarulis, p. vii.

⁷³ Victor P. Karpov, "The Soviet Concept of Peaceful Coexistence and Its Implications for International Law," in The Soviet Impact on International Law, ed. Hans W. Baade

However, Lerner writes that the Soviet Union did not willingly give birth to the policy of peaceful coexistence. In April 1920, Poland invaded the Ukraine at a time when the Soviets wished to install their own government in Poland. The Russians drove the Poles back, crossed into Polish territory, and installed its own regime in Bialystok. In August, the Red Army was in sight of Warsaw when Marshal Pilsudski drove it back to White Russia. The following month saw an armistice agreement, which led to the Treaty of Riga the next year. It was this failure which brought about the idea of peaceful coexistence. Further, Lipson adds that peaceful coexistence is not tantamount to pacifism. Wars of national liberation, revolutionary civil war, and wars against counter-revolution are still permitted.⁷⁴

Five years prior to the occupation, Moscow

(Dobbs Ferry, NY: Oceana, 1965), p. 14. Karpov was first secretary of the Soviet Embassy in Washington at the time he wrote those words.

⁷⁴ Warren Lerner, "The Historical Origins of the Soviet Doctrine of Peaceful Coexistence," in Baade, pp. 23-24; Leon Lipson, "Peaceful Coexistence," in Baade, p. 31. Lipson, p. 28, writes:

Western scholars have recalled that it was Chicherin, the People's Commissar for Foreign Affairs, who referred to the peace treaty with Estonia in 1920 as the first experiment in peaceful coexistence with bourgeois states. Twenty years later, the bourgeois state of Estonia having been rescued by Soviet forces, it became unnecessary to coexist with her except in the sense that the robin in Don Marquis' poem coexisted with the worm it had swallowed. The first experiment in peaceful coexistence had been unilaterally successful.

approached Berlin with a proposal to create a joint tutelage over Finland and the Baltic States. Hitler's government rejected this overture and informed the governments in question. By the time of the occupation, the Baltic States, according to the Kremlin's public perception, were preparing to act in concert against the USSR. Thus Moscow was compelled to demand the formation of governments willing to carry out the provisions of the Baltic mutual assistance pacts, and able to appeal to the people and hold "democratic" elections. Following World War II, the imperialist countries' "special services" helped activate anti-Soviet elements in Lithuania who were supported by "remnants" of the bourgeoisie Lithuanian diplomatic service, maintained by policies of nonrecognition.⁷⁵

⁷⁵ Antanas Barkauskas, Manoji respublika (My republic) (Vilnius: Mintis, 1980), p. 63; Alfred Bilmanis, A History of Latvia (Princeton: Princeton University Press, 1951), p. 385; Soviet Information Bureau, p. 4. V. Stanley Vardys, "The Baltic Peoples," Problems of Communism, 16, 5 (September-October 1967), 61, writes:

In the USSR, historiography fulfills primarily political purposes. Present interpretations of Baltic history, for instance, rest on two simple propositions: first, that Lithuania, Latvia and Estonia "joined" the Soviet Union voluntarily (in Premier Kosygin's words, as "a natural result of historic development"); and second, that these countries have no other logical political alternative but to remain within the borders of the USSR. Since the period of Baltic independence has shown the viability of another alternative, Soviet leaders and historians have bent every effort to prove that this independence was bogus, imposed from abroad, and furthermore, that the Baltic people never desired it in the first place."

For accounts in this vein, see K. Domasevicius, Tarybinio valstybingumo vystymasis Lietuvoje (The Development of the Soviet State in Lithuania) (Vilnius: Mintis, 1966), pp. 57-

During his October Revolution anniversary speech in 1949, Soviet Premier Georgii Malenkov declared: "Never in our history have the borders of our Motherland been so well and correctly laid down," and went on to describe the expanse from East Prussia in the West to the Kurile and Sakhalin Islands in the Far East.⁷⁶ At a conference in Kuala Lumpur in the spring of 1958, Australia's foreign minister, Richard Casey, overheard a Soviet delegate state that "an elephant cannot pay attention to the barking of a dog."⁷⁷

Soviet scholars defend the actions of the USSR before and during World War II, including the collaborations with Hitler and, later, the Allies. The Baltic annexations are also justified as having advanced the cause of peace and the cultural interests of the people involved. The Baltic

99; K. Kalniuvienė and D. Melyniene, eds., Už ateiti sviesia: Iš atsiminimų I 1918-1940 (For a Brighter Future: Reminiscences I 1918-1940) (Vilnius: Mintis, 1980), pp. 190-207; Vytautas Kancevičius, "Lietuvos įstojimas į Tarybų Sąjungą" ("Lithuania's Entry Into the Soviet Union"), Lietuvos istorijos metraštis 1972 (Yearbook of Lithuanian History 1972) (Vilnius: Mintis, 1973), 119-128; J. Macijauskas, Saulė leidžias, saulė teka: Atsiminimai (The Sun Sets, The Sun Rises: Reminiscences) (Vilnius: State Literary Press, 1961), pp. 124 ff.; J. Ziugzda, ed., Lietuvos TSR istorija nuo seniausiu laiku iki 1957 metų (History of the Lithuanian SSR From Ancient Times to 1957) (Vilnius: State Political and Scientific Press, 1958), pp. 393-398; Ziugzda, ed., Lietuvos TSR istorija III: 1917-1940 (History of the Lithuanian SSR III: 1917-1940) (Vilnius: Mintis, 1965), pp. 338-361.

⁷⁶ Backis, p. 121.

⁷⁷ Backis, p. 118.

proletariat had unsuccessfully struggled against the domestic bourgeoisie and the foreign imperialists who employed terrorism and armed force. The occupation helped bring about a proletarian revolution, whose will was expressed during the elections of July 1940. The dates of these elections are considered the official beginnings of the Soviet system in the Baltic.⁷⁸

F.I. Kozhevnikov remarks that the Soviet annexations were different from imperialist annexations:

Joining territory to the Soviet Union in application of socialist principles, i.e., in the interest and with the consent of the working masses of these territories, is a totally legal, perfectly natural process, as it assures the population of these territories a quick economic development, a full growth of natural culture, and increases their security, contributing at the same time to the increase of power of the great Soviet Union, and thus is in the interest of the working masses of the entire world. . . . [A] territorial question -- in view of the security of the USSR-- may be resolved by resorting to a just war, which is regarded as a utilization of self-defense for the socialist state. We must stress, however, that the annexation of territory into the Soviet Union, even in [the] case [of Finland], had nothing in common with the acquisition of a foreign territory.⁷⁹

Thus, for example, despite the principle of peaceful coexistence, Soviet practice allows the use of superior force to coerce a state to accept the terms of a treaty. The 1940 ultimatum stated that the 1939 mutual assistance

⁷⁸ Grzybowski, p. 42; Lothar Schultz, "The Soviet Concept of the Occupation and Incorporation of the Baltic States," Baltic Review, 10 (29 March 1957), 8-9.

⁷⁹ Quoted in Grzybowski, p. 37. Vitas' emphasis.

pact had been violated; therefore, Soviet demands were legitimate.⁸⁰

During the period of the Molotov-Ribbentrop pact, Kozhevnikov stated that international law was the result of the bourgeoisie victory over the feudal order. It was progressive to the extent that it declared principles of formal equality and sovereignty for all states. However, by the late nineteenth century, financial interests had expanded, necessitating the creation of spheres of influence, and the division of markets and raw materials. This resulted in competition and conflict, while international law attempted to stabilize and legalize capitalist victories. World War I was the first imperialist war. The subsequent peace treaties, along with the Washington Naval Treaty, the Covenant of the League of Nations, and the Kellogg-Briand Pact, legitimized the victories, and utilized capitalist pacifism to protect gains and possessions.

It was at this time that Soviet foreign policy sought to avoid entanglements which would lead to war. By freeing the USSR from the Anglo-French bloc, the Molotov-Ribbentrop pact had been an act of peace. This policy of peace was not equivalent to the status quo oriented

⁸⁰ Grzybowski, p. 449.

bourgeois pacifism.^{a1}

Though Soviet scholars find fault with capitalist treaties, such pacts -- bilateral and multilateral -- form the foundation of relations with other governments and are subject to unconditional observance (pacta sunt servanda). However, if treaties are unequal, non-observance is allowed, as when the Bolsheviks repudiated the Czarist debt. As far as Soviet international law is concerned, an unequal treaty includes the exercise of power on another's territory in the form of military bases, collective security agreements between capitalist states, and unfair economic arrangements.^{a2}

As applied to the Baltic States,

it was not the nature of isolated actions but the final goal that provided a dialectical justification for Soviet policies. Although the Kellogg-Briand Pact was classified by learned Soviet professors as bourgeois pacifism, the Soviet pacts of nonaggression and repudiation of war were evidence of the peaceful policy of the Soviet Union. Only in the hands of the socialist

^{a1} Grzybowski, pp. 11-12. Communist commentators write that socialist internationalism is compatible with state sovereignty. Concomitantly, the interests of individual states are subordinated to those of the socialist system. This system allows a larger economic organism, mutual assistance, a more efficient division of labor, and improved economic planning. While capitalist sovereignty is divisive, socialism is unifying. See Grzybowski, p. 38.

^{a2} Wolfgang Friedmann, The Changing Structure of International Law (New York: Columbia University Press, 1966), pp. 333-335; Grzybowski, p. 41. See also G.I. Tunkin, Theory of International Law, trans. William E. Butler (Cambridge, MA: Harvard University Press, 1974), pp. 207-224.

states are nonaggression pacts the tools of peace.⁸³

In other words, as far as Soviet interpretations are concerned, the actions of the summer of 1940 were both necessary and legal. They were to the benefit of all parties concerned. Non-Soviet law, which views the circumstances differently and states that the application of the Stimson Doctrine of nonrecognition in the case of Lithuania was appropriate, is itself illegitimate.

This chapter has attempted to lay the legal foundation for the rest of the study, taking into account the principles of self-determination, recognition, nonrecognition, and their implications for the Lithuanian situation. As Soviet scholars and officials have demonstrated, international law, whether customary or statutory, is not carved in stone but is interpreted individually by each national capital. Washington's interpretation of the Soviet occupation of Lithuania is the subject of the following chapter.

⁸³ Grzybowski, p. 12.

CHAPTER IV

GENESIS OF THE U.S. NONRECOGNITION POLICY

A. LITHUANIAN-AMERICAN ACTIONS

From the inception of an independent state of Lithuania, Lithuanian-Americans had come to the country's aid. The years 1918-1922 were crucial in Lithuania's development. Having declared its independence from the Russian empire, it was still forced to fight the Germans, Poles, and Bolsheviks in order to assure that the declaration of 16 February 1918 would not be hollow. Lithuania naturally sought support from Britain, France, and the United States. Over one million signatures requesting de jure recognition of Lithuania by the US were presented to President Warren G. Harding during a campaign by Lithuanians aimed at the US government. Their goal would become a reality in 1922.¹

¹ Constantine R. Jurgela, Lithuania and the United States: The Establishment of State Relations (Chicago: Lithuanian Research and Studies Center, 1985), pp. 184-198; Antanas Kucas, Amerikos lietuviu istorija (American Lithuanian History) (South Boston: Lithuanian Encyclopedia Press, 1971), pp. 354-388. During the recognition campaign, the Lithuanian Information Bureau published a book to publicize the Lithuanian cause. It contained statements by

During the period of independence, Lithuanian-Americans remained active. Lithuanian lawyers, bankers, and organizers were politically prominent in both major parties. Further, Lithuanian journalists were adept at using the non-Lithuanian media to publicize their causes. As David Truman writes:

A primary concern of all organized political interest groups in the United States is the character of the opinions existing in the community. Group leaders, whatever else they may neglect, cannot afford to be ignorant of widely held attitudes bearing upon the standing and objectives of their organizations. Estimating the direction and incidence of public opinions, moreover, goes hand in hand with more or less continuing efforts to guide and control them. In fact, almost invariably one of the first results

attorney William G. McAdoo, writer Dr. Herbert Adams Gibbons, and New York City Congressman Walter M. Chandler. See Lithuanian Recognition (Washington: Lithuanian Information Bureau, c. 1921). For an account of Lithuanian-American activities before and during Lithuania's wars of independence, see Vincentas Liulevicius, Iseivijos vaidmuo nepriklausomos Lietuvos atkurimo darbe (The Emigrants' Role in the Reconstitution of Independent Lithuania) (Chicago: Lithuanian World Community, 1981); Albert N. Tarulis, American-Baltic Relations 1918-1922: The Struggle Over Recognition (Washington: Catholic University of America Press, 1965).

In his "Postscript on U.S. Recognition of the Baltic States in 1922," Lituanus, 12, 1 (Spring 1966), 91, Malbone W. Graham recounts the following incident:

President Harding called Secretary of State Charles Evans Hughes on the phone. He had discovered apparently for the first time that Lithuania was not recognized by the United States.

"Don't we recognize Lithuania?" the President asked the Secretary of State.

"No", said Hughes.

"Well, why in the Hell don't we?" the President queried.

Hughes was stumped for an adequate reply. To cut short the conversation Harding said, "We'll go ahead and recognize them then."

of the formal organization of an interest group is its embarking upon a program of propaganda, though rarely so labeled, designed to affect opinions concerning the interests and claims of the new group.²

If this sort of work had been important during the interwar period, it became critical beginning with the events of 1940.³ Of prime importance at this time was the establishment of the Lithuanian American Council.⁴

On 15 June 1940, the same day the Soviet Union occupied Lithuania, community leader Leonardas Simutis convened a meeting of Chicago's Lithuanian activists to discuss what measures should be taken. The first meeting took place in the Plaisance Hotel, where the participants formed a committee to file a protest with Secretary of State Cordell Hull, and to request that the United States take steps to require the occupant to evacuate Lithuania.

The special committee, consisting of Dr. Antanas

² David B. Truman, The Governmental Process: Political Interests and Public Opinion, 2nd ed. (New York: Knopf, 1971), p. 213. See also Vytautas Alantas, ed., Antanas Vanagaitis (Sodus, MI: J.J. Baciunas, 1954); Leo J. Alilunas, ed., Lithuanians in the United States: Selected Studies (San Francisco: R & E Research Associates, 1978), pp. 148-164; J.J. Bachunas, Antanas Olis (Sodus, MI: Author, 1953); David Fainhauz, Lithuanians in Multi-Ethnic Chicago Until World War II (Chicago: Lithuanian Library Press / Loyola University Press, 1977), pp. 77-90.

³ For a short summary of Lithuanian-American action at that time, see Kucas, pp. 276-277.

⁴ The following passage is taken from Leonardas Simutis, Amerikos Lietuviu Taryba: 30 metu Lietuvos laisves kovoje 1940-1970 (Lithuanian American Council: 30 Year Struggle for the Liberation of Lithuania 1940-1970) (Chicago: LAC, 1971), pp. 16-25, 458.

Rakauskas, attorney Kazys Cesnulis, Dr. Stasys Biezis, and Simutis, dispatched a telegram to Secretary Hull, with a copy forwarded to the Lithuanian minister in Washington, Povilas Zadeikis. Other consultations took place on 16-18 June. The 21st saw a public rally protesting the Soviet actions.

The idea to form a unitary Lithuanian-American organization for the purpose of liberating Lithuania was raised by Simutis during a conference of Lithuanian leaders at the editorial offices of the daily Draugas newspaper. This meeting was attended by Dr. Antanas Rakauskas, the president of the American Lithuanian Roman Catholic Federation (ALRCF), Rev. Dr. Jonas Navickas, MIC, the provincial of the US Marian Fathers, Frank Mast (Mastauskas), an attorney, Rev. Dr. Kazimieras Reklaitis, and Rev. Dr. Juozas Vaskas. The idea was received with uncertainty, thinking that such a unitary organization, because of political differences, could be formed only with great difficulty.

On 25-27 June, in Wilkes-Barre, Pennsylvania, the board of directors of the Lithuanian Roman Catholic Association of America (LRCAA) met. Simutis raised the idea of an umbrella group. Since he was the president of the LRCAA, as well as the executive secretary of the ALRCF, he recommended that the officers of the ALRCF be invited to the LRCAA meeting. This was approved and the ALRCF vice

president, Juozas B. Laucka, arrived. This was the first organizational step in the formation of the Lithuanian American Council. Some were of the opinion that the new organization should be made up solely of Catholic leaders; others fought to include all factions.

The latter proposal won out, negotiations took place, and a delegation consisting of Simutis, Laucka, and Rakauskas was appointed to meet with Minister Zadeikis in Washington. Zadeikis agreed to the consultation, which occurred at the Lithuanian Legation on 29 June, lasting all day. At first, it appeared that Zadeikis was hesitant to speak out against the government of Justas Paleckis, not yet being certain as to what exactly was transpiring in Lithuania. The delegation stated that it would vigorously oppose the occupation, and would protest against Lithuanian diplomatic and consular personnel who would not break ties with the new government. It was noted that the legation had assisted the Paleckis regime in relaying communiques to the Lithuanian-American media. The consultation ended with a consensus that the Soviet regime in Lithuania would be opposed. Minister Zadeikis gave his blessing to the formation of a unitary Lithuanian American Council.

A general meeting of Lithuanian-American groups met at Pittsburgh on 9-10 August. The provisional by-laws of the Lithuanian American Council and the Lithuanian Rescue

Board (Lietuvos Gelbejimo Taryba) were approved.⁵

An idea to send a delegation to President Franklin D. Roosevelt germinated. A telegram was dispatched to US Representative A. Sabath, a Roosevelt supporter, raising the idea. A letter to that effect was sent to Minister Zadeikis. Both responded that the president was too occupied to receive a delegation. Assistance was then rendered by Viktoras Solis (Sholis), a journalist and assistant to Secretary of Commerce Harry Hopkins. Solis made the necessary arrangements, and President Roosevelt received the delegation on 15 October 1940. It presented the following memorandum:

The delegation before you, Mr. President, represents most of the Lithuanian people of the United States; it is here to encourage you in the

⁵ Of course, Lithuanian-American communists viewed the situation differently. They produced books and articles supporting Soviet actions in Lithuania and condemning Lithuanian-American "anti-communists" who "falsified and slandered the activity of progressive, revolutionary current and its communist leaders." See Leokadija Petkeviciene, Didvyriskos kovos avangarde: JAV lietuviu komunistu veikla 1919-1969 metais (In the Vanguard of a Noble Struggle: Lithuanian-American Communist Activity 1919-1969) (Vilnius: Mintis, 1979), p. 24. See also Antanas Bimba, Naujoji Lietuva faktų ir dokumentų šviesoje (New Lithuania in Light of Facts and Documents) (Chicago: Lietuvos draugu komitetas / Friends of Lithuania Committee, 1940); Bimba, Prisikelusi Lietuva: Tarybu Lietuvos liaudies ir vyriausybės žygiai ekonominiam ir kultūriniam šalies gyvenimui atstatyti (Risen Lithuania: Steps Taken by the Masses and Leadership of Soviet Lithuania to Restore Economic and Cultural Life) (New York: American-Lithuanian Workers' Literary Society, 1946); Rojus Mizara, Zvilgsnis į praeitį (Glance at the Past) (Vilnius: State Literary Press, 1960), pp. 288-290; Petkeviciene, pp. 143 ff.; L. Pruseika, Teisybė apie Lietuvą (The Truth About Lithuania) (Chicago: Apsvietos fondas / Education Fund, 1940).

task of bringing reason and law to reign again in a distracted world. With the world aflame, with ruthless might attempting to conquer the [E]arth, the Lithuanian people were moved to great depths of sorrow when their native land and land of their forbears lost her freedom. When Lithuania fell, it seemed that the nations of the [E]arth, particularly those who had recognized her as independent, were disinterested, none condemned the act of extirpation which to the Lithuanians of America seemed so needful of condemnation. Then, on the twenty-third day of July, 1940, your State Department, Mr. President, announced the [Welles declaration].⁶ . . .

That was a clear, understandable, and unequivocal statement of policy. It was an act of condemnation of a wrong committed by a great power against a weak nation. At last the clamor of destruction was overcome by the call to reason and justice, and our people were glad that voice came from the greatest liberty-loving nation on the [E]arth -- the United States of America. We are proud that our [US] stands firmly behind a policy that knows no compromise with aggression. Your courageous stand, Mr. President, on the side of justice, law and reason enkindled the flame of hope -- a hope that Lithuania may again take her place amongst the nations of the [E]arth.⁷

Roosevelt responded that Lithuania had not lost her independence, but that it had merely been suspended:

The address mentioned that Lithuania had lost its independence. That is a mistake. The independence of Lithuania is not lost but only put temporarily aside. The time will come when Lithuania will be free again. This may happen sooner than you may expect.⁸ It was a mistake on behalf of one of the speakers to say that Lithuania is a small country. In Latin America there are states even smaller than Lithuania, but they live a free and happy life.

Even the smallest nation has the same right to

⁶ See below for details of the Welles statement.

⁷ Simutis, p. 458. See also p. 24.

⁸ History would prove Roosevelt wrong.

enjoy independence as the largest one.⁹

Though Roosevelt was speaking in October, the policy of the US toward the Soviet occupation had been decided in July. A central figure in this episode was Loy Wesley Henderson, a career diplomat who prodded the US government into taking a firm stand with regard to the Lithuanian situation.

B. THE HENDERSON MEMORANDUM

Prior to entering into a discussion of events surrounding the memorandum itself, it is useful to look at Henderson's biography to see why he would be motivated to come to Lithuania's aid.

Loy Wesley Henderson was born a twin to a Colorado Methodist minister and his wife in 1892. He grew up in Montana and Arizona, in addition to his native state. He graduated Northwestern University and the University of Denver Law School. Because of an injured hand, he was not accepted for military service during World War I, and thus joined the American Red Cross in October 1918, in which he assisted prisoners of war in France, Russia, Germany and the Baltic States. In 1919 and 1920 he served at the American mission to the Baltic States in Riga, Latvia, where he

⁹ Simutis, p. 458. See also Algirdas M. Budreckis, ed., The Lithuanians in America 1651-1975: A Chronology and Fact Book (Dobbs Ferry, NY: Oceana, 1976), pp. 109-110; E.J. Harrison, Lithuania's Fight for Freedom, 3rd ed. (New York: Lithuanian American Information Center, 1948), p. 28; Simutis, p. 25.

married a Latvian woman, Eliza Marija Heinrichson.

Henderson completed the requirements for entering the US consular service in 1922, when he was posted to Ireland as a vice consul. In 1925 he was transferred to Washington to work in the State Department's Division of East European Affairs. In 1927 he returned to Riga to be a member of a group of diplomats which studied languages, observed the situation in the Soviet Union, prepared for the normalization of US relations with the USSR, and opened the US embassy in Moscow. From 1938 to 1942, Henderson was assistant chief of European Affairs in Washington. In 1942 he served as inspector and charge d'affaires in Moscow.

Henderson was appointed US minister to Bhagdad, Iraq in 1943. He was named chief for East Central Africa and South Asia in 1945. He served as ambassador to India and Nepal in 1948-1951, and to Iran in 1951-1954. Henderson represented the United States at the Suez Canal Conference of 1956, and at the Bhagdad Pact in 1955-1957 and 1959.

Following thirty nine years of service to his country, which included participating in the unification of the US diplomatic and consular services, Henderson retired from the Foreign Service on 30 January 1961. From then until 1969 he taught international relations and diplomacy at the American University.

It was Henderson who wrote the US statement of nonrecognition of the Soviet occupation of Lithuania,

received approval from President Roosevelt, and arranged for its release by Acting Secretary of State Sumner Welles. Henderson also helped in the establishment of the Voice of America¹⁰ and urged Representative Charles Kersten to conduct an investigation into the occupation of the Baltic States. His sister-in-law, who was deported to Siberia by the Soviets, testified at those hearings. Henderson was able to win her release while serving as ambassador in Teheran.

Loy Wesley Henderson died in Washington on 24 March 1986 at the age of ninety three. Several hundred dignitaries, including former president Richard Nixon, attended a memorial service for him in Washington on 3 May 1986. Henderson's name is carved in the walls of the main hall at the US State Department, along with other distinguished Americans who served the US in a diplomatic capacity.¹¹

Actions outside American control were certainly the

¹⁰ In fact, when Henderson discovered that the VOA offices displayed a map which placed the Baltic States inside the Soviet Union, he severely reprimanded a State Department policy official. The map was quickly replaced. Constantine R. Jurgela, letter to the author, 22 May 1986.

¹¹ Constantine R. Jurgela, "Loy Wesley Henderson: Lietuvos, Latvijos ir Estijos gynejas" ("Loy Wesley Henderson: Defender of Lithuania, Latvia and Estonia"), Draugas, 3 April 1986, p. 3; Pov. J. Labanauskas, "Sostine atsisveikino su Loy Wesley Hendersonu" ("The Capital Bids Farewell to Loy Wesley Henderson"), Draugas, 15 May 1986, p. 5; "Mire pabaltieciu draugas" ("A Baltic Friend Has Died"), Draugas, 5 April 1986, p. 4.

aggression upon their neighbors[?]¹³

Not being one to ignore practical consequences, Henderson added:

It seems likely that the assets of all three countries in the United States will not amount to much more than 12 or 13 million dollars. In this connection it will be observed that if the three countries in question are absorbed into the Soviet Union, the United States will probably not receive one cent of the several million dollars which the governments of these three countries owe us. Furthermore, American interests in those three countries will probably be a total loss.¹⁴

Henderson concluded the memorandum by urging the US to move swiftly in this regard, before the Soviets gained possession of the Baltic funds. He added that the US Maritime Commission should look into the matter of Baltic vessels in the same manner.¹⁵

Though it is uncertain whether any of Henderson's actions prior to writing the memorandum had any influence upon the matter, the US Treasury Department decided that the

¹³ US Department of State, Foreign Relations of the United States, Diplomatic Papers, 1940, vol. I, General (Washington: US Government Printing Office, 1959), p. 390.

¹⁴ US Department of State, Foreign Relations of the United States, 1940, I, General, pp. 390-391. A note by Dunn at the beginning of the document states: "I feel funds of all 3 of these countries should be blocked on same basis as those of countries occupied by Germany." See p. 389.

¹⁵ US Department of State, Foreign Relations of the United States, 1940, I, General, p. 391. See also Algirdas Budreckis, "Liberation Attempts From Abroad," in Lithuania 700 Years, 2nd rev. ed., ed. Albertas Gerutis (New York: Manyland, 1969), p. 384; Evald Roosaare, "Consular Relations Between the United States and the Baltic States," Baltic Review, 27 (June 1964), 24-25.

measures outlined by Henderson should be implemented. On the same day that Henderson dispatched his memorandum, president Roosevelt issued Executive Order 8484:

By virtue of the authority vested in me by section 5 (b) of the Act of October 6, 1917 (40 Stat. 411), as amended, and by virtue of all other authority vested in me, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do hereby amend Executive Order No. 8389 of April 10, 1940, as amended,¹⁶ so as to extend all the provisions thereof to, and with respect to, property in which Latvia, Estonia or Lithuania or any national thereof has at any time on or since July 10, 1940, had any interest of any nature whatsoever, direct or indirect . . .¹⁷

The actions of 15 July 1940, that is the Henderson memorandum and the Roosevelt order, were the first official responses to the occupation. In order for the nonrecognition policy to be fully framed, however, it was necessary for the United States to formally act on the diplomatic front. This task fell to Acting Secretary of State Sumner Welles who, in applying the Stimson Doctrine of nonrecognition to the European continent, in general, and to the Baltic States, in particular, forged a new trail in the US interpretation of international law.

¹⁶ This order froze Norwegian and Danish assets following the German occupation of those countries. See US Office of the Federal Register, Code of Federal Regulations, Title 3 -- The President, 1938-1943 Compilation (Washington: US Government Printing Office, 1968), pp. 645-647.

¹⁷ US Office of the Federal Register, Code of Federal Regulations, Title 3, 1938-1943, p. 687. In 1950, acting on the advice of the State Department, the Treasury Department modified its regulations implementing Executive Order 8484, so as to allow the Baltic funds to be invested in certain securities.

C. THE WELLES DECLARATION AND ITS AFTERMATH

One week following Henderson's and Roosevelt's measures, on 23 July 1940, the US State Department announced to the global community the American policy regarding the occupation, which is reproduced in its entirety:

During these past few days the devious processes whereunder the political independence and territorial integrity of the three Baltic Republics -- Estonia, Latvia, and Lithuania-- were to be deliberately annihilated by one of their more powerful neighbors, have been drawing rapidly to their conclusion.¹⁸ From the day when the peoples of these Republics first gained their independence and democratic form of government, the people of the United States have watched their admirable progress in self-government with deep and sympathetic interest. The policy of this Government is universally known. The people of the United States are opposed to predatory activities, no matter whether they are carried on by the use of force or by the threat of force. They are likewise opposed to any form of intervention on the part of one State, however powerful, in the domestic concerns of any other sovereign State, however weak. These principles constitute the very foundation upon which the existing relationship between the twenty-one sovereign republics of the New World rest. The United States will continue to stand by these principles, because of the conviction of the American people that unless the doctrine in which these principles are inherent once again governs the relations between nations, the rule of reason, of justice, and of law -- in other words, the basis of modern civilization itself -- cannot be preserved.¹⁹

Though seemingly vague and obfuscating, the

¹⁸ Two days prior to the Welles declaration, the Lithuanian "People's Seimas" had voted to enter the USSR.

¹⁹ US Department of State, Department of State Bulletin, 3, 57 (27 July 1940), 48.

declaration is pregnant with meaning. Welles does not mention nonrecognition per se, but, in the context of the Baltic States, the phrase "doctrine in which these principles are inherent" refers to the Stimson Doctrine.²⁰ By making this statement, and backed by the actions of the Treasury Department, the United States came out foursquare in favor of a nonrecognition policy aimed at Soviet actions in the Baltic States. The US did not consider the USSR to be a legitimate successor state in the area and, at least in Washington's eyes, Lithuania, Latvia and Estonia maintained some vestige of international personality.²¹

Needless to say, the American actions brought a storm of protest from the Soviet Union and from the new Soviet regimes in the Baltic States.²² On 27 July 1940, Welles met with Soviet ambassador Constantine A. Oumansky:

The Ambassador went on to say that the action

²⁰ Robert Langer, Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice (Princeton: Princeton University Press, 1947), pp. 263-264.

²¹ Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law, 4th ed. (New York: Macmillan, 1981), p. 118, cf. pp. 119-123. Shortly before Germany attacked the Soviet Union in June 1941, President Roosevelt had a conversation with General Sikorski, the premier of the Polish government-in-exile. One year after the fact, Roosevelt still maintained his stance toward the Baltic: "As far as the United States is concerned, we stand by [the Welles declaration]. . . . It is one of our basic policies not to recognize unilateral changes brought about by force or threat of force." See Jan Ciechanowski, Defeat in Victory (Garden City, NY: Doubleday, 1947), p. 20.

²² Cf. Budreckis, pp. 384-385.

taken by the Soviet [sic] should have been applauded by the [US] since it had obliterated the growth of "fascism" in the three Baltic republics and had made it possible for the suffering peoples . . . to come under the sheltering protection of the Soviet Government as a result of which they would obtain the blessings of liberal and social government.²³

Welles responded that he could not discuss the matter with the ambassador, because the US would stand by its stated policy. The ambassador stated that the US appeared to be viewing Soviet actions as being similar to German invasions in western European countries. Welles made it clear that the US "saw no difference in principle between the two cases."²⁴

In addition to the continuity of Baltic diplomatic and consular functions in the US, the Soviets took particular umbrage at the freezing of assets. In a conference with Welles, Henderson, and Acting Chief of European Affairs Ray Atherton, Oumansky remarked that:

So long as the [US] Government addressed communications to the Soviet Government of such a nature as that stick of dynamite on the subject of the frozen Baltic funds which had been given to him . . . , an improvement in the relations between the two countries would not be easy to achieve. . . . He noticed in one of these communications such offensive expressions as

²³ US Department of State, Foreign Relations of the United States, Diplomatic Papers 1940, vol. III (Washington: US Government Printing Office, 1958), p. 329.

²⁴ US Department of State, Foreign Relations of the United States, 1940, III, p. 330.

"duress", "force", etc.²⁵

The US charge d'affaires in Moscow, Thurston, in a 20 July conversation with Assistant Commisar for Foreign Affairs Lozovski received a strong protest against Executive Order 8484. In defending Roosevelt's action, Thurston said that it was not illegal, as Lozovski had said.²⁶ The formal US reply to the Soviet protest included mention of US losses in Soviet-controlled territories due to nationalization and confiscation.²⁷

In addition to these protests, US diplomats in the Baltic also received expressions of disapproval from the new governments there. The evening before the Lithuanian People's Seimas met, US Minister Owen J.C. Norem was called to the foreign ministry in Kaunas to receive a protest which stated that responsibility for losses due to Executive Order 8484 would fall to the US government. However, the representative of the ministry quietly added: "Please disregard all of our protests. We do not act independently anymore. We appreciate what Washington is doing more than

²⁵ US Department of State, Foreign Relations of the United States, 1940, III, p. 379.

²⁶ US Department of State, Foreign Relations of the United States, 1940, I, General, p. 395. According to Edgar Anderson, Soviet Deputy Commissar for Foreign Affairs Andrei Vishinsky admitted on 14 September 1940 that the Soviet government possessed no legal claims to Baltic gold. See his "British Policy Toward the Baltic States, 1940-41," Journal of Baltic Studies, 11, 4 (Winter 1980), 330.

²⁷ US Department of State, Foreign Relations of the United States, 1940, I, General, pp. 410-416.

we dare tell. People are listening and I cannot say any more."²⁸

As the events of the Second World War and thereafter would demonstrate, it was not always practically possible or desirable to maintain an ironclad interpretation of the nonrecognition policy. Indeed before the year was out, there was already some questioning of the policy by senior officials in the context of Western war aims; one of them was Secretary of State Cordell Hull. In a conversation with the British ambassador and his counselor of embassy, Hull said:

that if Russia should show a real disposition to move in our common direction with respect to the axis countries, then I would be disposed to deal with the Baltic assets and ships on a sort of quid pro quo basis rather than to adhere inflexibly to our non-recognition policy in this case.²⁹

In other words, it was clear from its inception -- at least privately in government circles -- that the nonrecognition policy would never be allowed to harm American interests.

²⁸ US Department of State, Foreign Relations of the United States, 1940, I, General, p. 397. The protest by the Estonian government contained some of the same passages as the one issued in Lithuania. See pp. 398-399. Following the freezing of the assets, there was some confusion among US diplomats in the Baltic regarding specifics of implementation of Executive Order 8484. See p. 395.

For further discussion of this issue, see vol. I, pp. 430-431; vol. III, pp. 327, 331, 340, 348, 362, 371, 388, 403, 413, 438.

²⁹ US Department of State, Foreign Relations of the United States, 1940, I, General, pp. 439-440.

D. THE UNITED STATES WITHDRAWS FROM THE BALTIC

Already four days following the occupation, American diplomats in the Baltic were considering the future of the US presence in the Baltic. On 19 June 1940, John C. Wiley, the US minister in Riga, Latvia cabled Washington:

It might be well for the [State] Department to foresee the possibility that the Soviet authorities might shortly assume charge of the diplomatic and consular representation of the Baltic States. . . . [US missions] might have to be liquidated on fairly short notice unless the Embassy in Moscow could obtain a special dispensation for the maintenance of a Consulate.³⁰

On 5 July, Wiley asked his superiors for instructions regarding the disposition of US property, codes, archives, and staff.³¹

Soviet intentions of a permanent presence soon became obvious. To avoid formal diplomatic gaffes, Wiley was instructed by Secretary Hull on 17 July to return to Washington for consultations, and to no longer meet with the authorities of the new government. In the meantime, US consular officers were to protect American interests and property. Wiley would soon depart; the minister in Kaunas,

³⁰ US Department of State, Foreign Relations of the United States, 1940, I, General, p. 377. As will be seen, the idea that the US could maintain consulates in the Baltic was extensively discussed. There was no mention, however, that this would potentially undercut the nonrecognition policy.

³¹ US Department of State, Foreign Relations of the United States, 1940, I, General, pp. 384-385.

Norem, would leave Lithuania on 30 July.³²

Following the formal admission of the Baltic States into the USSR, US authorities there and in Moscow were informed that there were no more formal governmental relations between the Baltic States and other countries. Consular exequaturs issued by the former governments were no longer valid, and foreign consuls were to liquidate their offices. The Soviet commissariat for foreign affairs would now assume control over Baltic missions -- whose property would be transferred to Soviet facilities -- and foreign affairs. The US was to liquidate its missions by 25 August.

In all, the US was given about two weeks' notice to leave the area. Discussions continued among foreign diplomats with the hope that consulates might remain open, especially in Riga if the Latvian port were to be used in future foreign trade. The Soviets, though, would allow no consular representation. US officials complained that the Soviets were not cooperating in the procurement of adequate packing and transportation services. Customs duties would be waived only for those on the diplomatic list, and Baltic nationals who had worked for the American missions would not be allowed to leave.

Three US officials were dispatched to the Baltic States to assist in the process of liquidation, hoping to

³² Roosaare, p. 22; US Department of State, Foreign Relations of the United States, 1940, I, General, p. 393.

meet the extended deadline of 5 September. This was not to be, however, and the Americans would only leave the area at the end of the month. Evidently, contrary to expressed Soviet intentions, no duty was collected on the vans that were processed through customs.³³

Thus ended the official US presence in the Baltic states. As far as the Soviets were concerned, this also closed a chapter of diplomacy. Lithuania, Latvia, and Estonia no longer existed, and they possessed no governmental ties to the outside world, except through the Soviet government. For the US, on the other hand, this was the beginning of a new chapter. There was no separate Lithuania, Latvia, or Estonia, and yet the United States

³³ US Department of State, Foreign Relations of the United States, 1940, I, General, pp. 384-385, 409-410, 416-426, 431-439. The State Department lists the official status of the missions as follows:

Estonia -- Legation at Tallinn closed. . . .
 Latvia -- Legation at Riga closed. . . .
 Lithuania -- Legation at Kaunas closed.

See US Department of State, "List of Foreign Service Posts," revised July 1970, pp. 1-2.

In response to a query from President Roosevelt, Welles authored a memorandum on Soviet consulates in the US. The US possessed a consular section at the Moscow embassy, while the Soviets had such a section at their Washington embassy, in addition to consulates in New York, San Francisco, and Los Angeles. The principle of reciprocity would allow the US to close an appropriate number of Soviet consulates in response to the liquidation of US missions in the Baltic. Another alternative would be permission to open new US consulates in the USSR. Welles recommended, however, that the US take no action against the Soviet consulates. He felt that this would neither help Baltic nationals, nor obtain new consulates for the US in Riga or Vladivostok. See US Department of State, Foreign Relations of the United States, 1940, I, General, pp. 424-425.

declared that they still existed, with both national interests and representation. The events of the next few years would demonstrate that this policy was far from empty, for it possessed very real political, economic, and legal consequences.

CHAPTER V

POLITICAL AND LEGAL EFFECTS OF NONRECOGNITION

A. THE STATUS OF THE LITHUANIAN GOVERNMENT

As spring turned to summer in 1940, the atmosphere on the European continent was tense. Poland had been eliminated from the political map by Germany and the Soviet Union the previous September. Germany was rapidly preparing to strike west toward France and Great Britain. In the East, Finland had been forced to negotiate an unequal peace treaty following the attack by the USSR. Finally, the Baltic States, who now had Soviet troops on their soil thanks to the mutual assistance pacts, sensed that the Kremlin was not satisfied with just that arrangement.

In order to be prepared for any contingency, Lithuanian Foreign Minister Juozas Urbsys, acting on presidential authority, dispatched telegram number 288 to Lithuanian diplomats abroad on 2 June 1940, just a scant two weeks prior to the occupation. It stated that in case of emergency, the chief of the remaining Lithuanian Diplomatic Service outside Lithuania would be Stasys Lozoraitis, former foreign minister and minister of Lithuania in Rome. His

first deputy would be Petras Klimas, minister in Berlin, and the second deputy would be Jurgis Saulys, posted in Berne, Switzerland.¹

Following the resolution by the People's Seimas to join the Soviet Union, Lozoraitis spoke out as the representative of the Lithuanian diplomats. Ironically, his first protest, on 1 August 1940, was directed against the foreign ministry in Kaunas:

In view of the resolution of July 21, passed by the so-called Seimas and incorporating Lithuania into the Soviet Union I declare:

primo: the so-called Seimas, constituted under military occupation, oppression and terror of a foreign country which had broken treaties and principles of international law and committed an act of aggression, is not a representative body, but a tool in the hands of oppressors;

secundo: its resolutions do not express the will of the Lithuanian nation, and bind neither the people of Lithuania nor myself, the legal representative of the independent and sovereign state of Lithuania;

tertio: I protest with horror against the treacherous resolution . . .²

¹ Algirdas Budreckis, "Liberation Attempts From Abroad," in Lithuania 700 Years, 2nd rev. ed., ed. Albertas Gerutis (New York: Manyland, 1969), p. 380; Albertas Gerutis, Petras Klimas (Cleveland: Viltis, 1978), p. 198; Aleksandras Merkelis, Antanas Smetona: Jo visuomenine, kulturine ir politine veikla (Antanas Smetona: His Social, Cultural and Political Activity) (New York: American Lithuanian National Association, 1964), p. 630. Juozas Audenas writes that the Cabinet had not been informed of this move. He is uncertain whether Smetona and Prime Minister Antanas Merkys knew of Urbsys' action. See his Paskutinis posedis: Atsiminimai (Final Conference: Reminiscences) (New York: Romuva, 1966), pp. 205-206.

² US House of Representatives, Third Interim Report of the Select Committee on Communist Aggression. Report of the Select Committee to Investigate Communist Aggression and the Forced Incorporation of the Baltic States into the U.S.S.R.

One may ask what became of President Antanas Smetona during this period. When he left Lithuania following the Soviet ultimatum, Smetona entered East Prussia, where he and his party were interned as guests of the German government. His Lithuanian diplomatic passport identified him as president. Constitutionally, Smetona was still president, though having temporarily relinquished acting powers to Prime Minister Antanas Merkys. Shortly thereafter, the US charge d'affaires in Berlin issued Smetona a visa to enter the United States, but only on the condition that he not represent himself as acting in an official capacity. He had to declare: "While I am in the U.S. I shall not be considered as the head or member of any government." In return, the US government referred to Smetona as the "distinguished guest, the President of the Republic of Lithuania in exile, residing in the U.S. in private capacity," while State Department correspondence addressed him as "His Excellency."^a

By way of South America, Smetona arrived in New York City on 10 March 1941. On 1 April he paid a visit to Acting Secretary of State Sumner Welles, and on the 18th he met with President Roosevelt. Roosevelt advised Smetona to work among Lithuanian-Americans for Lithuania's cause, which he

(Washington: US Government Printing Office, 1954), pp. 364-375.

^a Merkeliš, pp. 644-645, 657.

did until his untimely death in a fire at his son's home in Cleveland on 9 January 1944.⁴

Smetona's odyssey is related to the question of a Lithuanian government-in-exile. In September 1940, Lithuanian diplomats met in Rome to discuss the future of the nation's independent government. On the 25th, they endorsed a resolution which created the Lithuanian National Committee. Ernestas Galvanauskas, a former prime minister, was invited to be its president, Lozoraitis was appointed deputy ipso jure. Diplomats Eduardas Turauskas, Kazys Skirpa, and Povilas Zadeikis would have a hand in the committee's work. The committee's task was "to care for the interests of the Lithuanian State and Lithuanian nation."⁵ The Lithuanian National Committee never practically functioned.

The Supreme Committee for the Liberation of Lithuania has often represented itself as a quasi-government-in-exile, complete with parliamentary organs and political parties:

It is true that certain ministers plenipotentiary and other diplomatic representatives of Lithuania are still recognized and are continuing to fulfill

⁴ Merkelis, p. 652. See also J.J. Bachunas, Vincas S. Jokubynas (Sodus, MI: Author, 1954), pp. 10-11.

⁵ Bronis J. Kaslas, ed., The USSR-German Aggression Against Lithuania (New York: Robert Speller & Sons, 1973), p. 314. In an editor's comment on pp. 314-315, Kaslas notes that the committee never aspired to be a government-in-exile, but wished to preserve the Lithuanian Diplomatic Service, as well as to organize Lithuanian-Americans.

certain functions deriving from the state sovereignty. But they are only executive bodies, and not sovereign political representatives. . . . Hence the necessity arose for headquarters of some kind, vested with proper authority, to direct and coordinate Lithuanian activities . . . and provisionally to fulfill the tasks which otherwise would be a matter for the government.⁶

Indeed, in 1947, the Supreme Committee concluded an agreement with the Polish government-in-exile regarding the formulation of a treaty on the common struggle against the Soviet Union. Lithuanian diplomats, however, declined to endorse the draft treaty and the project was ultimately set aside.⁷

In July 1946, at a conference of the Supreme Committee and Lithuanian diplomats in Berne, Switzerland, it was decided to form the nucleus of a Lithuanian delegation to the upcoming peace conference. In a merger of the state and the resistance to the Soviets, an executive council of the committee was formed. Stasys Lozoraitis accepted the invitation to take charge of foreign affairs in the executive council, while the Supreme Committee would remain

⁶ Kazys Sidlauskas, "Supreme Committee for Liberation of Lithuania As Representative of Lithuanian National Interests," in Twenty Years' Struggle for Freedom of Lithuania, ed. Juozas Audenas (New York: ELTA, 1963), p. 100. On pp. 102-108, 115, Sidlauskas, a long-time official of the committee, cites legal precedents of the recognition of national committees during wartime, and states that the committee should be recognized as representing the Lithuanian people.

⁷ Juozas Audenas, "The Activities of the Supreme Committee for Liberation of Lithuania," in Twenty Years' Struggle for Freedom of Lithuania, ed. Juozas Audenas (New York: ELTA, 1963), pp. 78-79.

as a parliamentary and study institution. This arrangement was never ratified, and Lozoraitis later pulled out in order to retain his independence.^a

The question was never seriously addressed in the United States. On 18 December 1941, the Lithuanian minister in Washington, Povilas Zadeikis, following prodding by Smetona, transmitted a note to Secretary of State Cordell Hull on the matter of a Lithuanian National Council and government-in-exile. On 12 January 1942, Zadeikis informed Smetona that Hull had stated that consideration of those

^a Vytautas Alseika, Trys desimtmečiai emigracijoje: Nuo Roitlingeno iki Niujorko (Three Decades in Emigration: From Reutlingen to New York) (Vilnius: Mintis, 1977), pp. 120-121; Audenas, pp. 76-77. See also Comité Supreme de Liberation de la Lithuanie (Supreme Committee for the Liberation of Lithuania), Memorandum Relatif a la Restitution de l'Independence d L'Etat Lithuanien (Memorandum on the Restoration of the Independence of the Lithuanian State) (Fulda, West Germany: Le Conseil Executif Lithuanien / Lithuanian Executive Council, 1946); Algirdas J. Kasulaitis, Lithuanian Christian Democracy (Chicago: Leo XIII Fund, 1976), p. 163; Antanas Kucas, Amerikos lietuviu istorija (American Lithuanian History) (South Boston: Lithuanian Encyclopedia Press, 1971), pp. 587-593.

This conference saw an interesting incident finally make itself public. At the Berne conference, Lozoraitis revealed the existence of the Acts of Kybartai, which were dated 15 June 1940 and supposedly signed by Smetona just before he crossed the border out of Lithuania. The first act removed Antanas Merkys as prime minister and replaced him with Lozoraitis. The second act asked Lozoraitis to act as president. This fact was communicated to the US State Department in 1944 and, indeed, Lozoraitis signed some of his official papers as prime minister and acting president. It later became apparent that the acts were, indeed, signed by Smetona in Switzerland on 23 November 1940. This in an attempt to create a legal basis for the formation of governmental organs outside Lithuania. See Alseika, p. 119; Albertas Gerutis, "Kybartu aktai" ("Acts of Kybartai"), Aidai, 4 (April 1976), 164-171.

questions was postponed. It is quite possible that wartime politics, specifically the Soviet Union's participation against the Axis, was instrumental in this. This notwithstanding, even during the Cold War, the US did not wish to commit itself to the idea of recognizing an extra-territorial sovereign body. To this day, the Baltic legations in Washington are not recognized as governments-in-exile. The role of the charges d'affaires "is to uphold the ideal of a free Estonia, Latvia, and Lithuania."⁹

B. STATUS OF TREATIES AND DIPLOMATIC PERSONNEL

As far as the United States is concerned, its treaties with the government of independent Lithuania are

⁹ US Department of State, Statement by Robert L. Barry, Assistant Secretary for European Affairs, before the Subcommittee on International Organizations of the House Committee on Foreign Affairs, 26 June 1979, pp. 4-5. Also Edgar Anderson, "British Policy Toward the Baltic States, 1940-41," Journal of Baltic Studies, 11, 4 (Winter 1980), 327; Merkelis, p. 659. See also Johannes Klesment, The Estonian Soldiers in the Second World War (Stockholm: Estonian National Council, 1948), p. 15; Krystyna Marek, Identity and Continuity of States in Public International Law (Geneva: Librairie E. Droz, 1968), pp. 410-411; Sidlauskas, p. 107.

Vaino J. Rusmandel incorrectly writes that the functions of a government-in-exile, limited to foreign affairs, are being carried out by the Lithuanian and Latvian diplomats who received emergency powers prior to the occupation. Indeed their respective governments never intended for them to represent extra-territorial sovereign bodies. He gives a rather interesting account of two Estonian groups who, due to different interpretations of the Estonian Constitution, both claim to possess the authority of a government-in-exile. See his "The Continued Legal Existence of the Baltic States," Baltic Review, 12 (7 November 1957), 52-53. See also Estonian National Council 1947-1957 (Stockholm: ENC, 1957).

legally still in force. They deal with matters of customs, extradition, finance, nationality, postal affairs, trade, and other forms of international intercourse. Only abrogation by the executive terminates the validity of a treaty, and no Lithuanian executive recognized by the US government has done so. Of course, the treaties are now suspended, for there is no independent Lithuanian government to implement them. As far as the Soviets are concerned, the treaties are no longer valid, since all meaningful foreign affairs dealing with Lithuania must pass through the Kremlin.¹⁰ In addition, since official contact with the sending state was severed, the Lithuanian minister in Washington could no longer conclude treaties or other agreements with the US government. The list of US-Lithuanian treaties in force is reproduced in Appendix C of this study.

¹⁰ B.R. Bot, Nonrecognition and Treaty Relations (Leyden: A.W. Sijthoff, 1968), pp. 224-226; Constantine R. Jurgela, Lithuania and the United States: The Establishment of State Relations (Chicago: Lithuanian Research and Studies Center, 1985), p. 221; Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law, 4th ed. (New York: Macmillan, 1981), p. 110.

On 10 May 1940, Secretary of State Cordell Hull and Lithuanian Minister Povilas Zadeikis signed a consular convention at Washington. It never had a chance to be ratified. See US Senate, Committee on Foreign Relations, Lithuania -- Consular Convention, Executive Report No. 8, 22 May 1940 (Washington: US Government Printing Office, 1940).

Minister Zadeikis acquiesced in the application of trade controls while Lithuania is under occupation on 11 July 1951. See US Department of State, Treaties in Force, 1 January 1966 (Washington: US Government Printing Office, 1966), pp. 122-123.

Though President Smetona's fate, personally and politically, was not a happy one, Lithuanian diplomatic and consular personnel were more fortunate. Their status as representatives of the independent Lithuanian government remained unaltered. It was obvious that the US government considered the preservation of the Lithuanian Diplomatic service a minor and relatively harmless matter. Granting status to a chief executive and government-in-exile, though, would have possessed far-reaching political implications, tying Washington's hands in its relations with Moscow.

Popular lore has it that the Lithuanian legation in Washington refused to carry out the orders of the Lithuanian government as of 15 June 1940. However, as was indicated in the previous chapter, Minister Zadeikis and his staff were confused as to the situation in Lithuania due to Smetona's departure, Merkys' efforts to return him to Kaunas, the reports of his de facto resignation, and the presence of Foreign Minister Juozas Urbsys in Moscow. Compounding this was the fact that members of the new government, including President Paleckis, themselves were uncertain about the future. Zadeikis was receiving no information or responses to inquiries. The picture became more clear when it was learned that the known communist, Mecislovas Gedvilas, had been appointed interior minister, and that the first secretary of the Lithuanian Communist Party, Antanas Snieckus, was now the director of the internal security

department.¹¹

By 13 July 1940, Zadeikis was able to write to Secretary Hull that "From the information available, it appears that the scheduled elections [to the People's Seimas] will be carried out exclusively under the aegis of the Communist party . . ."¹² On 3 August, after the Supreme Soviet admitted Lithuania into the USSR, Zadeikis reaffirmed both his own status and his protest:

As the duly accredited representative of the Sovereign Republic of Lithuania near the Government of the United States of America I repeat my protest against the unprovoked aggression and illegal incorporation of Lithuania into the Soviet Union and at the same time express the hope of the Lithuanian nation that no State in the world will recognize this international outrage as having any legality or bona fide excuse. I . . . hope that the American Government will continue to refuse legal recognition of the Soviet's aggressive acts against Lithuania's integrity and independence.¹³

¹¹ Domas Krivickas, "Lithuania's Struggle Against Aggression and Subjugation," in Twenty Years' Struggle for Freedom of Lithuania, ed. Juozas Audenas (New York: ELTA, 1963), p. 139; Merkelis, pp. 630-631; US House of Representatives, Select Committee to Investigate the Incorporation of the Baltic States into the U.S.S.R., Baltic States Investigation I (Washington: US Government Printing Office, 1953), p. 10.

¹² US Department of State, Foreign Relations of the United States, Diplomatic Papers, 1940, vol. I, General (Washington: US Government Printing Office, 1959), p. 387. See also US House of Representatives, Third Interim Report of the Select Committee on Communist Aggression. Report of the Select Committee to Investigate Communist Aggression and the Forced Incorporation of the Baltic States into the U.S.S.R. (Washington: US Government Printing Office, 1954), pp. 365-366.

¹³ US House of Representatives, Third Interim Report, pp. 366-367.

It became abundantly clear to Zadeikis where he stood with the new government in Kaunas when a decision of the Lithuanian Council of Ministers was published on 14 August. Retroactive to 26 July, it stripped Zadeikis of his Lithuanian citizenship, confiscated his property, and forbade him to return to Lithuania. This notwithstanding, there was never any Soviet attempt to assume control of the legation, located at 2622 16th Street NW in Washington. Zadeikis continued to issue formal protests to the US State Department during the occupations of World War II, and disseminated information regarding the Lithuanian situation. Then, as now, the legation was listed in the State Department's annual Diplomatic List.¹⁴

¹⁴ Appeal of the Representatives of the Baltic Nations to the General Assembly of the United Nations. Jointly presented on November 24, 1947 by the Envoys of the Three Baltic States -- Lithuania, Latvia and Estonia -- in Washington To His Excellency Dr. Osvaldo Aranha, President of the General Assembly of the United Nations (Flushing Meadows, NY: np, 1947); Kaslas, pp. 361-364; US House of Representatives, Baltic States Investigation I, p. 11; US House of Representatives, Third Interim Report, p. 375; US Department of State, Diplomatic List, August 1987 (Washington: US Government Printing Office, 1987).

Latvian and Estonian diplomats behaved in similar fashion to Minister Zadeikis. See Latvian Legation Press Bureau, Latvia in 1939-1942: Background; Bolshevik and Nazi Occupation; Hopes for Future (Washington: Latvian Legation, 1942), pp. 105-106, 108-110; Krystyna Marek, Identity and Continuity of States in Public International Law (Geneva: Librairie E. Droz, 1968), p. 410; US House of Representatives, Baltic States Investigation I, pp. 14, 21, 24; US House of Representatives, Select Committee on Communist Aggression, Communist Takeover and Occupation of Estonia, Special Report No. 3 (Washington: US Government Printing Office, 1955), p. 13; US House of Representatives, Select Committee on Communist Aggression, Communist Takeover and Occupation of Latvia, Special Report No. 12 (Washington:

The following consular personnel continued to function in the US, representing the interests of Lithuanian nationals and their property: Consul General Jonas Budrys, Consul Vytautas Stasinskas, Vice Consul Anicetas Simutis, New York; Consul Petras Dauzvardis, Chicago; Honorary Consul Julius J. Bielskis, Los Angeles; Honorary Consul Anthony O. Shallna, Boston. However, the trade, economic, cultural, and scientific functions of the consulates practically ceased. The consuls were left in the unusual position of defending the interests of their nationals vis-a-vis the United States and the factual authorities of the sending state, Soviet Lithuania. "[Consular] representation may. . . be urgently needed in the interest of those whom non-recognition is intended to protect . . ." ¹⁵

Baltic consuls possess standing (locus standi) in US courts. ¹⁶ A court case confirming the status of the Estonian consul general in New York, but also applicable to

US Government Printing Office, 1954), pp. 6-7, 11; US House of Representatives, Third Interim Report, pp. 309, 407-409, 412, 433, 435, 439; US Department of State, Foreign Relations of the United States, 1940, I, pp. 400-401, 406-407.

¹⁵ Robert Langer, Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice (Princeton: Princeton University Press, 1947), p. 102. Also Evald Roosaare, "Consular Relations Between the United States and the Baltic States," Baltic Review, 27 (June 1964), 26. For US-Lithuanian consular relations prior to the occupation, see Roosaare, pp. 12-19.

¹⁶ Marek, p. 403; Vytautas Vaitiekunas, Lithuania (New York: Assembly of Captive European Nations, 1965), pp. 29-30.

Lithuanian consuls, was Buxhoeveden v. Estonian State Bank, et al.¹⁷ The plaintiff, Buxhoeveden, contended that he was entitled to certain payments under an Estonian will written in 1837. On 3 December 1941, he obtained a warrant of attachment and caused it to be levied on funds of the Estonian State Bank deposited at the National City Bank of New York.

The Estonian consul general, Jaakson Kaiv, asserted that it was his right under international law, the US-Estonian consular convention, and Estonian municipal law to protect property interests of nationals of the sending state where no power of attorney has been granted to another party. Buxhoeveden maintained that Kaiv did not have the authority to represent the Estonian State Bank as a consular official. The New York Supreme Court stated the problem:

The basic quest of law presented by this application is the extent of the right of a Consul General of a foreign nation, at peace with this country, but completely occupied by an enemy, to protect and guard in our courts the rights and property of one of his own nationals, an Estonian corporation in which the said Republic owns a majority share interest, and which, if indeed it has knowledge of this action, is itself manifestly unable, because of present unprecedented world conditions, to defend the same or to take any steps specifically to authorize such defense.¹⁸

Kaiv's consular status was affirmed on the basis of both

¹⁷ The New York Supreme Court, Special Term, Queens County, April 21, 1943; 41 N.Y.S. (2d) 752-757; Ibid., Part I, October 8, 1948; 84 N.Y.S. (2d) 2.

¹⁸ Buxhoeveden v. Estonian State Bank, 41 N.Y.S. (2d) 753.

international law and US-Estonian agreements. In other words, he acts in an official capacity, not as a private agent, when he defends the property interests of his nationals. He also possesses the right to move and take action without authorization from, or communication with, the defendant.¹⁹

This leads us to a discussion of the notarial acts of unrecognized governments.²⁰ All governments perform routine notarial acts, such as the issuance of birth, death, and marriage certificates. US courts have been faced with a dilemma when dealing with the acts of unrecognized governments, and have responded in various ways. Courts which have accepted their validity have indicated the non-political nature of such acts, and the fact that citizens have no choice but to accept the acts of a government in actual control of territory. They state that acceptance does not undercut a policy of nonrecognition. Courts which have invalidated such acts stress that executive nonrecognition must lead to judicial nonrecognition, for the

¹⁹ Buxhoeveden v. Estonian State Bank, 41 N.Y.S. (2d) 757. On 26 March 1948, the US State Department sent a letter to all state governors which stated that US-Baltic treaties were still in force, and that Soviet consular officers possessed no right to represent Baltic nationals in US probate proceedings. Only Baltic consular representatives were empowered to do so. See US Congressional Record, 1 May 1948, p. 6795.

²⁰ Unless otherwise indicated, the following passage is taken from Thomas M. Franck and Michael J. Glennon, Foreign Relations and National Security Law: Cases, Materials and Simulations (St. Paul, MN: West, 1987), pp. 494-497.

unrecognized government is not seen as possessing the legal capacity to act.

Following World War II there occurred a series of court decisions which grappled with these issues. Citizens in the Baltic States, who sought their legitimate share of estates in the United States, would sign letters of attorney so that American counsel could represent them. These letters were authenticated by officers of the unrecognized Soviet regimes in the Baltic. A US consul would, in turn, countersign, but add the note: "This authentication is not to be interpreted as implying recognition of Soviet sovereignty over [Lithuania, Latvia or Estonia]." The executor of the estate would typically object to these documents once introduced in court. Baltic consuls would also object. New York State surrogate courts tended to sustain these objections out of deference to determinations of the executive branch.²¹

²¹ Franck and Glennon, p. 496, note that these rulings were due partly to the prevailing Cold War atmosphere. They also write that:

Some Baltic nationals attempted to evade this result by travelling to Leningrad or Moscow to have their letters of attorney authenticated in the Soviet Union proper. This strategem worked in Matter of Luberg's Estate, 19 A.D. 2d 370, 243 N.Y.S. 2d 747 (1963), but failed in In re Mitzkel's Estate, 36 Misc. 2d 671, 233 N.Y.S. 2d 519 (Sur. Ct. Kings 1962). See generally Matter of Adler's Estate, 197 Misc. 104, 93 N.Y.S. 2d 416 (Sur. Ct. Kings), appeal dismissed, 279 App. Div. 745, 109 N.Y.S. 2d 175 (1951), order vacated 110 N.Y.S. 2d 283 (N.Y.A.D. 1952); In re Braunstein's Estate, 202 Misc. 244, 114 N.Y.S. 2d 280 (Sur. N.Y. 1952); In re Kapocius' Estate, 36 Misc. 2d

In In re Aleksandravicius,²² a New Jersey court followed a different approach and ruled that only political acts are to be unrecognized in US courts. The court added that this did not violate the nonrecognition policy, for the American consul's countersigned statement explicitly stated official US policy. Thus private notarial acts were separated from political ones. A New York court had a similar ruling in In re Estate of Bielinis, and noted practical difficulties facing beneficiaries residing in Lithuania:

There are no officials of the Republic of Lithuania in Lithuania. To require these legatees to go before a notary of the de jure Republic of Lithuania to prove their signatures is to deny to them the right validly to execute powers of attorney at all. To require them to travel to some part of the USSR where the USSR is recognized by our government as the de jure government in order to execute powers of attorney is to require them to do a useless act and one which, in the light of the small participation they have in the estate, may mean that they would forfeit their interest rather than try to prove it. . . .

It would appear self-evident that almost the last person in the world who would be able to communicate with the principals and to obtain appropriate evidence from the occupied territory of Lithuania would be the Lithuanian consul. . . .²³

Today, American courts generally distinguish between

1087, 234 N.Y.S. 2d 346 (Sur. King's 1962).
See also Roosaare, pp. 28-29.

²² 83 N.J. Super. 303, 199 A. 2d 662 (App. Div. 1964), cert. denied, 43 N.J. 128, 202 A. 2d 702 (1964).

²³ In re Estate of Bielinis, 55 Misc. 2d at 197-198, 284 N.Y.S. 2d at 825-826.

notarial acts and acts which politically would violate the nonrecognition policy. This was reaffirmed in a relatively recent federal case, Daniunas v. Simutis:

Even though the present government of Lithuania is not recognized by this country, since the powers of attorney relate to what has been determined to be solely a private, local and domestic matter, the inheritance rights of Lithuanian citizens, they will be given effect by the courts of this country.²⁴

The question of specific consular actions is found in the general context of US-Baltic consular relations. Roosaare writes:

[T]he [Vienna] Convention [on Consular Relations]²⁵ provides only that the functions of a member of the consulate come to an end "on notification by the sending state to the receiving state" in that respect and implies clearly that recalling a consular official by the sending state is governed by domestic and not by international law. The only question which may arise, and indeed arose, is whether the action was taken by the proper authorities and under proper law. Not the refusal by Baltic consuls to follow the Soviet order, but the United States' refusal to recognize the Soviet Government in the Baltic states determined their status within the United States.²⁶

Thus, Roosaare concludes, since the US has not changed its recognition of the independent Baltic governments, the legal status of Baltic consular officials and their ability to

²⁴ Daniunas v. Simutis, 481 F.Supp. at 134 (S.D.N.Y. 1978). See also In the Matter of the Estate of Julius Yuska, 128 Misc. 2d 98, 488 N.Y.S. 2d 609 (Sur. Kings 1985).

²⁵ United Nations, Doc. A/Conf. 25/12, 23 April 1963.

²⁶ Roosaare, p. 32. For an account of how the Estonian consul general in New York City, Jaakson Kaiv, refused to obey Soviet orders, see pp. 23-24.

carry out consular functions have not been altered.²⁷

While today, as will be seen in the final chapter, the existence of Lithuanian consulates in the US is mainly a symbolic and informational enterprise, the war years saw the consuls actively exercising their role in defending the interests of their nationals. Though challenges to Soviet notarial acts were a part of this, the most important strides were made in response to Soviet property nationalization laws and decrees, which Washington did not view as legitimate.

C. THE STATUS OF ASSETS AND PROPERTY

In the four day period of 22-25 July 1940, the Soviet-run legislatures of the Baltic States carried out decrees nationalizing banking and credit institutions, as well as industrial enterprises. All orders of the previous owners and directors became invalid. According to the Act of State Doctrine in international law, one state respects

²⁷ During a conversation with the Soviet ambassador on 25 February 1941, Sumner Welles reemphasized the continued US recognition of the independent Baltic diplomats and consuls. According to a memorandum of conversation by Loy Henderson:

Mr. Welles said that . . . nothing could be gained from a conversation in which Mr. Oumansky would insist that black is white while Mr. Welles insisted that white is black. . . . Mr. Welles said that without arguing, he must again disagree with the statements which Mr. Oumansky had just made.

See US Department of State, Foreign Relations of the United States, Diplomatic Papers, 1941, Volume I (Washington: US Government Printing Office, 1958), p. 708.

the validity of another's public acts. As a corollary, courts are not to pass judgement on their legality or constitutionality.²⁸ In other words, had the executive not intervened in the case of the Baltic States, US courts would have routinely upheld the Soviet decrees in cases coming before them.

However, the US nonrecognition policy did not permit this. Nonrecognition is a political relationship of which courts must take cognizance and, under the doctrine of judicial auto-limitation, must implement in line with stated executive policy. In such a situation, not only are the public acts of the unrecognized government viewed as illegal, but "a nonrecognized [de facto] government does not possess a right of access to the courts of such other states as deny it recognition; that is, an unrecognized government cannot sue in such courts."²⁹ In R.S.F. Soviet Republic v. Cibrario,³⁰ the court noted that no precedent existed whereby an unrecognized government could seek relief in US courts. The common practice in such event is to freeze assets, as indeed the US government did vis-a-vis the Baltic States, South Vietnam, Cambodia, North Korea, Cuba, and

²⁸ Dietrich A. Loeber, "Baltic Gold in Great Britain," Baltic Review, 36 (October 1969), 15-17; Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law, 4th ed. (New York: Macmillan, 1981), p. 152.

²⁹ von Glahn, p. 108.

³⁰ N.Y.C.A., 1923, 235 N.Y. 255, 139 N.E. 259.

China.³¹

At the time of the Soviet occupation, Gosbank, the official Soviet bank in Moscow, forwarded an order to US banks to transfer Baltic assets to it. This order, thanks to the presidential freeze of 15 July 1940, was not followed. All subsequent orders requesting the release of assets of nationalized Baltic business enterprises located in the US were ignored. The US Departments of State and Treasury began to jointly administer the frozen Baltic assets and gold reserves, which were used to maintain the

³¹ Malbone W. Graham, "What Does Non-Recognition Mean?" Baltic Review, 1, 4-5 (July-August 1946), 171; Marek, p. 401; von Glahn, p. 109. See also Richard A. Falk, The Role of Domestic Courts in the International Legal Order (Syracuse, NY: Syracuse University Press, 1964). Franck and Glennon, p. 451, write:

The method by which courts learn the executive branch's official recognition policy has changed from independent judicial determinations to specific State Department instructions. In the first half of this century, courts usually took "judicial notice" of official policy. Given the public nature of recognition, discerning the position of the Executive was not difficult. . . . After World War II, perhaps to ensure that executive and judicial positions did not diverge, the State Department often issued specific "suggestions" or instructions to courts, frequently prompted by the requests of individual litigants. Courts sometimes compared these State Department submissions to public pronouncements . . . to see whether they were congruent. . . . Most cases, and all recent ones, however, have relied on the Department's "suggestions" whenever these have been forthcoming. At times, the Department has acted to instruct the court on its own initiative, relaying its views through the Department of Justice. . . . More often, individual litigants have requested the Department to provide information. . . . Courts themselves rarely have solicited State Department positions.

still-recognized Baltic diplomatic and consular facilities.³²

While the Soviet orders of the summer of 1940 did not explicitly state that Baltic assets abroad were covered by the nationalization decrees, this was clearly the intent. Soviet juridical literature claims the positive extraterritorial effect of nationalization legislation. However, the US has refused to grant extraterritorial effect in this case.

American courts have consistently concluded that such decrees had no extraterritorial effect, that is, the decrees do not in themselves change the status of property situated in the United States or temporarily outside the borders of the state, or located in a third state at the time of the decree.³³

The United States has followed one concept in international law, namely that the deprivation of an entity of legal status by a state abroad is not recognized if nationalization injures the vested rights of third parties. The third party here is the US.³⁴ Further, Langer points

³² Algirdas Budreckis, "Liberation Attempts From Abroad," in Lithuania 700 Years, 2nd rev. ed., ed. Albertas Gerutis (New York: Manyland, 1969), p. 400; Merkelis, p. 661; US House of Representatives, Baltic States Investigation I, p. 32; von Glahn, pp. 110-111. The US State Department has periodically issued certificates which declare US nonrecognition of the Soviet occupation, as well as of all Soviet public acts in the Baltic. See Roosaare, pp. 32-33.

³³ Gerard J. Mangone, The Elements of International Law, rev. ed. (Homewood, IL: Dorsey Press, 1967), pp. 380-381. Mangone's emphasis.

³⁴ Loeber, pp. 17-20. See also p. 26.

out that:

A certain safeguard against the danger of giving effect, on the part of the non-recognizing State, to such measures of spoliation and depredation may consist in the application of the principle . . . that acts of a foreign Power that are irreconcilable with the public policy of the State from which enforcement is sought, are disregarded in the courts of the latter.³⁵

One of the more interesting episodes involving Baltic assets dealt with shipping. The "Baltic Ships Cases" were directly related to Soviet nationalization decrees. On this basis, the new governments in the Baltic could issue laws such as the following:

. . . Any kind of leaving harbours or entering harbours without the permission of the Government of the Republic [of Estonia] is prohibited for Estonian ships in foreign waters.

. . . Masters of ships who transgress the orders of the Government of the Republic regarding the bringing back of Estonian ships to the home country will be treated as persons guilty of high treason, whereby responsible are also the members of their families and nearer relatives.

. . . Ships are prohibited to enter the harbours of the United States of America and Britain without the permission of the Government

³⁵ Langer, p. 108. Regarding the validity of acts of a recognized state before agencies of a receiving state, Langer, p. 113, writes that the effects of de jure and de facto recognition are identical. Hirsch Lauterpacht, however, appears to differ, when he writes that de facto recognition takes into account the "actuality of power," while refusing to admit its legality. It produces limited legal consequences. He adds:

"that the government which is recognized de jure is entitled, as against the de facto government, to continued title in and control of the property of the State situated abroad such as legation buildings, archives, and so on."

See his Recognition in International Law (Cambridge: Cambridge University Press, 1947), p. 343.

of the Republic.³⁶

The Soviet Union asserted that the vessels in question were now the property of the state. As such they were immune from the jurisdiction of foreign courts without the consent of the new sovereign power. This immunity existed whether the vessels were used for public or private purposes, and whether or not they were in the physical possession of the sovereign.³⁷

The Soviet Union, thus, was attempting to gain possession of the vessels. Indeed, following World War II, it occasionally attempted to collect insurance payable for Baltic ships sunk during hostilities.³⁸ However, claims of ownership or insurance proceeds were rejected because such claims in each case were grounded upon some governmental act based on unrecognized Soviet sovereignty.

[The] Baltic Ship Cases, reinforced by corresponding decisions in a number of other countries, including the United States, helped to establish the doctrine that nonrecognition of an alleged successor state or government resulted in a failure to create immunity claimed for vessels

³⁶ US House of Representatives, Baltic States Investigation I, p. 182. See also US Department of State, Foreign Relations of the United States, 1940, I, p. 408.

³⁷ von Glahn, p. 149. See also US House of Representatives, Baltic States Investigation I, pp. 20-21, 207-209.

³⁸ von Glahn, p. 110. Richard A. Schnorf notes that Baltic ships transporting Allied war supplies across the Atlantic were decimated by German submarines. See his "The Baltic States in U.S.-Soviet Relations: The Years of Doubt, 1943-1946," Lituanus, 12, 4 (Winter 1966), 67.

of that state or government.³⁹

In Latvian State Cargo & Passenger S.S. Line v. McGrath, the US Court of Appeals explicitly took this into account. The court decided that the US did not merely fail to recognize the Soviet nationalization decrees, but deliberately opposed them. "We find ourselves in agreement with other courts which have either implicitly or explicitly recognized the policies of [the executive] in refusing to countenance the confiscation of vessels by the Soviet regime."⁴⁰

In order to gain an idea of how these cases were conceived and proceeded, it is worthwhile to quote Langer's synopsis of three of them:

In three cases, namely (1) the Kotkas,⁴¹ (2) the Regent,⁴² (3) the Signe (later renamed the Florida),⁴³ libels of persons acting on behalf of the Soviet Government had been filed in order to

³⁹ von Glahn, p. 149. Von Glahn, pp. 109-110, notes that not all legal scholars agree that a nonrecognized state is barred from access to the courts of nonrecognizing states. In turn, not all concur in the disposition of the Baltic ships cases.

⁴⁰ Latvian State Cargo & Passenger S.S. Line v. McGrath, US Court of Appeals, District of Columbia Circuit, 188 F 2d 1000 (1951).

⁴¹ 35 Federal Supplement Reporter 810, 983 ff., District Court, E.D. New York, November 22, 1940; 37 Federal Supplement Reporter 835 ff., do. March 31, 1941.

⁴² 35 Federal Supplement Reporter 985 ff., District Court, E.D. New York, November 22, 1940.

⁴³ 37 Federal Supplement Reporter 810 819 ff., District Court, E.D. Louisiana, New Orleans Division, March 4, 1941; 39 Federal Supplement Reporter 810 ff., do. July 22, 1941; 133 F 2d 719 ff., Circuit Court of Appeals, Fifth Circuit, February 20, 1943.

obtain possession of Baltic ships which their masters refused to surrender. The district courts had first to decide on motions of the libelants for letters rogatory to be issued to a competent court of the Soviet Union for the purpose of procuring testimony of parties residing in the respective Baltic countries. All these motions were denied on the ground that since the United States did not recognize the incorporation . . . , no court of the latter could issue effective process to residents of those republics. Thereupon the libels were dismissed for failure on the part of the libelants to prove their right of possession.⁴⁴

The Maret case dealt with the question of the validity of acts of an unrecognized occupant.⁴⁵ The Maret was a vessel of Estonian registry in the territorial waters of the US Virgin Islands at the time of incorporation. The captain was ordered to proceed to Murmansk. He was willing to comply and requested an advance to purchase supplies. The Amtorg Trading Company in New York, which was an agent of the Soviet government, obliged and provided the funds. However, while the vessel was in port at St. Thomas, the US Maritime Commission requisitioned it. The commission proceeded to deposit \$25,000 with the US Treasury "on account of just compensation" for the Maret. The Amtorg

⁴⁴ Langer, p. 266. Further, the court in the Signe case noted the authority possessed by the Estonian consul general in charge of legation, Jaakson Kaiv, for the "temporarily supplanted government of the Republic of Estonia." Kaiv became involved in approximately twenty cases involving Estonian vessels. See Langer, pp. 266-267; US House of Representatives, Baltic States Investigation I, p. 32.

⁴⁵ 145 F 2d 431, Circuit Court of Appeals, Third Circuit, October 17, 1944.

Company then filed suit seeking a portion of that payment. The Soviet action, in turn, was opposed by Estonian Consul General Jaakson Kaiv, acting for some of the co-owners of the vessel.

Though a federal district court decided in favor of the Soviets, a circuit court reversed the decision, writing that recognition is a political, not legal, question to be decided by the executive branch. The same applies to the validity of decrees of an unrecognized power. When Kaiv produced Acting Secretary of State Sumner Welles' certificate not recognizing the decrees of the regime functioning in Estonia, the circuit court decided that a domestic court cannot examine the decrees of such a sovereign and determine rights in property based on them.⁴⁶

The consequences of these events were certainly not lost on Soviet officials, who complained bitterly that the US government was sanctioning theft of Soviet property by aiding, as Soviet Ambassador Oumansky stated:

the former Ministers and Consuls of the Baltic States who, in cooperation with the officials of the Department of State, local Customs authorities, and police officials, were continuing to arrest Captains and members of the crews of what are now Soviet vessels only because such

⁴⁶ Langer, pp. 267-268; Georg Schwarzenberger, A Manual of International Law, 5th ed. (New York: Praeger & London Institute of World Affairs, 1967), p. 433; William L. Tung, International Law in an Organizing World (New York: Crowell, 1968), pp. 266-268. Franck and Glennon, p. 486, note that the court in the Maret did not consider the location of the ship outside Estonia when determining whether to give effect to the decree of the Estonian SSR.

persons desired to go home. The Consuls . . . through fictitious means were changing the registry of these vessels and directing their movements.⁴⁷

people's Commissar for Foreign Affairs Molotov complained to US Ambassador Steinhardt in Moscow that some of the Baltic vessels had been dispatched to South America, where the Soviet Union possessed no diplomatic representation.⁴⁸

The US nonrecognition policy possessed differential political and legal effects. On the one hand, the US would not commit itself to allowing a Lithuanian government-in-exile function on her soil. On the other hand, treaties and diplomats retained complete status, albeit in a practically reduced role. The consuls were the most active and potent representatives of the success of the policy. The events surrounding the disposition of Baltic property, and the Kremlin's reaction, serve to demonstrate that the effect of the US nonrecognition policy, at least at its inception, was far from merely symbolic. Actual physical resources were involved -- and removed from the reach of the Soviets.⁴⁹

⁴⁷ US Department of State, Foreign Relations of the United States, 1941, I, p. 708.

⁴⁸ US Department of State, Foreign Relations of the United States, Diplomatic Papers, 1940, Volume III (Washington: US Government Printing Office, 1958), p. 439.

⁴⁹ Other cases involving Baltic ships and nationals are Re Adler's Estate, 122 The New York Law Journal 1777, in the King's County Surrogate Court, New York; Re Braunstein's Estate, 114 N.Y.S. 2d 280 (1952), in the New York County Surrogate Court; Estonian State Cargo & Passenger S.S. Line et al. v. United States, 116 F.Supp. 447 (Ct. of Cl., 1953); Latvian State Cargo & Passenger S.S. Line et al. v. United

While the United States remains steadfast in its stated policy toward Lithuania and the other Baltic States, there have been occasions where the policy has been stretched -- or compressed, if you will -- to fit practical exigencies. The Second World War, along with the question of alliance with Stalin, would be the first major test of the resilience of the nonrecognition policy. These issues are addressed in the following chapter.

States, 116 F.Supp. 717 (Ct. of Cl., 1953); A/S Merilaid & Co. v. Chase National Bank of City of New York, 71 N.Y.S. 2d 377 (1947); The Matter of Mike Shaskus, 131 The New York Law Journal 12 (1954), in the King's County Surrogate Court, New York; United States v. Rumsa, 212 F 2d 927 (7th Cir., 1954), cert. denied, 348 U.S. 838.

CHAPTER VI

THE NONRECOGNITION POLICY & WARTIME POLITICS

A. THE CHANGING NATURE OF THE WAR

As the year 1940 gave way to 1941, the Soviets were still consolidating their occupation of Lithuania. Obviously, the US nonrecognition policy, while possessing definite political and legal consequences, had not caused their retreat. As the year wore on, however, the situation in the Baltic would change drastically, with great implications for US-Soviet relations.

Historically, the Lithuanian people have always been caught between the Germans and Russians; World War II was no exception. Hitler's Operation Barbarossa, ending the charade of the Molotov-Ribbentrop Pact, commenced 22 June 1941. Thus began the Third Reich's campaign to become master of the East. The German occupation brought cautious hope to a people who had just lived under a regime which in twelve months had arrested, deported or killed some fifty thousand Lithuanians. The greatest horrors occurred about one week prior to the Nazi attack when, during the night of 14 June, 34,260 people were packed off in cattle cars to

prisons and hard labor camps in Siberia and other points deep within the Soviet Union.

A rebellion temporarily reconstituting the Lithuanian government was carried out, but this received no support from the invading Germans. The affairs of the country were, instead, placed firmly under the control of the Reichskommissar fur das Ostland (Reich Commissar for the Eastern Territories), based in Riga, Latvia; terror and expropriation continued. For example, on 27 May 1942, four hundred Poles and Lithuanians were executed in retaliation for the murder of two German civilians. On 31 March 1943, in response to anti-German sentiments in Vilnius, a line of about two hundred men was formed -- and every fifth one was shot.¹

¹ For general accounts of Lithuania during World War II, see Zenonas Ivinskis, "Lithuania During the War: Resistance Against the Soviet and Nazi Occupants," in Lithuania Under the Soviets: Portrait of a Nation, 1940-65, ed. V. Stanley Vardys (New York: Praeger, 1965), pp. 61-84; Bronis Kaslas, La Lithuanie et la Seconde Guerre Mondiale: Recueil des Documents (Lithuania and the Second World War: A Documentary Collection) (Paris: G.-P. Maisonneuve at Larose, 1981); Algirdas J. Kasulaitis, Lithuanian Christian Democracy (Chicago: Leo XIII Fund, 1976), pp. 149-166; Benedict V. Maciuika, ed., Lithuania in the Last 30 Years. Subcontractor's Monograph prepared in the Division of the Social Sciences at the University of Chicago. HRAF Subcontract HRAF-1 Chi-1 (New Haven, CT: Human Relations Area Files, 1955), pp. 70-76.

The 1941 rebellion and provisional government are covered in Algirdas Budreckis, The Lithuanian National Revolt of 1941 (South Boston: Lithuanian Encyclopedia Press, 1968), esp. pp. 102-125; Zenonas Ivinskis, "The Lithuanian Revolt Against the Soviets in 1941," Lituanus, 12, 2 (Summer 1966), 5-19; Domas Krivickas, "Lithuania's Struggle Against Aggression and Subjugation," in Twenty Years' Struggle for Freedom of Lithuania, ed. Juozas Audenas (New York: ELTA,

B. CHANGING PERCEPTIONS OF THE SOVIET UNION

Hitler, who was the declared enemy of the West, had now attacked the Soviet Union. As the wartime alliance became cemented, the US was forced to choose the lesser of two evils. In other words, any enemy of Hitler was considered an ally. The rocky course of this unnatural relationship can be traced in the official propaganda of the time. When Stalin was on the move against Poland, Finland, and the Baltic States, he was branded an international criminal and expelled from the League of Nations. Outcries were heard in the public and press. However, after the United States entered the war and the Anglo-Soviet Treaty of Alliance was signed on 26 May 1942, attacks on the Kremlin

1963), pp. 137-139.

The Nazi occupation is addressed in Adolfas Damusis, Antinacine lietuviu rezistencija (Anti-Nazi Lithuanian Resistance), offprint from a series in Teviskes ziburiai (Lights of Homeland), 1974, 13-16; Hans-Dieter Handrack, "The Cultural Policy of the German Administration in the Reichskommissariat Ostland, 1941-44," in Fourth Conference on Baltic Studies: Summaries of Papers (Brooklyn: Association for the Advancement of Baltic Studies, 1974), p. 24; Bronius Kviklys, Lietuviu kova su naciais 1941-1944 m. (Lithuanians' Fight Against the Nazis 1941-1944) (Memmingen, West Germany: Mintis, 1946); Mecislovas Mackevicius, "Lithuanian Resistance to German Mobilization Attempts 1941-1944," Lituanus, 32, 4 (Winter 1986), 9-22; Julius P. Slavenas, "Nazi Ideology and Policy in the Baltic States," Lituanus, 11, 1 (Spring 1965), 34-47.

The communist interpretation of events in Lithuania during this period is found in Mecislovas Gedvilas, Lemiamas posukis: 1940-1945 metai (Decisive Turn 1940-1945) (Vilnius: Vaga, 1975). Literature produced by Lithuanian writers who fled to Russia during the Nazi occupation is found in E. Miezelaitytis, et al., eds., Kovu puslapiai (Pages of Battles) (Vilnius: Vaga, 1974).

were toned down in an effort to construct a superficial working relationship and harmony during the course of hostilities. The Red Army was perceived as a friend in the battle against the Third Reich -- though, of course, the matter of postwar settlements was in the back of everyone's mind.

In a poll released on 22 December 1939, seventy percent of those Americans questioned believed that communist activities in the US were more serious than nazi actions. However, less than two months following the commencement of Operation Barbarossa, thirty-eight percent of Americans favored the inclusion of the Soviet Union in the Lend-Lease program, while thirty-nine percent were opposed.²

Of course, there was a small vocal communist movement in the US which fostered such attitudes. Regarding the Soviet occupation of Lithuania, leftist author Anna Louise Strong wrote that "a sovereign state was changing from capitalism to socialism quite constitutionally without destruction of life or property."³ Gregory Meiksins asserted that Lithuania had never been independent and belonged in the Soviet Union following "liberation" by the

² Hardley Cantril, ed., Public Opinion 1935-1946 (Princeton, NJ: Princeton University Press, 1955), pp. 164, 411.

³ Anna Louise Strong, The New Lithuania (New York: Workers Library Publishers, 1941), p. 3.

Red Army.⁴

Yet, the communists' influence was negligible, for it was members of the American mainstream who were also becoming supportive of the Soviets -- and often overlooking their transgressions. Vice President Henry A. Wallace, Harold Ickes, Senator E.D. Thomas, Walter Lippmann, and news commentator Elmer Davis were among those influential in forming public opinion regarding Soviet intentions during the war. Americans were inclined to respect the Soviets thanks to their victories in the East, while the Western allies were still waiting to throw all their force against Hitler. Some American writers even supported Russian ethnographic claims to the Baltic States. Though individuals such as Herbert Hoover and Robert Taft cautioned Americans to be more realistic in their appraisal of the Soviets, the paramount concern of the time appeared to be the maintenance of allied unity.⁵

⁴ Gregory Meiksins, The Baltic Soviet Republics (New York: National Council of American-Soviet Friendship, 1944).

⁵ Jan Ciechanowski, Defeat in Victory (Garden City, NY: Doubleday, 1947), p. 97. Richard A. Schnorf, "The Baltic States in U.S.-Soviet Relations, 1939-1942," Lituanus, 12, 1 (Spring 1966), 52-53; Schnorf, "The Baltic States in U.S.-Soviet Relations: The Years of Doubt, 1943-1946," Lituanus, 12, 4 (Winter 1966), 57-58. Schnorf also writes:

In one respect it is fortunate that the Soviet Union did not invade the Baltic States later than it did. . . . If the Soviet Union had invaded the Baltic States after it had been invaded by Germany, its argument that the occupation was a defensive move might have been accepted by the Western world. If the Soviet Union had forced anti-German treaties on the Baltic States, with

US officials were acutely aware of their predicament. Once the alliance was on its way to formation, an anti-communist or anti-Soviet message could have been construed as fascist. Officials were hard pressed to make statements on the Soviet occupation of Lithuania, for they would immediately be branded as harmful to the alliance and the war effort.⁶ Other officials, though, urged greater support for the Soviets. In a letter to Breden Bracken, presidential advisor Harry Hopkins wrote:

We are having some difficulty with our public opinion with regard to Russia. The American people don't take aid to Russia easily. . . . [A] lot of people . . . sincerely believe that Stalin is a great menace to the world. Still I think it will come out all right in the end.⁷

Another official with similar opinions was Joseph E. Davies, the US ambassador to Moscow, who wrote:

In my opinion, the Russian people, the Soviet

the right of free passage of troops, the situation could have been tolerated in the democratic states in spite of the infringement of Baltic sovereignty.

See his "The Baltic States in U.S.-Soviet Relations: From Truman to Johnson," Lituanus, 14, 3 (Fall 1968), 58.

⁶ Antanas A. Olis, "JAV uzsienio politika sarysy su Lietuvos klausimu" ("US Foreign Policy and the Lithuanian Question"), in Amerikos lietuviu tarybos suvaziavimas (Congress of the Lithuanian American Council) (Chicago: LAC, 1954), p. 40. Though some officials who voiced wartime doubts regarding the Soviets died a professional death, Loy Henderson, an architect of the nonrecognition policy, continued on an illustrious career. See Schnorf, "The Baltic States in U.S.-Soviet Relations . . . 1943-1946," p. 75.

⁷ Quoted in Robert E. Sherwood, Roosevelt and Hopkins (New York: Harper & Brothers, 1950), pp. 372-373.

government, and the Soviet leaders are moved, basically, by altruistic concepts. It is their purpose to promote the brotherhood of man and to improve the lot of the common people. They wish to create a society in which men live as equals, governed by ethical ideals. They are devoted to peace.^a

In an address to twenty thousand people in Chicago in February 1942, Davies asserted that "by the testimony of performance and in my opinion, the word of honor of the Soviet Government is as safe as the Bible."^a Though perhaps Davies' confidence in the Kremlin was greater than that of most Americans, it, at least in part, reflected the currents of opinion in the United States during the course of World War II.

C. THE ATLANTIC CHARTER

The Atlantic Charter, signed by President Roosevelt and British Prime Minister Winston Churchill on 14 August

^a Joseph E. Davies, Mission to Moscow (New York: Simon & Schuster, 1941), p. 511.

^a Quoted in William C. Bullitt, The Great Globe Itself (New York: Scribner's, 1946), p. 22. In the historical section of a handbook issued to US military personnel toward the end of hostilities, there was no mention of the Soviet aggression of 1939-1940. See The USSR: Institutions and People. A brief Handbook for the use of Officers of the Armed Forces of the United States (Washington: US Government Printing Office, 1945).

Even Sumner Welles, who had issued the nonrecognition declaration on 23 July 1940, incorrectly spoke of the "plebiscites of 1939," and added that "perhaps the peoples of the Baltic States desire to form an integral part of the Union of Soviet Socialist Republics." See his The Time for Decision (New York: Harper & Brothers, 1944), pp. 330, 333.

1941, was a stirring declaration stating that neither the US nor Great Britain would seek increases in territory during and after hostilities. Further, territorial changes and forms of government would be determined in accordance with the wishes of the people of Europe. In addition, the signatories hoped "to see sovereign rights and self-government restored to those who have been forcibly deprived of them."¹⁰ The Atlantic Charter was a moral pronouncement reminiscent of Woodrow Wilson's Fourteen Points. Nevertheless, it was not a formal treaty and did not possess binding force.

By September 1941, Stalin had formally subscribed to the provisions of the Atlantic Charter, telling Anthony Eden that "he thought the Charter was directed against those who

¹⁰ See The Atlantic Charter, or The Lifeboat of Millions of People who Lost Their Homes (Amberg: C. Mayr, 1941); Algirdas Budreckis, "Liberation Attempts from Abroad," in Lithuania 700 Years, 2nd rev. ed., ed. Albertas Gerutis (New York: Manyland, 1969), p. 379; E. Krepp, Security and Non-Aggression: Baltic States and U.S.S.R. Treaties of Non-Aggression (Stockholm: Estonian Information Centre / Latvian National Foundation, 1973), p. 30; US Department of State, In Quest of Peace and Security: Selected Documents on American Foreign Policy 1941-1951 (Washington: US Government Printing Office, 1951), p. 2.

Assistant Secretary of State Adolph Berle responded to a note from Estonian Consul General Kaiv on 18 September 1941 regarding the German presence in Estonia. In reiterating US policy, Berle referred Kaiv to the principles of the Atlantic Charter. See Policy of the United States of America Towards Estonia (New York: Consulate General of Estonia, n.d.), p. 4.

were trying to get world domination."¹¹ Roosevelt, and especially Churchill, were wary of Stalin's true intentions, on several occasions commenting that Stalin's actions were not consistent with the Charter.¹² Specifically, Stalin had agreed to the document on the basis of boundaries existing at the time of Hitler's move east, that is, with the Baltic States within the Soviet Union. British officials and some American pragmatists, such as Assistant Secretary of State Adolph Berle, were willing to concede this point, since Roosevelt had put off boundary settlements until after the war.¹³

While, on the one hand, Churchill sincerely declared that the 1941 boundaries were illegally constructed,¹⁴ he could not realistically trade British interests for the Baltic. Early in 1942, Churchill wrote to Roosevelt:

The increasing gravity of the war has led me to

¹¹ Herbert Feis, Churchill-Roosevelt-Stalin: The War They Waged and the Peace They Sought (Princeton, NJ: Princeton University Press, 1957), p. 27.

¹² Bullitt, p. 16; Winston S. Churchill, The Grand Alliance (Boston: Houghton Mifflin, 1950), p. 630. See also Latvian Legation Press Bureau, Latvia in 1939-1942: Background; Bolshevik and Nazi Occupation; Hopes for Future (Washington: Latvian Legation, 1942), pp. 58-59.

¹³ Earl W. Jennison, Jr., Review Essay, Journal of Baltic Studies, 6, 2-3 (Summer-Fall 1975), 223-224. Bernard Newman points out that even the Russian emigre liberal leader, Alexander Kerensky, defended the incorporation of the Baltic States because it was achieved prior to the Atlantic Charter. See his Baltic Background (London: Robert Hale, Ltd., 1948), p. 164.

¹⁴ Churchill, The Grand Alliance, pp. 584-585.

feel that the principles of the Atlantic Charter ought not to be construed as to deny Russia the frontiers she occupied when Germany attacked her. This was the basis on which Russia acceded to the Charter.¹⁵

Churchill further was of the opinion that "in the deadly struggle it is not right to assume more burdens than those who are fighting for a great cause [the British] can bear."¹⁶

Granted, Stalin's public statements expressed adherence to the Atlantic Charter's principles. But when the scales of war began tipping in his favor, he changed his posture and brought forth a list of territorial claims. As will be seen below, while hardly taken aback by this action, the West was forced to actively reassess its perception of, and position vis-a-vis, the Soviet Union. The realization that Moscow would be a power to contend with after the war was unsettling, to say the least. With this grew distrust and ambiguity regarding Soviet behavior following the

¹⁵ Quoted in Feis, p. 60.

¹⁶ Quoted in Feis, p. 60. Schnorf, "The Baltic States in U.S.-Soviet Relations, 1939-1942," p. 48, writes:

Although Churchill's concern with Britain's self-interest can be appreciated, exclusion of Russia from the principles of the Charter deprived the Baltic peoples of sorely needed support during a period when prospects for success could have been most favorable. If Britain had been able to hold firm regarding application of the Charter's principles to the Soviet Union, and if the United States had chosen to bargain, Lend Lease to the Soviet Union would have been an excellent vehicle for the improvement of the Baltic situation as well as for the post-war status of eastern Europe.

cessation of conflict. Be that as it may, the Western powers were still concerned with successfully concluding the war, and decided to place the issue on the backburner; boundaries were to be settled at a forthcoming peace conference -- a conference which was never formally completed.

Following the Axis declaration of war on the US on 11 December 1941, the Soviet Union attempted to utilize its new, good relations with the West. In the spring of the following year, the Kremlin requested that the US and Britain recognize Lithuania, Latvia, and Estonia as incorporated components of the USSR, but both powers refused to do so. On the other hand, while the US was willing to symbolically support the Baltic cause, it realized that practical exigencies dictated a cautious approach, knowing full well that the US could not completely influence events in Eastern Europe -- and that the American people would not support a war with the Soviets following the defeat of the Nazis.

What was the fate of the Atlantic Charter? Though the protocol of proceedings of the Yalta Conference of February 1945 reaffirmed the Charter's principles, on 19 December 1944, President Roosevelt stated that it had never been formally signed, so that it did not have to be implemented.¹⁷

¹⁷ Aleksandras Merkelis, Antanas Smetona: Jo visuomenine, kulturine ir politine veikla (Antanas Smetona: His Social, Cultural, and Political Activity) (New York:

American diplomacy sought and obtained repeated Soviet promises that governments and boundaries in liberated areas would be determined democratically, but at the price of avoiding further mention of past unpleasanties such as the Soviet annexation of the Baltic States and a chunk of Finland. This was . . . not a policy of confrontation, but rather one of accomodation. The dubious rationale for this policy was that the Soviets would not feel compelled to turn their weak neighbors into client states for security reasons if assured that American friendship and the new international organization would protect them instead. American diplomats in Soviet-liberated countries seemed honestly surprised when in 1944 and 1945 the Soviets set about reordering boundaries and governments according to their own definition of [democracy].^{1a}

Kaslas adds:

Clemenceau said that Wilson talked like Jesus Christ and acted like Lloyd George; much the same can be said for Roosevelt. The dichotomy between lofty principle and mundane action is a traditional characteristic of American foreign policy, and the Atlantic Charter is one of the loftier enunciations of principles which American presidents have produced, but American governments have never implemented.^{1a}

Perhaps Schnorf sums up the results of the Atlantic Charter best when he writes that "this famous manifesto is today virtually forgotten except by those whose hopes of freedom

American Lithuanian National Association, 1964), p. 664; Leonardas Simutis, Amerikos Lietuviu Taryba: 30 metu Lietuvos laisves kovoje 1940-1970 (Lithuanian American Council: 30 Year Struggle for the Liberation of Lithuania 1940-1970) (Chicago: LAC, 1971), p. 77; US Department of State, In Quest of Peace and Security, p. 14.

^{1a} Jennison, p. 224.

^{1a} Bronis J. Kaslas, ed., The USSR-German Aggression Against Lithuania (New York: Robert Speller & Sons, 1973), p. 364.

are expressed in its provisions."²⁰

The Atlantic Charter was, of course, the first act in the play of diplomacy surrounding the Second World War. The West had adopted a policy of non-predetermination, that is that victory was the immediate priority. Territorial questions would be addressed at a postwar peace conference. On 4 February 1942, Secretary of State Cordell Hull penned a memorandum to President Roosevelt, where he asserted that permanent political and territorial agreements during the course of hostilities would be contrary to the Atlantic Charter, and a reversal of US policy not recognizing forcible annexation.²¹

Hull was an old-fashioned Jeffersonian liberal who remembered the problems Wilson had in 1919 when confronted with the secret treaties of the Allies. Hull would adamantly oppose any secret deals while the war was still in progress. He would strive mightily for an international organization that could maintain the peace after the war.²²

Sumner Welles, Adolph Berle, and State Department careerists shared Hull's view and, further, were suspicious of both British and Soviet imperialism. Old World diplomacy, with its spheres of influence and balances of power, was to give

²⁰ Schnorf, "The Baltic States in U.S.-Soviet Relations, 1939-1942," p. 47.

²¹ Schnorf, "The Baltic States in U.S.-Soviet Relations . . . 1943-1946," p. 57; I. Vizulis, "The Diplomacy of the Allied Powers Toward the Baltic States (1942-1945)," Baltic Review, 35 (August 1968), 52, 58-59.

²² Edmund R. Padvaiskas, "World War II Russian-American Relations and the Baltic States: A Test Case," Lituanus, 28, 2 (Summer 1982), 7.

way to democratic diplomacy. Roosevelt was a politician who had risen to power through dealing and trading. He was confident that his charm and negotiating skills would ultimately carry the day for a democratic Europe.²³ Roosevelt's first wartime test would come during the Anglo-Soviet negotiations of 1941-1942.

D. THE ANGLO-SOVIET TREATY OF ALLIANCE

As noted above, Stalin pressed for Western recognition of Soviet gains in the Baltic. British Foreign Secretary Anthony Eden spoke with him on this matter in December 1941. Stalin added that this was a condition for an Anglo-Soviet agreement. Eden replied that he could not commit to territorial arrangements. Churchill agreed, yet by early 1942 he did not feel "that this moral position could be physically maintained."²⁴ Churchill wrote Roosevelt a letter on 7 March 1942 pleading:

The increasing gravity of the war has led me to feel that the principles of the Atlantic Charter ought not to be construed so as to deny Russia the frontier she occupied when Germany attacked her. This was the basis on which Russia acceded to the Charter . . . I hope, therefore, that you will be able to give us a free hand to sign the treaty which Stalin desires . . . [T]here is very little we can do to help the only country that is

²³ Padvaiskas, pp. 7-8.

²⁴ Winston S. Churchill, The Grand Alliance (Boston: Houghton Mifflin, 1950), pp. 558-559; Churchill, The Second World War (London: Cassel & Co., 1951), IV, 292-294. See also Merkelis, p. 664; Kaarel R. Pusta, "How Has Russia Been 'Rewarded'?" Baltic Review, 1, 4-5 (July-August 1946), 235.

heavily engaged with the German armies.²⁵

Hull urged Roosevelt not to endorse such an arrangement. Roosevelt appealed directly to Stalin to omit territorial matters from the treaty. Stalin answered that he was merely taking note of the president's position.²⁶

Though Roosevelt's motives appeared noble, George Kennan is of a different opinion:

[O]ne does not get . . . the impression that Roosevelt had any substantive objections -- any real political objections -- to seeing these [Baltic and Polish] areas go Russian, or indeed that he cared much about the issue for its own sake. One gets the impression that it seemed to him of little importance whether these areas were Polish or Russian. His anxiety was rather that he had a large body of voting constituents in this country of Polish or Baltic origin, and a further number who sympathized with the Poles, and he simply did not want this issue to become a factor in domestic politics . . .²⁷

In a series of conversations in February-April 1942, Roosevelt, Sumner Welles, and British Ambassador Lord Halifax discussed the negotiations with the Kremlin. Among the options discussed were the right of the Soviets to

²⁵ Churchill, The Hinge of Fate (Boston: Houghton Mifflin, 1950), p. 285. W. Phillips Davison attributes an utterance to Churchill, which states that if Hitler invaded Hell, he would speak favorably of the Devil in the House of Commons. See his "The Public Opinion Process," in Policy-Making in American Government, ed. Edward V. Schneier (New York: Basic Books, 1969), pp. 17-18.

²⁶ Feis, p. 59; US Department of State, Foreign Relations of the United States, 1942, III (Washington: US Government Printing Office, 1961), pp. 505-512.

²⁷ George F. Kennan, Russia and the West Under Lenin and Stalin (Boston: Little, Brown, 1961), p. 357. See also Feis, p. 60; Vizulis, p. 53.

possess military bases in the Baltic following the war, or their right to control Baltic foreign and defense policy. Roosevelt implied that he favored the latter option. If this were done, Soviet demands for security could be reconciled with the Atlantic Charter. Halifax noted that the Soviet demands could be greater. Further, the USSR's presence in the Baltic would translate into greater security against possible future German aggression. Welles countered by asking as to what kind of peace could be created if the US and Britain:

agreed upon selling out millions of people who looked to us as their one hope in the future and if that new world order were based upon the domination of unwilling, resentful, and potent minorities by a State to which they would never give willing allegiance.²⁸

Lord Halifax felt that Washington was not being realistic. For him, Baltic self-government did not outweigh having a friendly and cooperative Kremlin during and after the war. Soon thereafter, Welles transmitted an idea from Roosevelt. Roosevelt's offer was US approval of British acceptance of Soviet demands if Baltic residents who did not wish to live under a Soviet regime would be allowed to leave with their property.²⁹

Assistant Secretary Berle forcefully condemned this

²⁸ US Department of State, Foreign Relations of the United States, 1942, III, pp. 519-520.

²⁹ US Department of State, Foreign Relations of the United States, 1942, III, pp. 512-526, 538.

idea. He supported a US-style Good Neighbor policy in the Baltic, conceded that the Baltic States could not be springboards for invasion from the west, and felt that the Soviets should have access to the Baltic Sea. However, he urged observance of the Atlantic Charter, saying that implementation of the proposed policy would be a "Baltic Munich." In such a case, the US:

would have committed [itself] to the seizure of the territory, provided there is added some pious, and in the existing circumstances, meaningless phrase about free immigration of populations to places unknown, on conditions unspecified, and in any case, with the complete sacrifice of their tradition, their property, their habits, and possibly even their language and race.³⁰

Evidently the Roosevelt property proposal was a trial balloon. Welles informed Berle that both he and the president were opposed to such a policy. If the current Kremlin demands were met, more would be sure to follow. Emigration would be a last resort to prevent complete enslavement if the Soviets remained in the Baltic.³¹ Welles added:

I have felt more strongly on this issue, namely, the conclusion of this treaty, than on any matter which has [come] before me in recent years. The attitude of the British Government is, in my judgement, not only indefensible from every moral

³⁰ US Department of State, Foreign Relations of the United States, 1942, III, pp. 539-540.

³¹ US Department of State, Foreign Relations of the United States, 1942, III, pp. 541-542.

standpoint, but likewise extraordinarily stupid.³²

Roosevelt was not going to endorse any territorial agreement in the current negotiations, preferring a military alliance creating a second front. Indeed the president may have repudiated a territory-based agreement outright. The Kremlin gave up the territorial clauses, realizing that recognition of its conquests was not forthcoming. In addition, the Germans had halted the Soviet counter-attack in the eastern Ukraine, and the Kremlin was increasingly dependent upon American aid. Finally, a simple treaty of Anglo-Soviet alliance was signed on 26 May 1942.³³

E. THE WARTIME CONFERENCES

Though Roosevelt won this diplomatic battle, he could not ignore practical reality. In a March 1943 conference with British Foreign Secretary Anthony Eden, Roosevelt stated that American public opinion would be opposed to a final postwar absorption of the Baltic States. However, he could not force the Soviets to do anything. The president hoped that Stalin would, at least, go through the motions of a second plebiscite, and was confident that recognition of Soviet control in the Baltic could be

³² US Department of State, Foreign Relations of the United States, 1942, III, pp. 540-541.

³³ Feis, p. 61; Padvaiskas, pp. 21-22; Schnorf, "The Baltic States in U.S.-Soviet Relations, 1939-1942," pp. 51-53; Vizulis, p. 54.

utilized as a bargaining chip for Soviet concessions in other areas.³⁴ In July of that year, Roosevelt told the Polish ambassador: "The problem of the Baltic States, and particularly that of Lithuania will be much more difficult. . . . What can we do if Stalin calmly announces, for instance, that the question of Lithuania must be left out of the discussion?"³⁵

As the Moscow foreign ministers' conference of October 1943 approached, the Western allies were slowly proceeding up the Italian peninsula and Soviet troops were crossing the Dnieper River on a broad front. Secretary Hull did not receive instructions to discuss the Baltic. However, in a 5 October conference, President Roosevelt spelled out his plans for the upcoming Teheran conference:

As for Poland and the Baltic States, the President said that, when he should meet with Stalin, he intended to appeal to him on grounds of high morality. He would say to him that neither Britain nor we would fight Russia over the Baltic States, but that in Russia's own interest . . . it would be a good thing for her . . . to hold a second plebiscite in the Baltic countries.³⁶

³⁴ Feis, p. 122; Padvaiskas, pp. 23-24. Padvaiskas notes that the president informed W. Averill Harriman that he, Roosevelt, would personally negotiate matters involving the Baltic States. He also notes that Sumner Welles resigned in September 1943 over personality clashes with Secretary Hull. Thus was lost a strong defender of the Atlantic Charter.

³⁵ Ciechanowski, p. 186.

³⁶ Cordell Hull, The Memoirs of Cordell Hull, ed. Walter Johnson (New York: Macmillan, 1948), p. 1266; Arnolds Spekke, Latvia and the Baltic Problem (London: Latvian Information Bureau, 1952), p. 65. See also Schnorf, "The

Prime Minister Churchill, though, did give Anthony Eden pre-Moscow advice on the Baltic. It turned out, though, to be an oxymoron: "We reaffirm the principles of the Atlantic Charter, noting that Russia's accession thereto is based upon the frontiers of June 22, 1941. We also take note of the historic frontiers of Russia before the two [world] wars . . ."³⁷

When Hull returned from Moscow on 15 November, he declared that the Baltic and Balkan states deserve the right of self-determination. Each state, regardless of size, was sovereign and equal, according to Hull. Despite such high-minded -- and vague -- pronouncements, true State Department opinions regarding Moscow were pessimistic. When encountering this, Jan Ciechanowski, Polish ambassador to the US, surmised "that, as far as could then be ascertained, America and Britain had had to sacrifice the three Baltic countries and half of Poland to Russia for the sake of understanding with the Soviets."³⁸

A number of observers in official circles were not surprised by the outcome of the Moscow conference, and the direction that East-West relations appeared to be taking.

Baltic States in U.S.-Soviet Relations . . . 1943-1946," p. 59.

³⁷ Churchill, Closing the Ring (Boston: Houghton Mifflin, 1952), p. 283.

³⁸ Ciechanowski, p. 228. See also Grigas Valancius, Lietuva ir Karaliauciaus krastas (Lithuania and Konigsberg) (Kirchheim-Teck, West Germany: Author, 1946), p. 7.

Indeed, Admiral William Leahy expressed his pessimism shortly before the conference:

America's position at this conference might be very difficult because of our reputation for reliability and our previous announcement that the sovereignty of small nations should be reestablished after the war's end. It was inconceivable to me that Stalin would submit to the reestablishment of effective sovereignty in Poland, Latvia, Lithuania, and Estonia.³⁹

It is not certain whether Hull ever discussed the Baltic with Stalin at Moscow. What is certain is that the Baltic States did not emerge in a more favorable position -- a pattern which was repeating itself.⁴⁰

Direct discussion of the Baltic States was not on the agenda of the December 1943 Teheran conference, which was the first time that Roosevelt, Churchill, and Stalin met together. Yet, the issue did arise and Roosevelt immediately sought to appease Stalin. Roosevelt noted the historical place of the Baltic States as a part of Russia, and "jokingly" added that he did not intend to go to war over the territory. He was worried, however, about public opinion in the US vis-a-vis self-determination and referenda, specifically mentioning Baltic-American voters. He urged Stalin to carry out a plebiscite in the Baltic, for he was certain that Lithuanians, Latvians, and Estonians

³⁹ William D. Leahy, I Was There (New York: Whittlesey House, 1950), p. 185.

⁴⁰ Schnorf, "The Baltic States in U.S.-Soviet Relations . . . 1943-1946," pp. 62-63.

would vote to join the Soviet Union.

Stalin replied that there had not been any outcry of world opinion when the Czar did not grant autonomy to the Baltic States at the turn of the century. Further, the Baltic people had voted to join the Soviet Union in 1940. He also astonishingly suggested that the Western powers carry out a propaganda campaign in their countries to sway people to accept Soviet power in the Baltic. With that, Stalin closed the door on further discussion of the matter, and Roosevelt left it at that.⁴¹

Schnorf takes Roosevelt to task for this conversation. He cannot reconcile what the president said with the Atlantic Charter and the Declaration of the United Nations, though he admits that Roosevelt may have attempted false flattery to keep the Baltic issue alive.⁴² Schnorf also finds a problem with Roosevelt's assertion that the Baltic States have traditionally been a part of Russia, noting that those territories have lived apart from Russia

⁴¹ Robert E. Sherwood, Roosevelt and Hopkins (New York: Harper & Brothers, 1950), p. 796; US Department of State, Digest of International Law, ed. Marjorie M. Whiteman (Washington: US Government Printing Office, 1964), III, pp. 219-222; US Department of State, Foreign Relations of the United States: Diplomatic Papers, The Conferences at Cairo and Teheran, 1943 (Washington: US Government Printing Office, 1961), pp. 594-595; Vizulis, p. 55.

⁴² Vizulis, p. 56, writes that Roosevelt's proposal for a second plebiscite was based on genuine disinformation regarding the circumstances surrounding the 1940 plebiscites. Others contend that the president utilized it as a diplomatic tactic.

longer than within it.⁴³ He summarizes the proceedings as follows:

The conversation dulled to a great extent the keen moral edge of the United States policy of July 23, 1940. Although the United States did not renounce that policy, it made no serious attempt to deter the Soviet Union from repeating its rape of the Baltic States. The diplomats from the Baltic countries had been powerless when the massive influence of the Soviet Union came to bear on the United States. Seized with fear of a separate Russo-German peace, the American Government no longer could afford the luxury of condemning devious processes. . . . [T]he Teheran Conference marked the low point in relations between the United States and the Baltic States as represented by its diplomats. The slim thread of non-recognition of the Soviet annexation was not broken, but it was tightly stretched.⁴⁴

Other commentators criticize President Roosevelt's actions at Teheran, noting that he explicitly stated that Stalin's position in the Baltic would not be challenged. The Soviets had made the Baltic a test case -- a test which the US failed.⁴⁵

⁴³ Schnorf, "The Baltic States in U.S.-Soviet Relations . . . 1943-1946," pp. 64-65.

⁴⁴ Schnorf, "The Baltic States in U.S.-Soviet Relations . . . 1943-1946," p. 66. By using the phrase "devious processes," Schnorf is making a reference to words used in the Welles Declaration.

⁴⁵ Padvaiskas, p. 27; Vizulis, pp. 55-56. In a letter to a friend dated 2 September 1944, James V. Forrestal angrily wrote:

I find that whenever any American suggests that we act in accordance with the needs of our own security, he is called a god-damned fascist and imperialist, while if Uncle Joe [Stalin] suggests that he needs the Baltic Provinces, half of Poland, all of Bessarabia, and access to the Mediterranean, all hands agree that he is a fine, frank, candid and generally delightful fellow who

World War II did not stop for conferences. It ground on and the fortunes of the Allies gradually improved. Stalingrad, where the Germans were dealt a crushing defeat, was the beginning of the end of the Third Reich. The Red Army began sweeping the Nazi armies back westward across the continent. In the West, plans were successfully implemented for the invasion of Europe on D-Day, 6 June 1944, opening a second major front. Coincidentally, the Germans retreated from Lithuania that same month. As the war's end came within sight, political and territorial settlements could no longer be ignored. The Allies would grapple with these matters at the final major wartime conference -- Yalta.⁴⁶

The US and Britain entered the Yalta conference with no illusions as to the fate of the Baltic States, in

is very easy to deal with because he is so explicit in what he wants.

Quoted in Walter Millis, ed., The Forrestal Diaries (New York: Viking, 1951), p. 14.

⁴⁶ Vizulis, p. 54. Sumner Welles, p. 333, though no longer in government, grappled with those issues at the same time, revealing the ascendancy of pragmatism over idealism:

To remove all grounds for justifiable criticism and to make doubly sure that the frontiers of the future Russia will incorporate willing, rather than unwilling, Soviet citizens, the Soviet government would be well-advised to permit open plebiscites to be taken in every instance where there is a dispute as to the will of the majority, and to permit all individuals who do not wish to become Soviet citizens to depart freely with their possessions, and with due compensation for the real property they are obliged to abandon.

Vitas' emphasis. This from the man who but two years earlier had emphatically rejected similar proposals as "not only indefensible from every moral standpoint, but likewise extraordinarily stupid." See this chapter, note 32.

particular, and Eastern Europe, in general. With the Red Army controlling half of the continent, there was little that the Western powers could do to restrain Stalin.⁴⁷ Indeed during the planning for Yalta, John Hickerson, deputy director of European affairs at the State Department, wrote a secret memorandum to the secretary of state on 8 January 1945 pointing this out and suggesting a solution:

We know that the three Baltic States have been re-incorporated into the Soviet Union and that nothing which we can do can alter this. It is not a question of whether we like it . . . The point is that it has been done and nothing which is within the power of the United States Government to do can undo it. . . .

I would favor using any bargaining power that exists in connection with the foregoing matters to induce the Russians to go along with a satisfactory United Nations organization. . . . I would favor . . . our recognition of these areas as Soviet territory.⁴⁸

Thus some US officials were ready to concede everything to Stalin, even the nonrecognition policy, which had been an expression of American morality applied to the international arena.

Yalta was also the place where the Soviets pressed for the admission of Soviet Lithuania, Byelorussia, and the Ukraine to the new United Nations. The Soviet law of 1

⁴⁷ Richard F. Fenno, Jr., ed., The Yalta Conference (Boston: D.C. Heath, 1955), p. 91.

⁴⁸ US Department of State, Foreign Relations of the United States: Diplomatic Papers, The Conferences at Malta and Yalta, 1945 (Washington: US Government Printing Office, 1955), pp. 94-95. Vitas' emphasis. Hickerson also noted the necessity of carrying out a program to prepare public opinion for recognition.

February 1944 gave each Union Republic the right to establish direct relations with foreign countries, conclude agreements, and exchange representatives. They were also authorized to establish their own ministries of foreign affairs. Such decisions belong to the Supreme Soviet of each Union Republic. However, concurrently, the USSR ministry of foreign affairs was transferred from the All-Union category of ministry to the Union-Republic class. Whereas the former means that it possesses no counterpart in the country, the latter class creates corresponding ministries with direction and control emanating from Moscow. Indeed while the war was still in progress, Lithuania, Byelorussia, and the Ukraine concluded exchange of population and repatriation agreements with the government reconstituted in Poland, the Lublin Committee. Despite the initial Soviet dream of having all Union Republics represented in the UN, ultimately only Byelorussia and the Ukraine were admitted.⁴⁹

Though Churchill was more of a realist, Roosevelt and Secretary of State Edward Stettinius were of the opinion that friendly contacts led to successful diplomacy. Yet, Churchill achieved the same result in the Baltic, mainly

⁴⁹ Fenno, p. 12; Kazimierz Grzybowski, Soviet Public International Law: Doctrines and Diplomatic Practice (Leyden, The Netherlands: A.W. Sijthoff, 1970), pp. 90-92.

because he saw no other alternative; it was too late.⁵⁰ Roosevelt possessed a vision of a postwar world controlled by benevolent powers. He brushed off warnings of Stalin's dubious intentions:

I just have a hunch that Stalin isn't that kind of man. Harry [Hopkins] tells me he's not and that he doesn't want anything but security for his country. I think that if I give him everything I possibly can and ask for nothing in return, he won't try to annex anything and will work with me for a world of peace and democracy.⁵¹

Four years prior to Yalta, Roosevelt condemned Stalin for the incorporation of Lithuania, Latvia, and Estonia. Now he saw only a benign Stalin, not merely as a diplomatic tactic, but seemingly privately, as well.

The Yalta communique of 11 February 1945 professed adherence to the idealistic principles of the Atlantic Charter, but also confirmed the division of Europe into military zones.⁵² By war's end, Roosevelt had abandoned principles of equality and sovereignty in favor of a sometimes arrogant view of smaller nations, whose sovereignties he easily traded. He would not bargain with them, but was prepared to dictate their place in the new

⁵⁰ Fenno, pp. 41-49; Schnorf, "The Baltic States in U.S.-Soviet Relations . . . 1943-1946," p. 70; Sumner Welles, Seven Decisions That Shaped History (New York: Harper & Brothers, 1951).

⁵¹ Quoted in Fenno, p. 41.

⁵² Budreckis, p. 379; Fenno, p. 52; The USSR: Institutions and People, pp. 110-111.

world order.⁵³ This was not just to placate Stalin, but simply because he no longer cared about Lithuania and other secondary powers. As such, the "Yalta decisions necessarily broke the back of opposition to Communist rule, not only in Poland, but in every country that had been or was about to be overrun by Russian armies."⁵⁴

Other observers felt that the West was not completely impotent at Yalta, and that it could have exerted its influence to change the situation in eastern Europe. Patrick J. Hurley, US ambassador to China during the conference, later testified:

America was in a position at Yalta to speak the only language the Communists understand, the language of power. . . . One quiet sentence to Marshal Stalin in that language could have indicated that America would require him to keep his solemn agreements. . . . The sentence was not forthcoming. . . . [At] the time of Yalta the

⁵³ Fenno, p. 40. See also Polish American Congress, A Memorandum to the Senate of the United States on the Crimea Decisions Concerning Poland (np: PAC, 1945).

In February 1945, a delegation of the Lithuanian American Council visited the chairman of the Senate Foreign Relations Committee, Senator Thomas Connally, who announced:

You, the representatives of small nations, are wasting your own time and the time of others, as if not knowing that the small nations began the World War. We must see to it that such events do not repeat themselves in the future.

Simutis, pp. 80-81.

⁵⁴ Fenno, p. 44. Fenno, p. 48, writes of an unidentified senior US official who commented on Roosevelt's health:

The Presidnet looked physically tired at Casablanca; but his mind worked well. At Teheran there were signs of loss of memory. At Yalta he could neither think consecutively nor express himself coherently.

United States had unquestionable power to make Russia respect her . . . agreements, but instead we surrendered them in secret. Russia did not have to break her agreements or commitments.⁵⁵

F. THE WAR ENDS

According to one scholar, Lithuanians "had the firm belief that Nazi Germany would first crush the Soviet Union and then, in turn, be defeated by the Anglo-American alliance, which would restore Europe on an ante bellum status."⁵⁶ However, that was not to be, and the victorious powers met at Potsdam in July-August 1945. The Potsdam declaration of 3 August did not mention the Baltic States. However, certain inferences existed in Section VI, "City of Koenigsberg and the Adjacent Area," which grew out of Stalin's claim to the city. He said that this had been agreed to at Teheran by President Roosevelt and Prime

⁵⁵ US Senate, Committees on Armed Services and Foreign Relations, Hearings on the Military Situation in the Far East (Washington: US Government Printing Office, 1951), quoted in Fenno, p. 57.

Following Yalta, the State Department issued the following statement on 4 March 1945:

. . . as far as the United States are concerned, the status of the Baltic States has not altered in any way, not even after the Yalta conference. . . the Baltic States -- Lithuania, Latvia, and Estonia -- were still acknowledged by the State Department.

Budreckis, p. 393; Bruno Chevrier, "The International Status of the Baltic States," Baltic Review, 1, 6 (November 1946), p. 271. Vitas' emphasis. The emphasized portion implies the State Department's grave interpretation of Yalta vis-a-vis the Baltic States.

⁵⁶ Budreckis, p. 379.

Minister Churchill. President Harry Truman did not oppose Stalin's claim, but Churchill contended that the provision would imply recognition. He recommended that the question be deferred until a final peace settlement; Stalin assented to this.⁵⁷ As a result, Section VI of the Declaration wrote that the US and Britain will support at the "forthcoming peace settlement" the Soviet proposal to transfer that area to the USSR. It appears to indicate that ultimately the Western powers intended to agree to the Baltic incorporation, for it is difficult to discern how a transfer of the adjacent area of East Prussia could be accomplished without including Lithuania.⁵⁸

The Paris Peace Conference convened on 29 July 1946. Prior to this, the Soviets had attempted to place the foreign ministers of the Baltic SSRs in the Soviet delegation. This was met with protests by the Baltic diplomats in the US. Lithuanian Minister Povilas Zadeikis

⁵⁷ Harry S. Truman, Memoirs I (Garden City, NY: Doubleday, 1955), p. 378.

⁵⁸ Robert Langer, Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice (Princeton, NJ: Princeton University Press, 1947), pp. 283-284; Lithuanian Legation, Some Aspects of the Soviet Russian Rule in Occupied Lithuania June 15, 1940 - June 15, 1950: Ten Years of Lithuania's Sufferings Under Foreign Tyranny (Washington: Lithuanian Legation, 1950), pp. 24-25; William Tung, International Law in an Organizing World (New York: Crowell, 1968), pp. 283-284; US Department of State, Foreign Relations of the United States: Diplomatic Papers, The Conference of Berlin (The Potsdam Conference), 1945 (Washington: US Government Printing Office, 1960), I, II.

wrote to Acting Secretary of State Dean Acheson:

It actually means that the Soviet Government still persists in selling to the Western Democratic Powers the false idea that the Lithuanian nation voluntarily discarded their hard-won independence . . . [It] means that the Soviet dictatorship is in fact a foe of democracy, of the Four Freedoms, of the Atlantic Charter, and of the principle of self-determination. . . . The bringing of [Lithuanian SSR Foreign Minister P.F.] Rotomskis to Paris appears to be the latest trick of the Soviet diplomatic game. . . . I consider it my duty to register my protest against any attempts by Mr. Rotomskis to represent the Lithuanian people and against any move to consider him as a legal representative of the Lithuanian Republic.⁵⁹

It was hoped by some that the US atomic monopoly would force the Baltic States onto the conference's agenda. This was not to be. Indeed the Paris conference reinforced the divided Europe created during the wartime consultations, for it never led to any formal peace treaty.⁶⁰

⁵⁹ Povilas Zadeikis, letter to Acting Secretary of State Dean Acheson, no. 1237, 29 July 1946, pp. 1-2. See also Martin Brakas, "Lithuania's International Status: Some Legal Aspects 2," Baltic Review, 38 (August 1971), 11.

⁶⁰ Budreckis, p. 395; James F. Byrnes, Speaking Frankly (New York: Harper & Brothers, 1947), p. 114; Schnorf, "The Baltic States in U.S.-Soviet Relations: From Truman to Johnson," pp. 43-44; "The Soviet Baltic Quislings in Paris," Baltic Review, 1, 6 (November 1946), pp. 319-320.

See also Lietuvos TSR Auksciausiosios Tarybos Prezidiumo organizacinis-informacinis skyrius (Lithuanian SSR Supreme Soviet - Organization-Information Section), Lietuvos TSR administracinis-teritorinis suskirstymas 1959 m. vasario 1 dienai (Lithuanian SSR Administrative-Territorial Divisions as of 1 February 1959) (Vilnius: State Political and Scientific Press, 1959); Aleksandras Stromas, Politine samone Lietuvoje (Political Consciousness in Lithuania) (London: Nida, 1980); US Office of Military Government for Germany, Legal Division, Gesetzliche Vorschriften der Amerikanischen Militarregierung in Deutschland (Statutory Instructions of the American Military Government in Germany), Issue A, 1 June 1946 -- Issue H, 16

Vizulis writes:

Were the Baltic countries the price the Western Allies had to pay the Soviet Union to win the war with Nazi Germany? . . . The triumph of victory, as Winston Churchill has said, soon turned into the tragedy of the cold war, the cause of Berlin, Korea, and Vietnam. Nor was the cause of international justice served by the subjugation of the Baltic countries by Soviet tyranny. . . . The tragedy now finished, all that was left was for the actors to leave the darkened stage.^{e1}

Schnorf adds that there was less notoriety surrounding the Baltic absorption of 1944-1945 than the first one in 1940. At the end of the war, "there was no longer a real Baltic issue in the United States."^{e2}

Many to this day criticize the West's diplomatic behavior during and after World War II. Sabaliunas points out that:

. . . the Baltic mentality has never fully understood the Anglo-Saxon conception of diplomacy, which Harold Nicolson has labeled as "mercantile." It rejects the notion that diplomacy is war by other means and, instead, stresses the need for a frank discussion, mutual concessions, conciliation, appeasement, credit, reasonableness. In general, the purpose of such a diplomacy is a peace of accomodation, not victory, and it is certainly more conducive to international stability than a theory which sees

January 1948. Printed by Publishing Operations Branch, Information Control Division, Office of Military Government for Bavaria.

^{e1} Vizulis, p. 57.

^{e2} Schnorf, "The Baltic States in U.S.-Soviet Relations . . . 1943-1946," p. 74.

negotiation as a military campaign.⁶³

Others assert, however, that Stalin took advantage of western war-weariness⁶⁴ and utilized an approach to diplomacy far removed from the Anglo-Saxon model:

Stalin was a survivor of the Bolshevik underground and tsarist prisons, the formidable victor in the power struggle and purge, the killer of Trotsky, Bukharin, and literally millions of others. Above all he understood power, how to seize, retain, and wield it. This was a different school than Groton or Harvard, and his political experience involved something more than defeating Republican ward bosses or presidential contenders.⁶⁵

In the final analysis, the West could have pushed Stalin to make concessions at the height of the war when the USSR was at its weakest. A separate Soviet agreement with Hitler was a remote possibility. Hitler would never have retreated from captured territory, and by such an arrangement, Stalin would have had much to lose and little to gain.

Yet, once Stalin possessed the ability to do so, he would have abrogated any agreement unfavorable to him. The presence of the Red Army in eastern Europe would have easily enabled him to do so. Be that as it may, such an abrupt

⁶³ Leonas Sabaliunas, "Baltic Perspectives: The Disillusionment With the West and the Choices Ahead," Lituanus, 14, 2 (Summer 1968), p. 11. See also Harold Nicolson, Diplomacy, 2nd ed. (London: Oxford University Press, 1960), pp. 51-54.

⁶⁴ "Kremlin Tactics in Converting the Baltic States Into Satellites," Baltic Review, 7 (16 June 1956), 13.

⁶⁵ Padvaiskas, p. 9.

Kremlin policy switch as the war progressed would have possessed two positive results. First:

from the standpoint of international law and world opinion, the Soviets would have had to face the consequences of violating their own international pledges and commitments. The Baltic countries could have strengthened their international position by virtue of this legal commitment on the part of the Soviet Union to restore their independence.⁶⁶

Second:

If the Soviet Union had demurred [in its international obligations], its refusal would have provided the United States with an early indication of Soviet intentions; and American self-interest, as well as international morality, could then better have influenced American conduct at ensuing conferences with the Soviets.⁶⁷

Thus had the West remained firm in its commitment to Lithuania and the other Baltic States, Stalin's actions ultimately would have strengthened their status, as well as served to warn the US and Britain. That, of course, was never to be. The Truman Doctrine, the Cold War, and the policy of containment emerged not as a result of wartime planning -- but more as an unavoidable afterthought.

The policy of nonrecognition had survived the Second World War, though some US officials had been willing to discard it. But its ultimate objects of concern, the Baltic States, were now firmly entrenched well beyond the Iron Curtain. Prospects for restored independence as a result of

⁶⁶ Vizulis, p. 59.

⁶⁷ Schnorf, "The Baltic States in U.S.-Soviet Relations: From Truman to Johnson," p. 59.

the war did not come to pass. What emerged was a hollow, symbolic independence hanging from the thin political thread of nonrecognition.

CHAPTER VII

EXTENDED IMPLEMENTATION OF NONRECOGNITION

A. EXECUTIVE ACTION

As noted in the previous chapter, the nonrecognition policy did indeed survive the trying times of World War II. On various occasions, the US government has reaffirmed the policy by way of public statements made by presidents and secretaries of state,¹ official certifications,² and

¹ Janis Skrundens, Latvia 1918-1968 (New York: American Latvian Association, 1968), p. 75; US Department of State, "For the Press No. 90: Statement by Secretary of State John Foster Dulles for Lithuanian and Estonian National Days," 16 February 1953; US Department of State, "For the Press No. 67: Statement by Acting Secretary of State Walter Bedell Smith on the 36th Anniversary of the Declaration of Lithuanian Independence," 15 February 1954. See also Algirdas M. Budreckis, ed., The Lithuanians in America 1651-1975: A Chronology & Fact Book (Dobbs Ferry, NY: Oceana, 1976), pp. 140-142.

In one of Dulles' public statements, he wrote:
The United States was quick to denounce this aggression, and refused to recognize the forced incorporation of the Baltic States into the U.S.S.R.

Quoted in Policy of the United States of America Towards Estonia (New York: Consulate General of Estonia, nd), p. 11. Since it took about six weeks for the US government to formally condemn the occupation, it is questionable whether "quick" is an appropriate word.

formal policy statements, the latest of which is reproduced in Appendix A.² Baltic affairs are monitored in the US State Department not by the Soviet desk, but by a separate Baltic desk. This is the official governmental watchdog over the nonrecognition policy.

In addition, the Baltic charges d'affaires receive national day greetings from the secretary of state to coincide with their respective countries' independence days. This is the custom followed toward all accredited ministers in Washington. An example of such a greeting is the 8 February 1968 letter of Secretary of State Dean Rusk to Joseph Kajeckas, the Lithuanian charge:

On the occasion of the fiftieth anniversary of Lithuania's independence, I am very pleased to extend to you best wishes on behalf of the Government and people of the United States.

Throughout its long and proud history, the Lithuanian nation has endured with fortitude many periods of trial and alien rule. Unhappily, in our own time, Lithuania's re-establishment as an independent state was followed only twenty-two years later by its forcible incorporation into the Soviet Union. The Lithuanian people have responded to this situation through the years with unyielding courage and unfaltering hope for

² Leonardas Simutis, Amerikos Lietuviu Taryba: 30 metu Lietuvos laisves kovoje 1940-1970 (Lithuanian American Council: 30 Year Struggle for the Liberation of Lithuania 1940-1970) (Chicago: LAC, 1971), p. 169; US Department of State, Status of the World's Nations, Geographical Bulletin No. 2 (Washington: US Government Printing Office, 1965), pp. 1, 9; US Department of State, Treaties in Force, January 1, 1966 (Washington: US Government Printing Office, 1966).

³ US Department of State, "US Policy: The Baltic Republics," Gist, August 1984; Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law, 4th ed. (New York: Macmillan, 1981), p. 110.

freedom and national independence. The firm purpose with which the Lithuanians both at home and abroad have struggled to preserve their national heritage is the best assurance of their survival as a nation.

Americans look with understanding and sympathy upon the just aspiration of the Lithuanian people to determine freely their own destiny. The United States Government, by its continued non-recognition of the forcible incorporation of Lithuania, affirms its belief in Lithuania's right of self-determination.⁴

It is interesting to note that, though each successive administration since Roosevelt has explicitly supported the nonrecognition policy, its particular interpretation has been different depending upon who sits in the Oval Office. This is reflected in the national day greetings. Secretary of State Cyrus Vance's letter to Lithuanian Charge Dr. Stasys Backis of 9 February 1978 reveals a human rights oriented pre-Afghanistan Carter approach. The letter talks of courage, perseverance, national consciousness, and the maintenance of traditions. Secretary George Shultz's letter of 15 February 1983 condemns outright the Soviet actions of 1940, a focus more in line with the foreign policy of Ronald Reagan.⁵

⁴ Reproduced in Lithuanian Council of Chicago, Lietuvos nepriklausomybes atkurimo ir 717 metu karalystes isteigimo minejimas (Commemoration of Lithuania's Independence and the 717th Anniversary of the Establishment of the Lithuanian Kingdom) (Chicago: LCC, 1968), p. 14. For similar greetings, see Policy of the United States of America Toward Estonia, p. 12; Simutis, pp. 164-165.

⁵ US Department of State, letter of Secretary of State Cyrus Vance to Lithuanian Charge d'Affaires Dr. Stasys Backis, 9 February 1978; US Department of State, letter of Secretary of State George P. Shultz to Lithuanian Charge

In both 1972 and 1982, Lithuanians in the United States addressed the US government on the subject of official maps and Lithuania's place in them. These encounters resulted in a more favorable depiction of Lithuania and the other Baltic States. Rep. Charles Dougherty (R-PA) successfully included the following provision in the Defense Department's authorization for 1983:

None of the funds appropriated pursuant to an authorization of appropriations in this Act may be used to prepare, produce or purchase any map showing the [USSR] that does not --

(1) show the geographic boundaries of Estonia, Latvia, and Lithuania and designate those areas by those names;

(2) include the designation "Soviet Occupied" in parenthesis under each of those names; and

(3) include in close proximity to the area of the Baltic countries the following statement: "The United States Government does not recognize the incorporation of Estonia, Latvia, and Lithuania into the Soviet Union".⁶

The nonrecognition note is now placed near Latvia between Leningrad and Moscow; before it had been in the Indian Ocean. Concurrently, the State Department began listing the Baltic States within the East European section. They had been omitted before.⁷

d'Affaires Dr. Stasys Backis, 15 February 1983.

⁶ Public Law 97-252, Department of Defense Authorization Act, 1983, 8 September 1982, section 1134.

⁷ Budreckis, pp. 63-64; Vytautas Kutkus, JAV Lietuviu Bendruomenes krasto valdybos veikla nuo 1979 m. gruodzio men. 15 d. iki 1982 m. spalio men. 23 d. (The Activity of

The first Lithuanian broadcast over the Voice of America was made on 16 February 1951. The Washington bureau began with twelve broadcasts daily, and the Munich bureau with three. At the request of Sen. Charles Percy (R-IL), chairman of the Senate foreign relations committee, an announcement was made on 2 October 1984 which altered the European service. The US Board for International Broadcasting unanimously voted to transfer the Baltic Language Services Division from Radio Liberty, which broadcasts to the Soviet Union, to Radio Free Europe, which transmits to east Europe. The changes in the flowchart and on-air identification were designed to better conform with US policy.^a

B. CONGRESSIONAL ACTION

Of course, it has not only been the executive branch that has taken steps to reaffirm the nonrecognition policy. Indeed in the days following the Soviet invasion of Lithuania, which coincided with German adventurism in the West, the Congress passed a joint resolution geared to withholding recognition of forcible territorial transfers in

the Lithuanian-American Community of the USA from 15 December 1979 to 23 October 1982) (np: LACUSA, 1982), p. 12.

^a Algirdas Budreckis, "Liberation Attempts From Abroad," in Lithuania 700 Years, 2nd rev. ed., ed. Albertas Gerutis (New York: Manyland, 1969), pp. 402-403; US Senate, Committee on Foreign Relations, "Baltic Radio Service to be Transferred to Radio Free Europe at Percy Request," media notice, 2 October 1984, p. 1.

the western hemisphere.⁹

Legislators most often speak of Lithuania on or about 16 February of each year, which is Lithuanian independence day. Statements and, more frequently, extensions of remarks submitted in writing following a session abound in the Congressional Record in February.¹⁰ Obviously, these actions serve to placate constituencies and possess little, if any, practical effect. One commentator is especially severe in her judgement of these rhetorical exercises:

It is very doubtful that any Lithuanians have ever noticed this practice [of repeating speeches]. On the contrary, they are lovingly grateful for these "forensic" crumbs which fall from the tables of the busy legislators. And the Lithuanian-Americans of Racine and Linden and East St. Louis are voters, too, so the arrangement, though time-

⁹ US Congress, House Joint Resolution 556, Senate Joint Resolution 271, 76th Congress, 3rd session. See Robert Langer, Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice (Princeton, NJ: Princeton University Press, 1947), p. 82.

¹⁰ On occasion, Lithuanian organizations have culled the Congressional Record for February statements and published them separately, greatly enhancing the public relations of the respective speakers. See Freedom for Lithuania: Lithuania's Independence Day in the Congress of the United States. Excerpts from Proceedings of the United States Senate and House of Representatives, February-June 1955 (np: np, 1955); Lithuania's Independence Day in Congress of the United States. Excerpts from Proceedings of the Senate of the United States and House of Representatives, February-May 1953 (np: np, 1953); Juozas Prunskis, ed., Lithuania Must Be Free: Congressional Voices for Lithuania's Independence (Chicago: Lithuanian American Council, 1981).

consuming, is not without mutual advantage.¹¹

Congress has taken other actions on behalf of the Baltic states. At various times, it has passed resolutions commending executive nonrecognition of the incorporation,¹² and has called for the withdrawal of Soviet civilian and military personnel.¹³

In 1961, Leonardas Valiukas, a California Lithuanian, started the Americans for Congressional Action to Free the Baltic States, which sought passage of a resolution asking the president to raise the Baltic question in the United Nations. Ad hoc committees were established in Baltic communities in the US to raise funds and lobby legislators to this effect. By the first session of the 89th Congress, there were seventy-three House and Senate

¹¹ Norma Krause Herzfeld, "The persistent Lithuanians: A government without a country," The Catholic Reporter, 9 June 1961, section 2, p. 1.

¹² In order to clarify US policy regarding recognition, the US Senate on 25 September 1969 passed Senate Resolution 205, which states, in part:

Resolved, That it is the sense of the Senate that when the United States recognizes a foreign government and exchanges diplomatic representatives with it, this does not of itself imply that the United States approves of the form, ideology, or policy of that foreign government.

The State Department completely concurred in the resolution. See Thomas M. Franck and Michael J. Glennon, Foreign Relations and National Security Law: Cases, Materials and Simulations (St. Paul, MN: West, 1987), pp. 462-463.

¹³ US Senate Resolution, 29 April 1954, quoted in Policy of the United States of America Toward Estonia, pp. 9-10; US House of Representatives, House Concurrent Resolution 57, 4 February 1981, pp. 2-3.

resolutions with this purpose in mind. Finally, House Concurrent Resolution 416 passed the House on 23 June 1966. Senator Mike Mansfield asked the Senate to unanimously approve the resolution on 22 October of that year. The senate consented and called on the president:

- (a) to direct the attention of world opinion at the United Nations and at other appropriate international forums and by such means as he deems appropriate, to the denial of the rights of self-determination for the peoples of Estonia, Latvia, and Lithuania, and
- (b) to bring the force of world opinion to bear on behalf of the restoration of these rights to the Baltic peoples.¹⁴

This, however, was merely a Sense of the Congress resolution without the force of law. The State Department vaguely responded that the US ambassador to the UN would implement the resolution "at an appropriate time."¹⁵

Congress took more direct action at the October 1970 Interparliamentary Conference at the Hague. One of the US delegates was Rep. Edward Derwinski (R-IL). A delegate from the Soviet Union was Justas Paleckis, head of the Lithuanian governmental apparatus since the occupation. When Derwinski pointed out the circumstances surrounding the Baltic incorporation, Paleckis replied:

Mr. Derwinski's thinking had been too much influenced by the military criminals of the Baltic

¹⁴ US Congress, House Concurrent Resolution 416, 22 October 1966. See Budreckis, The Lithuanians in America, pp. 135-136.

¹⁵ Budreckis, "Liberation Attempts From Abroad," pp. 420-421.

countries who, together with Hitler's troops, had left their countries. The people there were a thousand times freer than they had ever been under the regimes of fascist dictatorship so strongly defended by Derwinski, who was sick with anti-communism.¹⁶

By the early 1980s, there was even an Ad Hoc Congressional Committee on the Baltic States and Ukraine in the House, consisting of about forty members. The first co-chairmen were Rep. Charles Dougherty (R-PA) and Rep. Brian J. Donnelly (D-MA). In addition to sponsoring human rights related resolutions, the committee regularly called in Baltic and Ukrainian representatives for formal consultations.¹⁷ However, by far the most important Baltic congressional committee, both in terms of publicity and substance, was the Kersten Committee of 1953-1954.

In late 1952 and early 1953, an idea began brewing within the Lithuanian American Council that a formal committee with investigative capabilities -- and public relations potential -- be formed to examine the incorporation of Lithuania into the Soviet Union. The group advocating this route was encouraged by the congressional investigation of the Soviet Katyn Forest massacre of Polish officers, and by President-elect Dwight Eisenhower's remarks on the liberation of east Europe. The Council, following internal debates as to how to proceed, began lobbying the

¹⁶ Rep. Edward J. Derwinski, "Derwinski-Paletskis [sic] Debate Again," news release, 16 October 1970, p. 1.

¹⁷ Kutkus, pp. 14-15.

White House, Congress, the State Department, and the media seeking support and sponsors.^{1a}

Rep. Charles J. Kersten, a Republican from Milwaukee, had previously expressed his support for the liberation movement in east Europe. He had authored an amendment to the Mutual Security Act providing \$100 million for resistance fighters behind the Iron Curtain. When Mary Kizis, director of the Lithuanian Information Center, a subsidiary of the Lithuanian American Council, asked if Kersten would take the lead in the establishment of a special committee, he immediately agreed.

On 26 March 1953, a Council delegation met with President Eisenhower. The matter of the special committee was raised during the proceedings. When the president asked if such a committee had operated before, Kersten replied no. When the president inquired about a sponsor for the legislation, Kersten announced that he would take the lead. He subsequently drafted a resolution and dispatched it to the State Department for its comments. By mid-April 1953, the undersecretary had approved the resolution and pledged his department's cooperation.

Rep. Kersten introduced House Resolution 231 on 7 May 1953, but it was soon bogged down in the Rules

^{1a} Unless otherwise indicated, the passage on the Kersten Committee is taken from Kersteno rezoliucija ir pastangos ja pravesti JAV Kongrese (The Kersten Resolution and Efforts for its Passage in the US Congress) (np: Lithuanian American Council, c. 1953), pp. 1-10.

Committee, whose chairman, Rep. Leo E. Allen (R-IL), appeared uncertain as to its utility. Following further lobbying by Lithuanian-American groups, Speaker Joseph Martin agreed to find the right moment to move the resolution out of committee. By July, however, no progress had been achieved and the session was drawing to a close. More lobbying was unleashed upon Capitol Hill. At a White House ceremony on 11 July marking the one year anniversary of Eisenhower's nomination to the presidency, Rep. Allen approached Kersten, informed him of consultations with Speaker Martin, and promised to place the resolution on the committee's agenda.

Yet, when Rules Committee member Rep. Hugh Scott of Pennsylvania moved to consider the legislation, Allen appeared to change his position, reasoning that this was a matter for the United Nations to consider. He also noted that it was already thirteen years since the events of 1940, and questioned the need for an investigation following such a lapse of time. Majority Leader Rep. Charles A. Halleck (R-IN) added that the legislation should first go to the Foreign Affairs Committee. By the morning of 20 July, telegrams began pouring into the offices of key congressmen from Lithuanian-Americans urging swift action on the resolution. Rep. Allen was also contacted by the Republican National Committee to end the delay. Finally, after a conference of Martin, Halleck, and Kersten, it was agreed to

place the resolution on the agenda immediately.

Due to revisions which had been made in the interim, the legislation was now known as House Resolution 346. It was considered in the Rules Committee on 23 July, which later unanimously recommended it to the full House. Consideration in the House had to come quickly, for money would still have to come from the Appropriations Committee in time to avoid delaying the hearings until the start of the next session. It was placed on the House's agenda for 27 July. At 6:30 am, after considering the Korean armistice, Hugh Scott was finally able to sponsor the motion. Halleck seconded it, and Kersten spoke on its behalf. After one half hour of statements from thirteen other congressmen, HR 346 was unanimously approved. It read, in part,

Whereas the Government of the United States . . . maintains diplomatic relations with the Governments of . . . Lithuania, Latvia, and Estonia and consistently has refused to recognize their seizure and forced "incorporation" into the [USSR]: Now, therefore, be it

Resolved, That there is hereby created a select committee to be composed of seven Members of the House . . . to be appointed by the Speaker, one of whom he shall designate as chairman. . . .¹⁹

The committee is authorized and directed to conduct a full and complete investigation and study of said seizure and forced "incorporation" of Lithuania, Latvia, and Estonia by the [USSR] and the treatment of the said Baltic peoples during and following said seizure and

¹⁹ C.J. Kersten (R-WI), chairman, A.M. Bentley (R-MI), E.J. Bonin (R-PA), F.E. Busbey (R-IL), T.J. Dodd (D-CT), T.M. Machrowicz (D-MI), R.J. Madden (D-IN).

"incorporation". . . .²⁰

\$30,000 was appropriated to the special committee over a two year period. 335 witnesses testified before the committee, which also collected over two hundred documents, lists, and signed items of testimony.²¹ The committee ultimately produced two major reports on the Baltic summer of 1940.²² The Kersten Committee hearings gave an opportunity to fully present, for the first time, the ultimate reason for the existence of the US nonrecognition policy, namely an objective account of the events in question directed and compiled by non-Baltics. In his own testimony, Secretary of State John Foster Dulles perhaps gave the most eloquent summary of both the hearings and the policy:

Some may say that it is unrealistic and impractical not to recognize the enforced incorporation of Estonia, Latvia, and Lithuania into the Soviet Union. . . . We are not prepared to seek illusory safety for ourselves by a bargain with their masters which would confirm their captivity. . . . We do not look upon the

²⁰ House Resolution 346, 27 July 1953 (legislative day). See also Simutis, pp. 180-181.

²¹ Antanas Kucas, Lithuanians in America, trans. Joseph Boley (Boston: Encyclopedia Lituanica, 1975), pp. 279-280.

²² US House of Representatives, Select Committee to Investigate the Incorporation of the Baltic States into the U.S.S.R., Baltic States Investigation I (Washington: US Government Printing Office, 1953); US House of Representatives, Third Interim Report of the Select Committee on Communist Aggression. Report of the Select Committee to Investigate Communist Aggression and the Forced Incorporation of the Baltic States into the U.S.S.R. (Washington: US Government Printing Office, 1954).

conference table as a place where we surrender our principles, but rather as a place for making our principles prevail.²³

C. NONRECOGNITION AND US-USSR RELATIONS

Nonrecognition is not merely a piece on the chessboard of domestic politics, as outlined above. Its primary focus is outside the country as a message to the nations of the world community, specifically the Soviet Union, of the American attitude toward aggression in the Baltic. The policy has certainly affected domestic political and legal affairs in the US.²⁴ It has also affected US-Soviet relations.

Of course, the Soviets fought against the nonrecognition policy from its inception, stating that it would sour the course of US-USSR relations. The continued presence of the Baltic diplomats in the US, as well as the problems surrounding vessels in US territorial waters, were the most obvious manifestations of the policy against which the Soviets directed their attacks. Undersecretary of State Sumner Welles and Soviet Ambassador Constantine A. Oumansky discussed these matters on 27 February 1941. Welles noted that the US would not back down from its position, and that certain issues would have to remain in the realm of

²³ US House of Representatives, Baltic States Investigation I, p. 4.

²⁴ See chapter five above.

"unsolvable problems"; this is where the Baltic States were placed. Oumansky found this unacceptable.²⁵

Public US proposals and statements regarding the Baltic States have always brought vehement reaction from the Kremlin.²⁶ Two general responses have been charges of US interference in Soviet internal affairs, and the contention that the Baltic States joined the Soviet Union voluntarily. A third response began surfacing in the 1960s in an attempt to turn the tables on the United States and the morality of its actions. Writing of respect for sovereignty and territorial integrity, Victor Karpov notes:

This principle should be strictly observed; and

²⁵ US Department of State, Foreign Relations of the United States: Diplomatic Papers, 1940, Volume I, General (Washington: US Government Printing Office, 1959), pp. 708-712. See also p. 785.

Soviet Foreign Affairs Commissar Maxim Litvinov addressed the Council of the League of Nations on 12 May 1938 after Britain recognized the Italian annexation of Ethiopia. His remarks were ironic in light of subsequent events:

But, according to circumstances, non-recognition may be of vast importance, not only morally, but also politically -- particularly when the victim of aggression itself continues to fight for its independence and for the integrity of its territory. In such cases, the recognition of the results of acts of violent aggression, or the abandonment of the policy of non-recognition, would be equivalent to abetting the aggressor directly, and to stabbing his victim in the back by discouraging and demoralizing him.

See Bronis J. Kaslas, ed., The USSR-German Aggression Against Lithuania (New York: Robert Speller & Sons, 1973), pp. 424-425.

²⁶ Richard A. Schnorf, "The Baltic States in U.S.-Soviet Relations: From Truman to Johnson," Lituanus, 14, 3 (Fall 1968), 54.

its observance is, of course, incompatible with some resolutions that have from time to time been adopted by the American Congress, as those calling for "liberation" of some integral parts of [the] Soviet Union -- of . . . Lithuania . . . I would say this is roughly the same as if the parliament of Mexico, for example, would have passed a resolution demanding that Texas, Arizona, and California be "liberated from American slavery."²⁷

Following the completion of the Second World War, the first forum where the nonrecognition policy became a factor in terms of foreign affairs was Nuremberg. On 6 October 1945, American, British, French, and Soviet representatives signed the indictments of German war criminals before the International Military Tribunal. Among the charges were atrocities committed in the "Lithuanian Soviet Socialist Republic," the "Latvian Soviet Socialist Republic," and the "Estonian Soviet Socialist Republic." Supreme Court Justice Robert H. Jackson, the US prosecutor at Nuremberg, signed the indictment, but also deposited a reservation with the Tribunal's secretary:

. . . reference is made to Estonia, Latvia, Lithuania and certain other territories as being within the area of the U.S.S.R. This language is proposed by Russia and is accepted to avoid delay. . . . The indictment is signed subject to this reservation and understanding:

I have no authority either to admit or to challenge, on behalf of the United States, the Soviet claims to sovereignty over such territories. Nothing, therefore, in this indictment is to be construed as a recognition by

²⁷ Victor P. Karpov, "The Soviet Concept of Peaceful Coexistence and Its Implications for International Law," in The Soviet Impact on International Law, ed. Hans W. Baade (Dobbs Ferry, NY: Oceana, 1965), p. 20.

the United States of such sovereignty²⁸

Jackson's letter was made public in Berlin on 15 October 1945.²⁹

The liberation espoused by President Eisenhower and Secretary of State John Foster Dulles was welcomed by those

²⁸ The New York Times, 19 October 1945. The British Foreign Office announced on 19 October that the British signature on the indictments also did not imply recognition. The New York Times, 20 October 1945. See also Assembly of Captive European Nations, International Agreements and Pledges Concerning East-Central Europe (New York: ACEN, 1960), p. 45.

The US government has usually been fairly scrupulous when discussing the Baltic States. In April 1950, a US military aircraft allegedly flew over Baltic territory, which prompted a protest from the Kremlin that Soviet territory had been violated. The US State Department responded that "the United States Navy Aircraft in question . . . did not fly over any Soviet or Soviet-occupied territory or territorial waters adjacent thereto." Quoted in Krystyna Marek, Identity and Continuity of States in Public International Law (Geneva: Librairie E. Droz, 1968), p. 403. Marek's emphasis.

²⁹ Langer, p. 284; Supreme Lithuanian Committee of Liberation, Memorandum on the Restoration of Lithuania's Independence (np: Lithuanian Executive Council, 1950), p. 82. See also Robert H. Jackson, Grundlegende Rede vorgetragen im Namen der Vereinigten Staaten von Amerika (Frankfurt am Main: Das Forum, 1946).

Martin Brakas adds an interesting sidelight to the Nuremberg proceedings when he writes:

In the terms of the Nuremberg Tribunal -- the so-called Nuremberg Principles -- the Secret Supplementary Protocols to the German-Russian Non-Aggression Pact of August 23 and September 28, 1939, and the Decree of the Supreme Soviet of the Soviet Union on the "incorporation" of Lithuania would have to be qualified as instances of "crimes against peace," and the series of actions aimed at the annexation of Lithuania during the war and in its wake -- as violations of the Hague Regulations and, therefore, as "war crimes."

See his "Lithuania's International Status: Some Legal Aspects 2," Baltic Review, 38 (August 1971), 17.

who viewed George Kennan's containment policy as one of tacitly recognizing spheres of influence between East and West. But those who thought that liberation was to be applied literally toward Lithuania, Latvia, and Estonia were sorely disappointed. American inaction during the East German and Hungarian uprisings of the 1950s demonstrated that liberation would not come easily.³⁰

Be that as it may, the Eisenhower administration lost no opportunities to criticize the Kremlin for its behavior. At the Four Power Conference in Berlin in February 1954, Secretary Dulles cited the illegal tactics used in incorporating the Baltic States, which were replicated in eastern Europe at the close of World War II.³¹

July of the following year saw the Big Four gather at Geneva, where the West desired to place the Baltic on the agenda. The proposal was rejected by the Soviets, though there were press reports that the matter was discussed aside from the formal talks. It was announced that the matter was postponed until the October 1955 conference, where it was once again blocked by the Kremlin's foreign minister. It is interesting to note that Stasys Lozoraitis, chief of the Lithuanian Diplomatic Service, went to Geneva in case Lithuania would require formal representation, though this

³⁰ Schnorf, p. 46 ff.

³¹ Antanas Trimakas, "Satellite Status for the Baltic States -- A Possible Opening for Freedom," Baltic Review, 7 (16 June 1956), 7-8.

turned out to be a wasted -- and idealistic -- effort on his part.³²

Greater controversy was generated during the ratification process for a new US-Soviet consular convention. Negotiations commenced in 1959 and the treaty was signed at Moscow on 1 June 1964. Among the provisions of the convention was Article VII, paragraph 3, which allowed consular officials to register nationals of the sending state residing in the receiving state. Other provisions included the customary notarial, commercial, and custodial functions of consulates.³³

The Senate Foreign Relations Committee considered the convention the following year, and on 30 July 1965 voted 7-1 to recommend it to the full Senate, which did not ratify it. The Johnson administration brought it up again in 1967, and the Foreign Relations Committee began considering it on 23 January.³⁴

Lithuanians in the United States were concerned over seemingly vague passages and possible double-meanings which could indirectly destroy the nonrecognition policy. When hearings commenced for the second time, Lithuanian-American

³² Schnorf, p. 49; Trimakas, pp. 8-9.

³³ US Senate, Committee on Foreign Relations, Consular Convention With the Soviet Union, Hearings on Executive D (Washington: US Government Printing Office, 1967), pp. 283-292.

³⁴ Simutis, p. 423.

groups began lobbying senators for its defeat, and collected documentation to back up their claims. Anthony J. Rudis, president of the Lithuanian American Council, testified against the treaty because it did not explicitly grant an exception to the Baltic States. He was especially concerned that the Soviet Union could claim Baltic nationals as nationals of the USSR under Soviet citizenship decrees. The convention would also have granted immunity to consular staffers, something which was usually granted only to embassy staff. Indeed, Rep. Edward J. Derwinski (R-IL) pointed out the implications of this provision vis-a-vis Americans who have relatives in Soviet-occupied territory: "The possibility of coercion, bribery, even blackmail are evident if Soviet consular officials have the freedom to roam throughout the United States."³⁵

In an exchange between Rudis and committee member Sen. Eugene McCarthy, McCarthy pointed out that no treaty with the USSR distinguishes the Baltic States; this is done in separate statements. Rudis conceded this point, but added that he was concerned with possible harassment from staffers, for example, Vytautas Zenkevicius, who was second secretary at the Soviet embassy and who possessed immunity. McCarthy replied that the convention would not change this

³⁵ Edward J. Derwinski, "Remarks in the House of Representatives on Proposed Consular Convention with the Soviet Union," press release, 9 August 1965, p. 4. See also Simutis, pp. 423-424; US Senate, Consular Convention With the Soviet Union, p. 242.

arrangement, but noted that the matter could be helped if only ethnic Russians were allowed to assume immune diplomatic and consular positions. Rudis agreed, adding that it would be improper for the US to open a consulate in the Baltic States.³⁶

The US State Department's legal adviser assured the committee that ratification of the convention would have no effect on nonrecognition. Further, in a 2 February 1967 letter to the committee's chairman, Sen. J. William Fulbright, Assistant Secretary for Congressional Relations Douglas MacArthur II asserted:

Recognition of the incorporation of Estonia, Latvia and Lithuania into the USSR would, like all cases of diplomatic recognition, require a positive statement or positive act by the United States. This Convention contains no such statement and provides for no such act. . . . The ratification of this treaty will not change this [nonrecognition] policy -- any more than did the signing of the more than 105 bilateral and multilateral agreements which we have entered into with the USSR.³⁷

However, the State Department did acknowledge one problem, namely the establishment of US consular offices in the Baltic, and its potential for de facto recognition. In his testimony, Secretary of State Dean Rusk said, "We do have a

³⁶ US Senate, Consular Convention With the Soviet Union, pp. 250-252.

³⁷ US Senate, Consular Convention With the Soviet Union, p. 139. See also p. 248.

bit of a dilemma there, Senator."³⁸ Nonetheless, the issue of nonrecognition did not sufficiently overshadow the convention to cause its amendment or to prevent its passage. The Senate ratified it on 16 March 1967 by a vote of 66 to 28.³⁹

The United States and Soviet Union have grappled not only bilaterally, but also in the United Nations. US ambassadors to the UN have addressed UN bodies several times on the topic of Lithuania and the other Baltic States. Ambassador Adlai Stevenson utilized the Baltic as an example of Soviet colonialism. Ambassador Arthur Goldberg carried this point further on 31 August 1967 when he reiterated the US policy of nonrecognition. On 24 November 1976, Ambassador William Warren Scranton addressed the UN's Third Committee on the denial of freedom and religious expression in the Baltic. The Soviet representative replied that the Baltic States had a rightful place in the Soviet "family of republics." Finally, Ambassador Jeane J. Kirkpatrick delivered to UN Secretary-General Javier Perez de Cuellar the text of a 26 July 1983 statement by President Ronald Reagan, which gave an overview of the occupation of the

³⁸ US Senate, Consular Convention With the Soviet Union, p. 331. See also Derwinski, "Remarks . . . on Proposed Consular Convention," p. 1.

³⁹ Simutis, p. 426.

Baltic and reaffirmed nonrecognition.⁴⁰

While such instances are somewhat routine and uneventful, an incident of greater consequence occurred when Mrs. Leokadia Pilyushenko arrived at the 1967 fall session of the UN along with the rest of the Soviet delegation. This, in and of itself, meant nothing. However, Pilyushenko identified herself as Soviet Lithuania's foreign minister. When speaking before the Third Committee, she stated, "As a member of the Soviet delegation, I represent at the same time one of the fifteen sovereign republics, the Lithuanian Soviet Socialist Republic," and went on to disparage Lithuania during the period of independence. The US representative to the committee, Patricia Roberts Harris, replied that Pilyushenko had no right to speak on behalf of Lithuania.⁴¹

⁴⁰ Edgars Dunsdorfs, The Baltic Dilemma II: The case of the reversal of the de jure recognition by Australia of the incorporation of the Baltic States into the Soviet Union (Melbourne: Baltic Council of Australia, 1982), p. 425; Kaslas, p. 468; Schnorf, p. 53; US Mission to the United Nations, "The United States Reaffirms Recognition of Independence of Estonia, Latvia and Lithuania," press release, 29 July 1983, pp. 1-3.

⁴¹ In an address to the Lithuanian American Congress in Chicago, November 1953, Assistant Secretary of State Donald B. Lourie noted that the US delegation had worked successfully to block seating by the USSR of Baltic representatives at international meetings, for example, of the Postal Union Congress and the Telecommunications Conference. See Visuotinas Amerikos lietuviu kongresas (General Lithuanian American Congress) (Chicago: Lithuanian American Council, 1953), p. 70.

Despite requests from Congress,⁴² however, neither the US nor any other member has ever sought to place the Baltic issue on the UN's formal agenda.⁴³ The US has, in fact, consciously done this in order to avoid embarrassment:

The question has been raised on various occasions about the desirability of United States initiatives in the United Nations calling for the restoration of independence to the Baltic countries. . . . At the present time, however, the great majority of the UN members do not adhere to the position of the US Government on this issue. We must recognize that any failure of such an initiative in the United Nations would be a severe rebuff to the United States and would seriously prejudice our position in the matter before the world.⁴⁴

In addition to the explicit rejection of US action in the UN, the above statement went on to say that the US could do no more on behalf of the Baltic than it had already done:

Any US initiatives in the United Nations of the nature described above could well be misleading in suggesting that more can be done than we are already doing in behalf of the Baltic peoples.⁴⁵

In other words, the US government continues to embrace the policy of nonrecognition -- but also notes its practical limits. This is nothing new, for, as the previous chapter

⁴² For example, see Edward J. Derwinski, "Derwinski Introduces New Baltic States Resolution," news release, 18 November 1977, p. 1.

⁴³ Schnorf, p. 48.

⁴⁴ US Department of State, "United States Policy Toward the Baltic States," Public Information Series, no. P-317-870, c. 1970, p. 1.

⁴⁵ US Department of State, "United States Policy Toward the Baltic States," p. 1.

on wartime diplomacy described, the US recognized the policy's limitations almost from its inception.

D. THE BALTIC AND IMPLICATIONS FOR US-USSR RELATIONS

Sometimes, the routine of international intercourse forces the United States to deal fairly directly with Lithuania and the other Baltic States. Particular cases regarding individuals must be addressed, as well as those of family reunification, special visits, and other topics.⁴⁶ US government personnel have been in the Baltic and have dealt with the Soviet regimes there. Effective foreign relations do not allow absolute isolation from even an unrecognized government. This, however, does not violate the nonrecognition policy. Gerhard von Glahn offers an explanation:

. . . it is quite possible for a given state to have dealings (relations officieuses) with an unrecognized government without proceeding to recognition, provided the absence of intent to recognize is made clear. Thus the United States maintained agents in several Latin American republics before recognizing the latter as states independent from Spain, a course of action also pursued by Great Britain at the time. During the American Civil War, Great Britain sent a number of official agents to the Confederate States, yet did not recognize the latter as an independent entity. Many other governments have acted similarly in

⁴⁶ US Department of State, Statement by Robert L. Barry, Assistant Secretary of State for European Affairs before the Subcommittee on International Organizations, House Foreign Affairs Committee, 26 June 1979, pp. 2-3.

ties with the Lithuanian people without recognizing Lithuania's forcible incorporation into the Soviet Union.⁵⁰

This, of course, occurred during the period of detente. The mood of US-Soviet relations under President Reagan was considerably different when the US ambassador in Moscow, Jack Matlock, refused to receive a delegation from the Supreme Soviet of the Latvian SSR in December 1987. The delegation was protesting a US House of Representatives resolution on Latvia's independence day. The Latvians were kept waiting in the street for about one hour until the embassy's second secretary informed them that they could be received only as private citizens. When a similar resolution was passed for Lithuania's independence day two months later on 16 February 1988, Ambassador Matlock again refused a delegation from the Lithuanian SSR, which was protesting US interference in Lithuania's affairs.⁵¹

⁵⁰ Henry M. Kissinger, letter to Sen. Hugh Scott, 28 October 1972. Regarding a scheduled US-USSR conference for 15-19 September 1986 near Riga, Latvia, US State Department representative John C. Whitehead assured a Latvian-American group that the meeting would not compromise nonrecognition. Mark Palmer, another State Department representative, added that the situation in Soviet occupied Latvia would be raised at the conference by the US delegation, as, indeed, it was. See "Amerikos latviu sajunga apie JAV-SSRS konferencija Latvijoje" ("American Latvian Association on the US-USSR Conference in Latvia"), Nepriklausoma Lietuva (Independent Lithuania), 10 July 1986, p. 1.

⁵¹ "Ambasadorius neprieme latviu deputatu" ("Ambassador did not Receive Latvian Deputies"), Draugas, 16 January 1988, p. 1; "Ambasadorius neprieme Sovietu bendradarbiu" ("Ambassador did not Receive Soviet Aides"), Draugas, 18 February 1988, p. 1.

Since the espousal of the policy of nonrecognition, both the Congress and the Executive have sought to keep it alive. Much of this activity, in the form of statements, resolutions, and conferences, has been geared toward consumption by domestic groups, specifically, Lithuanians, Latvians, and Estonians residing in the United States. However, exceptions such as the Kersten Committee hearings, which cost substantial money and effort, are indications that the policy is taken seriously, at least by those familiar with the circumstances surrounding it.

The policy has also affected US-Soviet relations. Initially, the Kremlin declared that the Baltic issue would create a permanent rift between the two countries. Of course, a rift still exists, but the effect of the nonrecognition policy here is minimal, despite Soviet rhetoric aimed against it. Granted, the policy has caused Washington and Moscow to grapple between themselves and on the floor of the United Nations. But, successful wartime diplomacy in the early 1940s -- and even detente in the 1970s -- were carried out in spite of it.

Chapter five of this study demonstrated that the policy possessed concrete political and legal consequences. The previous chapter, however, showed that it also has limitations. When expedient, the policy was temporarily shelved during wartime. This chapter has expanded upon the limitations. First, the US can only go so far in helping

the Baltic States. There are relatively few tools for action in the hands of American policymakers. Second, it is unavoidable to unofficially deal with the Soviet regimes in the Baltic. Indeed in many cases involving individuals it is beneficial. The following chapter will now address several specific instances where implementation of the nonrecognition policy has been problematic -- or non-existent.

CHAPTER VIII

PROBLEMS OF IMPLEMENTATION: CASE STUDIES

A. POSTWAR BALTIC REPATRIATION

While, by and large, the US government has stood by the nonrecognition policy in both word and deed, there have been instances where it has been undermined, either perceptually or in fact. The first major transgression against it was forced postwar repatriation of Lithuanians, Latvians, and Estonians to their native lands, now under Moscow's control.

Following the conclusion of hostilities, several hundred thousand Baltic persons found themselves in the western occupation zones of the defeated Germany. They had fled as the Red Army swept westward back across the continent. If Baltic citizens were not considered citizens of the Soviet Union, they would not have been in any danger of forced repatriation to the USSR, for the western powers did not recognize the citizenship decree of the presidium of the Supreme Soviet issued on 7 September 1940:

(1) In accordance with Section 1, the Law on Nationality of the USSR of August 19, 1938, it is hereby established that nationals of the

FIGURE 8-1: LITHUANIAN DISPLACED PERSONS CAMPS IN WEST GERMANY IN 1948



SOURCE: Milda Danys, DP: Lithuanian Immigration to Canada After the Second World War (Toronto: Multicultural History Society of Ontario, 1986), p. 47.

Lithuanian, Latvian, and Estonian Soviet Socialist Republics shall be USSR nationals from the day when these Republics are received into the USSR.

(2) Nationals of the Lithuanian, Latvian, and Estonian [SSRs] who at the time of the promulgation of the present decree are outside of the confines of the USSR and were not deprived of nationality by the Soviet governments of these Republics must register on or before November 1, 1940, as Soviet Nationals at diplomatic missions and consultants [sic] of the USSR by means of a personal appearance or by mailing a special application with their passports.¹

In addition, the western allies possessed moral and legal traditions of ready asylum for political exiles:²

The international practice after World War I shows that no prisoners of war were forcibly extradited to their countries of origin. At that time, the problem arose only between certain powers and Soviet Russia. From 1918 to 1921, the Soviets signed twenty-seven international treaties and agreements concerning the repatriation of prisoners of war and civilians. All were based upon the principle of voluntary repatriation only and contained almost identical clauses explicitly precluding any forced repatriation.³

These sentiments were echoed in postwar declarations by individual governments, as well as the United Nations. The

¹ US Senate, Committee on Foreign Relations, Consular Convention With the Soviet Union, Hearings on Executive D (Washington: US Government Printing Office, 1967), p. 345.

Technically, following the annexation of the Baltic States, former Russian nationals who had lost their nationality under the decrees of 28 October and 15 December 1921 were given the opportunity to regain it. See Kazimierz Grzybowski, Soviet Public International Law: Doctrines and Diplomatic Practice (Leyden, The Netherlands: A.W. Sijthoff, 1970), p. 239.

² Julius Epstein, Operation Keelhaul: The Story of Forced Repatriation from 1944 to the Present (Old Greenwich, CT: Devin-Adair, 1973), p. 21.

³ Epstein, p. 14. Vitas' emphasis.

Geneva Convention Relating to the Status of Refugees, signed on 28 July 1951, explicitly prohibits forced repatriation to a person's native land if he will face persecution there.⁴

In order to establish procedures for processing displaced persons, US and Soviet military authorities signed an agreement regarding liberated prisoners of war and civilians at Yalta on 11 February 1945. The document contains no reference to the use of force, though sees repatriation as the only solution.⁵ Further, the US and USSR defined a displaced person as one who was a Soviet citizen on or before 1 September 1939, and who was displaced on or after 21 June 1941. Finally, a 12 May 1945 order from the Supreme Commander of the Allied Expeditionary Force, General of the Army Dwight D. Eisenhower, stated that Baltic citizens could not be forcibly repatriated because they did not meet the former criterion, and neither the US nor the United Kingdom recognized subsequent political and territorial changes there.⁶

⁴ Article 33, Section 1. See also UN General Assembly Resolution, 12 February 1946. Quoted in Epstein, pp. 16-17.

⁵ Epstein, pp. 25-26; US Department of State, Foreign Relations of the United States: Diplomatic Papers, The Conferences at Malta and Yalta, 1945 (Washington: US Government Printing Office, 1955), pp. 985-987.

Some maintained a suspicion that there was a secret protocol attached to the Yalta document regarding forced repatriation. See "Secret Yalta Displaced Persons Clauses," Baltic Review, 1, 4-5 (July-August 1946), 238-240.

⁶ Juri Piiroja, et al., Baltic Refugees and Displaced Persons (London: Boreas, 1947), pp. 15-16. See also Janis Skrundens, Latvia 1918-1968 (New York: American Latvian

Nonetheless, the US government did not strictly adhere to a policy of voluntary repatriation for citizens not charged with war crimes or collaboration with the Nazis. Even while negotiators were attempting to safeguard Russian and Baltic people who did not wish to return to their homelands, policy was beginning to shift inside government circles. As early as the autumn of 1944, a memorandum was written by Bernard Guffler, Special War Problems Division of the State Department, to Charles Bohlen, chief of the East European Affairs Division, which indicated the change:

The new policy toward Soviet nationals differs from the policy hitherto followed with regard to them and with the policy which it is proposed to continue to follow with regard to other Allied nationals. The most notable difference is that no persons claimed by other Allied Governments are delivered to the custody of those Governments against their wills. The adoption of this new policy towards the Soviets will result in the delivery to the Soviet authorities of persons hitherto withheld from them because they were unwilling to return to the Soviet Union.⁷

Bohlen "signified his approval" on 20 October 1944.⁸

The US Army began activating what one writer has identified as "Operation Keelhaul," a secret repatriation plan which called for the return, forced if necessary, of approximately two million prisoners of war and displaced

Association, 1968), p. 22.

⁷ US Department of State, Foreign Relations of the United States: Diplomatic Papers, 1944, Volume IV, Europe (Washington: US Government Printing Office, 1966), p. 1258.

⁸ US Department of State, Foreign Relations of the United States, 1944, IV, p. 1260.

persons into Soviet hands.⁹ The plan was partially implemented from 1944 to 1947, not because of ignorance of the Eisenhower directive, but because of the way the Displaced Persons Branch of the US Army handled the matter. The same month that Eisenhower sought to protect Baltic citizens, this army branch issued the following instruction: "After identification by Soviet Repatriation Representatives, Soviet displaced persons will be repatriated regardless of their individual wishes."¹⁰ The loophole in this order was that Soviet representatives could point to a person who originated in what subsequently became Soviet territory. The individual then had no recourse, and protests meant little.

The Soviets were also conducting a campaign for the return of Lithuanians, Latvians, and Estonians. Soviet diplomats attacked them as fascists and war criminals, who were conducting reactionary anti-Soviet campaigns in displaced persons camps. Further, according to the Kremlin, they were aided by the Western allies, who sought to continue German war policy by searching for inexpensive labor. Specifically, the Soviets stated that as of 1 January 1947, 221,500 of the 827,000 refugees in Germany were Soviet

⁹ Epstein, pp. 1 ff. Epstein writes that he was not allowed access to the secret US files on Operation Keelhaul.

¹⁰ Allied Expeditionary Force, Supreme Headquarters, G-5 Division, Displaced Persons Branch, Guide to the Care of Displaced Persons in Germany, revised May 1945.

citizens, and demanded free access to them.¹¹ The Soviet criminal code labeled flight abroad as treason, punishable by death. Relatives remaining behind could also be punished, regardless of whether or not they assisted in the escape. Ironically, though the Soviets claimed Baltics as Soviet citizens, Soviet law automatically abolishes Soviet citizenship for an individual who departs the country without the knowledge of the authorities.¹²

The Soviet campaign was also carried out closer to the displaced persons. Repatriation officers began supplying the camps with booklets and brochures extolling

¹¹ Vytautas Alseika, Trys desimtmečiai emigracijoje: Nuo Reutlingeno iki Niujorko (Three Decades of Emigration: From Reutlingen to New York) (Vilnius: Mintis, 1977), pp. 58-61, 69-70, 72-74; The Baltic Refugees (Stockholm: Baltic Humanitarian Association, 1946), p. 11; Grzybowski, p. 243; A.J. Visinskis [Vishinsky] and A.A. Gromiko [Gromyko], Del pabegeliu ir perkeltuju asmenu: Kalbos Suvienytuju Naciju Generalineje Asamblejoje Niujorke 1946 m. (On Refugees and Displaced Persons: Addresses to the United Nations General Assembly in New York, 1946) (Vilnius: State Political Press, 1947), pp. 15-20.

See also Antanas Kucas, Amerikos lietuviu istorija (American Lithuanian History) (South Boston: Lithuanian Encyclopedia Press, 1971), p. 566; United Nations, Department of Public Information, "USSR Submits Draft Resolution on Repatriation of Refugees," press release GA/SHC/469, 5 October 1955.

Interestingly, Pliroja, p. 16, writes that the German press contributed to the Soviet anti-Baltic campaign in order to rid the country of foreigners and to mitigate German war guilt. However, all German local governments (Landrats) issued announcements against forced repatriation. See The Baltic Refugees, p. 12.

¹² The Baltic Refugees, pp. 10, 14.

life in the Lithuanian SSR.¹³ However, more direct measures were also employed. Secret order 199 of the United Nations Relief and Rehabilitation Administration (UNRRA) noted that displaced persons' leaders who were opposed to repatriation should be transferred to other camps containing individuals not slated for repatriation. The International Refugee Organization (IRO), which succeeded UNRRA on 1 July 1947, issued a secret Manual for Eligibility Officers, all copies of which were destroyed upon IRO's liquidation. That manual stated that a displaced person must give sufficient information why he should not be repatriated. Though a political, not an economic, reason had to be given, arguments against communism had to be "plausible." For example, the absence of religious freedom was not sufficient

¹³ For examples, see Alseika, p. 71; K. Gasparavicius, ed., Mokslininku zodis (Scholars' Address) (Kaunas: State Encyclopedic, Dictionary, and Scientific Press, 1948); Gasparavicius, ed., Tevyneje (In the Homeland) (Kaunas: State Encyclopedic, Dictionary, and Scientific Press, 1948); V. Kalpokas, ed., Repatrijuotuju tarybiniu pilieciu teises (Rights of Repatriated Soviet Citizens) (Vilnius: State Political Press, 1947); V. Kubilius, ed., Po gimtuoju dangum (Under Native Skies) (Kaunas: Spindulys, c. 1950); Justas Paleckis, Kelias i Lietuva Atviras (The Road to Lithuania is Open) (Vilnius: State Political Press, 1947); Tiesa apie musu gyvenima (The Truth About Our Life) (Vilnius: Tiesa, 1947).

For the distribution of materials by the International Refugee Organization, see United Nations, International Refugee Organization, Report to the General Council of the International Refugee Organization by the Executive Secretary of the Preparatory Commission: 1 July 1947 -- 30 June 1948 (Geneva: UN IRO, 1948), pp. 27, 30.

to avoid repatriation.¹⁴

In 1946, the Lithuanians of the Reutlingen camp were invited to the assembly hall of an elementary school to listen to the presentation of a Soviet officer. He warned that they would not possess the right of repatriation indefinitely. Those who did not return would lose their Soviet citizenship.¹⁵ Swettenham humorously writes of the cool reception accorded to Soviet repatriation missions: "Soviet literature was distributed in the camps, but usually found its way into numerous toilets! Repatriation for Balts at any rate was a washout."¹⁶ Not all incidents, however, were humorous. On 6 September 1945, when UNRRA and US personnel attempted to forcibly repatriate individuals-- Ukrainians in this case -- from the Mannheim and Kempton

¹⁴ Alseika, p. 71; Petras Stravinskas, Atsiminimai ir pasaulezvalga: Rastai ir credo II (Reminiscences and Worldview: Writings and Credo II) (Chicago: Committee to Publish the Writings of Petras Stravinskas, 1982), pp. 144-146.

For the rigors of the screening process, see Stasys Mingaila, Neapkenciamo zmogaus uzrasai (Notes of an Untolerated Person) (West Germany: Author, 1948), pp. 63 ff, 83, 97-99; Piiroja, pp. 6-7, 19-22; John Alexander Swettenham, The Tragedy of the Baltic States: A Report Compiled From Official Documents and Eyewitnesses' Reports (New York: Praeger, 1954), p. 163.

¹⁵ Alseika, p. 71. US officers also urged Baltics to return to their homelands. Alseika, pp. 71-72, describes a visit to the Hanau camp by a Captain Moses on 10 June 1947. He told the Lithuanians there that their future was uncertain. Lithuania was in need of people for administration and industry. He claimed that those who had returned were writing positive letters about their post-repatriation experiences. See also Mingaila, p. 61.

¹⁶ Swettenham, p. 177.

camps, violence broke out. From then on, US authorities barred the forcible repatriation of Ukrainians, and forbade UNRRA from utilizing American personnel in any repatriation efforts.¹⁷

Needless to say, the specter of repatriation caused anxiety among Lithuanians. Several publications appeared which voiced this concern, along with booklets geared to call favorable attention to their plight. Some even proposed that Baltic national committees be allowed to perform consular functions in Germany in order to guarantee the personal status of Lithuanians, Latvians, and Estonians.¹⁸ Fears were reinforced when letters describing the unfavorable situation in the Baltic were smuggled back to the West from repatriated persons.¹⁹

¹⁷ Kucas, p. 567.

¹⁸ The Baltic Refugees, p. 16; N. Kaasik, "The Legal Status of Baltic Refugees," Baltic Review, 1, 1 (December 1945), 25-26; "'Laisve' nori pabegelius bausti" ("'Liberty' Wants to Punish the Refugees"), Musu kryziaus keliai (Our Way of the Cross), Bulletin of the Lithuanian Ravensburg camp, 1, 8 September 1945, p. 25; Juozas Pasilaitis, Hearken Then Judge: Sidelights on Lithuanian DPs (Tubingen, West Germany: Patria, c. 1948); V. Viliamas, Isikurimo galimybes uzjurio krastuose (Overseas Settlement Possibilities) (Nordlingen, West Germany: Sudavija, 1947), pp. 5, 10.

¹⁹ Appeal of the Representatives of the Baltic Nations to the General Assembly of the United Nations. Jointly presented on November 24, 1947 by the Envoys of the Three Baltic States -- Lithuania, Latvia and Estonia -- in Washington to His Excellency Dr. Osvaldo Aranha, President of the General Assembly of the United Nations (Flushing Meadows, NY: np, 1947), pp. 16-22.

The US Senate took cognizance of the situation in the postwar Baltic. See US Senate, Committee on the Judiciary, Subcommittee to Investigate Immigration and

While the displaced persons in Germany were struggling to remain in the West, a battle was being fought on the other side of the Atlantic to the same end. As early as 9 April 1944, Lithuanian Minister Povilas Zadeikis dispatched a note to the State Department on this issue. He received assurances that no person in the US zone of occupation would be repatriated against their will. Zadeikis also directed the United Lithuanian Relief Fund of America to inform the displaced persons to firmly maintain their claims to Lithuanian citizenship. Despite the efforts of Lithuanian-American organizations, and the intercession of Eleanor Roosevelt, the American promises were not fully kept.²⁰

By 1947, Operation Keelhaul had ceased and Secretary of State George C. Marshall said that "it is the fixed policy of the United States Government to oppose any forced

Naturalization, Displaced Persons in Europe, (Washington: US Government Printing Office, 1948), pp. 20-21.

Fears of repatriation were not only present immediately following World War II. They existed among remaining displaced persons during the negotiations for the Austrian State Treaty of 1955. See Assembly of Captive European Nations, First Session (Second Part), February 12, 1955 -- September 20, 1955. Organization, Resolutions, Reports, Debate (New York: ACEN, 1955), pp. 36-37, 75-83, 102-103.

²⁰ Watson Kirkconnell, "Eclipse of Baltic Freedom," Baltic Review, 1, 4-5 (July-August 1946), 221; Kucas, p. 567; Swettenham, p. 180.

repatriation of displaced persons."²¹ But this, unfortunately, came too late for several thousand Baltic citizens removed to their countries against their will among the approximately 2,100,000 persons repatriated to the Soviet Union.²² This despite the fact that the US had not recognized the regimes functioning in Lithuania, Latvia, and Estonia since 1940. Indeed, it was only in 1950 that the US government legislatively recognized a special category of refugee who could not return to his country for fear of political or religious persecution. This was in the form of amendments to the Displaced Persons Act of 1948.²³ It is interesting that the nonrecognition policy was able to protect Baltic property from falling into the hands of the

²¹ Epstein, p. 1. Secretary of State James F. Byrnes wrote: "We support [the displaced persons] and will not force them to return . . . as long as there is reason to believe they would be punished for political reasons." See his Speaking Frankly (New York: Harper & Brothers, 1947), p. 168.

²² Grzybowski, p. 239. See also The Baltic Refugees, pp. 11-13, 17; Kucas, p. 566; Report to the U.S. High Commissioner for Germany on the International Refugee Organization, US Zone of Germany, 22 October 1951, annex VI, pp. 1-10; Vaino J. Rusmandel, "The Continued Legal Existence of the Baltic States," Baltic Review, 12, 7 November 1957, 54; Supreme Lithuanian Committee of Liberation, Appeal to the United Nations on Genocide (np: Lithuanian Foreign Service, nd), p. 34; United Nations Organization Yearbook, 1946-1947, pp. 164-170; United Nations, International Relief Organization, The Facts About Refugees (Geneva: UN IRO, 1948), pp. 4, 12-13; UN IRO, The Forgotten Elite: The Story of Refugee Specialists (Geneva: UN IRO, 1949).

²³ Public Law 555, An Act to Amend the Displaced Persons Act of 1948, 16 June 1950, section 2(d). See also Public Law 203, Refugee Relief Act of 1953, 7 August 1953.

soviets -- but not Baltic persons.

B. THE SIMAS KUDIRKA INCIDENT

This chapter has discussed the forced repatriation of several thousand Lithuanians, Latvians, and Estonians. We now turn to the forced repatriation of one Lithuanian, Simas Kudirka, a sailor in the Soviet merchant marine.

On 23 November 1970, the US Coast Guard cutter Vigilant and the Soviet fishing trawler Sovetskaya Litva (Soviet Lithuania) met in American waters off Martha's Vineyard, Massachusetts. There a US delegation was to meet with the Soviets to discuss problems of interest to the New England fishing industry, specifically the Soviet's illegal use of tightly-woven nets, which were also dropped to excessive depths. The delegation consisted of three fishing industry civilians, a Coast Guard legal advisor, and two officials from the US Commerce Department's National Marine Fisheries Service. The Vigilant (WMEC-617) was a 210 foot medium endurance cutter based in New Bedford, Massachusetts. The Sovetskaya Litva (M-26402) was a 509 foot refrigerated trawler, based in Klaipeda, Lithuania, which operated along the east coast of the United States.²⁴

²⁴ Jurgis Gliauda, Simas, trans. Kestutis Ciziunas and J. Zemkalnis (New York: Manyland, 1971), pp. 2-4; Algis Ruksenas, Day of Shame (New York: David McKay, 1973), pp. xv, plates following p. 176; US House of Representatives, Attempted Defection by Lithuanian Seaman Simas Kudirka. Report of the Subcommittee on State Department Organization and Foreign Operations, Committee on Foreign Affairs

At some point during the proceedings, Simas Kudirka, a radio operator on board the trawler, managed to leap undetected onto the deck of the Vigilant. Kudirka hid below and informed an American sailor of the circumstances. The sailor, in turn, reported to the vessel's commanding officer, Commander Ralph Eustis. Eustis was a 1954 graduate of the Coast Guard Academy and the US Naval Postgraduate School. His previous assignments had included tours in Maine, Japan, California, and Coast Guard Headquarters. When Eustis went below to interrogate Kudirka, Kudirka informed him that he was Lithuanian, not Russian. Kudirka also requested political asylum.

This information made its way back to one of the civilian delegates, Robert M. Brieze, president of the New Bedford Seafood Producers Association. Ironically, Brieze was a Latvian whose entire family had been deported to Siberia in 1941, and who fled the Soviets in 1944. Brieze had earlier expressed anger that a ship named Soviet Lithuania was sailing into US waters, despite the nonrecognition policy.²⁵ Brieze went to see Commander Eustis and informed him of the policy, the presence of the Baltic desk at the State Department, and the danger to Kudirka were he returned to Soviet officials. He also

(Washington: US Government Printing Office, 1971), pp. 2 ff.

²⁵ Chapter seven, note 47 of this study cited the possibility of indirect recognition. It is safe to put this instance into that category of concern.

advised that the Lithuanian Legation in Washington should be contacted.²⁶

The incident, however, began traveling along the tortuous path of Coast Guard and State Department bureaucracy. The commander of the First Coast Guard District in Boston, Rear Admiral William B. Ellis, was recovering from an illness, and had relinquished district command to his chief of staff, Captain Fletcher W. Brown, Jr. Technically, Ellis was not in command and could issue no binding directives. Yet, Brown informed Ellis of the situation and sought his advice. Admiral Ellis and other officers began displaying an appalling lack of historical knowledge. Ellis was unaware of the nonrecognition policy, and confused the concepts of defection and desertion. One of the officers thought that Brieze escaped the Soviets in order to avoid the draft.²⁷ A radio conversation between Ellis and Commander Eustis was indicative of these attitudes:

"In order to protect the fisheries talks," Ellis said, "you should notify the Soviets of the defection. You must also return the defector if they so desire. But if they choose to do nothing, keep him on board."

²⁶ Gliauda, pp. 3, 53-54; Ruksenas, pp. xv, 15; US House of Representatives, Attempted Defection by Lithuanian Seaman Simas Kudirka. Hearings Before the Subcommittee on State Department Organization and Foreign Operations, Committee on Foreign Affairs (Washington: US Government Printing Office, 1971), pp. 31 ff.

²⁷ Gliauda, pp. 25-26; Ruksenas, pp. 277-279; US House of Representatives, Report, pp. 7-9.

"But if the defector jumped overboard while the ships were unmooring," Eustis remarked, "The Vigilant could make an attempt to pick him up."

"In this case, too," Ellis replied, "the Soviet ship should be given the first opportunity. Make sure you don't preempt them in taking that action."²⁸

When testifying after the incident, Ellis stated: "I'm not sure if [Captain Brown] said the man was a Lithuanian. I don't think it would have meant anything if he had. He was still a Soviet citizen."²⁹ Further, though Ellis was formally not in command, his advice to subordinates acquired the ring of an order.³⁰

By then the State Department had been drawn into the matter. Edward L. Killham was the officer in charge of bilateral affairs in the Office of Soviet Union Affairs. This was his third tour at the bilateral section of the Soviet desk. Killham was a senior foreign service officer with eighteen years experience. The initial report had been phoned to him by Captain Wallace C. Dahlgren, USCG, chief of the Intelligence Division in the Office of Operations (Flag Plot). As a country officer, Killham possessed the authority to order a defector held by US officials. Yet, he viewed this not as a genuine defection, but as a possible Soviet attempt at provocation. In any event, US officials appeared more concerned with the success of the negotiations

²⁸ Gliauda, pp. 51-52.

²⁹ Ruksenas, p. 279.

³⁰ Gliauda, p. 26.

than with the political ramifications of the incident.³¹

Not only were officials not addressing the basic issues of asylum and nonrecognition, the system itself was beginning to break down. Communications problems delayed transmissions. Bureaucratic procedures and chains of command were blurring among different actors at the Coast Guard and State Department. While Ellis and Killham appeared to be advocating one course of action, the Coast Guard district's legal officer, Commander Flanagan, advised that Kudirka should be detained, brought ashore, and transferred to either the State Department or the Immigration and Naturalization Service. Finally, the entire matter should have been handled at the Baltic, not the Soviet, desk.³²

³¹ Gliauda, pp. 37-38; Ruksenas, p. 86.

³² Gliauda, pp. 42-43; Ruksenas, pp. 190, 192, 198, 276-287; US House of Representatives, Hearings, pp. 37, 115.

United States Code, Title 8, section 1153 (a)(7) writes that the Attorney General may issue immigrant visas: to aliens who satisfy an Immigration and Naturalization Service officer at any examination in any non-Communist or non-Communist dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (1) from any Communist or Communist-dominated country or area . . . and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion.

The US Code of Federal Regulations, Title 8, section 253.1 (f) writes that a crewman: who alleges that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution in that country on account of race, religion, or political opinion shall be removed from the vessel or aircraft for

The path of inquiry was becoming overgrown with the dense vegetation of bureaucracy. The problem itself had become distorted and reduced to a technical detail of a Search and Rescue operation with some potential political nuances.³³

By now, the Soviets had discovered Kudirka's presence on board the Vigilant and demanded his return. The Sovetskaya Litva's commander, Captain Popov, lodged a maritime protest to the Vigilant, contending that Kudirka had stolen three thousand rubles from the safe in Popov's stateroom -- though rubles are worthless outside the Soviet Union.³⁴

Brieze later testified:

At approximately 11 p.m., Captain Eustis said that he had orders from above to give back the Lithuanian defector to the Russians. I then pleaded with Captain Eustis to save the defector's life and keep him aboard the Vigilant. Captain Eustis said he had no choice as he had received his orders. At this time Captain Eustis was crying. He said that the orders had come from the

interrogation. Following the interrogation, the district director [of Immigration and Naturalization] having jurisdiction over the area where the alien crewman is located may in his discretion authorize parole of the alien crewman into the United States . . .

³³ Gliauda, p. 36. Documents from the Lithuanian Consulate General in Chicago, now located at the Lithuanian Research and Studies Center, indicate that confusion abounded not only during the incident, but following it, as well. Vague information was being received from US government agencies, including an incorrect rendition of Kudirka's name, i.e. Simas Gruze.

³⁴ Gliauda, pp. 80-81.

Boston office.³⁵

soon thereafter, Soviet sailors were allowed to board the vigilant, capture, beat, and transport Kudirka back to the Sovetskaya Litva. Though distraught, Commander Eustis reportedly ordered the crew to "keep their mouths shut" regarding the incident. However, the three civilian fishermen aboard the Vigilant at the time made the story public. New Bedford shopkeepers refused service to Coast Guard personnel, who were also jeered in the town's streets. The Vigilant was placed under guard following bomb threats. Commander Eustis' home was placed under surveillance and the phone number was changed to an unlisted one. His two sons were harrassed in the local school, once by a teacher.³⁶

The media response, in both liberal and conservative quarters, was critical, though President Nixon was informed only two days later, after the story had been nationally broadcast. International response was also harsh. One week following the Kudirka incident, the UN Commissioner for Refugees, Prince Sadrunin Khan, called on US Ambassador Charles Yost and presented a protest addressed to Secretary of State William Rogers. Lithuanian-Americans staged massive demonstrations in major cities, protesting US

³⁵ US House of Representatives, Hearings, p. 35. See also Ruksenas, pp. 173, 225.

³⁶ Kucas, p. 304; Ruksenas, p. 275.

actions and demanding Kudirka's return.³⁷ President Nixon could not ignore the response and stated at his news conference of 10 December 1970: "I can assure you it will never happen again. The [US] for 190 years has had a proud tradition of providing opportunities for refugees and guaranteeing their safety, and we are going to meet that tradition."³⁸

Investigations conducted by Congress and the Coast Guard followed the much publicized incident. During congressional hearings, Rep. Edward Derwinski (R-IL) stated:

The fact that the seaman involved was a Lithuanian, it is incomprehensible to me that anybody at a reasonable level in the Department of State, or anybody who had reached a captain's or admiral's rank in the Coast Guard, would not understand that the Soviet Union is made up of many captive peoples and a Lithuanian is not a Russian.³⁹

During Robert Brieze's testimony, Rep. John Buchanan (R-IL) added:

It would appear, Mr. Brieze, that you have a better understanding of international law and of United States foreign policy than either the Coast Guard or the State Department, since we do not recognize that the Soviet Union has any right under Heaven to a Lithuanian citizen seeking asylum.⁴⁰

Indeed most official US discussion of the Kudirka incident

³⁷ Kucas, pp. 303-304; Ruksenas, pp. 265-266, 270, 272-274.

³⁸ Ruksenas, p. 275.

³⁹ US House of Representatives, Hearings, p. 4.

⁴⁰ US House of Representatives, Hearings, p. 41.

speaks of mistakes in implementing asylum-granting procedures. There is usually no mention of the nonrecognition policy, indicating that a great deal of personnel are either unaware of it, or do not fully understand its implications in practical matters. For example, Louis F.E. Goldie, a professor at the US Naval War College, writes that the Kudirka incident "was merely an illegality [foreigners exercising authority on US territory] aided and abetted by an officer of the U.S. Coast Guard."⁴¹

Admiral Ellis, Captain Brown, and Commander Eustis were suspended pending investigation. A Coast Guard board of investigation recommended general courts-martial for Ellis and Brown. Secretary of Transportation John Volpe did not concur with this decision, and provided the officers with the opportunity to retire with punitive letters of reprimand; they took this route. Volpe did, however, concur in Eustis' reassignment. Eustis was transferred to Executive Base, Governor's Island, New York, where he served as executive officer. He was passed over for promotion to the rank of captain in May 1972.⁴² Finally, the State

⁴¹ Louis F.E. Goldie, "Legal Aspects of the Refusal of Asylum by U.S. Coast Guard on 23 November, 1970," Lituanus, 18, 3 (Fall 1972), 63.

⁴² Ruksenas, pp. 294-298. For other accounts of the Kudirka incident, see Joanne S. Gowa, U.S. Obligations Under International Law Governing the Status of Refugees and the Granting of Asylum: The Case of Simas Kudirka. Monograph Series in Public Affairs No. 6 (Princeton, NJ: Woodrow Wilson School of Public and International Affairs, Princeton University, 1975); Clyde R. Mann, "Asylum Denied: The

Department issued a policy directive dealing with asylum requests on 4 January 1972. Guidelines were also issued to the Coast Guard.⁴³

As for Kudirka, he was tried in secret and on 20 May 1971 was sentenced to ten years in a Siberian labor camp for high treason. At his trial, he was allowed to speak for four hours, where he denied being a Soviet subject and demanded independence for Lithuania.⁴⁴ Lithuanian-American organizations, along with a number of politicians, continued to work for his cause. It was later discovered that Kudirka's mother had been born in Brooklyn, New York, and later emigrated to Lithuania. Under US law, since she was an American citizen, he, too, could claim US citizenship. Though the USSR does not recognize dual citizenship, President Gerald Ford was able to strike a bargain with Soviet General Secretary Leonid Brezhnev and won Kudirka's release. On 5 November 1974, a Soviet plane carrying Kudirka, his wife, daughter, and mother landed at New York

Vigilant Incident," Lituanus, 18, 3 (Fall 1972), 13-57; Lieutenant Commander Paul M. Regan, USCG, "International Law and the Naval Commander," US Naval Institute Proceedings, 107, 8 (August 1981), 51 ff.

⁴³ Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law, 4th ed. (New York: Macmillan, 1981), pp. 276-277.

⁴⁴ Kucas, pp. 304-305; Anatole Shub, "Report on the Trial Testimony of Simas Kudirka -- Lithuanian Sailor," Lituanus, 18, 3 (Fall 1972), 7-12; Shub, "Tell defector's stirring plea for free Lithuania," Chicago Sun-Times, 7 August 1971, p. 1.

City's Kennedy Airport, almost four years after the incident off Martha's Vineyard.⁴⁵

As far as senior foreign service and naval officers were concerned, the Kudirka incident revolved around the issue of political asylum. The matter only incidentally involved a Lithuanian sailor. Nonrecognition here played a secondary role in terms of bureaucratic decision making in a compressed situation, as well as in long term official analyses. Beyond the issuance of new asylum guidelines for US personnel and a pro forma reaffirmation of the policy, it was largely ignored. Forced repatriation once again occurred, but this time on a US naval vessel in American territorial waters. Had the incident not taken place in a politically charged atmosphere, it may never have come to light, indicating the passive role of the nonrecognition policy in official circles. As an announced policy, it has

⁴⁵ Bill Anderson, "New Stress Over the Baltic Lands," Chicago Tribune, 18 March 1975; Kucas, pp. 305-306. Kucas, p. 306, writes that one of the US officials escorting Kudirka from Moscow was William Dyess, chief of the State Department's Soviet section. The author of the present study once again notes that there is a Baltic desk at the Department, and asks why an official from that entity was not dispatched instead.

See also Algirdas M. Budreckis, ed., The Lithuanians in America 1651-1975: A Chronology & Fact Book (Dobbs Ferry, NY: Oceana, 1976), p. 66; US Department of State, letter of Carol C. Laise, Assistant Secretary for Public Affairs, to Antanas Sukauskas, private citizen, 14 March 1974.

Kudirka wrote his memoirs after arriving in the United States. See Simas Kudirka and Larry Eichel, For Those Still at Sea: The Defection of a Lithuanian Sailor (New York: Dial, 1978).

withstood the test of time. However, in a real world situation, it fell through the bureaucratic cracks.

C. THE HELSINKI ACCORDS

The Final Act of the Conference on Security and Cooperation in Europe was signed at Helsinki, Finland on 1 August 1975. It climaxed a decade long effort on the part of the Soviet Union to win confirmation of the territorial and political status quo on the continent. The act consisted of three "baskets" dealing with military confidence building, broad based cooperation, and human rights. The Declaration on Principles Guiding Relations Between Participating States included provisions on sovereign equality, respect for the rights inherent in sovereignty, avoidance of the threat or use of force, territorial integrity, non-intervention in internal affairs, and the right of self-determination.⁴⁶

Already three years prior to the signing of the Helsinki accords, Americans of eastern European descent were

⁴⁶ US General Accounting Office, Helsinki Commission: The First 8 Years. Report to the Chairman of the Commission on Security and Cooperation in Europe. GAO/NSIAD-85-57, 1 March 1985 (Washington: US Government Printing Office, 1985), pp. i, 1-2; US House of Representatives, Conference on Security and Cooperation in Europe, Part II. Hearings Before the Subcommittee on International Political and Military Affairs of the Committee on International Relations (Washington: US Government Printing Office, 1976), pp. 121-124. See also Voldemars Korsts, ed., Heritage--Nationalities News (Chicago: Republican State Nationalities Council of Illinois, 1978), p. 2.

warning that the agreement could recognize the status quo in Europe, that is Soviet domination of eastern Europe, including the Baltic States. A Lithuanian-American delegation presented a memorandum to Secretary of State Henry Kissinger urging "that the international status of the Baltic states not be compromised" at the conference. US officials, in turn, maintained that the US advocated peaceful territorial changes and continued nonrecognition of the Baltic annexation.⁴⁷

As the signing of the final act drew near, more activity was taking place between Congress and the State Department regarding the status of the nonrecognition policy. On 11 April 1975, Rep. Thomas E. Morgan, chairman of the House Committee on International Relations, received assurances from the State Department that nonrecognition would not be bargained away at Helsinki:

The Department affirms that it remains the policy of the United States not to recognize the forcible annexation of the Baltic States by the USSR.

The Department of State agrees . . . that the United States delegation to the Conference should not agree to the recognition by the Conference of the Soviet Union's forcible annexation of Estonia, Latvia and Lithuania. We expect that the Conference will adopt a declaration of principles which will include respect for "frontier

⁴⁷ Baltic Committee in Scandinavia, Memorandum Regarding The European Security and Cooperation Conference and the Baltic States (Stockholm: BCS, 1972), p. 2; Budreckis, p. 64; US Department of State, letter of Acting Assistant Secretary for Public Affairs John Richardson, Jr. to Ilmar Pleer, president of the Estonian-American National Council, 21 September 1973.

inviolability" but in our view this will not involve recognition . . .^{4a}

On the very eve of the signing of the accords, President Gerald Ford, Secretary Kissinger, and congressional representatives received a delegation of Americans of eastern European descent in the White House. President Ford noted that the US was not abandoning east Europe:

We have acted in concert with our free and democratic partners to preserve our interests in Berlin and Germany, and have obtained the public commitment of the Warsaw Pact governments to the possibility of peaceful adjustment of frontiers-- a major concession which runs quite contrary to the allegation that present borders are being permanently frozen. . . .

Specifically addressing the understandable concern about the effect of the Helsinki declarations on the Baltic nations, I can assure you . . . that the United States has never recognized the Soviet incorporation of Lithuania, Latvia and Estonia and is not doing so now. Our official policy of non-recognition is not affected by the results of the European Security Conference.

There is included in the declaration of principles on territorial integrity the provision that no occupation or acquisition of territory in violation of international law will be recognized

^{4a} US House of Representatives, Subcommittee on International Political and Military Affairs, Committee on International Relations, Conference on Security and Cooperation In Europe (Washington: US Government Printing Office, 1975), p. 11. See also Baltic Council of Australia, Notes and Documents on Australian Recognition of the Incorporation of the Baltic States into the USSR (np: BCA, 1974), p. 14; Bronis J. Kaslas, The Baltic Nations -- The Quest for Regional Integration and Political Liberty (Pittston, PA: Euramerica, 1976), pp. 278-280.

as legal.⁴⁹

In and of itself, the Helsinki signing did not violate the nonrecognition policy, especially in view of repeated US pronouncements to this effect. What was disturbing were reports that Secretary Kissinger, the National Security Council, and the State Department sought to dilute the policy for the sake of detente. Bill Anderson reported in the Chicago Tribune on 15 March 1975 that:

President Ford is getting advice to drop United States diplomatic recognition of Lithuania, Latvia, and Estonia. . . .

Opinion is so strong . . . that some officials in the White House initially tried to conceal from the press a [February] meeting by Ford with supporters of freedom for the Baltic States. . . .

It was felt that the highly motivated Baltic supporters would generate publicity and damage "delicate" dealings with Russia. . . .

This time Kissinger's staff lost to Ford's staff, although there was a compromise: The NSC wanted the Baltic group to talk only about "domestic" American matters and to see Ford without advertising the meeting. . . .

Further compounding the NSC-State Department problem is the fact that Ford for some time has shown a higher-than-average Presidential interest in the Baltic situation.⁵⁰

Anderson later reported that certain White House staffers prevented the Voice of America from broadcasting news of the

⁴⁹ US Department of State, Department of State Bulletin, 73, 1885, 11 August 1975, pp. 204-206. West German Foreign Minister Hans-Dietrich Genscher on 25 July 1975, and British Prime Minister Harold Wilson on 5 August 1975 declared to their respective parliaments that the Helsinki accords did not recognize the status quo in Europe as final. See Kaslas, pp. 277-278.

⁵⁰ Bill Anderson, "Ford is Urged to Cut Our Baltic Ties," Chicago Tribune, 15 March 1975.

visit, censored photographs, and attempted to have Rep. Edward Derwinski, who organized the meeting, reprimanded.⁵¹ When these disclosures were made, the State Department was subjected to "a rolling avalanche of outraged telephone calls, telegrams, and letters."⁵²

About the time of the February delegation to the White House, the US consul in Leningrad, Joseph V. Neubert, and his deputy, Garry L. Mathews, visited the Baltic States and met with senior communist officials.⁵³ The New York Times reported:

The United States through its consulate [in Leningrad] is diluting a 35-year-old policy of refusing to recognize the incorporation of Lithuania, Latvia and Estonia into the Soviet Union.

Western diplomats [in Leningrad] feel that there is a gradual but unmistakable American movement toward de facto, if not formal, recognition of the Soviet Baltic republics . . .

[Consul General Neubert] acknowledged that in effect he was now the United States Ambassador to the three republics. . . .

Mr. Neubert adheres to American policy protocol by not making direct contacts with the highest party and government officials in the Baltic republics, but he has met with their deputies.

. . . The consulate, rather than the embassy in Moscow, has responsibility for reporting on the

⁵¹ Anderson, "New Stress Over the Baltic Lands," Chicago Tribune, 18 March 1975.

⁵² "Forgive Them Their Helplessness," editorial, Chicago Tribune, 5 April 1975. See also William I. Bacchus, "Multilateral Foreign Policy Making: The Conference on Security and Cooperation in Europe," in The Politics of Policy Making in America: Five Case Studies, ed. David A. Caputo (San Francisco: Freeman, 1977), pp. 132-165.

⁵³ US House of Representatives, Conference on Security and Cooperation in Europe, p. 37.

Baltic region to the State Department.⁵⁴

such developments only served to increase anxiety among those who clinged to the policy as an important moral statement on the part of the United States.

Months after the signing of the Helsinki accords, when the controversy would have been expected to settle, the House of Representatives saw fit to address the issue once again in terms of the nonrecognition policy. House Resolution 864 was approved by the House Subcommittee on International Political and Military Affairs on 18 November 1975, and was debated by the full House on 2 December. HR 864 stated, in part:

. . . Whereas the Soviet Union appears to interpret the Final Act of the Conference on Security and Cooperation in Europe, signed at Helsinki, as giving permanent status to the Soviet Union's illegal annexation of Estonia, Latvia, and Lithuania, . . . Now, therefore, be it

Resolved, That notwithstanding any interpretation which the Soviet Union or any other country may attempt to give to the Final Act . . . it is the sense of the House of Representatives (1) that there has been no change in the longstanding policy of the United States on nonrecognition of the illegal seizure and annexation by the Soviet Union of the three Baltic nations . . . , and (2) that it will continue to be the policy of the United States not to recognize in any way the annexation of the Baltic nations by the Soviet Union.⁵⁵

⁵⁴ James F. Clarity, "U.S. Eases Policy on Baltic States," New York Times, 18 May 1975.

⁵⁵ US Congress, Congressional Record, 2 December 1975, p. H 11587. See also US House of Representatives, Conference on Security and Cooperation in Europe, Part II, pp. 1-2.

During the debate, Rep. Edward Koch (D-NY), tried to frame the resolution relative to detente:

Detente is an admirable goal, but we need not-- and should not -- forsake the truth or acquiesce in oppression in our quest for better relations with the Soviet Union. If we acquiesce in the illegal incorporation of the Baltic States, are we not as guilty of cynical expediency as Russia and Germany were when they originally divided up this area of Eastern Europe in their pact of 1939?⁵⁶

Koch went on to say that the nonrecognition policy, in particular, and US foreign policy, in general, are designed to be definite statements to the world community: "What is the purpose of our foreign policy if it is not to encourage self-determination and democracy around the world?"⁵⁷ Rep. Boland, too, emphasized that foreign policy addresses not merely domestic interest groups, but a broader international audience, as well: ". . . we do not consider this resolution merely for those citizens of Latvian, Lithuanian, and Estonian descent. We mean by this resolution to express to the world that this body does not waiver in its commitment to freedom throughout the world."⁵⁸ HR 864, directed mainly to the Kremlin's attention, was unanimously approved the same day. The Senate passed a similarly worded resolution,

⁵⁶ US Congress, Congressional Record, 2 December 1975, p. H 11589.

⁵⁷ US Congress, Congressional Record, 2 December 1975, p. H 11589.

⁵⁸ US Congress, Congressional Record, 2 December 1975, p. H 11589.

Senate Resolution 406, on 5 May 1976.⁵⁹

Helsinki did not end with the signing of the accords in August 1975. The "Helsinki process" consists of follow-up review meetings and reports focusing on adherence to the political commitments made in 1975. Critics of the accords assert that continued meetings sanctify Soviet hegemony in Europe with nothing in return. Others say that the Helsinki process focuses attention on Soviet human rights violations.⁶⁰

The first review occurred in Belgrade, Yugoslavia in 1977-1978. On 25 November 1977, Sen. Robert Dole and Ambassador Arthur Goldberg of the US delegation spoke of the Baltic States during addresses to the conference. The second review occurred in Madrid in 1980-1981. On 15

⁵⁹ US Senate, Senate Resolution 406, 5 May 1976, section 5, pp. 4-6. The following year, the State Department announced:

. . . the principle on territorial integrity excludes the acquisition of territory by force or threat of force. It states that no acquisition contrary to international law may be regarded as legal. The language in this principle reflects and supports the longstanding U.S. position on the Baltic states. . . . The executive branch . . . has also welcomed House and Senate resolutions expressing no change in the U.S. position of nonrecognition.

See US Department of State, "Conference on Security and Cooperation in Europe: A Foreign Relations Outline," Department of State Bulletin, 26 September 1977, p. 406.

⁶⁰ US General Accounting Office, p. 2. See also Zinta Arums, Joint Baltic American National Committee (JBANC) 1986 Annual Report (Rockville, MD: JBANC, 1987), pp. 7-9; John B. Genys, "The Joint Baltic American Committee and the European Security Conference," Journal of Baltic Studies, 9 (1978), 245-258.

December 1980, Warren Zimmerman, deputy chairman of the US delegation, reaffirmed the nonrecognition policy, adding that the Soviet incorporation violated principle eight of the Helsinki accords. Zimmerman also noted that territorial acquisition contrary to international law as listed in principle four was applicable to the Baltic.⁶¹ For the Madrid conference, President Jimmy Carter appointed Rimantas Cesonis as a public member of the US delegation. Cesonis was a member of the public affairs committee of the Lithuanian American Community.⁶² The Vienna conference took place in 1986-1987, where the US delegation repeated Washington's position on the Baltic.

The US State Department and US Commission on Security and Cooperation in Europe, which is a mixed executive-legislative entity, issue periodic reports on the monitoring of the Helsinki process. They routinely reaffirm the nonrecognition policy, and chronicle the progress of

⁶¹ Edgars Dunsdorfs, The Baltic Dilemma II: The case of the reversal of the de jure recognition by Australia of the incorporation of the Baltic States into the Soviet Union (Melbourne: Baltic Council of Australia, 1982), pp. 382-383; US Commission on Security and Cooperation in Europe, The Belgrade Followup Meeting to the Conference on Security and Cooperation in Europe: A Report and Appraisal. Transmitted to the Committee on International Relations, US House of Representatives (Washington: US Government Printing Office, 1978), p. 23.

⁶² Vytautas Kutkus, JAV Lietuviu Bendruomenes krasto valdybos veikla nuo 1979 m. gruodzio men. 15 d. iki 1982 m. spalio men. 23 d. (Activity of the Lithuanian American Community from 15 December 1979 to 23 October 1982) (np: LAC, 1982), p. 14.

human rights in the Baltic States under the equal rights and self-determination provisions of principle eight. However, at least in the State Department reports, the section dealing with principle eight usually repeats itself every year. In other places where activities are broken down by nation, the Baltic States are included in the Soviet Union.⁶³

It must be noted that the Final Act is not a treaty under international law, but a non-binding declaration of intentions. The act explicitly states that it is not eligible for registration under Article 102 of the United Nations Charter.⁶⁴ The US, though, considers the ten principles of the Helsinki Declaration "solemn moral and political undertakings drawn from the body of established

⁶³ See, for example, US Commission on Security and Cooperation in Europe, Implementation of the Final Act of the Conference on Security and Cooperation in Europe: Findings and Recommendations Seven Years After Helsinki. Report Submitted to the Congress of the United States (Washington: US Government Printing Office, 1982), pp. 20-22; US Department of State, Implementation of Helsinki Final Act. December 1, 1983 -- March 31, 1984. Sixteenth Semiannual Report (Washington: US Government Printing Office, 1984), p. 14.

The US government is not the only entity monitoring implementation of the Helsinki accords in Lithuania. For a discussion of the Lithuanian Helsinki Group, see Tomas Venclova, Lietuva pasaulyje (Lithuania in the World) (Chicago: Academic Press, 1981), pp. 55-66.

⁶⁴ Kaslas, pp. 277-278; US Commission on Security and Cooperation In Europe, Report to the Congress of the United States on Implementation of the Final Act of the Conference on Security and Cooperation in Europe: Findings and Recommendations Two Years After Helsinki (Washington: USCSCE, 1977), p. 4.

international law."⁶⁵ Washington's position notwithstanding, the USSR claims that the Helsinki Declaration of Principles applies between East and West, but not necessarily between the Soviet Union and other Socialist states. Thus, as far as the Kremlin is concerned, the Final Act justifies behavior such as the 1968 invasion of Czechoslovakia.⁶⁶

Finally, a number of commentators have addressed the supposed recognition of the Lithuanian occupation implicit in the Helsinki accords. In retrospect, most advise against a defeatist interpretation of the Final Act, citing repeated US government pronouncements reaffirming nonrecognition. Indeed, they caution that concessions of recognition at Helsinki psychologically play into the hands of Soviet leaders. The signatories of the Final Act possessed no authority to determine the status of the Lithuanian state. Thus, regardless of what occurred in Helsinki in 1975, the legal status of Lithuania remains unchanged.⁶⁷

⁶⁵ US Department of State, The Belgrade Followup Meeting to the Conference on Security and Cooperation in Europe. October 4, 1977 -- March 9, 1978 (Washington: US Government Printing Office, 1978), p. 13.

⁶⁶ US Department of State, The Belgrade Followup Meeting, pp. 13-14.

⁶⁷ Kazys Sidlauskas, Amerikos Lietuviu Tarybos veiklos penkmetis (Lithuanian American Council: Five Year Summary of Activity) (Chicago: LAC, 1980), pp. 8, 10; Petras Stravinskas, Ir sviesa ir tiesa: Rastai ir credo I (And Light and Truth: Writings and Credo I) (Chicago: Valerijonas Simkus, 1978), pp. 74-78.

It appears, too, that the status of Europe as a whole remains unchanged. On 19 October 1977 at Belgrade, Ambassador Albert W. Sherer, deputy chairman of the US delegation, conceded:

The Europe envisaged by the Declaration of Principles is one in which each state feels secure in its basic interests without the need to assert special hegemonic rights or intra-alliance reservations. We have not yet reached that day. We must continue to work toward it.⁶⁸

D. THE US OFFICE OF SPECIAL INVESTIGATIONS

In 1975, Rep. Elizabeth Holtzman (D-NY) began planning legislation to amend the 1952 Immigration and Naturalization Act, which contained no specific provision excluding Nazi war criminals from the US. The amendment sought to identify, exclude, and deport persons who, under the Nazis, "engaged or assisted in or incited or ordered any other person to engage or assist in the persecution of any person on account of such person's race, religion or national origin." The act was signed by President Carter in October 1978.⁶⁹ September of the following year saw the

⁶⁸ US Department of State, The Belgrade Followup Meeting, p. 14.

⁶⁹ Public Law 95-549, 30 October 1978. 92 Stat. 2065, 8 U.S.C. 1251 (a)(19)(1978). See also Silvia Kucenas, "OSI Collaborates With KGB," Lituanus, 30, 1 (Spring 1984), 85; US House of Representatives, House Report No. 95-1452 (Washington: US Government Printing Office, 1978); S. Paul Zumbakis, Soviet Evidence in North American Courts: An Analysis of Problems and Concerns With Reliance on Communist Source Evidence in Alleged War Criminal Trials (Woodhaven, NY: Americans for Due Process, 1986), pp. 5-6.

creation of the Office of Special Investigations (OSI) within the Justice Department's Criminal Division. Its task was the location and deportation of Nazi war criminals living in the United States.⁷⁰

Several months later, in January 1980, Walter S. Rockler, OSI director, and his deputy, Allan A. Ryan, Jr., traveled to Moscow to secure Soviet cooperation in identifying and prosecuting eastern European war criminals. Most relevant documentation and witnesses were located in Soviet-controlled territory. Rockler and Ryan met with Soviet Procurator General Roman Rudenko. Though Ryan and others have termed the cooperative agreement reached a "handshake," Zumbakis writes that "a statement that no formal agreement or report was ever executed or exchanged is implausible, at best. The stakes were too important, the bureaucratic level too high, for a handshake agreement."⁷¹

⁷⁰ Lithuanian American Community of the United States, National Executive Committee, Public Affairs Council, "Memorandum of Concerns Regarding the Conduct of the Office of Special Investigations," Lituanus, 31, 4 (Winter 1985), 48; US Department of Justice, Order of the Attorney General, Transfer of Functions of the Special Litigation Unit Within the Immigration and Naturalization Service of the Department of Justice to the Criminal Division of the Department of Justice. No. 851-79, 4 September 1979.

⁷¹ Zumbakis, p. 30. See also Lithuanian American Community, p. 50.

Ryan was appointed OSI director in 1980, and was succeeded by Neal Sher in 1983.

Zumbakis, note, p. 29, writes:

Rudenko represented the Soviet Union as a prosecutor in the Nuremberg trials, during which he personally attempted to have a "confession" entered into evidence, which the tribunal at

Zumbakis contends that there are documents related to the Moscow Agreement, but that the OSI objects to their release by the State Department.⁷²

The OSI's activities have generated discussion over several issues beyond the scope of this study: the presence of Nazi war criminals in the United States,⁷³ utilization of Soviet evidence in American trials,⁷⁴ the use of civil procedures without juries,⁷⁵ Nazi activities in the Baltic

Nuremberg discovered had been signed by the witness after several months in solitary confinement and in which all questions and answers had been prepared by Moscow interrogators. In 1952, General Rudenko was personally in command of the slaughter of inmates in a Ural gulag.

⁷² Zumbakis, p. 30.

⁷³ See Charles R. Allen, Jr., Nazi War Criminals Among Us, Jewish Currents Reprint Series (New York: Jewish Currents, 1963), pp. 32-40; Algirdas Budreckis, "Soviet Attempts to Eradicate Lithuanian Sovereignty," Baltic Review, 34 (November 1967), 37-38; Leonas Jonaitis, They Live in Your Midst (Vilnius: Gintaras, 1972); Allan A. Ryan, Jr., Quiet Neighbors: Prosecuting Nazi War Criminals in America (San Diego: Harcourt Brace Jovanovich, 1984); Vytautas Zeimantas, Teisingumas reikalauja (Justice Demands It) (Vilnius: Mintis, 1984).

⁷⁴ See Kucenas, p. 82; Lithuanian American Community, pp. 59-60; Victor A. Nakas, "OSI and the Baltic Community," Lituanus, 31, 3 (Fall 1985), 83, 85; Balys Raugas, ed., JAV LB trys desimtmečiai (Three Decades of the Lithuanian American Community) (Brooklyn: LAC, 1982), pp. 290-291; US Department of Justice, letter of Assistant Attorney General, Criminal Division, Steven Trott, to Rep. Frank Annunzio, 7 November 1983; Zumbakis, pp. 58-95.

⁷⁵ See Arums, pp. 21-22; Kutkus, pp. 16-17.

states during World War II,⁷⁶ discrimination against Americans of east European descent,⁷⁷ and alleged Soviet machinations in tandem with the OSI.⁷⁸ What is important in terms of the present study is the impact of the OSI on the nonrecognition policy. This was dramatically brought out during the deportation proceedings of Karl Linnas.

Karl Linnas was a retired sixty-seven year old land surveyor who lived with his wife and three daughters on Long Island, New York in 1987. He was tried in absentia in his native Estonia in January 1962, and was sentenced to death

⁷⁶ See Alex Alexiev, Soviet Nationalities in German Wartime Strategy, 1941-1945, R-2772-NA (Santa Monica, CA: Rand, 1982), pp. 17-20, 29-30; Juozas Prunskis, Lithuania's Jews and the Holocaust (Chicago: Lithuanian American Council, 1979); Arnold Purre, "Why the Baltic Soldiers Fought the Soviets," Baltic Review, 2, 2 (June 1948), 23-30; Kazys Rukšenas, "Del Lietuvos zydu gelbejimo hitlerines okupacijos metais (1941-1945 m.)" ("On the Rescue of Lithuania's Jews During the Years of Hitler's Occupation (1941-1945)"), in Lietuvos istorijos metraštis 1978 (Yearbook of Lithuanian History 1978) (Vilnius: Lithuanian SSR Academy of Sciences, 1979), pp. 36-49; Isaiah Trunk, Jewish Responses to Nazi Persecution: Collective and Individual Behavior in Extremis (New York: Stein & Day, 1979), pp. 38, 40-41, 43, 53, 55, 111, 196-197, 249, 316.

⁷⁷ See Lithuanian American Community, Bulletin 15 (English summary), 29 December 1987, p. 3; Nakas, pp. 83-84.

⁷⁸ Budreckis, "Soviet Attempts to Eradicate Lithuanian Sovereignty," p. 38; Lithuanian American Community, "Memorandum of Concern," p. 49.

On 11 July 1974, Rep. Joshua Eilberg, chairman of the House Subcommittee on Immigration, Citizenship, and International Law, perhaps naively, stated: ". . . I would imagine that the Russians would be happy to cooperate in an endeavor as uncontroversial as locating Nazi war criminals." See US Congress, "Department of State Impedes Investigation of Nazi War Criminals," Congressional Record, 11 July 1974, p. H 6443.

for war crimes in connection with his alleged administration of a concentration camp during the German occupation of his country.⁷⁹ Following proceedings in the United States, Linnas' US citizenship was revoked in 1981, and several federal courts ruled that he could be deported for lying on his 1951 visa application, where he wrote that he had been a student during the war. The US Supreme Court cleared the way for Linnas' deportation on 27 January 1987. His family approached approximately fifty countries to find one-- other than the Soviet Union -- which would accept him. However, they all rejected Linnas' entry, and he was deported from New York City to Estonia on 20 April 1987.⁸⁰ He died, according to Soviet reports, of heart failure several months later.

In addition to the objections noted above, the Linnas deportation raised questions of nonrecognition vis-a-vis Baltic citizenship. As noted at the beginning of this chapter, the presidium of the USSR Supreme Soviet issued a decree on 7 September 1940 converting Lithuanian, Latvian, and Estonian nationality to Soviet nationality.⁸¹ Those who

⁷⁹ Though formally tried in January 1962, the guilty verdict had already appeared in the 7 December 1961 issue of Socialist Legality, published in the USSR.

⁸⁰ Arums, p. 23. See also Allen, pp. 29-32; Richard Lacayo, "Problems of Crime and Punishment," Time, 20 April 1987, p. 60.

⁸¹ A technical amendment regarding the Klaipeda Territory and the Silute and Pagegiai districts of Lithuania was decreed on 16 December 1947. See US Senate, Committee

recognize the incorporation of the Baltic States into the Soviet Union regard Baltic refugees as stateless persons not entitled to diplomatic protection. The US, though, recognizes such persons as possessing their original Baltic citizenship, unless they have been naturalized as US citizens.^{a2}

on Foreign Relations, Consular Convention With the Soviet Union, pp. 345-346.

Robert Langer notes that "the change of nationality of the population in a certain territory as a result of cession or annexation is actually mass naturalization." See his Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice (Princeton, NJ: Princeton University Press, 1947), p. 201.

^{a2} Kaasik, pp. 23-24.

A new Soviet law went into effect on 1 July 1979 which recognizes a Soviet citizen as one born or naturalized as such -- and their children, regardless of where they were born. Further, the latter are not recognized as possessing non-Soviet citizenship. Both houses of Congress passed resolutions condemning this infringement of the US citizenship of several million native and naturalized Americans. See House Concurrent Resolution 200, Congressional Record, 13 November 1979, pp. H 10583-10586, 10603; Senate Concurrent Resolution 54, Congressional Record, 28 November 1979, p. S 17441. See also Rep. Robert K. Dornan's remarks, Congressional Record, 10 October 1979, p. E 4945; Dunsdorfs, II, pp. 379-382.

Grzybowski, pp. 334-335, recounts Articles 40 and 41 of the 1926 Statute of Soviet Consuls Abroad, which hold that Soviet consuls must maintain discipline among Soviet citizens abroad:

The consul must see to it that citizens of the [USSR] who are abroad . . . carry out all his legitimate orders. In case of insubordination to such orders of the consul, the latter is to notify the People's Commissariat for Foreign Affairs in order that the necessary measures may be taken. . . . In case of extreme necessity a consul has the power . . . to order the citizen of the U.S.S.R. to return to the territory of the U.S.S.R. . . .

Grzybowski, p. 335, adds:

Linnas was naturalized and, later, denaturalized. At this point he came within the jurisdiction of the Immigration and Naturalization Service (INS). Because Linnas had lost his citizenship, he no longer possessed the right to remain in the US. An INS administrative law judge, and the Board of Immigration Appeals, determined his deportability. Once this stage has been completed, a defendant can choose the country to which he wishes to be deported, provided the country in question accepts him. Regarding the OSI trials, the only country which has been willing to accept deportees has been the Soviet Union.⁸³

Presumably, when the US deported Linnas to Soviet-occupied Estonia, it was violating the nonrecognition policy. However, Washington has not interpreted events in such a manner, but has focused more narrowly on deportation proceedings. In the first place, when a defendant is found guilty in an OSI trial, he is not guilty of war crimes *per se*, but of entering the United States illegally, for example, by lying on visa and citizenship applications. As such, the matter is a domestic one, completely divorced from events which may have taken place outside the US.

Then, deportation occurs under section 243 (a)(7) of

It is doubtful whether Soviet authorities would accept a similar degree of consular supervision and control over aliens resident in the Soviet Union.

⁸³ Lithuanian American Community, "Memorandum of Concerns," p. 70.

the Immigration and Nationality Act,⁸⁴ which deports a person to any country willing to accept him, not on the basis of his country of nationality or citizenship. When Linnas went to Estonia, he was not going as an Estonian as far as the US was concerned. In general terms, deportation:

to the Soviet Union would not, as a matter of law, contravene the long-standing and firmly held U.S. policy of non-recognition of the forcible incorporation of Estonia into the Soviet Union. [US officials] strongly adhere to that policy and believe it is unaffected by [Linnas'] deportation.
⁸⁵

One group has cynically commented that "this response, although acknowledging the non-recognition policy, amounts to little more than lip service."⁸⁶

Indeed while the US asserts that such deportations do not legally violate nonrecognition, the USSR politically may interpret them as a form of de facto recognition. Thus Washington may be looking at the matter much too narrowly, without considering practical implications.⁸⁷ Further, it

⁸⁴ 8 U.S.C. 1253 (a)(7).

⁸⁵ US Department of State, letter of Acting Assistant Secretary for Public Affairs and Acting Spokesman Alan D. Romberg to Jonas Urbonas, chairman, Public Affairs Council, Lithuanian American Community, 18 January 1985, quoted in Lithuanian American Community, "Memorandum of Concerns," p. 71.

⁸⁶ Lithuanian American Community, "Memorandum of Concerns," p. 71. See also "Karl Linnas' Deportation and USA Nonrecognition Policy," Lituanus, 31, 4 (Winter 1985), 91.

⁸⁷ Lithuanian American Community, "Memorandum of Concerns," p. 72.

is not known whether the nonrecognition policy was ever discussed in conjunction with the Moscow agreement.^{ee} While as a matter of principle, the director of OSI is barred from entering the Baltic, his subordinates may do so with an escort from the US embassy in Moscow or the consulate in Leningrad.^{ee}

As of this writing, only one Baltic person, Karl Linnas, has been deported to Soviet-occupied territory in the Baltic. With the strict, procedural US interpretation of this and possibly other deportations, the OSI cases are not glaring legal examples of violation of nonrecognition, as were postwar repatriation and the Simas Kudirka incident. Realistically, however, it is difficult to reconcile deportation with nonrecognition. The punishment of war criminals is a vital task which must be vigorously pursued. Yet, perhaps a formula could be constructed whereby punishments would be served in the US, and not the Baltic. Otherwise, a contemporary version of Operation Keelhaul may be underway.

E. CONCLUDING REMARKS

Chapter five of the present study examined the very

^{ee} Zumbakis, p. 32.

^{ee} Raugas, p. 290. This notwithstanding, it is interesting to note that a former OSI director frequently utilizes quotation marks when referring to the nonrecognition policy, implying that he does not consider it important, valid, or both. For example, see Ryan, p. 68.

real legal, political, diplomatic, and economic consequences of the nonrecognition policy. Chapters six and seven, on the other hand, saw that the policy could be circumvented. The case studies in this chapter recounted four instances of factual or perceptual violation of nonrecognition.

Postwar repatriation, the Kudirka incident, and the activities of the OSI impacted upon individuals turned over to authorities not recognized as possessing legitimate jurisdiction over Lithuanian, Latvian, and Estonian nationals. In these cases, nonrecognition was either unknown or simply ignored. In any event, the policy was, at best, a secondary factor. Only at Helsinki did it assume greater importance. This even to the point of two rival bureaucracies, Ford's and Kissinger's, fighting over its appropriateness in that context -- as well as its viability at all. Interestingly, where the policy took center stage, Helsinki, it was not violated despite the harsh rhetoric emanating from conservative and emigre groups. Nonrecognition was only perceptually violated by the signing of the Helsinki accords.

The US government formally does not recognize the occupation and its logical consequences, that is, mass naturalization and the abandonment of sovereignty. These cases deal with Washington's commitment to that stand. However, there were other issues involved beside nonrecognition. For example, in repatriation and the

Kudirka incident, matters of asylum and political persecution were also in play. Diplomacy, too, was a factor, for repatriation was executed in the afterglow of successful East-West wartime diplomacy, while Kudirka was handed back at the threshold of detente. The OSI presents another dilemma, namely, how to reconcile the policy with denaturalization proceedings, while properly crusading against war criminals.

A student of nonrecognition cannot afford to ignore the limited practical role of Baltic diplomats in these cases. While they successfully operated to protect national interests in the legal and economic realms, the needs of diplomacy, coupled with bureaucratic ignorance or sabotage, limit their powers. The only guarantee that Baltic diplomats can expect under the nonrecognition policy is a courteous reception.

Nonrecognition hangs by a thread, as demonstrated in Kissinger's actions during Helsinki, the words of an American consul (the pseudo-ambassador to the Baltic), and the legal tightrope walked by the OSI. Indeed a human being was sacrificed for the sake of successful fishing talks. This is compounded by the occasional incompetence of those seeking to preserve the policy, as seen in the fatalistic declarations of those convinced that the West sold out the Baltic States at Helsinki.

Be that as it may, the policy has not been

forgotten. The controversy surrounding the Kudirka incident, as well as questions focused on the OSI, are indicative of this. The post-Helsinki declarations -- as always, bipartisan -- are also applicable here. The problem is not that the policy is never invoked, but that it is invoked after it has been violated. This is especially obvious in the most flagrant violations, repatriation and Kudirka. For ultimately, the policy exists to protect a group of people -- a task which has not always proved successful.

CHAPTER IX

NONRECOGNITION IN COMPARATIVE PERSPECTIVE

A. INTERNATIONAL ORGANIZATIONS

Though this study deals with the United States policy of nonrecognition, it is useful to briefly examine the attitudes of others regarding the legal status of Lithuania, Latvia, and Estonia.

To commemorate the twentieth anniversary of the incorporation of the Baltic States, the Consultative Assembly of the Council of Europe passed Resolution 189 on 29 September 1960. In addition to pledging support for the independence of the three countries, the resolution noted that "this illegal annexation took place without any genuine reference to the wishes of the people," and noted "that the independent existence of the Baltic States is still recognized de jure by a great majority of the Governments of the nations of the free world."¹

Over twenty years later, the European Parliament

¹ Bronis J. Kaslas, ed., The USSR-German Aggression Against Lithuania (New York: Robert Speller & Sons, 1973), pp. 461-462. See also Algirdas J. Kasulaitis, Lithuanian Christian Democracy (Chicago: Leo XIII Fund, 1976), p. 236.

called for more specific measures on behalf of the Baltic states. On 13 January 1983, the parliament adopted a resolution by a vote of 98-6 with eight abstentions calling for the matter to be submitted to the United Nations Special Committee on Decolonization.² The resolution was based on a report submitted by a member of the parliament, Dr. Otto von Habsburg, who noted that most European states had not recognized the annexation. Habsburg added that though the resolution could not change anything, it may have a positive effect upon public opinion.³

The Baltic States were not struck from the roster of the League of Nations upon their occupation. However, there were no representatives of the three countries present when the League wound up its affairs.⁴ Schnorf laments: "When the League of Nations stopped functioning politically, the international voice of the Baltic States was stilled."⁵

² This has yet to be done.

³ William J.H. Hough, III, "The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory," New York Law School Journal of International and Comparative Law, 6, 2 (Winter 1985), 438-439.

⁴ Robert Langer, Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice (Princeton: Princeton University Press, 1947), pp. 282, 247; Krystyna Marek, Identity and Continuity of States in Public International Law (Geneva: Librairie E. Droz, 1954, p. 409.

⁵ Richard A. Schnorf, "The Baltic States in U.S.-Soviet Relations: The Years of Doubt, 1943-1946," Lituanus, 12, 4 (Winter 1966), 73. Clarence A. Manning, on the other hand, discounts the value of the League to the Baltic States, in

Of course, Lithuania, Latvia, and Estonia are not represented at the League's successor, the United Nations. On 6 April 1945, Estonia's acting consul general in charge of legation, Johannes Kaiv, informed Secretary of State Edward Stettinius that the Soviet delegation could not express the views of the Estonian people, and that only the legal representatives of Estonia's constitutional government could do so. Yet, the Baltic States were not allowed to participate in the food, monetary, and other UN conferences, even as observers.⁶ At the UN's inception, the French delegate, Bidault, remarked that, in addition to Germany, there were "13 European States of recognised international standing representing 150 million inhabitants and a glorious past in civilisation, who are not present in this hall."⁷

The principle of nonrecognition is not explicitly mentioned in the UN Charter. However, some commentators, such as R.Y. Jennings and Hersch Lauterpacht, believe that nonrecognition is implicit in Article 2, paragraph 4 of the

particular, and to the world, in general. He writes that by World War II, "the League of Nations had become a bad joke." See his The Forgotten Republics (New York: Philosophical Library, 1952), p. 205.

⁶ Alfred Bilmanis, "Baltic States -- The Belgium of Eastern Europe," Social Science, 21, 1 (January 1946), 36; Schnorf, p. 73.

⁷ "The Missing Countries," Baltic Review, 1, 4-5 (July-August 1946), 233.

Charter, which deals with non-intervention.⁹ Von Glahn writes:

The coming into force of the United Nations Charter ended . . . the legality of the acquisition of title to territory through conquest. The relevant provisions of the instrument (especially Art. 2, par. 4) make it abundantly clear that, from a legal point of view, the use or the threat of the use of force, in violation of obligations assumed under the Charter, to obtain territory from another state is clearly prohibited to all member states of the organization.⁹

Because of this, non-acquisition of territory by force may be considered an authoritative expectation in international politics, linking the Stimson Doctrine to the principles of self-determination and decolonization.¹⁰

Finally, some have said that the presence of the USSR, and the absence of the Baltic States, in the UN amount to a tacit recognition of the incorporation by the

⁹ Hough, p. 448; E. Krepp, Security and Non-Aggression: Baltic States and U.S.S.R. Treaties of Non-Aggression (Stockholm: Estonian Information Centre/Latvian National Foundation, 1973), p. 32; Langer, pp. 286.

⁹ Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law, 4th ed. (New York: Macmillan, 1981), p. 325. Von Glahn's emphasis. However, on pp. 325-326, von Glahn adds that member states have individually acquiesced in forcible territorial seizure on several occasions. Valid title to territory can result from tacit acceptance or pro forma protests directed against continued possession of seized territory.

Edgars Dunsdorfs writes that most members of the UN do not share the US view of the incorporation of the Baltic. See his The Baltic Dilemma II: The case of the reversal of the de jure recognition by Australia of the incorporation of the Baltic States into the Soviet Union (Melbourne: Baltic Council of Australia, 1982), p. 418.

¹⁰ Hough, p. 448. See also von Glahn, p. 175.

organization's member states. Yet, this is not necessarily the case, for one must examine the statements of individual members along with relevant court decisions. There has never been a prevailing view that mere membership in the UN leads to a member's automatic recognition of all acts undertaken by another member as legal.¹¹

B. GREAT BRITAIN

Assistance from the Royal Navy, in addition to loans and weapons shipments, helped the Baltic States win their independence following World War I. In general, Britain possessed a great deal of prestige in the area during the interwar period. However, Britain wanted to curb the influence of Russia, France, and Germany there. Indeed, London was trading with Moscow while concurrently pressuring Lithuania, Latvia, and Estonia not to. The British provided moral support to the Baltic -- and little else. London refused to become the area's defender or a party to an east European security agreement. It, instead, hoped for Germany

¹¹ Stasys Backis, "Lietuvos valstybes tarptautine teisine ir politine padetis" ("The International Legal and Political Status of the Lithuanian State"), in Lietuva okupacijoje (Lithuania Under Occupation), ed. Jonas Balkunas (New York: World Lithuanian Community Congress Organizing Committee, 1958), p. 123.

For further details see E. Aruja, "UNO and the Baltic States," Baltic Review, 1, 4-5 (July-August 1946), 236; Domas Krivickas, "The Evolution of the Soviet Constitution Imposed on Lithuania: One Nation's 'Road to Socialism,'" Baltic Review, 6 (March 1956), 53-55; Vaclovas Sidzikauskas, "The United Nations and the Baltic States," Baltic Review, 25 (October 1962), 5-11.

and the Soviet Union to annihilate each other, with the Baltic being the obvious battleground. When the British offered guarantees to the Baltic States in the summer of 1939, it was already too late.¹²

Upon occupation, Baltic diplomats in London faced a chillier reception than those in Washington, but they were not ordered to transfer their facilities and archives to the Soviets:¹³

After complete occupation of the Baltic States by Soviet Red Army Churchill instructed British Ambassador to Moscow, Sir Stafford Cripps to "affect to believe" that this action of the Soviet Government was dictated by the "imminence and magnitude" of the German danger now threatening Russia and that the Soviet Union might well have been justified in taking, for reasons of self-defense, measures [sic] "otherwise open to criticism." Unlike the American Government, the British Government officially did not protest at the annexation of the Baltic States by the USSR. On the other hand, the British Foreign Office hoped to be able to put off for some time to come the "awkward question" of whether or not to recognise the annexation of the Baltic States by the Soviet Union. The British felt fortunate that the closing of the Baltic by the Germans relieved them of any commercial questions in the Baltic States which might have forced them to take a

¹² Edgar Anderson, "British Policy Toward the Baltic States, 1940-41," Journal of Baltic Studies, 11, 4 (Winter 1980), 325-326. Anderson, pp. 326-327, writes:

When the highly moralistic Bible student, Lord Halifax, the British Secretary of State for Foreign Affairs, was informed on 15 June 1940 about complete occupation of Lithuania by Soviet forces, he dismissed the message with a remark: "It leaves me quite cold!"

¹³ Edgars Dunsdorfs, The Baltic Dilemma: The case of the de jure recognition by Australia of the incorporation of the Baltic States into the Soviet Union (New York: Robert Speller & Sons, 1975), p. 289.

decisive step as regards the recognition of Soviet conquest.¹⁴

While some leftist British diplomats, such as Cripps, advised immediate de jure recognition, financially this was not possible. The considerable British investments in the Baltic were lost. London, hoping to avert total disaster, froze \$5 million in Baltic gold deposited in the country and seized twenty six Baltic ships in British ports. Recognizing the occupation would have removed the legal basis for detaining these assets. London, though, also announced that they would be released if British claims in the Baltic were satisfied.¹⁵

The British government did not regard the events of July and August 1940 as decisions freely undertaken by the Baltic States, and responded as such to the 23 July protests of the British ministers in London. Yet, the government did not go so far as to condemn Moscow's actions. Three days later, Lord Halifax prepared a memorandum for the War Cabinet. He wrote that since the annexation was occurring in the middle of the war, it was unknown if the situation would be permanent. Further, recognition would damage Britain's reputation in neutral countries, as well as in the United States. The cabinet generally concurred with these ideas.

¹⁴ Anderson, p. 327.

¹⁵ Anderson, pp. 328, 330; US Department of State, Foreign Relations of the United States: Diplomatic Papers, 1940, Volume I, General (Washington: US Government Printing Office, 1959), p. 392.

On 8 August, following incorporation by the Supreme Soviet, the cabinet deferred a final decision. By withholding recognition, the USSR was alienated, but recognition would be equally undesirable. Halifax later advised Soviet Ambassador Ivan Majskij not to press the issue of the Baltic legations.¹⁶

Baltic diplomats in London carried on their activities and assisted sailors who remained in the country.¹⁷ They also channeled some Baltic funds and property out of legal reach of the British government. When Anthony Eden became foreign secretary in December 1940, he decided that he would not formally receive the diplomats. The ministers were informed of the decision on 6 January 1941, and told that they would have to write private letters to the head of the Foreign Office's Northern Department, Laurence Collier. London also refused to entertain the idea of governments-in-exile:¹⁸

[T]he Foreign Office [wanted] to tell [the Baltic diplomats] verbally and privately that they better not press for an official ruling and that, if they took no action, their names would remain on the Diplomatic List and they would continue for the present to enjoy diplomatic immunities.¹⁹

¹⁶ Anderson, pp. 327-329. Anderson, p. 330, writes that the cabinet entertained the possibility of de facto recognition on 15 October 1940.

¹⁷ See Kaslas, pp. 301-303, for Minister Balutis' protest of the People's Seimas resolutions to Lord Halifax.

¹⁸ Anderson, pp. 329-330.

¹⁹ Anderson, p. 328.

Indeed, The Foreign Office List and Diplomatic and Consular Yearbook continued to list Baltic ministers and career consuls under the names of their countries. However, shortly after the conclusion of the Anglo-Soviet Treaty of 1942, discussed in chapter six of the present study, The Diplomat's Annual (Annual Edition of the Diplomatic Bulletin) began listing Baltic ministers and staff in a separate annex without the names of the countries they represented. The annex was entitled, "List of Persons no longer included in the Diplomatic List but still accepted by H.M. Government as Personally Enjoying Certain Diplomatic Courtesies." The Foreign Office continued the practice noted above.²⁰

The position of the government remained unaltered during the remainder of the war. On 21 December 1944 and 31 January 1945, the government responded to questions in the House of Commons by saying that the 1940 changes in the Baltic were not recognized.²¹ Following the war, the Baltic legations in London issued thousands of documents to Baltic refugees, and Britain expressed the same reservation as the

²⁰ Algirdas Budreckis, "Liberation Attempts From Abroad," in Lithuania 700 Years, 2nd rev. ed., ed. Albertas Gerutis (New York: Manyland, 1969), pp. 386-387; Langer, p. 265; Marek, pp. 404-405; Vaino J. Rusmandel, "The Continued Legal Existence of the Baltic States," Baltic Review, 12, (7 November 1957), 61.

²¹ Budreckis, p. 387; United Kingdom, Parliamentary Debates (Hansard), House of Commons, Official Report (London: HM Stationery Office), 21 December 1944, vol. 406, column 1953; 31 January 1945, vol. 407, column 1464.

US did at Nuremberg.²²

However, Britain was now prepared to officially rule on the status of Lithuania, Latvia, and Estonia. In 1946, the British government recognized the Baltic situation de facto, but not de jure.²³ On 23 May 1947, the undersecretary of foreign affairs, Mayhew, stated in the House of Commons that "it is necessary for us to deal with these facts as we find them."²⁴ On 15 February 1954, the joint parliamentary undersecretary in the Foreign Office, Dodds-Parker, reiterated in the House of Commons the de facto recognition, but added that de jure recognition was not subject to consideration.²⁵

In de facto recognition, Britain acknowledged certain unalterable facts, while registering disapproval of them. London recognizes that the Baltic States continue to

²² Budreckis, p. 396; Felix Kessler, "Phantom Diplomats Carry On in Britain -- Men With No Country," The Wall Street Journal, 12 December 1970, p. 22. Nuremberg is discussed in chapter seven of the present study.

²³ A/S Tallinna Laeviihisus and others v. Tallinna Shipping Company, Ltd., and Estonian State Steamship Line, Lloyd's List Law Reports, 1946, vol. 79, p. 251; Rusmandel, p. 59.

²⁴ United Kingdom, Parliamentary Debates (Hansard), House of Commons, Official Report (London: HM Stationery Office), 23 May 1947, vol. 437, column 2785.

²⁵ United Kingdom, Parliamentary Debates (Hansard), House of Commons, Official Report (London: HM Stationery Office), 15 February 1954, vol. 523, column 1637. British courts have not recognized Soviet nationalization decrees in the Baltic, and have acted as US courts in assets cases. See Dietrich A. Loeber, "Baltic Gold in Great Britain," Baltic Review, 36 (October 1969), 18-19; Marek, p. 407.

exist, but their authority has been usurped and, consequently, cannot be practically exercised.²⁶ In 1954, sir Roger Makins, British ambassador to Washington, stated:

The practice of Great Britain has always conformed fairly closely to the de facto principle. If a government is in effective control of the country in question; if it seems to have a reasonable expectancy of permanence; if it can act for a majority of the country's inhabitants; if it is able (though possibly not willing) to carry out its international obligations; if, in short, it can give a convincing answer to the question, "Who's in charge here?", then we recognize that government. We are not conferring a favor, we are recognizing a situation of fact.²⁷

Since de facto recognition possesses limited legal consequences, British-Baltic treaties are still valid, though the field of application has narrowed. Baltic nationals are able to be protected by their diplomatic representatives, as well.²⁸

A major development in British policy involved the Baltic gold frozen following the occupation. In 1959, London began negotiating with Moscow regarding the gold's disposal. A joint British-Soviet declaration was issued on 12 February 1967, and Prime Minister Harold Wilson's government confiscated the gold. It was sold on 29 June

²⁶ Thomas M. Franck and Michael J. Glennon, Foreign Relations and National Security Law: Cases, Materials and Simulations (St. Paul, MN: West, 1987), p. 431; Marek, p. 406.

²⁷ Franck and Glennon, p. 458. See also Hough, pp. 423-424.

²⁸ Loeber, pp. 24-25; Rusmandel, p. 66.

1967, invested, and began earning interest for the British government. On 5 January 1968, an agreement was concluded between the two countries, which dropped the claims of each against the other. The agreement also stipulated that British claims for losses in the Baltic be paid out of the funds realized from the sale of the Baltic gold.²⁹

While the Anglo-Soviet agreement did not transfer the formal ownership of the gold,³⁰ an Estonian diplomat "thought this was very unfair . . . It wasn't our governments that appropriated the property. The money should have been preserved for the legitimate governments as a matter of principle."³¹ When implementing legislation came before the House of Commons, objections were raised. The government responded:

If . . . [the Baltic] States came into existence at some future date³² and considered that they had a case for the return of the value of the assets that we are proposing to distribute, the appropriate course for them to take would be to present a claim to the British government through the diplomatic channel. In addressing themselves

²⁹ Loeber, pp. 12-13; Maris Pone, "The Fate of the Baltic Gold Reserves in London," in Problems of Mininations: Baltic Perspectives, eds. Arvids Ziedonis, et al. (San Jose, CA: Association for the Advancement of Baltic Studies, 1973), p. 193; Asko Vuorjoki, "The Baltic Question in Today's World," Baltic Review, 38 (August 1971), 4.

³⁰ Loeber, p. 19.

³¹ Kessler, p. 1. Kessler's emphasis. Loeber, pp. 30 ff, reviews various twentieth century cases and arguments regarding compensation for expropriated foreign property.

³² This is an unusual statement, since London formally considers the Baltic States as still in existence.

to any such claim I am sure that the British government of the day would keep well in mind all the sad history of the Baltic peoples, . . . and that the British Government would be predisposed to take as sympathetic a view as, in all the circumstances of the case, they feel to be warranted. . . .³³

Be that as it may, Loeber harshly criticizes London:

[T]he United Kingdom has yielded, after 27 years, to Soviet diplomatic pressure. H.M. Government has undertaken to use the assets of third parties in order to comply with obligations it accepted itself under the terms of the 1968 Agreement. The Baltic gold is thus appropriated by Great Britain at the expense of those holding title in the gold. To this extent Great Britain is unjustly enriched, unless it compensates the owners of the Baltic assets, as required by international law.

. . . The claim that it is "proper and within the power of the British Government and Parliament" to use the Baltic gold is not supported by . . . international legal principles. . . . The argument is not substantiated and appears to be unconvincing. The reasoning that it is "just" to use the Baltic assets "to help our claimants, who suffered heavy losses" is not legal in character. It is of a socio-economic nature. . . . It is certainly true that British investors incurred heavy losses in what is now the Soviet Union. But it is not in order to compensate them at the expense of the Baltic States and its corporations.³⁴

Following the Second World War, Baltic diplomats continued to transact normal business, enjoyed diplomatic privileges, and maintained their legations. However, new legation officers are not permitted to replace those who die. Thus when Lithuanian Minister Bronius Balutis died in

³³ United Kingdom, Parliamentary Debates (Hansard), House of Commons, Official Report (London: HM Stationery Office), 22 January 1969, vol. 776, columns 611-612.

³⁴ Loeber, pp. 37-38.

1967, the position of charge d'affaires was assumed by Counsellor Vincas Balickas. However, Balickas possesses no assistants who were on duty at the time of the occupation. Thus he is the final accredited representative of Lithuania to Great Britain.³⁵ As for the government he represents, "[i]n the present situation Her Majesty's Government do not regard any specific authority as being competent to represent [Lithuania]."³⁶

C. GERMANY

Hitler's Germany did not oppose the annexation of Lithuania, Latvia, and Estonia in August 1940, though it did not formally recognize it. This was a result of the Molotov-Ribbentrop Pact and its secret protocols regarding the division of eastern Europe. Lithuanian Minister Kazys Skirpa was evicted from the Lithuanian Legation by the Berlin police.³⁷ This did not change following the German

³⁵ Budreckis, p. 400; Norma Krause Herzfeld, "The persistent Lithuanians: A government without a country," The Catholic Reporter, 9 June 1961, sec. 2, p. 1; Hough, p. 423; Kessler, p. 1; Marek, p. 406.

³⁶ P.J.S. Moon of the UK mission to the UN, 14 April 1967, quoted in Dunsdorfs, I, p. 295.

As late as 1979, the topic of nonrecognition arose in London. This was in conjunction with Soviet military maneuvers in Lithuania, to which British observers had been invited. The under secretary of state declared that this possessed no implications for British policy toward Lithuania. See Hough, p. 415.

³⁷ Kaslas, pp. 307-308; Boris Meissner, Die Sowjetunion, die Baltischen Staaten und das Voelkerrecht (The Soviet Union, the Baltic States, and International Law)

attack on the Red Army.

After the conclusion of hostilities, German courts generally decided cases involving Baltic nationals according to the policy of the respective occupying power. The annexation was recognized in the Soviet zone, and initially in the French zone, since France had recognized the annexation de facto. Courts in the American and British zones applied nonrecognition.³⁸

Following the establishment of the Federal Republic of Germany, West German courts were faced with the dilemma as to whether or not the Baltic States legally still existed as far as Bonn was concerned. German civil law acts on the basis of the lex patriae principle, whereby cases involving foreigners are decided according to the civil law of their home country, and not according to German law (lex domicilii). The Soviets, of course, had introduced the Russian Civil Code of 1922 in the Baltic following the occupation, supplanting the laws of the independence period. This judicial problem was soon resolved, though, after the Bonn government recognized the independent Baltic States de

(Cologne: Verlag Politik und Wirtschaft, 1956), pp. 304-305.

Kaslas adds that Skirpa, before he left the legation, saw to it that the Lithuanian flag atop the building was inaccessible. The Soviets had to call the Berlin fire department to remove it.

See Kaslas, pp. 290-292, for Skirpa's protest of the People's Seimas resolutions to Ribbentrop.

³⁸ Rusmandel, pp. 55-56.

jure.

On 3 August 1951, the West German Interior Ministry informed the UN International Refugee Organization that the federal government considered Lithuania, Latvia, and Estonia to be under military occupation (occupatio bellica). The government does not consider Baltic citizens to be Soviet citizens. Bonn also honors passports issued by Baltic consuls, and has accepted semi-official diplomatic representation. Until his death in 1987, Dr. Albertas Gerutis served as charge d'affaires of Lithuania.³⁹

When West Germany established diplomatic relations with the Soviet Union, Bonn's position toward the Baltic remained unchanged. There was no de jure recognition of the Soviet Union's de facto borders. This was confirmed in German Chancellor Konrad Adenauer's letter of reservation to the Soviet government on 14 September 1953. The Bundestag later unanimously reaffirmed his position on 14 September 1955. The 12 August 1970 Bonn-Moscow pact, which called on both parties to respect territorial integrity, did not recognize the annexation, either, for the Soviet Union's western boundaries were not discussed. The Foreign Ministry attested to this on 27 August and 9 October 1970. Thus West Germany does not recognize the annexation of the Baltic

³⁹ Budreckis, p. 398; Dunsdorfs, I, p. 293; Herzfeld, p. 1; Domas Krivickas, "Lithuania's Struggle Against Aggression and Subjugation," in Twenty Years' Struggle for Freedom of Lithuania, ed. Juozas Audenas (New York: ELTA, 1963), pp. 141-142; Rusmandel, pp. 55, 68.

states, either de facto or de jure.⁴⁰

D. FRANCE

On 8 August 1940, several days after the Supreme Soviet formally admitted the Baltic States into the Soviet Union, the Soviet representative in Paris demanded that the Baltic legations be closed down within ten days. On 15 August, the Lithuanian legation was closed and the keys handed over to the Soviet embassy by the prefect of police. Lithuanian Minister Petras Klimas, who also represented his country in Belgium, Spain, Portugal, and Luxembourg, was later arrested by the Germans.⁴¹ Even in unoccupied France, the police did not recognize the status of the Lithuanian consul at Marseilles. Following the German attack against the Soviets, the Germans requisitioned Baltic facilities in France on 22 June 1941.

When the Germans retreated from France in September 1944, the Baltic diplomats requested the French authorities for permission to continue their official activities. This was denied, although Lithuanian Charge d' Affaires Dr. Stasys Backis and Counsellor Dr. Jurgis Baltrusaitis, Jr. continued to personally enjoy diplomatic privileges. There was no official announcement concerning the recognition of

⁴⁰ Hough, p. 426; Meissner, p. 308; Vuorjoki, p. 4.

⁴¹ See Kaslas, pp. 305-307, for Klimas' protest of the incorporation to Vichy Foreign Minister Baudouin.

annexation, though some commentators feel that de facto recognition was implied in French government actions.⁴²

While the French executive was not sympathetic to Baltic interests, the French Supreme Court was not as harsh. In a 1951 case involving Latvian citizenship, Gebraud v. De Medem, the tribunal decided:

Considering that no act of international significance has intervened to obliterate the recognition of the Latvian State as a holder of rights and liable to legal obligations; that the Court of Appeals rightly decided that so long as the Peace Treaty has not determined the fate of Latvia, it is impossible to say that Latvians have at present no nationality.⁴³

The most recent expression of the French position toward the Baltic was made by Foreign Minister Claude Cheysson on 17 December 1981:

France has not recognized the annexation of the States of Latvia, Estonia and Lithuania by the U.S.S.R. in 1940. Since then, it has not extended any recognition, either expressly or tacitly.⁴⁴

⁴² Budreckis, p. 387; Albertas Gerutis, Petras Klimas (Cleveland: Viltis, 1978), pp. 199-201; Antanas Klimas, et al., "Petras Klimas," Lietuviu enciklopedija (Lithuanian Encyclopedia) (South Boston: Lithuanian Encyclopedia Press, 1957), vol. 12, p. 120; Marek, p. 408; Rusmandel, pp. 63, 68; C. Surdokas, "Lietuvos diplomatine ir konsularine tarnyba II" ("Lithuania's Diplomatic and Consular Service II"), Karys, 9 (November 1987), 408.

Though Baltic facilities were in the hands of the Soviets, Baltic gold in France was not transferred to them. See Backis, p. 123.

⁴³ Journal du Droit International (Journal of International Law) (Paris), (1951), 173. See also Budreckis, p. 397; Krivickas, pp. 142-143; Rusmandel, p. 63.

⁴⁴ Marek, p. 408; and Rusmandel, p. 63, disagree. They feel that de facto recognition was implied in postwar French actions toward Baltic diplomats.

This attitude was confirmed in 1975 at the time of the signing of the Helsinki Final Act by the president of the Republic when he indicated that "[i]n the view of France, the texts signed here do not imply the recognition of situations which it would not have recognized otherwise."⁴⁵

E. SWEDEN

Though the Swedish government has never officially affirmed it, its position comes closest to de jure recognition of the annexation. Sweden recognized the incorporation on 12 August 1940. That day, the lowest ranking staff member of the Lithuanian legation in Stockholm, Zilinskas, lowered the Lithuanian tricolor to half mast, and transferred the keys to the Swedish foreign ministry.⁴⁶ The Swedes also turned Baltic assets over to the Soviets in 1941.⁴⁷ Finally, following the Second World

⁴⁵ Quoted in Hough, p. 430.

⁴⁶ Kaslas, pp. 308-309; Marek, p. 398; Meissner, p. 302. See Kaslas, pp. 300-301, for Minister Vytautas Gyls' protest of the People's Seimas resolutions to the Swedish foreign minister.

⁴⁷ US Department of State, Foreign Relations of the United States, 1940, I, p. 442, writes:

An agreement between Sweden and the Soviet Union was eventually signed in Moscow on May 30, 1941, which regulated their mutual property claims in the former Baltic States. Swedish economic claims of all kinds amounted to about 118,000,000 Swedish crowns; and "in final settlement of all other Swedish claims the Soviet Government will pay the Swedish Government the sum of 20,000,000 Swedish crowns in eight quarterly installments, or over a period of two years." In return, Sweden "released gold to a value of 18,000,000 Swedish crowns belonging to the Baltic States and deposited in Sweden, and also a number of Baltic ships lying in

war, Sweden repatriated 167 Baltic citizens who had been compelled to fight with the German army, but only after fierce governmental and public debate.⁴⁸

On 13 December 1944, Foreign Minister Gunther addressed the Swedish Riksdag and stated that "practical considerations" dictated Swedish policy toward Lithuania, Latvia, and Estonia. No Baltic nationality is recognized in Sweden. One is considered stateless if he left his country before the Soviet citizenship decree of 7 September 1940. Otherwise, he is considered a Soviet citizen.⁴⁹ On the other hand, judicial and administrative practice has treated all Baltic refugees as political refugees and, therefore, as stateless persons. In a 1949 case, Laurine v. Laurine, Sweden's supreme court (Hogstra Domstol) opined that if people have no real ties with their homeland and do not intend to return to it, they should be treated as stateless.⁵⁰

Swedish ports before the negotiations were concluded."

⁴⁸ The Baltic Refugees (Stockholm: Baltic Humanitarian Association, 1946), pp. 11-13, 17.

⁴⁹ Budreckis, pp. 387-388; Rusmandel, pp. 64-65.

⁵⁰ 25 February 1949, Nytt Juridiskt Arkiv, 1949, part 1, p. 82. See also Hough, pp. 440-443; Lohk v. Lohk, 12 December 1948, Nytt Juridiskt Arkiv, 1948, part 1, p. 805; Folke Schmidt, "Construction of Statutes," Scandinavian Studies in Law, 1957, I (Stockholm: Almqvist & Wicksell, 1957), pp. 188-190; Schmidt, "Nationality and Domicile in Swedish Private International Law," The International Law Quarterly, 4 (1951), 39-52.

In 1968, Sweden's Prime Minister Tage Erlander stated that the Baltic States possess a right to independence.⁵¹ The Royal Swedish Ministry of Foreign Affairs admitted in 1977, however, that the "Swedish Government has not 'made up its mind' whether to recognize the incorporation as either de facto or de jure."⁵²

F. SWITZERLAND

The Swiss Federal Council closed the Baltic missions in January 1941, but they were not turned over to the Soviets, and Baltic diplomats continued to reside in the Latvian legation.⁵³ On 15 November 1946, Baltic archives and property were turned over to the Federal Political Department for fiduciary administration (gestion fiduciaire). The owners were considered to be in a position whereby they could not manage the assets. The administration was to end once the owners could legally administer the property, or there was a legitimate state succession. Indeed, the following year, the head of the

⁵¹ Vuorjoki, p. 4.

⁵² Quoted in Hough, p. 443.

⁵³ Jurgis Savickis, Zeme dega I (The Ground Burns I) (Chicago: Terra, 1956), p. 345, writes of the concern of Baltic diplomats in Switzerland during the occupation of the Baltic. He served as Lithuanian minister to the League of Nations.

See Kaslas, pp. 298-299, for Minister Jurgis Saulys' protest of the People's Seimas resolutions to the Swiss federal president.

Soviet mission in Switzerland asked to use the Latvian mission on the ground of state succession. The Swiss refused the request. However, the 1946 report of the Federal Council spoke of the "former Baltic States." The Swiss government has not formally recognized the annexation of the Baltic States.⁵⁴

G. OTHER COUNTRIES

Canada recognizes the de facto entry of the Baltic States into the Soviet Union, but does not recognize their annexation de jure. It has reaffirmed this position on several occasions.⁵⁵ In 1948, Soviet consulates in Canada attempted to induce Lithuanians there to register as Soviet citizens. This prompted Ottawa to reiterate its policy of nonrecognition.⁵⁶ No Lithuanian legation was ever established in Ottawa, since the one in London, England served that purpose for all the Commonwealth countries. There have, however, been three honorary consuls general in Toronto: Gerald L.P. Grant-Suttie from 1937 to 1949, Jonas

⁵⁴ Budreckis, p. 398; Hough, pp. 435-436; Marek, pp. 408-409; Rusmandel, p. 64.

⁵⁵ Dunsdorfs, I, p. 296; Hough, pp. 428-429; Kaslas, p. 470; Laane and Baltser v. Estonian State Cargo & Passenger S.S. Line, 1949, Canada Law Reports, vol. 539, pp. 539-540; Marek, pp. 407-408.

⁵⁶ Budreckis, p. 397; Canada, House of Commons Debates, Official Report, 17 May 1954, vol. 96, column 1767; Rusmandel, p. 62.

Gyls from 1949 to 1959, and Jonas Zmuidzinas since 1962.⁵⁷
A vice consul was appointed to Toronto in the autumn of 1988.

Belgium's policy came to light in Compagnie Belgo-Lithuanienne d'Electricite v. Societe des Centrales Electriques Regionales, decided by the High Court in Brussels on 26 October 1946. The Court noted that Belgium had not recognized the annexation of the Baltic States de jure. In addition, "no document issued by the Department of Foreign Affairs and Foreign Trade establishes that the Belgian Government considers such annexation recognized de facto."⁵⁸ In 1945, Belgium refused to repatriate Baltic nationals to the USSR, and thirty years later stated that the Helsinki accords did not imply a change in policy.⁵⁹

Lithuania, Latvia, and Estonia continue to be listed

⁵⁷ Pranas Gaida, et al., Lithuanians in Canada (Ottawa: Canada Ethnic Press Federation, 1967), pp. 288-289. Rusmandel, p. 62, writes that the Commonwealth countries were dropped from the British Foreign Office List in 1954. Since then, its successor in Canada, Canadian Representatives Abroad and Representatives of Other Countries in Canada, has not listed Baltic consular officers.

⁵⁸ 26 October 1946, Journal du Droit International, 77 (1950), 865-867. In a 1951 divorce case involving a Latvian couple, the court approached the matter differently when it stated that in:

actual fact, the USSR effectively occupies Latvia and has incorporated that state, ensuring the establishment of power . . . Latvia has now ceased to exist as an independent state.

See Pulenciks v. Augustovskis, Tribunal Civil de Bruxelles, 5 April 1951, Pasicrisie Belge, 1952, III, pp. 40-42.

⁵⁹ Budreckis, pp. 397-398; Hough, p. 432.

on the map of the Danish foreign minister. In 1982, Denmark's foreign ministry declared:

We have never recognized the annexation of these three countries to the Soviet Union. It is for this reason that we cannot inquire with Moscow about the rumors [of an anthrax epidemic] affecting these three countries. This is very inconvenient . . . [but] we do not want [the Soviets] to get from us any piece of writing which they then could interpret as the recognition of the annexation . . .⁶⁰

The position of the Italian government is unclear. The Baltic legations and consulates in the country were closed in 1940, but without a formal declaration. De facto recognition may be inferred, however. The Baltic missions have not been included in the Italian diplomatic list since the annexation.⁶¹

The Irish government's position was made clear in 1942 when the Supreme Court was deciding Soviet claims to Latvian and Estonian vessels in Zarine v. Owners of S.S. Ramava and McEvoy v. Owners of Otto.⁶² The Ministry of External Affairs informed the court that Ireland did not recognize Soviet sovereignty in Latvia and Estonia either de facto or de jure. The court, in turn, ruled that the

⁶⁰ Quoted in Hough, p. 432.

⁶¹ Budreckis, p. 387; Rusmandel, p. 64. See also any edition of Ambasciate e legazioni estere in Italia, published by the Italian government.

See Kaslas, pp. 296-297, for Minister Stasys Lozoraitis' protest of the People's Seimas resolutions to the Italian foreign minister, Count Galeazzo Ciano.

⁶² 4 July 1942, The Irish Law Reports, 1942, pp. 148-172.

vessels in question were not the property of the USSR.⁶³

Spain and Portugal are both signatories to the Saavedra Lamas Pact, discussed in chapter three of the present study. As such, they are bound not to recognize forcible changes in territorial title. Spain made no official comment on the annexation, but continued to receive Latvian and Estonian envoys. Portugal officially declared a policy of nonrecognition and suspended its treaties with the Baltic States.⁶⁴

The Vatican has not recognized the annexation.⁶⁵ Upon occupation, Lithuanian Minister Stasys Girdvainis remained at his post.⁶⁶ When a new pope is elected, it is customary for all diplomats accredited to the Holy See to present new credentials signed by their respective chiefs of state. When Pope John XXIII succeeded Pope Pius XII, this announcement was made to all Vatican diplomats, including Girdvainis. However, it was obvious that he could not receive new credentials. Senior Lithuanian clergymen

⁶³ See Langer, p. 268.

⁶⁴ Hough, p. 433; Krivickas, p. 142; Marek, p. 409; Rusmandel, p. 58.

⁶⁵ Tiesa, the Lithuanian Pravda, characterized this stand by the Vatican as tantamount to the invasion of Lithuania by the Crusaders. See "Puola popieziu uz okupacijos nepripazinima" ("Pope Attacked for Nonrecognition of the Occupation"), Draugas, 11 September 1987, p. 1.

⁶⁶ See Kaslas, pp. 295-296, for Minister Girdvainis' protest of the People's Seimas resolutions to the papal secretary of state, Louis Cardinal Maglione.

interceded on behalf of the Lithuanian diplomat, asking the pope to accept the old credentials issued in 1939. Rumors that John XXIII was pursuing a new policy toward the eastern bloc, combined with Girdvainis not being invited to certain diplomatic functions, caused consternation among Lithuanians in western Europe. Finally, L'Osservatore Romano reported in January 1959 that the Lithuanian legation would be allowed to function, though Girdvainis title was changed to gerant d'affaires. Girdvainis was eventually succeeded by his first secretary, Stasys Lozoraitis, Jr., son of the head of the Lithuanian Diplomatic Service.⁶⁷

Though the nations of the eastern bloc have not formally issued pronouncements on Soviet actions in the Baltic in 1940, it may be assumed that they recognize the annexation de jure. Yugoslavia, on the other hand, has indicated that the Soviet Union possesses no legal title to Lithuania, Latvia, and Estonia. Yugoslav leader Josip Tito criticized the USSR in that vein on 29 July 1951. This position was recently reiterated in Socialism, a semi-official Yugoslav periodical.⁶⁸

Soviet-influenced Finland has made no official announcements regarding the annexation, nor has there been

⁶⁷ Budreckis, p. 399; Herzfeld, p. 1; Krivickas, p. 142; "Lietuvos Pasiuntinybe prie sv. Sosto veike ir veiks" ("The Lithuanian Legation at the Holy See Will Continue to Operate"), Eltos Informacija (Elta Information), 15 January 1959, supplement, pp. 1-2; Rusmandel, pp. 58, 68.

⁶⁸ Hough, pp. 437, 430-431.

any public or governmental discussion of the matter since the 1940s. Dr. Ragnor Oeller continued to serve as Lithuanian consul in Finland until his death in December 1960. However, the Soviet-Finnish armistice of 1944 required the Finns to repatriate Estonians who had fled the advancing Red Army. The 1947 Treaty of Paris required Finland, as a defeated ally of Germany, to liquidate Baltic assets in the country and turn them over to the USSR.⁶⁹

No recognition of the annexation has been made by Malta, Greece, Luxembourg, Turkey, Norway, or the Netherlands.⁷⁰

As far as Latin America is concerned, many of which states are signatories to the Saavedra Lamas Pact,

Uruguay has been a leader among those nations refusing to acknowledge the legality of the forcible seizure of territory along the Baltic. On February 16, 1963, the President of Uruguay received a Lithuanian delegation and delivered a speech in which he affirmed the Uruguayan position. In Brazil and Colombia, Baltic diplomatic personnel are active, and Ecuador and Chile have received semi-official diplomatic representatives of the Baltic States. Guatemala, Paraguay and Venezuela continue to send representatives to diplomatic receptions held at Baltic embassies in South America. Costa Rica has become an outspoken advocate of Baltic sovereignty and continually criticizes the Soviet seizure of

⁶⁹ Budreckis, p. 400; Axel Gadolin, The Solution of the Karelian Refugee Problem in Finland (The Hague: M. Nijhoff, 1952), p. 13; Hough, p. 437.

⁷⁰ Hough, pp. 433-434.

Baltic territory.⁷¹

Only Argentina under the leadership of Juan Peron withdrew recognition from the Lithuanian legation in 1948 during trade negotiations with the USSR. Argentina declared that operations would be suspended pending a resolution of the Baltic situation by the United Nations. The legation was transferred to Uruguay.⁷²

Asia has seen the People's Republic of China, the Republic of China, South Korea, and the Phillipines explicitly declare a policy of nonrecognition. Other Asian nations have not announced a position. Most African nations acquired their independence after World War II and have not discussed the issue.⁷³

H. THE AUSTRALIAN RECOGNITION EPISODE

Australia had not recognized the incorporation of Lithuania, Latvia, and Estonia into the Soviet Union. In 1948, when the Soviet embassy invited Baltic nationals to

⁷¹ Hough, p. 444. See also Brazil, Ministerio das Relacoes Exteriores, Departamento Economico e Consular, Divisao Consular, Lista do Corpo Consular Estrangeiro (List of the Foreign Consular Corps), 31 December 1955 (Rio de Janeiro: Departamento de Imprensa Nacional, 1956), pp. 28, 64; Budreckis, pp. 387, 400.

⁷² Budreckis, p. 399; Herzfeld, p. 1; Krivickas, p. 143; Meissner, pp. 300-301; Rusmandel, p. 59.

See Kaslas, pp. 297-298, for Minister Kazimieras Grauzinis' protest of the People's Seimas resolutions to Argentina's foreign minister, Jose Maria Cantilo.

⁷³ Hough, pp. 445-446.

register as Soviet citizens, the Australian government advised that the request be ignored, and reiterated its policy, which it would also do on other occasions.⁷⁴

This policy, however, was to drastically change in mid-1974. On 17 May 1974, Prime Minister Gough Whitlam wrote:

The policy of the present Australian Government is that while not formally recognising the incorporation of Lithuania, Latvia and Estonia into the Soviet Union, it must be cognisant of the de facto situation and deal with the government which has effective control of the territory in question. This was also the attitude taken by all of our predecessors on this matter.⁷⁵

This position, in and of itself, was no surprise. However, on 3 July 1974, while the foreign minister was out of the country, and without consulting the cabinet or Labor party leaders, Prime Minister Whitlam decided to grant de jure recognition to the annexation. On 16 July, Sir James Plimsoll, Australian ambassador in Moscow was informed of the decision. He, in turn, officially visited Estonia on 28-30 July.⁷⁶

By early August, news of the visit had leaked to the Australian press, who, along with the Liberal opposition, pressed for confirmation. The foreign ministry confirmed

⁷⁴ Rusmandel, pp. 62-63. See also Kaslas, pp. 470-471.

⁷⁵ Baltic Council of Australia, Notes and Documents on Australian Recognition of the Incorporation of the Baltic States into the USSR (np: BCA, 1974), p. 13.

⁷⁶ Baltic Council of Australia, pp. 13, 18; Dunsdorfs, I, pp. 37-38.

the change in policy on 4 August, and Prime Minister Whitlam publicly addressed the topic on 6 September.⁷⁷

The announcement of de jure recognition, extended without any pressure from Moscow, immediately caused controversy in the halls of government, as well as among the general public, particularly immigrants. Even the Australian Communist Party disapproved of the action.⁷⁸ By a vote of 29-27, the Australian Senate resolved on 18 September:

That the Minister for Foreign Affairs is deserving of censure and ought to resign because: in breach of a clear undertaking to the contrary given by the Prime Minister the Government shamefully and furtively extended recognition to the incorporation of the Baltic States in the U.S.S.R., the Minister withholding any announcement or explanation of the decision.⁷⁹

R.G. McComas, the honorary Latvian consul in Melbourne, immediately lost his official status. Baltic nationals who had not received Australian citizenship were now considered to be under Soviet consular protection. Indeed, there was even talk that Australian citizens of Baltic descent could be compelled to serve in the Soviet army if they happened to visit Soviet-occupied territory.

⁷⁷ Dunsdorfs, I, pp. 38-39.

⁷⁸ Baltic Council of Australia, pp. 1-4; Dunsdorfs, I, p. 258. See also Antanas Skerys, Geelongo Lietuviu Bendruomenes kronika 1948-1978 (Chronicle of the Geelong Lithuanian Community 1948-1978) (Geelong, Australia: Australian Lithuanian Community, 1980), p. 260.

⁷⁹ Quoted in Dunsdorfs, I, p. 218.

Australia recognizes dual citizenship and, theoretically, could not protest such Soviet actions.⁸⁰

It is difficult to speculate on the full effect of Australia's policy shift, for it would not last beyond the end of 1975. That year saw problems befalling the Labor government, including price fluctuations, industrial disputes, bankruptcies, and high unemployment. Meanwhile, Baltic activists strove to place the recognition issue on the opposition Liberal Party's platform. The Liberals promised to reverse recognition if they won the elections of 13 December 1975, which they did. On 17 December, Malcolm Fraser was named new prime minister and Andrew Peacock took the foreign minister's portfolio. That day, Peacock cabled Ambassador Plimsoll in Moscow with instructions that neither he nor his senior staff should officially visit the Baltic. Two days later Latvian Consul McComas was reinstated to his former position.⁸¹

It would be foolish to assert that the issue of Baltic recognition brought Prime Minister Whitlam's government down, though it can perhaps be safely said that the uproar following the incident certainly did not help his fortunes. Indeed action on the reversal of recognition was

⁸⁰ Dunsdorfs, I, pp. 37 ff, 296.

⁸¹ Viktoras Baltutis, ed., Australijos lietuviu metraštis II (Australian Lithuanian Yearbook II) (Adelaide: Australian Lithuanian Community & Australian Lithuanian Foundation, 1973), p. 27; Dunsdorfs, II, pp. 324-349, 354-355.

taken two days following the 1975 elections. In addition, though some commentators have ascribed devious motives, it is likely that the public rationale was truthful, namely that Australia was merely recognizing reality. In terms of politics and public relations, though, the prime minister handled the matter poorly. In terms of law, the maintenance of the previous de facto recognition would have sufficed as far as dealing with reality was concerned.⁸²

The entire Australian recognition episode is a mere blip in the overall landscape of diplomatic history. However, it demonstrates both the fragility and strength of the nonrecognition policy. It has not been forgotten, and governments cannot completely ignore it.

I. CONCLUDING REMARKS

In general, there are three groups of countries regarding the status of the Baltic States. The US heads the group which has not recognized their incorporation either de jure or de facto. Great Britain is at the head of countries extending de facto recognition. The third, and largest, group consists of states which have not expressis verbis stated an opinion.⁸³ Overall, however, the United States has been the clearest and most consistent on the

⁸² Henry S. Albinski, review of Dunsdorfs I, Journal of Baltic Studies, 7, 4 (Winter 1976), 373-374.

⁸³ Jonas Maziulis, review of Meissner, Baltic Review, 7 (16 June 1956), 78-79.

nonrecognition policy. Despite flaws in implementation, the US has maintained the spirit of the Stimson Doctrine.^{a4}

^{a4} Backis, p. 122; Langer, p. 285.

CHAPTER X

CONCLUSION

A. LITHUANIAN DIPLOMATIC CONTINUITY

As the nonrecognition policy entered the 1970s, concern began to mount over the diplomatic continuity of the Republic of Lithuania in the United States. Since the incorporation, diplomatic and consular personnel had remained on duty, supported from the assets frozen by Washington on 15 July 1940. They had also been able to appoint successors when needed. Thus when Minister Povilas Zadeikis died in 1957, his counsellor, Juozas Kajeckas, succeeded him. His assistant, in turn, Dr. Stasys Backis, succeeded him in 1977 following a long illness.¹ However, while honorary consuls could be appointed with little difficulty,² the representation at the legation could not

¹ Kajeckas died the following year. See Norma Krause Herzfeld, "The persistent Lithuanians: A government without a country," The Catholic Reporter, 9 June 1961, sec. 2, p. 1.

² Mrs. Josephine J. Dauzvardis succeeded her late husband, Dr. Petras Dauzvardis, as consul general in Chicago on 12 November 1972, though in an honorary capacity. Vytautas Cekanauskas succeeded the late honorary Consul General Dr. Julius J. Bielskis in Los Angeles on 6 October

be replaced as easily. The US ruled that only individuals commissioned in the Lithuanian foreign service at the time of the occupation could serve at the legation. The problem for continuity was obvious.^a

Funds to support Lithuanian diplomatic and consular activities in the US and abroad were also dwindling at this time. Representative Charles Dougherty and Senator John Heinz decided to address this issue. After considering several alternatives, such as allowing the US government to cover financial shortfalls not met by Lithuanian-American donations, and having Congress establish a large, permanent trust fund, Dougherty and Heinz proposed legislation in which the US government would provide \$250,000 annually to the Lithuanian legation as of 1981:

. . . (a) there is authorized to be appropriated for fiscal year 1981 to the legation of Lithuania in the United States, \$250,000.

(b) The Charge d'Affaires of the legation . . . is authorized to receive, on behalf of such legation, any funds appropriated under this Act to such legation, and is authorized to administer such funds. Such funds may only be used for the maintenance of the operations of such legation. The Charge d'Affaires may use such funds to pay the compensation of personnel which the Charge d'Affaires may appoint to be in the diplomatic corps of the legation, except that all such

1977. Indeed, the Chicago consulate was upgraded to a consulate general on 11 August 1961. See C. Surdokas, "Lietuvos diplomatine ir konsularine tarnyba II" ("Lithuania's Diplomatic and Consular Corps II"), Karys, 9 (November 1987), 410.

^a The pessimistic tone regarding this matter can be seen in John Sherwood, "The keeper of Lithuania's fading flame," Chicago Tribune, 13 July 1978, sec. 2, pp. 1, 4.

personnel must be of Lithuanian parentage and may not be United States citizens. Such personnel shall be entitled to all the privileges and immunities of diplomatic personnel of comparable rank from other countries.⁴

The State Department, however, did not agree with that manner of financial support:

The sponsors of H.R. 5407 [Rep. Dougherty's bill] believe that after having recognized the Legations's diplomatic status for more than 39 years, it would be inappropriate for the United States to permit the Lithuanian Charge d'Affaires and the small and dwindling corps of Lithuanian diplomats and their families to face a bleak future.

The Department thoroughly shares this view. However, the Department also believes that to provide direct U.S. Government financial assistance to the Lithuanian Legation would degrade the valid and important degree of independence which the Lithuanian Charge d'Affaires, an accredited foreign diplomatic representative, now possesses from the U.S. Government and from U.S. domestic politics and related considerations. . . .

I am pleased to inform you that we are in the final stages of working out an arrangement which will provide for the continuing financial requirements of the Lithuanian Legation . . .⁵

The arrangement which the State Department was referring to was the pooling of the resources of all three Baltic

⁴ Senate Resolution 2257 in US Congress, Congressional Record, 4 February 1980. Rep. Dougherty had introduced similar legislation in the House on 26 September 1979. See House Resolution 5407.

⁵ US Department of State, letter of Assistant Secretary for Congressional Relations J. Brian Atwood to Rep. Clement J. Zablocki, chairman, House Committee on Foreign Affairs, 8 February 1980, pp. 1-2. See also US Department State, Statement by Robert L. Barry, Assistant Secretary for European Affairs, before the Subcommittee on International Organizations, House Foreign Affairs Committee, 26 June 1979, p. 5.

countries, the bulk of which came from Latvian funds. This was accomplished in 1980.⁶

While the financial security of the Lithuanian diplomatic corps was assured for the near future, the rule that only officers commissioned as of June 1940 could serve would practically invalidate that victory. This problem, though, would soon be resolved, as well. In what was probably the most important victory for proponents of the nonrecognition policy since the promulgation of the policy itself, Dr. Stephen Aiello, special assistant to President Jimmy Carter for ethnic affairs, announced in October 1980:

Up until now, we have accepted as diplomatic representatives of the Baltic countries only individuals who were in 1940 commissioned officers of the diplomatic services of the last independent governments. With the passage of time, the number of individuals accreditable under this standard has dwindled to a handful. In view of the important symbolic role of Baltic diplomatic representation, we . . . are prepared, in response to their request, to coordinate closely with the three present Baltic Charge d'Affaires on designation of their successors in order to provide for continued representation when the present corps of Baltic diplomats is no longer

⁶ For Lithuanian-American efforts aimed at assuring Lithuanian diplomatic continuity, see Vytautas Kutkus, JAV Lietuviu Bendruomenes krasto valdybos veikla nuo 1979 m. gruodzio men. 15 d. iki 1982 m. spalio men. 23 d. (Activity of the Lithuanian American Community from 15 December 1979 to 23 October 1982) (np: LAC, 1982), p. 15; Balys Rangas, ed., JAV LB trys desimtmečiai (Three Decades of the Lithuanian American Community) (Brooklyn: LAC, 1982), p. 273; Kazys Sidlauskas, Amerikos Lietuviu Tarybos veiklos penkmetis (Five Years' Activity of the Lithuanian American Council) (Chicago: LAC, 1980), p. 16.

able to function.⁷

This opened the door for a successor to the aging charge d'affaires in Washington, Dr. Stasys Backis. Backis had been charge since 1 January 1977 and deputy chief of the Lithuanian Diplomatic Service since 20 August 1978. He succeeded to the post of chief upon the death of Stasys Lozoraitis, Sr. on 24 December 1983, and continued to serve as charge in Washington. Meanwhile, on 6 December 1983, Stasys Lozoraitis, Jr. had been confirmed as Backis' counsellor. On 15 November 1987, Backis retired as charge and was succeeded by Lozoraitis, Jr. Backis continues to serve as chief of the service, while officially listed as counsellor of legation in Washington. Lozoraitis, Jr., who was not a commissioned officer in 1940, is now Lithuanian representative to both the US and the Vatican.^a

The Lithuanian legation periodically presents its credentials to the US State Department, disseminates information on the current situation in Lithuania, and sees to it that the status of diplomatic and consular personnel is maintained. Because new appointments are not made by a

⁷ Stephen Aiello, White House Office of Public Affairs, draft statement, reprinted in Draugas, 28 October 1980, p. 1. Aiello, along with his deputy, Victoria Mongiardo, delivered this statement at the annual meeting of the board of directors of the Lithuanian American Community in Chicago just before the November election.

^a Surdokas, I, Karys, 8 (October 1987), 363-364; Surdokas, II, pp. 405-407; US Department of State, Diplomatic List, May 1988 (Washington: US Government Printing Office, 1988), p. 44.

head of state, the Lithuanian representative is officially a charge d'affaires accredited to the US Secretary of State. In the State Department's Diplomatic List, charges are listed in order of their precedence immediately after ambassadors. The senior charge d'affaires in Washington at this writing is Latvian Charge Dr. Anatol Dinbergs, who has served since 1 October 1970. Up until his retirement, Stasys Backis was second charge in order of precedence. The last individual on the list is Ernst Jaakson, Estonian consul general in New York City in charge of legation since 15 December 1965.⁹

As indicated above, honorary consular personnel in the US had been appointed for a number of years, replacing retiring or deceased officers. Mrs. Mary Krauchunas served as vice consul in Chicago from 1983 to 1985. Mr. Vytautas Cekanauskas was appointed consul general in Los Angeles in 1977. Mrs. Josephine Dauzvardis was appointed consul general in Chicago in 1972, and was succeeded by Mr.

⁹ Robert Keatley, "Homeless Diplomats: Their Lands Are Gone, Their Mission Remains," The Wall Street Journal, 20 March 1973, p. 20; Krystyna Marek, Identity and Continuity of States in Public International Law (Geneva: Librairie E. Droz, 1968), p. 402; Tom Tiede, "Legation is last bit of Lithuania," Huntington Park [California] Daily Signal, 2 April 1979; US Department of State, Diplomatic List, pp. vii-viii. See also Charles Peters, "Tilting at Windmills," The Washington Monthly, May 1984, p. 10.

Tiede adds:

As for the legation itself, it has unhappily become something of a diplomatic chuckle in Washington. Some who are aware of the five-story outpost say it is an absurd relic.

vaclovas Kleiza in 1985.¹⁰ There are currently three Lithuanian consuls general in the US: Cekanauskas, Kleiza, and Anicetas Simutis in New York City.¹¹ Simutis is the only Lithuanian consul general who can provide full consular services to Lithuanian citizens, including the issuance of Lithuanian passports. His jurisdiction encompasses the entire United States, its territories and possessions. He is not an honorary consul because he was on duty as a consular attache in New York at the time of occupation. He became vice consul in 1951, consul in 1965, and consul general in 1967.¹²

¹⁰ See Surdokas, II, pp. 410-411. See also a memorandum from Lithuanian Consul General Julius J. Bielskis in Los Angeles to Charge d'Affaires Juozas Kajeckas dated 17 July 1971 regarding the possible appointment of a vice consul and two consular attaches in that city. This was never implemented. The document is housed in the Dauzvardis Consular Collection at the Lithuanian Research and Studies Center, Chicago.

¹¹ US Department of State, Foreign Consular Offices in the United States, February 1987 (Washington: US Government Printing Office, 1987), p. 52.

¹² See Bronis J. Kaslas, ed., The USSR-German Aggression Against Lithuania (New York: Robert Speller & Sons, 1973), pp. 471-472; Surdokas, II, pp. 408-409.

For information on Latvian diplomatic and consular succession, see Draugas, 18 November 1987, p. 1; Latvian Legation, Press Bureau, Latvia in 1939-1942: Background; Bolshevik and Nazi Occupation; Hopes for Future (Washington: Latvian Legation, 1942), pp. 105-106; Marek, pp. 401-402; Vaino J. Rusmandel, "The Continued Legal Existence of the Baltic States," Baltic Review, 12 (7 November 1957), 67-68; US House of Representatives, Select Committee on Communist Aggression, Communist Takeover and Occupation of Latvia, Special Report No. 12 (Washington: US Government Printing Office, 1954), pp. 6-7; US House of Representatives, Select Committee to Investigate the Incorporation of the Baltic States into the U.S.S.R., Baltic States Investigation I

As honorary, and not career, consuls, and as naturalized US citizens, Cekanauskas and Kleiza are subject to the tax laws of the United States, except for fees accepted for consular services.¹³ As far as Washington is concerned,

[a]s a matter of U.S. policy, honorary consular officers recognized by the U.S. Government are American citizens or permanent resident aliens who perform consular services on a part-time basis. The limited immunity afforded honorary consular officers is specified in Article 71 of the [Vienna Convention on Consular Relations]. However, such individuals do not enjoy personal inviolability and may be arrested pending trial if circumstances should otherwise warrant. However, appropriate steps must be provided to accord to such officers the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consular officer are inviolable at all times and wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to the other activities of an honorary consular officer

(Washington: US Government Printing Office, 1953), p. 14; US Department of State, Diplomatic List, p. 43; US Department of State, Foreign Consular Offices, p. 51.

Estonia recalled its minister in 1925 and placed the legation in the charge of the consulate in New York. This situation, therefore, is not a by-product of the incorporation. For further information on Estonian representation in the US, see William J.H. Hough, III, "The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory," New York Law School Journal of International and Comparative Law, 6, 2 (Winter 1985), 412; Evald Roosaare, "Consular Relations Between the United States and the Baltic States," Baltic Review, 27 (June 1964), 19; Rusmandel, pp. 66-67; US Department of State, Diplomatic List, p. 23; US Department of State, Foreign Consular Offices, p. 26.

¹³ John R. Wood and Jean Serres, Diplomatic Ceremonial and Protocol: Principles, Procedures and Practices (New York: Columbia University Press, 1970), p. 76.

or person working with that consular officer.¹⁴

B. LITHUANIA AND THE PHILOSOPHY OF STATEHOOD

As historians often point out, Lithuania was not a state fabricated during the twentieth century, but a nation which had achieved statehood in the thirteenth century. Though formal statehood and the exercise of sovereignty have occasionally been interrupted, the essence of statehood has been alive within the Lithuanian nation for over seven hundred years.¹⁵

A renewed consciousness of Lithuanian statehood and citizenship appeared before the formal reconstitution of the Lithuanian state during the national renaissance of the late nineteenth century. Statehood manifested itself during various rebellions, the Vilnius Conference of 1905, the 1918 declaration of independence, the wars of independence and, finally, governmental activity until the occupation of 1940. Statehood also manifested itself during the 1941 national revolt, which attempted to reconstitute the Lithuanian state following the Soviet retreat and, after the return of the

¹⁴ US Department of State, Foreign Consular Offices, pp. i-ii.

¹⁵ Stasys Backis, "Lietuvos valstybes tarptautine teisine ir politine padetis" ("The International Legal and Political Status of the Lithuanian State"), in Lietuva okupacijoje (Lithuania Under Occupation), ed. Jonas Balkunas (New York: World Lithuanian Community Congress Committee, 1958), pp. 121-122.

Red Army, in underground and overt partisan activity.¹⁶

A century of national revival, culminating in the establishment of an independent state, produced among the Lithuanians strong commitments to national ideas and to the national state. The younger generation especially, sensitive to the medieval traditions of Lithuanian statehood, took modern Lithuania's independence as an axiomatic fact and therefore refused to reconcile itself to its loss.¹⁷

Statehood is as much a subjective factor of consciousness, as it is an objective one of formal governmental apparatus. The consciousness of a state's goals and tasks leads to a consciousness of duty and obligations toward the state, that is, laboring for and defending it. One commentator stresses the importance of civic consciousness and education during the course of a national occupation. This entails the study of a state's past, democratic principles, legal foundations, and civil-legal goals. In addition to this, though, a citizen of an occupied state must develop new ideas and look to an independent future. If this is not done, statehood itself is in jeopardy.¹⁸

This is especially valid when applied to smaller nations. In this regard, Sveics is quoted in extenso:

¹⁶ Petras Stravinskas, Ir sviesa ir tiesa: Rastai ir credo. Pirma knyga (And Light and Truth: Writings and Credo. A First Book) (Chicago: Valerijonas Simkus, 1978), pp. 33-35.

¹⁷ Zenonas Ivinskis, "The Lithuanian Revolt Against the Soviets in 1941," Lituanus, 12, 2 (Summer 1966), 5-6.

¹⁸ Backis, p. 124; Stravinskas, I, pp. 32-33, 37-38.

Many Big Power ideologists condemn nationalism, and a number of scholars habitually use the term nationalism only in a negative sense. However, small nations must recognize and rely on nationalism as a primary source of their strength.

. . . Nationalism has become an expression of a nation's will to live and its individualism. It has become a symbol of the dignity of peoples. It is the feeling of belonging to a national brotherhood. In many instances it is the strongest and most durable social bond.

From the point of view of national defense and survival, nationalism -- a product of patriotic loyalty and uniting cohesion -- is the main source of strength. It fixes the basic loyalty, the political objectives, the strategy, and many techniques in the struggles to defend a nation.

Nationalism, adequately mobilized, is an impressive force. In situations of political and social conflict, it enhances national strength in various ways: (a) rallies the nation's forces, (b) unifies them, (c) clarifies the issues of the struggle, distinguishes friend from foe, and (d) provides a guiding philosophy, a sense of direction, an understanding of the goals to be achieved.

Small states and nations that do possess the precious inheritance of nationalism should recognize its value as a foundation of national survival. They should build their future on it.¹⁹

Lithuanian Minister Dr. Stasys Backis has written that, along with the use of atomic energy, the fight against colonialism is the most distinctive feature of the postwar world.²⁰ Those fighting for independence in Asia and Africa

¹⁹ V.V. Sveics, "Nationalism: A Source of Strength for Small Nations," in Fourth Conference on Baltic Studies: Summaries of Papers (Brooklyn: Association for the Advancement of Baltic Studies, 1974), p. 69. Sveics' emphasis.

²⁰ Backis, "Kataliku baznycios doktrina apie tautu apsisprendimo teise" ("The Catholic Church's Doctrine on Self-Determination"), in Suvaziavimo darbai IV (Proceedings IV), ed. A. Liuima (Rome: Lithuanian Catholic Academy of Sciences, 1961), p. 52.

over the past four decades have realized that an independent state is the most desirable vehicle for the refinement of a nation's social, economic, and cultural progress. Some have gone as far as asserting that the suppression of a nation's progress toward those goals, as well as the forced subjugation of a state, are violations of international law. The mere existence of a state is enough to grant it the right to survival; recognition by other states is unnecessary. As such, all nations, regardless of size and strength, are morally and juridically equal.²¹

Be that as it may, Alfred Cobban has pointed out the practical difficulties in such an approach. He notes that the will of struggling populations has played less a role in decolonization than the will of the major powers. Thus, while admitting the rights of nationality, the power of a state -- or lack thereof -- cannot be ignored. Such limitations mean that the greater states will, perhaps necessarily, exert the most power on the global stage.²² Cobban goes on to ask:

How do these [realities] affect the prospects of national self-determination? Local autonomy may solve the problems of some of the smaller communities, but there are a considerable number

²¹ Konstantinas Rackauskas, "Power Politics vs. International Law," Baltic Review, 14 (1 August 1958), 64-65; Antanas Trimakas, "The Soviet Disregard of the Right of Peoples to Self-Determination," Baltic Review, 16 (April 1959), 37.

²² Alfred Cobban, The Nation State and National Self-Determination (New York: Crowell, 1970), pp. 289, 301.

of small nations which, because of their history as separate political entities, or their experience of national oppression in the past, will not be satisfied with anything short of political independence and the rank of state.

. . . On the other hand, . . . we cannot avoid the conclusion that the smaller nations or states are dependent for their economic wellbeing on the policies of the great world powers. Economic resources mean military power, and the concentration of the one in the modern world has as its concomitant a concentration of the other.²³

Obviously, as Cobban indicates, sovereignty without an adequate economic or military defense is an oxymoron. In 1940, Lithuania was forced to bend to superior force, though the country and its citizens were never released from their rights and obligations in the international community.²⁴ Practically, in order to lift the suspension of sovereignty, the lack of resistance in 1940 has presented problems:

Their surrender of national sovereignty can be both understood and regretted. With no expectation of assistance, they were powerless to withstand Soviet aggression. Yet, in retrospect, it is clear that the cause of independence would have been served better in the eyes of the world through resistance. Finland's stout but futile resistance evoked widespread admiration. No one could have expected the Baltic States to defeat the Soviet Union but even token opposition would have been remembered in a more favorable light than was the almost docile submission.²⁵

²³ Cobban, p. 284.

²⁴ Backis, "Lietuvos valstybes tarptautine teisine ir politine padetis," p. 123; Cobban, p. 285.

²⁵ Richard A. Schnorf, "The Baltic States in U.S.-Soviet Relations: From Truman to Johnson," Lituanus, 14, 3 (Fall 1968), 57. The author of the present study discussed the practical difficulties of Lithuanian resistance in 1940 in a previous study. See Robert A. Vitas, Civil-Military Relations in Lithuania Under President Antanas Smetona 1926-

In the end, though,

[t]he conception of equality belongs not to the field of power but to that of rights. If we are saying anything that is worth saying when we talk of national equality, we must mean an equality of rights. We come back then to a fundamental question of political philosophy. If it is agreed that the rights of a nation are to be interpreted not in terms of power or prestige, but in terms of the interests of its citizens, then, when we say that all nations are equal we mean that they all have equal rights to economic, cultural and spiritual wellbeing.²⁶

Evidently, through the nonrecognition policy, the United States still recognizes the existence of the independent Lithuanian state, and that its organs are competent to discuss and represent Lithuania's affairs, though with certain practical limitations.²⁷ But, as Hough notes, the de facto presence of Soviet power in that country cannot be forever ignored and, without an international coercive authority, Moscow cannot be compelled to leave. He cites three possibilities of legalization of territorial title: Prescription, or the continuous and undisturbed exercise of sovereignty; Validation by the injured party; and a Quasi-legal action by the international community. As far as Lithuania is concerned, the first method has been disturbed, the second has come by way of spurious plebiscites and installed regimes, and the third has not

1940, M.A. Thesis, Political Science, Loyola University of Chicago, 1986, pp. 180-183.

²⁶ Cobban, p. 305.

²⁷ See Backis, "Kataliku Baznycios doktrina," p. 55.

occured, nor is it likely to.²⁸ He concludes that Lithuania does indeed juridically still exist, for

[i]n light of historical and legal precedents, it must be concluded that the only truly legal validation of an illegal annexation remains the genuine approbation by the injured party or total and complete acquiescence in the face of overwhelming force by the indigenous population and third party members.²⁹

Thus Washington is not being unreasonable in asserting its policy of nonrecognition.

Lithuania may juridically still exist as far as the United States is concerned and, as previous chapters have noted, this possesses concrete legal and political consequences. Practically, though, it lives only as the Lithuanian SSR, a union republic of the USSR. According to Article 80 of the Soviet constitution, "A Union Republic has the right to enter into relations with other states, conclude treaties with them, exchange diplomatic and consular representatives, and take part in the work of

²⁸ Hough, pp. 468 ff.

²⁹ Hough, p. 480. William L. Tung writes:

If a territory is under the suzerainty of a state which later incorporates it as an integral part of the country, the validity of the action depends upon the wishes of the majority of the population and the international status of the incorporated territory. The detachment of part of the territory of one state by another through conquest followed by the establishment of a puppet regime is really annexation under disguise.

See his International Law in an Organizing World (New York: Crowell, 1968), p. 165.

international organizations."³⁰ However, under nonrecognition, the US has rejected any overtures from the Lithuanian SSR foreign ministry.

April 1956, though, saw rumors and news reports that Lithuania, Latvia, and Estonia may be granted satellite status as "people's democracies." There was even a report that the twentieth congress of the Soviet Communist Party had secretly resolved to have Moscow formally relinquish sovereignty over the Baltic States.³¹

A new People's Democracy of Lithuania, if recognized as a legitimate government by Washington, would then be the heir to the claims of its predecessor, that is, the prewar Lithuanian government. The government in Vilnius would receive title to the assets of procedure located in the US. This would include deposits, investments, facilities, and the contents of offices. The Lithuanian diplomats currently stationed in this country presumably would be made to vacate the premises by the new government, and Washington would have no choice but to acquiesce. Lithuania would also probably be successful in a claim to a seat in the United Nations. While this is obviously sheer speculation,

³⁰ Constitution (Fundamental Law) of the Union of Soviet Socialist Republics. Adopted at the Seventh (Special) Session of the Supreme Soviet of the USSR, Ninth Convocation, on October 7, 1977 (Moscow: Novosti, 1977), article 80.

³¹ Antanas Trimakas, "Satellite Status for the Baltic States -- A Possible Opening for Freedom," Baltic Review, 7 (16 June 1956), 3-4.

satellite status for Lithuania and the other Baltic States would present a dilemma for the US and other nations espousing a nonrecognition policy.³² As for now, Lithuania's statehood survives in a different form.

C. NORMATIVE DIMENSIONS OF NONRECOGNITION

Hough writes that two principles have been at odds in interstate relations for over five thousand years: Machiavelli's La forza fa giustizia (might makes right) and the legal maxim Ex iniuria ius non oritur (legal rights will not arise from illegality).³³

The US government and interested parties have long stressed the normative nature of the nonrecognition policy, which seeks to apply law, not Machiavellian politics, to the Lithuanian situation. Some commentators have stated that normative goals have little, if anything, to do with nonrecognition. Algirdas Gustaitis, for example, writes that the American political establishment tries to keep matters related to the policy in a secondary position, not going beyond occasional formalities. He contends that Lithuanians should not be naive as to Washington's intentions toward a small nation. As far as he is

³² "Kremlin Tactics In Converting the Baltic States Into Satellites," Baltic Review, 7 (16 June 1956), 14-15; Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law, 4th ed. (New York: Macmillan, 1981), p. 103.

³³ Hough, pp. 303-304.

concerned, votes and publicity are of primary concern here.³⁴ Historian Constantine Jurgela wrote that nonrecognition "is not an active policy."³⁵

Gerard Mangone correctly points out that international values, or lack thereof, are at the foundation of the nonrecognition policy's effectiveness:

International law, now or in the future, cannot be substituted for international politics. Nevertheless, a substantial improvement in international lawmaking must be made soon if legal definitions, procedures, and judgements ever hope to bridle a few of the startling changes in international relations today that threaten to jar the universe. Lawmaking cannot proceed more rapidly than the shared values of a community, and these, in turn, depend on a rough harmony of economic, ideological, aesthetic, and other interests. International law can be no better than the international political system that

³⁴ Algirdas Gustaitis, Simas Kudirka Nobelio taikos premijai (Simas Kudirka for the Nobel Peace Prize) (np: Europos lietuvis / European Lithuanian, 1971), pp. 8, 11.

For an example of symbolism vis-a-vis the nonrecognition policy, one can note that the flags of the independent Baltic States were planted on the moon in May 1972 by the crew of Apollo 16. They were later presented to Baltic diplomats. See statement of Senator Charles H. Percy (R-IL), 21 March 1972, p. 1. The flags are also permanently hung in the Kennedy Center for the Performing Arts in Washington. See Keatley, p. 1.

³⁵ Constantine R. Jurgela, letter to Robert A. Vitas, 22 May 1986. Povilas A. Mazeika writes:

During times of peaceful relations (including the period of the cold war) the Baltic nations cannot, of course, count on any significant moral or political help from outside the Soviet Russian empire. The question is then whether there are forces within the empire leading to eventual liberation.

See his "Russian Objectives in the Baltic Countries," in Problems of Mininations: Baltic Perspectives, eds. Arvids Ziedonis, et al. (San Jose, CA: Association for the Advancement of Baltic Studies, 1973), p. 124.

nurtures it.³⁶

Von Glahn correctly adds "that individual or multilateral declarations concerning the invalidity of conquest as a source of territorial titles have been more than counterbalanced by the contrary practices of states."³⁷

This is the crux of the impotence of the nonrecognition policy, for if the nations which make up the global community refuse to obey international law, there can be no hope of collective enforcement:

[I]t is inaccurate and dangerous to assimilate a declaration of this sort to a sanction. Inaccurate, because the only effective sanction is that which is applied collectively in fulfillment of their common obligations by those in a position to bring the aggressor back to respect for the law. Dangerous, because the egoism of States easily induces them to limit to such declarations their resistance to aggression.³⁸

If no action is taken,

³⁶ Gerard J. Mangone, The Elements of International Law, rev. ed. (Homewood, IL: Dorsey Press, 1967), p. 526. On page v, Mangone writes:

The eye of the student, scholar, and statesman, therefore, should be fixed on ways to make the current practice of international law contribute to a desirable future for mankind. Put another way, they should be prepared to engage in a battle for values.

³⁷ von Glahn, p. 325.

³⁸ Charles de Visscher, Theory and Reality in Public International Law, rev. ed., trans. P.E. Corbett (Princeton, NJ: Princeton University Press, 1968), p. 329. See also Martin Brakas, "Lithuania's International Status: Some Legal Aspects 1," Baltic Review, 37 (October 1970), 55-57; Bruno Chevrier, "The International Status of the Baltic States," Baltic Review, 1, 6 (November 1946), 270; "Courtly defense of a higher law," Chicago Tribune, 26 January 1988, section 3, p. 3.

[t]ime is hard on "theoretical" nations. In an exile of more than 20 years [at that time], the operation becomes diplomacy by petition, a paper diplomacy of words while the deeds behind the words fade away and are conveniently forgotten.³⁹

While it is true that pursuit of "good relations" with the Soviet Union may obscure normative goals regarding the Baltic States, in particular, and East-West issues, in general,⁴⁰ Lithuanian Minister Dr. Stasys Backis urges both scholar and layman to combine sentiment and jurisprudence with the realities of foreign policy.⁴¹ It was clear from the very enunciation of the nonrecognition policy that the US would not wage war to liberate Lithuania, Latvia, and Estonia. On the other hand, Washington has not abandoned the idea of independence for the three countries.⁴²

Indeed, in a sense, the US has done more for the Baltic States in terms of its national existence than other

³⁹ Herzfeld, p. 1.

⁴⁰ Trimakas, p. 9, writes: "Western pressure on the Kremlin has been mild, although embarrassing to the Soviet leaders." Cf. Richard Pipes, Survival is not Enough: Soviet Realities and America's Future (New York: Simon & Schuster, 1984); Jean-Francois Revel, How Democracies Perish (New York: Doubleday, 1984).

⁴¹ Backis, "Lietuvos valstybes tarptautine teisine ir politine padetis," p. 117.

⁴² Richard A. Schnorf, "The Baltic States in U.S.-Soviet Relations: From Truman to Johnson," Lituanus, 14, 3 (Fall 1968), p. 60; Leonardas Simutis, Amerikos Lietuviu Taryba: 30 metu Lietuvos laisves kovoje 1940-1970 (Lithuanian American Council: 30 Year Struggle for the Liberation of Lithuania 1940-1970) (Chicago: LAC, 1971), p. 102.

countries. For example, Lithuanian diplomats in Berlin and Moscow believed that Germany and the Soviet Union were the sources of Lithuania's salvation. Yet, in the last few years of independence, during the course of ultimatums presented by Poland, Germany, and the USSR, those two powers did not offer even symbolic support. The US, in its continuing condemnation of the incorporation, stands out as a leader in the international cause for the liberation of the Baltic.

The United States has long infused morality and idealism into its foreign policy. This mentality as applied to the incorporation of the Baltic was, in Senator Charles J. Kersten's words, "in the true American spirit."⁴³ When viewing the normative character of American foreign policy,

[i]t cannot be said, although at times it has been so stated, that all these purposive principles, charters, and declarations were only empty words. Standing alone, neither the moral tenets nor the qualities of power and interest define the totality of political endeavor. Rather, that totality contains both.⁴⁴

Thus morality, though it cannot stand alone, is an integral component of Washington's policy toward other nations. While power could not realistically be applied toward

⁴³ Charles J. Kersten, Self-Determination of the Enslaved Nations -- The Only Basis for True Peace, address before the Lithuanian Chamber of Commerce of Illinois, Bismarck Hotel, Chicago, 17 May 1953 (Chicago: LCCI, c. 1953), p. 1.

⁴⁴ Leonas Sabaliunas, "Baltic Perspectives: The Disillusionment With the West and the Choices Ahead," Lituanus, 14, 2 (Summer 1968), 13.

liberating the Baltic States, morality certainly has not been ignored. Schnorf, for example, is of the opinion that though nonrecognition was, and is, a politically sound policy, it was not undertaken in response to political expedience, America's ethnic electorate, or the pleas of Baltic diplomats in the United States. US diplomats in the Baltic correctly interpreted the nature of the occupation, elections, and subsequent annexation as staged and illegal. The diplomats reported the immorality of the process to Washington, which responded with a policy "solidly based on moral grounds" and disapproval of Stalin's actions.⁴⁵

As seen in chapter six, the course of wartime diplomacy did witness some dilution of the nonrecognition policy. But one cannot ignore the instances when Washington has reaffirmed its stand. President Roosevelt, Undersecretary Welles, and other staff at the State Department faced incredible pressure from London to ignore the policy during the spring of 1942, when Britain was fighting a desparate battle against Germany and seeking

⁴⁵ Richard A. Schnorf, "The Baltic States in U.S.-Soviet Relations, 1939-1942," Lituanus, 12, 1 (Spring 1966), 36-38; Schnorf, "The Baltic States in U.S.-Soviet Relations: From Truman to Johnson," 58. In "The Baltic States . . . 1939-1942," p. 36, Schnorf writes:

It is doubtful whether the Baltic diplomats alone could have caused the United States to refer to the proceedings in the Baltic States as "devious processes." Even with the backing of a much larger ethnic group, the Polish Ambassador in 1945 was not able to convince the United States to maintain recognition of the legitimate Polish Government in London.

Moscow's support. Though it could have helped inter-allied relations, the US government did not back down from the policy at a time when the future of the war hung in the balance. Eventually, the Soviets relented and signed a treaty which did not compromise the status of the Baltic.⁴⁶

More recently, the US reaffirmed the nonrecognition policy on another occasion when political expedience and diplomatic courtesy would have warranted its suppression. On 15-19 September 1986, a town meeting style conference took place in Jurmala, Latvia. It was sponsored by the Chautauqua Institute of Jamestown, NY, and attended by approximately 270 US government officials and private citizens. American officials -- wearing lapel pins depicting the American and independent Latvian flags -- reaffirmed the policy for the first time ever on Baltic soil. Indeed, a Soviet official traveled from Moscow to denounce the policy which was receiving great attention inside the conference, as well as outside. This reportedly had a positive impact upon the Latvian citizenry.⁴⁷ The effect of the policy upon

⁴⁶ Edmund R. Padvaiskas, "World War II Russian-American Relations and the Baltic States: A Test Case," Lituanus, 28, 2 (Summer 1982), 22.

⁴⁷ Zinta Arums, Joint Baltic American National Committee (JBANC) 1986 Annual Report (Rockville, MD: JBANC, 1987), pp. 29-30; "Daniloff incident sours U.S.-Soviet conference," Chicago Sun-Times, 16 September 1986, p. 34; Nils Melngailis, "The Chautauqua Conference and its Meaning for the Baltic Cause," Lituanus, 33, 1 (Winter 1987), pp. 83-86.

The "Daniloff incident . . ." article's byline was listed as "Jurmala, U.S.S.R.," not Jurmala, Latvia.

morale in the Baltic is a significant factor, though average citizens often do not fully know of, or understand, it.⁴⁸

While the nonrecognition policy is far from perfect in achieving its goals,⁴⁹ the United States' continued adherence to it is primarily based in the morality advocated by the tenets of international law. In the final analysis, normatively, "non-recognition is the most pertinent manifestation of the postulate that a unilateral tour de force should not be allowed to bring about a valid change in the existing territorial order."⁵⁰

D. A POLICY AWAITING COMPLETION

Of course, ultimately the status of Lithuania and the Baltic States vis-a-vis international law is determined by foreign governments. For many, the Baltic States have ceased to exist as separate political and juridical entities. Though the Soviet Union is guilty according to

⁴⁸ Hough, p. 481; In Re Linnas, US Immigration Court, New York City, case A8 085 628, 5 April 1985; US House of Representatives, Subcommittee on International Political and Military Affairs, Committee on International Relations, Conference on Security and Cooperation in Europe (Washington: US Government Printing Office, 1975), p. 27.

⁴⁹ Robert Langer, Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice (Princeton, NJ: Princeton University Press, 1947), p. 119, writes: ". . . in the field of political life there are no best, only second-best solutions." Cf. David Braybrooke and Charles E. Lindblom, A Strategy of Decision: Policy Evaluation as a Social Process (New York: Free Press, 1970).

⁵⁰ Langer, p. 288.

the letter of the law, no practical action, obviously, has been taken to redress the grievance.

Does a state exist through recognition or by fulfilling certain conditions of statehood? For Lithuania, statehood, as granted by the US government, is limited and honorary -- a hollow statehood. For, as Aron writes:

. . . major historical events, those by which the states are born and die, are external to the juridical order. The Baltic States have ceased to exist, they are no longer subjects of law; nothing the Soviet Union does on the territories that, in 1939, were subject to the Estonian or Lithuanian sovereignty any longer relates to international law, at least in the eyes of those of the states that have ceased to "recognize" Estonia, Lithuania, and Latvia (that is, almost every state). When a state is crossed off the map of the world, it is the victim of a violation of international law. If no one comes to its aid, it will soon be forgotten and the state that has delivered the coup de grace will be no less welcome in the assemblies of so-called peaceful nations.⁵¹

On the other hand, at least in the United States, the political and juridical impact of nonrecognition is quite real. If sovereignty is once again able to be effectively exercised, it will be done by the prewar, though reconstituted, governments of the Baltic. New states would not be created.⁵² This is true regardless of the time it

⁵¹ Raymond Aron, Peace and War: A Theory of International Relations, trans. Richard Howard and Annette Baker Fox (Garden City, NY: Doubleday, 1966), p. 108. See also Philip C. Jessup, Transnational Law (New Haven, CT: Yale University Press, 1956), p. 62.

⁵² Marek, p. 416; Alexander Shtromas, "Political and Legal Aspects of the Soviet Occupation and Incorporation of the Baltic States," Baltic Forum, 1, 1 (Fall 1984), 38.

takes to achieve restoration, for as Marek writes,

In the case of the Baltic States the finality of Soviet annexation cannot be admitted at the present time. The Soviet claim to the domination of the Baltic States continues to be rejected by the international community. No general post-war international instrument has confirmed the existing state of affairs in the Baltic. No general peace-making in Europe has taken place and no foundations of any new international delimitation have been laid. This does not mean that a constitutive and validating effect would attach to such settlements per se. It merely means that nothing even approximately final has taken place which would totally destroy any reasonable chance of an ad integrum restitutio of the Baltic States.

It is precisely the persistence of this reasonable chance of restitution which determines the time-limit up to which the international legal system can withstand a divorce between validity and effectiveness.⁵³

Many say that the occupation and incorporation are past history and should be accepted, albeit reluctantly. Nonrecognition is only a fiction with no practical effect. On the other hand, it could be asserted that the matter is important to this day, not only because of the fact that the Baltic States are strategically located with implications for international power politics,⁵⁴ but also precisely because of its symbolic value, with symbolism not used as a synonym for trivia. Is public policy merely a practical

⁵³ Marek, p. 415. Marek's emphasis. See also US Displaced Persons Commission, Second Semiannual Report to the President and the Congress, 1 August 1949 (Washington: US Government Printing Office, 1949), pp. 12-13

⁵⁴ E. Krepp, Security and Non-Aggression: Baltic States and U.S.S.R. Treaties of Non-Aggression (Stockholm: Estonian Information Centre, Latvian National Foundation, 1973), p. 5.

instrument, or does it also possess some normative dimension? Obviously, Washington has long been concerned with such issues.

Despite the pessimism often attending discussions of nonrecognition, this study has pointed out concrete legal and political effects involving citizenship, restrictions on US government officials, and millions of dollars of assets. One cannot say that Moscow is pleased with the policy, though it has learned to live with it. One cannot ignore the positive effect the policy has on morale in the Baltic. The people living in that region know that they have not been forgotten, and that the events of 1940 have not been erased from history books on the western side of the Iron Curtain.⁵⁵ It has also been claimed that:

[t]he uncertain international status of these nations discourages a great many Soviet citizens from settling in the Baltic countries. Thus it reduces the flow of colonists and considerably hinders Soviet genocidal policies of colonization, ethnic dilution, Russification and effective absorption of Baltic nations into the Soviet Union.

There are indications that this non-recognition of annexation has also had a restraining effect on Soviet repressive policies since their authorities have to consider the possibility that extreme measures of repression in the Baltic countries might not be regarded as an internal matter of the Soviet Union and could provoke protests in the United Nations and elsewhere.⁵⁶

⁵⁵ Langer, p. 288; Schnorf, "The Baltic States in U.S.-Soviet Relations: From Truman to Johnson," p. 59.

⁵⁶ US House of Representatives, Conference on Security and Cooperation in Europe, p. 27.

It is probably most accurate to state that the nonrecognition policy has yet to reach its logical conclusion, namely the restoration of practical sovereignty to Lithuania, Latvia, and Estonia. This is the practical, albeit long-term, goal of the policy. While this possibility is kept alive by nonrecognition, the specific-- and realistic -- moral goals of the policy's founders are achieved. Hence, it is a successful policy. Ex iniuria ius non oritur, which does not allow valid title to arise from an invalid act, is precisely what the policy asserts. Washington's continuous reaffirmation of the policy reflects a refusal to confer a title which does not conform to international standards of law and morality, regardless of how imperfectly enforced. The Soviet Union continues to be regarded as a mere occupant in the Baltic, and the Stimson Doctrine remains a vital and viable component of the law.⁵⁷

Brakas asserts:

To a great degree, non-recognition is to be qualified as a kind of intervention against the annexing state . . . Negative as this intervention by non-recognition may be, it throws a dark shadow of immorality and delinquency on the annexing

⁵⁷ Ti-Chiang Chen, The International Law of Recognition, With Special Reference to Practice in Great Britain and the United States, ed. L.C. Green (New York: Praeger, 1951), p. 415; Malbone W. Graham, "What Does Non-Recognition Mean?" Baltic Review, 1, 4-5 (July-August 1946), 173; Hough, p. 484; Langer, p. 288; Marek, p. 414; Boris Meissner, Die Sowjetunion, die Baltischen Staaten und das Voelkerrecht (The Soviet Union, the Baltic States, and International Law) (Cologne: Verlag Politik und Wirtschaft, 1956), reviewed in Jonas Maziulis, Baltic Review, 7 (16 June 1956), 79.

state's status, brands that state as a law-breaker in the eyes of the world, and interferes with its political and diplomatic freedom of action. . . . [E]ven in this world of imperfect justice in international relations, arbitrariness of states, no matter how mightily and supreme, has its limits where the existence of law qua law is endangered.⁵⁸

While asserting the nonrecognition policy, the US government does not practically alter US-Soviet relations, but it nevertheless makes a statement emanating from the very principles upon which it stands. It may not be a powerful force against practical exigencies, but it is an important one, for it represents not only the aspirations of Lithuanians, Latvians, and Estonians -- but of Americans, as well.

⁵⁸ Martin Brakas, "Lithuania's International Status: Some Legal Aspects 2," Baltic Review, 38 (August 1971), 12-13.

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APPENDIX A

APPENDIX A

OFFICIAL US POLICY STATEMENT ON NONRECOGNITION

Gist is one of the organs by which the US State Department transmits its policy statements to the public. This appendix quotes directly from the August 1984 issue of that publication.

US Policy: The Baltic Republics

Background: The US does not recognize the forcible and unlawful incorporation of Estonia, Latvia, and Lithuania into the USSR that occurred in 1940. As an integral part of US policy toward these occupied countries, the US Government continues to recognize and conduct business with the diplomatic representatives of the last independent Baltic governments. The Estonian, Latvian, and Lithuanian chiefs of mission in the US enjoy full diplomatic privileges and immunities. Part of their major role is to continue to uphold the ultimate goal of a free Estonia, Latvia, and Lithuania.

Helsinki Final Act and US policy toward the Baltic Republics: The US espousal of freedom for the Baltic Republics has enjoyed broad bipartisan support since it was first enunciated in 1940. To clarify our stand on the interpretation of the Helsinki Final Act during the review conference in Madrid in 1980, the deputy chairman of the US delegation said:

"The United States does not recognize the illegal incorporation, by force of arms, of the States of Latvia, Lithuania, and Estonia by the Soviet Union. I would also recall the statement in Principle IV [territorial integrity of states] that no occupation or acquisition of territory in contravention of international law will be recognized as legal. And I would reiterate my government's consistent interpretation that this provision is applicable to the Baltic States."

Reaffirmation of US policy at the UN: In July 1983, on the commemoration of the 61st anniversary of the de jure recognition of the three Baltic Republics by the US, President Reagan had delivered to the UN Secretary General a statement in which he said:

"Americans share the just aspirations of the Baltic nations for national independence. We cannot remain silent in the face of the continued refusal of the Government of the USSR to allow these people to be free. We uphold their right to determine their own national destiny, a right contained in the Helsinki Declaration which affirms that 'all people always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social, and cultural development.'

"For this reason, the Government of the United States has never recognized the forced incorporation of the Baltic States into the Soviet Union and will not do so in the future.

"On this occasion we wish to reaffirm this policy as we note the anniversary of the 1922 recognition by the US of the three Baltic Republics. In doing so, we demonstrate our continuing commitment to the principles and purposes of the United Nations Charter and to the cause of peace and liberty in the world."

The value of US policy: The US position upholding the right to freedom and liberty of the Baltic nations is a reminder that the democratic West has not forgotten the injustice done to those peoples, and it is also a symbol of hope for the future. This position is fully consistent with the importance which the US and most other countries in the world place on human rights, particularly as enunciated in the Helsinki Final Act.

Baltic diplomatic representation: The Baltic missions in the US remain important symbols to the Baltic peoples, and we continue to deal with their diplomats on a full range of appropriate matters. Those three offices are diplomatic entities, fully independent of US Government financing. They have been paid for by Estonian, Latvian, and Lithuanian Government funds that were protected from seizure by the Soviets in 1940 and blocked by the US at that time.

Policy applications: Our policy toward the Baltic Republics is manifested in several ways:

- The Secretary of State annually issues National Day greetings to the Baltic peoples through the Charges d'Affaires; and senior representatives of the Department of State attend the official National Day functions of the three missions.
- So that the US Government speaks with a consistent voice regarding our nonrecognition policy, we seek to coordinate actions of other US agencies on such matters as captions and place names relative to Estonia, Latvia, and Lithuania on official US Government maps.
- We support the flow of news and information to the Baltic peoples in their native languages through broadcasts of the Voice of America and the Baltic Services Division of Radio Liberty.¹
- We reiterate on all appropriate occasions our policy of not legally recognizing the forcible incorporation of the three countries into the USSR.
- Our Ambassador in Moscow and Cabinet-level officers of the US Government do not visit the Baltic Republics.

Effect on US-Soviet relations: The Soviet Union has been fully aware of our policy since its enunciation in 1940, and our espousal of this position has not affected in any significant way the substance or the course of our bilateral relations. From time to time we deal with the USSR on items such as US citizen interest cases involving family reunification of persons living in the Baltic Republics. However, the need for such de facto contacts with the Soviets on specific topics concerning individuals does not in our view detract from the integrity or substance of the nonrecognition policy.

¹ The Baltic Services Division was transferred to Radio Free Europe in October 1984.

APPENDIX B

APPENDIX B

THE HENDERSON MEMORANDUM OF 15 JULY 1940

As noted in chapter four of the present study, the memorandum written by Loy Wesley Henderson, assistant chief of European affairs at the State Department at the time of incorporation, addressed the issues and dilemmas faced by the United States. The Henderson Memorandum is reprinted entirely in this appendix from US Department of State, Foreign Relations of the United States, Diplomatic Papers, 1940, Volume I, General (Washington: US Government Printing Office, 1959), pp. 389-392.

340.51 Frozen Credits/3251¹

Memorandum by the Assistant Chief of the Division of
European Affairs (Henderson)²

[Washington,] July 15, 1940.

As you are aware, on one pretext or another the Soviet Government, by demands backed up with threats of force, has during the last six weeks forced the three Baltic countries of Estonia, Latvia, and Lithuania to permit the

¹ Internal microfilm notation by the State Department's archivists. Not in the memorandum's original.

The succeeding notes reprinted here are taken directly from Foreign Relations of the United States, added to the document by the archivists. They have been renumbered for purposes of this recapitulation.

² Addressed to the Assistant Secretary of State, Adolf A. Berle, Jr., and to the Adviser on Political Relations, James Clement Dunn. A note written by the latter, at the beginning of the memorandum, reads: "I feel funds of all 3 of these countries should be blocked on same basis as those of countries occupied by Germany."

entrance of Soviet troops aggregating about 500,000 men. Under Soviet pressure the Governments in all three countries have been replaced by governments which are mere Soviet puppets. The President of Lithuania was successful in escaping to Germany; the President of Latvia appears to be a virtual if not an actual prisoner; the President of Estonia is also apparently without any power whatsoever.

Under Soviet pressure elections were ordered in these three countries for yesterday and today. It is clear from reports which reach us that these elections are merely a mockery. Only persons approved by the Soviet Government or the Communist International³ are permitted to stand as candidates. It appears likely that following these so-called elections it will be arranged for these three republics to be merged into the Soviet Union. Whether these arrangements will be put into effect at once or whether the Soviet Government will be satisfied for some time to come with having the three countries under its actual control, although fictitiously independent, remains to be seen.

On Saturday, July 13, shortly after noon, the Latvian Minister⁴ presented the attached note⁵ to Mr. Atherton after having endeavored unsuccessfully to obtain an appointment with the Secretary or Under Secretary. In this note he points out that in view of the circumstances surrounding the holding of the elections in Latvia he "reserves the right not to recognize the results of the coming elections and the acts emanating therefrom". The Minister also states that in United States banks there are deposits of the Latvian State and of Latvian banks, corporations and private citizens, and that there are a number of Latvian ships in the waters of the western hemisphere. He asks that if attempts are made to alienate these deposits, vessels and other Latvian property and interests in the United States, the American Government safeguard and secure the said deposits and property. It is understood that the Lithuanian Minister⁶ has also prepared a note which he plans to hand to the Department within the next few days, if he has not already done so, in which he will point out the illegality of the elections in Lithuania. There is no Estonian Minister in this country. The only

³ The Communist (Third, Red) International, founded by the Bolsheviks at Moscow in March 1919.

⁴ Alfred Bilmanis.

⁵ Not printed.

⁶ Povilas Zadeikis.

representative of that government in the United States is the Estonian Consul General in New York.⁷

The recent events in the Baltic States have raised a number of rather important questions. The note of the Latvian Minister merely serves to render these questions more active. Among these questions are the following:

1. Is the Government of the United States to apply certain standards of judgement and conduct to aggression by Germany and Japan which it will not apply to aggression by the Soviet Union. In other words, is the Government of the United States to follow one policy with respect to, say, Czechoslovakia, Denmark, and German-occupied Poland, and another policy with respect to Latvia, Estonia, Lithuania, and Finland, which before the end of the year is likely to suffer the same fate as the other three Baltic States. Is the United States to continue to refuse to recognize the fruits of aggression regardless of who the aggressor may be, or for reasons of expediency to close its eyes to the fact that certain nations are committing aggression upon their neighbors. If our Government at this juncture desires to take no step which might arouse the displeasure of the Soviet Union it would possibly be wise for it to overlook the present Soviet aggressive acts in the Baltic States, as well as similar acts which will probably take place in Finland. On the other hand, our failure to recognize Soviet conquests just now, although not pleasant to the Soviet Government, may possibly place another card in our hands when, if ever, a conference regarding the future of Europe takes place.

2. Does the Government of the United States desire to take steps to restrain the export of funds in this country belonging to the States of Latvia, Estonia and Lithuania, as it has done recently in the case of countries taken over by Germany. If no restriction on the export of these funds is laid down, it seems almost certain that they will pass into the Soviet Treasury. It is impossible at the present time to estimate the full amount. It seems likely that the assets of all three countries in the United States will not amount to much more than 12 or 13 million dollars. In this connection it will be observed that if the three countries in question are absorbed into the Soviet Union, the United States will probably not receive one cent of the several million dollars which the governments of these three countries owe us. Furthermore, American interests in those three countries will probably be a total loss. It is

⁷ Johannes Kaiv, Acting Consul General, in charge of the Legation of Estonia.

estimated that these interests will not approximate more than two or three hundred thousand dollars, although it is difficult to obtain figures. It will be recalled that the Soviet Government announced some time ago that since the acts of nationalization of that part of Poland which has been annexed to the Soviet Union took place prior to the entry of that territory into the Soviet Union, the Soviet Government could not be held responsible for losses incurred as a result of those acts.⁹ It is possible that in the interim before the incorporation of the three Baltic States into the Soviet Union, the new puppet governments of those States might denounce all public indebtedness and nationalize property, and that the Soviet Government, after their entry into the Soviet Union, will take the attitude that it is not responsible for the acts of such puppet governments.

At the suggestion of Mr. Berle, which I conveyed to Mr. Livesey⁹ last week, Mr. Livesey has informally asked the Treasury to investigate the holdings of Latvia, Estonia, and Lithuania in this country in American banks and to request the banks in which the holdings are extensive to inform the American Government, before any large withdrawals are permitted. It is probable that during the present week endeavors will be made by the Soviet Government to obtain possession of these funds. It is essential, therefore, that a decision with respect to them be made at once.¹⁰

⁹ For text of the Soviet note of April 26, 1940, see telegram No. 502, May 8, 5 p.m., from the Charge in the Soviet Union, vol. III, p. 197; the Department's reply was sent in telegram No. 276, May 16, 6 p.m., ibid., p. 201.

⁹ Frederick Livesey, Assistant Adviser on International Economic Affairs.

¹⁰ In a note attached at this point, Mr. Henderson wrote: "Mr. Berle states that Treasury has decided to block the accounts of Latvia, Estonia, and Lithuania in this country today July 15, 1940." For text of Executive Order No. 8484, by which this was accomplished, see 5 Federal Register 2586. The text of regulations of the Treasury Department, also issued on July 15, 1940, is printed ibid., p. 2593. Although the assets of the Baltic States were frozen, disbursements from them were subsequently permitted to the extent necessary to support the continued operation of the Baltic diplomatic missions in the United States and in the several other countries which had likewise not recognized the Soviet occupation of these countries. Title to the assets remained in the name of the free governments of Estonia, Latvia, and Lithuania, since the United States

3. Are vessels of the Baltic States in American harbors to be permitted to depart freely or are they to be held up like the vessels of a number of countries which have been taken over by Germany. For some time the ability of the Soviet Union to handle its foreign trade has been suffering because of the lack of ships. For the last several months the Soviet Embassy has been endeavoring to arrange for the charter of Latvian bottoms in order to transport material to Vladivostok. Apparently the Soviet plan now is to force the Latvian Government and private owners to permit Soviet organizations to charter Latvian and other Baltic ships and to call these ships into Soviet ports where they are to be nationalized. Some of the Latvian ships are excellent and have a high rating in Lloyds, according to information received from our Legation at Riga. The Latvian Minister states that at the present time a Latvian vessel is in Baltimore taking on cargo for Vladivostok in pursuance of a recent Soviet charter. The Maritime Commission is undoubtedly in a much better position than this Department to decide whether it would be advantageous to the American Government to retain these vessels or to permit them to depart.

L[oy] W. H[enderson]

never recognized the legality of the Soviet occupation of the three states.

APPENDIX C

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UNITED STATES TREATIES WITH LITHUANIA

Chapter five of the present study noted that US-Lithuanian treaties are considered to be still in force, but suspended. Further, the Lithuanian minister to the US, not representing an active government, has no power to conclude new agreements with Washington. The following list is reproduced from US Department of State, Treaties in Force, 1 January 1966 (Washington: US Government Printing Office, 1966), pp. 122-123.

Customs:

Arrangement regarding reciprocal privileges for consular officers to import articles free of duty for their personal use. Exchanges of notes at Washington July 28, September 17 and 19, and October 4, 1934; entered into force October 4, 1934; operative October 15, 1934.

Extradition:

Treaty of extradition. Signed at Kaunas April 9, 1924; entered into force August 23, 1924. 43 Stat. 1835; TS 699; IV Trenwith 4424; 51 LNTS 191.
Supplementary extradition treaty. Signed at Washington May 17, 1934; entered into force January 8, 1935. 49 Stat. 3077; TS 879; IV Trenwith 4434; 157 LNTS 441.

Finance:

Agreement for the funding of the debt of Lithuania to the United States. Signed at Washington September 22, 1924; operative June 15, 1924. Treasury Department print.
Amendment: June 9, 1932 (Treasury Department print).

Nationality:

Treaty defining liability for military service and other acts of allegiance of naturalized persons and

persons born with double nationality. Signed at Kaunas October 18, 1937; entered into force July 20, 1938. 53 Stat. 1569; TS 936; 191 LNTS 351.

Pacific Settlement of Disputes:

Arbitration treaty. Signed at Washington November 14, 1928; entered into force January 20, 1930. 46 Stat. 2457; TS 809; IV Trenwith 4431; 100 LNTS 111.
Treaty of conciliation. Signed at Washington November 14, 1928; entered into force January 20, 1930. 46 Stat. 2459; TS 810; IV Trenwith 4433; 100 LNTS 117.

Postal Matters:

Convention for the exchange of money orders. Signed at Washington April 10 and at Kaunas July 30, 1923; operative October 15, 1923.
Amendments: May 26 and June 13, 1934. June 11 and 28, 1934.
Parcel post agreement. Signed at Kaunas December 4 and at Washington December 28, 1939; operative February 1, 1940. 54 Stat. 2021; Post Office Department print; 202 LNTS 381.

Trade and Commerce:¹

Agreement according mutual unconditional most-favored-nation treatment in customs matters.
Exchange of notes at Washington December 23, 1925; entered into force July 10, 1926. TS 742; IV Trenwith 4428; 54 LNTS 377.

Trade Marks:

Agreement relating to the registration of trade-marks. Exchange of notes at Riga September 14, 1929 and at Kaunas October 11, 1929; entered into force October 11, 1929.

Visas:

Arrangement for the reciprocal waiver of passport visa fees for nonimmigrants. Exchange of notes at Washington April 17, 1937; entered into force April 17, 1937; operative May 1, 1937.

¹ Application of controls to trade between the United States and Lithuania while that country is under Soviet domination or control was acquiesced in by the Minister of Lithuania in Washington in a note dated July 11, 1951, to the Secretary of State.

APPENDIX D

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ACTIVE LITHUANIAN DIPLOMATIC & CONSULAR PERSONNEL

Chapter nine of the present study noted that a number of countries beside the United States had not recognized the occupation of Lithuania by the Soviet Union. This does not necessarily mean that Lithuania possesses active diplomatic representation in all of them. The ranks of the Lithuanian Diplomatic Service have been depleted in the years since the incorporation. The following list represents Lithuanian diplomatic and consular personnel active as of this writing. Dates in parentheses indicate the time of appointment to the post.

Chief of the Diplomatic Service of Lithuania:

Dr. Stasys A. Backis (24 December 1983)

Charge d'Affaires in Great Britain:

Vincas Balickas (22 January 1968)

Gerant d'Affaires at the Holy See:

Stasys Lozoraitis, Jr. (15 June 1970)

Charge d'Affaires in the United States:

Stasys Lozoraitis, Jr. (15 November 1987)

Counsellor: Dr. Stasys A. Backis (15 November 1987)

Consuls General in the United States:

Anicetas Simutis, New York (11 September 1967)

Vytautas Cekanaukas, Los Angeles (6 October 1977)

Vaclovas D. Kleiza, Chicago (3 December 1985)

Consul General in Canada:

Dr. Jonas Zmuidzinis, Toronto (15 August 1962)

APPENDIX E

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EPILOGUE, 1989

When the research for, and writing of, this dissertation commenced, the new political winds initiated by Soviet leader Mikhail Gorbachev had just begun to blow across the face of the Soviet Union, including Lithuania and the other Baltic States. As the work neared its completion, radical changes were occurring in Lithuania.

Two organizations in that country, the Lithuanian Reorganization Association (Lietuvos Persitvarkymo Sajudis) and the Lithuanian Freedom League (Lietuvos Laisves Lyga) were created and openly operated, demanding socio-political changes in Lithuania.

In terms of religious liberty, St. Casimir Church had been reopened, mass had been said near (not in) the Vilnius Cathedral, and Bishop Vincentas Sladkevicius had been elevated to cardinal.

Politically, the chief of Lithuania's Communist Party, Ringaudas Songaila, resigned in October 1988 after only one year in office. He was replaced by Algirdas Brazauskas. The country has also witnessed environmental demonstrations and mass political rallies, culminating in the legalization of independent Lithuania's tricolor and its raising on the fortress of Grand Duke Gediminas in the capital of Vilnius, over which the flag of the Lithuanian SSR had flown for four decades. Discussions continue over the creation of separate Lithuanian currency and postage stamps. Finally, several leaders of Lithuanian emigre organizations were invited to participate in political organization within Lithuania.

Discussion over the possibility of autonomy within the Soviet Union has increased. Though no prominent Lithuanians have called for independence, the logical culmination of current events, even if it took several decades, would indeed be the restoration of complete Lithuanian political independence. In historical parallel, Lithuania today stands in the same position as during the

national renaissance, which occurred at the turn of the present century. At that time, autonomy was the goal of Lithuanian leaders, with independence emerging as a viable option only shortly before the declaration of independence on 16 February 1918. Of course, there is a difference in that the Lithuanian population today is a more educated one, not having been subject to long-term russification efforts as had been practiced by the czars.

In terms of the US nonrecognition policy, it appears that morality and reality may occasionally converge. As was mentioned in chapter six of the present study, the United States stayed the nonrecognition course and took the moral highground at a time when it would have been politically expedient to repudiate the policy. Certain State Department diehards, Loy Wesley Henderson among them, were of the opinion that nonrecognition possessed long-term implications for Lithuania's international personality, in addition to the practical effects as denoted in chapter five. Washington has not abandoned the idea of independence for Lithuania.

It has been this author's contention that the Roosevelt administration never intended nonrecognition to commit the US to actually liberate Lithuania. This task would have to be accomplished by the Lithuanians themselves. The events of 1988-1989 are bearing this out. The policy crafted in Washington is now awaiting completion in Vilnius. Lithuanians there are not going to allow the legitimization of the Soviet presence there by way of unopposed prescription or formal plebiscitary validation. Statehood exists not solely through recognition, but by an active manifestation of state consciousness. This exists in Lithuania, without yet possessing the formal apparatus of statehood.

In terms of future US policy, those who wish to push nonrecognition along to its intended conclusion should do best to subtly exercise political leverage toward Moscow and inter-Republic cooperation in the Soviet Union. For example, a leader of the Armenian national movement has visited Kaunas to discuss common issues and goals with Lithuanians.

Indeed, both Americans and Lithuanians must be subtle and reasoned in their approach to the new political freedoms. A backlash from the Soviets must be avoided. The Lithuanian Reorganization Association, which is made up of leading intellectuals, has not referred to itself as a party, and is more cautious in its dealings with the Kremlin than the Lithuanian Freedom League, which has a more emotional base of support. If the Lithuanians do not

restrain themselves and make excessive demands, Moscow could take away the freedoms and changes won in the past year. Organizations and activities could once again be declared anti-Soviet manifestations, martial law could be declared, and the Red Army could easily stage extended military maneuvers in the country, as it did during the Polish unrest in the early 1980s.

The same caution must be exercised in Washington. Demagoguery and unreasonable demands would not serve the nonrecognition policy well, though nonrecognition is itself a form of active intervention. Indeed, the US can now take advantage of citizen exchanges between this country and Lithuania to gain information, as well as to exert political influence and encourage the current process in Lithuania. The American effort must be private and adroit, not subject to needless publicity.

If an independent Lithuanian republic is restored, it will be the legal continuation of the regime extinguished in the summer of 1940. Practically, as mentioned in the study, it will be socio-economically very different from its predecessor. However, it will still be considered the legitimate heir to the mantle of the Lithuanian government reconstituted at the conclusion of the First World War, and will be able to make the legal and financial claims of its predecessor.

What of Lithuania's diplomats in the US? Their status was extended under President Carter. A future independent Lithuanian republic could retain and augment the already existing network of envoys and consuls, or it could replace it. In any event, the Lithuanian government would have the advantage of possessing international representation and continuity, an advantage which did not exist in 1918. Indeed, there have already been calls for separate membership for Lithuania in the United Nations.

The debate over the utility of nonrecognition continues to this day, and is probably not fully embraced by US policymakers. Yet, it continues to exist and it cannot be said that it has not had a positive impact upon its target country. The US has maintained Lithuania's legal personality in the courts, in treaties, as well as in the maintenance of the Lithuanian Diplomatic Service and independent Lithuania's assets. The nonrecognition process is now being furthered in Lithuania, with an eye to finally concluding the Second World War in that country. If the process is not halted or mismanaged, the policy will arrive at its conclusion -- and thus will no longer be necessary.

APPROVAL SHEET

The dissertation submitted by Robert A. Vitas has been read and approved by the following committee:

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The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the Committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

Nov 30, 1988
Date

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