

A radical change in the military administration was made by a decree of November 15 (*Official Gazette*, November 16).

In order to secure a unified control over demobilization, a change in the relations of the military commands is necessary. The Acting General Commands, the General Staff, and the Supreme Military Administration are hereafter placed under the control of the Ministry for War. All military bureaus must comply with the orders of the Ministry. The Ministry for War as well as all Imperial bureaus are under the control of the Executive Committee of the Workmen's and Soldiers' Council.

In order to reassure the people in regard to the future action of the Government, the following proclamation, signed by Ebert and Haase, was issued under date of November 15 (*Official Gazette*, November 16):

In order to refute the rumors that are in circulation, the Imperial Government makes the following declaration:

1. We do not intend to seize deposits in banks or savings banks, or moneys, bank notes, or securities on hand, or any open or sealed deposits.
2. We do not intend to declare the subscriptions to the Ninth War Loan or to any war loan to be invalid or to affect the legal validity thereof. The Government, however, contemplates rigorously calling upon the possessors of large fortunes and income to cover governmental expenditures.
3. The claims for salaries, pensions, and other claims in favor of public officials and employees and of the officers and other persons belonging to the military class, of persons incapacitated by war and the dependents of such persons, remain absolutely unaffected and continue in force.

The Chief of Police also published a proclamation in the *Official Gazette* of November 16, assuring the people that the laws remain in force and that the people should not allow themselves to be intimidated, as no one is entitled to attack private property. "All such violations will be punished in the most severe manner by the courts; extortion and looting will be prevented if necessary by immediate shooting of the offender."

On November 21 the Imperial Bureau for Economic Demobilization issued, over the signature of Koeth, the following decree (*Official Gazette*, November 22):

Unproductive labor on war orders must cease. Industries must immediately be changed over for the manufacture of peace materials. For this purpose, all State and communal authorities, public corporations, etc., shall immediately give their peace orders. Orders for public emergency work will be given. If sufficient orders are not on hand, peace work is to be manufactured for future disposal. Public authorities shall not make any further demands for the manufacture of war materials under existing contracts. For the purpose of satisfying at the earliest possible moment the peace needs of the country, the owners of industrial establishments must not insist on the right to deliver war materials to be manufactured hereafter. All peace orders are to have the preference unconditionally over current war orders. Dismissal of employees may take place only if provision has been made for work in other places. Unemployment is to be avoided under all circumstances.

If, in exceptional cases, the goal—peace work without unemployment—cannot be attained, war work may be provisionally continued as emergency work. In estimating compensation, it is fundamental that no profits can be allowed on such work, because of its character as emergency work.

Under authority of the decree of the Council of People's Commissioners, dated November 12, 1918, relating to the establishment of an Imperial Bureau for Economic Demobilization (Demobilization Bureau) it is hereby decreed:

1. In so far as, under exceptional circumstances, war work must be continued after November 10, 1918, the public authorities having control of such work shall fix new prices for a continuance of work on war materials, taking into consideration its character as emergency work.

From the decision fixing the price an appeal lies in favor of the contractor or subcontractor to the commissioner for demobilization of the district, and must be brought within four weeks after notification of the decision. The commissioner for demobilization, after hearing the public authorities and the appellant, shall finally fix the price, with the proviso that after compensation for the entire cost of production no profit shall be allowed, and that under no cir-

cumstances may the contract price be exceeded in whole or in part.

2. The contractors and subcontractors have no right of action against a person giving the orders for any loss of profits on war contracts not carried out.

3. The foregoing provisions do not preclude an agreement concerning the immediate termination of the contracts, or of parts thereof, entered into between the public authorities and the contractor or subcontractor, and providing in appropriate cases for the taking over of unfinished products.

4. In cases of doubt regarding the application of this ordinance in a particular case, the Demobilization Bureau shall decide on petition of any one of the parties.

5. The State central authorities, or the persons designated by them, shall designate the officials who are to assist the commissioners for demobilization in carrying out the duties set forth in Section 1. The proceedings before the commissioner for demobilization are free of costs; the commissioner for demobilization decides as regards cash expenditures.

6. The ordinary jurisdiction of courts is excluded in controversies arising under this ordinance.

An ordinance of November 14 empowered the Bundesrat to continue to exercise its administrative functions, and on the following day a further ordinance continued in force the law insuring the payment of war taxes (*Official Gazette*, November 16).

The Mexican Oil Situation

By J. P. CHAMBERLAIN

THE legal facts regarding the oil situation in Mexico should be clearly understood by the American people if the true meaning of the rather vague newspaper accounts of the dispute between the Mexican Government and foreign oil producers is to be grasped. The dispute is not a local question which can be settled by the Mexican authorities alone. Already protests have been made by the American, British, French, and Dutch Governments against legislation proposed by Mexico, on the ground that it is confiscatory of the property of their citizens; while the need during the war of a great supply of gasoline and fuel oil for military and naval purposes has emphasized the importance of keeping up operation and shipment from the Mexican fields. Foreign interests, though frequently in the form of Mexican corporations, control almost the whole of the known Mexican oil fields and transport and refine their output, so that practically any action taken by the Mexican Government will chiefly affect not Mexicans but foreigners.

The oil industry in Mexico has been developed by foreigners, principally Americans, since 1901, though the presence of asphalt and oil was known in Mexico even before the Spanish occupation. The value of the Mexican fields, however, was not proved until the exploration work of two Americans, Messrs. Doheny and Canfield, was crowned with success in 1901. Since then the development has been very rapid and the promise for the future is brilliant. The total output has risen from 10,345 barrels in 1901 to 55,292,770 in 1917, with an estimated possible production of 250,000,000 barrels a year, or nearly one-half of the total world production in 1917. The oil is nearly all exported, and consumed on foreign ships or engines or in foreign automobiles. In July, 1918, for example, 3,435,545 barrels were shipped to the United States, and 1,309,290 barrels to other points abroad. The Mexican Government is now re-

ceiving a share of the profits. President Carranza estimates the prospective income for the next fiscal year from petroleum lands at 19,000,000 pesos, or about \$9,500,000, so that the revenue-producing possibilities, if the industry continues its rapid development, are evident. The total income from mining taxes was estimated at 14,800,000 pesos, appreciably less than that from petroleum.

The tendency has been for the ownership and handling of the oil to be concentrated in the hands of foreign interests which own the refineries, the pipe lines, and the tank ships. The principal organizations are the Mexican Petroleum (Doheny interests), the Waters-Pierce (Standard Oil), the Pan-Mexican Fuel Oil (Standard Oil), the East Coast Oil (Southern Pacific), the Corona Oil (Dutch Shell), and the Mexican Eagle (Pearson English interests). The amount invested is already very large. A recent estimate puts the British and American capital invested in this business at \$300,000,000, of which \$200,000,000 is American.

The legal history of the ownership of oil in Mexico begins with the Spanish period. All grants of land were made by authority of the king, but they did not include minerals underlying the surface, which were granted separately on condition of exploitation and the payment of an annual production tax. The law was based on the principle that the right to develop the natural wealth of the subsoil should be granted only to persons who would utilize it, and on the condition that it be utilized, so that the industry might be developed and the royal treasury enriched by a share of the proceeds. If the concessionaire did not fulfill the conditions of his grant, the property reverted to the crown. In 1783 the mining edicts were combined into a code. On achieving independence, the Mexican nation succeeded to the ownership of minerals as well as to the other rights of the Spanish crown, and the old system of granting mining concessions was followed. In the Constitution of 1857, mining legislation was left to the States, but a constitutional amendment in 1883 transferred that right to the Federal Congress, and in 1884 the President, acting on a general authorization of the Congress, issued a decree containing a federal mining code.

The code changed the policy of the law in regard to certain products of the subsoil, among which were coal and petroleum, by expressly declaring them to be the property of the owner of the surface. Since 1783 there had been conflicting opinions as to whether coal, at least, was the property of the owner of the surface or of the State, and the draftsman of 1884 decided in favor of the land owner. There was no declaration of national ownership of the other minerals, but as they could be acquired only through concession from the Government on conditions laid down by the Government, they were practically part of the public domain. This division of minerals was the result of the deliberate action of the executive commission which drafted the decree, contrary to the judgment of many Mexican authorities.

The division of the subsoil products was reaffirmed in an act of Congress of 1892, which introduced another important change in the mining law by making the grant of publicly-owned minerals perpetual, dependent only on the payment of taxes. Even in regard to these minerals, therefore, the principle of the Spanish law that a mine must be continuously worked was given up, and the necessity of paying a tax was depended upon to insure operation. The latest mining code, that of 1909, adopted by Congress since the great expansion of the petroleum industry, follows the pre-

ceding act in these respects. It expressly states that minerals in general are the property of the nation, but that certain products, including mineral combustibles and bituminous substances, are "the exclusive property of the owner of the soil." In the debate over the code in Congress, it was said that the legislature could not change the conditions of the substances which the code of 1884 had declared to be private property, and thus placed under the protection of the Constitution. The Mexican law-making power, in other words, has repeatedly recognized the proprietor of the surface as the owner of the petroleum, and the Mexican Government has permitted, indeed encouraged, the investment of large sums of money in the purchase of oil-bearing lands, or of leases of the right to pump oil, depending on the existing statutes, and in the erection of refineries and other plants to utilize the property so acquired.

Article 27 of the new Constitution profoundly changed this legal situation. Petroleum was expressly included among the mineral resources of the nation which are inalienable, but which may be exploited by individuals under concession on condition of regular development. The Constitutional Convention returned in general to the Spanish theory of mining ownership. Concessions can be granted only to Mexican citizens, to Mexican corporations, or to foreigners who agree to be considered as Mexicans in regard to such property and not to invoke the protection of their Governments in respect of it; furthermore, Mexican citizens are to be preferred in grants of concessions. Foreign corporations cannot acquire ownership in concessions, consequently foreign corporations cannot continue in the industry in Mexico. Mexican corporations owning oil lands suffer a further limitation. Article 27 allows them to hold only as much land as "is absolutely necessary for their purpose," the amount to be fixed by the Executive; so that a corporation loses not only the oil underlying the land which it owned, but in addition the land itself, unless it obtains a concession to utilize the petroleum, when it may keep the amount of land necessary for its purposes. This provision of Article 27 has not as yet been put into effect.

Realizing the finality of constitutional provisions, save as changed by regularly adopted amendments, those who believe that the petroleum should remain in private ownership attempt to construe the Constitution to meet their opinion. It is argued that Article 27, so far as it deprives the owners of the soil of their petroleum rights, is nullified by other rules laid down in the same instrument. Article 14 provides that no law shall be given a retroactive effect, and Article 27 itself stipulates that private property shall not be taken except for public purposes and upon indemnification. Article 14 undoubtedly prohibits retroactive legislation by Congress, but it cannot limit the power of the Constitutional Convention, nor has one section of the Constitution more authority than another. If Article 14 can be said to limit Article 27, Article 27 can equally limit the application of Article 14. The meaning of the Constitution is the only question at issue. The only value of Article 14, as applied to Article 27, is that it lays down a general principle which would help in its interpretation if its meaning be doubtful; but there can be no doubt of the meaning of the language used in Article 27. As practically all the known oil-bearing lands are privately owned, Article 27, if it is to have any extended application, must apply to lands held in private ownership; so to admit the argument drawn from Article 14 would be practically to nullify Article 27, in enacting which the Conven-

tion evidently did not intend "a vain thing." Señor Pastor Rouaix, now a member of the Mexican Cabinet, the draftsman of the article, which was adopted practically without amendment, authoritatively states that the national ownership of all petroleum was intended whether or not it underlay lands privately owned. The Mexican Government, also, composed of men intimately acquainted with the intent of the Convention and headed by President Carranza, its master spirit, has acted on the same theory in its subsequent decrees. The words of the article, and its contemporary interpretation by the Government and by its draftsman, are too clear to permit the general rule laid down in Article 14 to be resorted to for aid in its interpretation, even if Article 14 applies to the Constitution at all. It is equally evident that the limitation on the right to take property except for a public use and on payment of compensation does not apply to such taking by the Constitution itself.

The former operators were allowed to continue work under the new Constitution. Taxes were laid on their product, but their possession was not threatened until the President, acting under the general power in regard to finance granted by Congress, issued the decree of February 19, 1918. This decree fixed a royalty of five per cent. on output, a tax of five pesos (\$2.50) a hectare (2½ acres) on all oil lands, and a steeply-graduated tax on the rent paid under oil leases running up to fifty per cent. of the royalty. The intention to maintain the ownership of the nation, resulting from Article 27, was evidenced by a section requiring owners or lessees who desired to operate the land held by them to file a statement within three months, and by providing that at the expiration of that period all lands not so registered would be open to claim. Only leases executed prior to May 1, 1917, were recognized. This decree gave a privilege to the holders of oil lands or oil leases, an exclusive prior right for three months to file claims on the oil lands previously held, plainly foreshadowing the grant of a concession. It apparently recognizes their moral right to consideration, and also the economic advantage to the state and to the laborers in the oil fields of a steady continuation of production.

This decree caused great commotion among the oil operators, who affirmed that it showed an intention to take away their property. If, however, Article 27 is to be given the effect which we believe it has, it had already appropriated the oil rights, so there was nothing left for the decree to confiscate.

The United States, in a note dated April 2, 1918, protested against the decree as an interference with the rights of operators who were American citizens. It also objected to the tax imposed "as indicating a trend" towards confiscation, and criticised other objectionable features in the system of collecting the royalty. England, France, and Holland have also entered protests on behalf of their nationals.

The Mexican Government could not be shaken from its legal position; but it showed its unwillingness to take action by extending the period for registration to July 31, this being done through the decree of May 18, issued on the day before the expiration of the three months' period of the decree of February 19. On July 31, again, after a conference with representatives of foreign interests, the period was extended through August 15. On August 8 a new decree was issued, requiring the owner or lessee who had registered his property to file a claim for a concession within three months (the lessee within two months) after August 15, or his prior right would lapse. A foreign corporation could

transfer its right to a Mexican corporation, and a foreign individual must relinquish the protection of his Government in respect of the concession. Tracts of land of over four hectares (ten acres), which was declared to be the size of a petroleum claim, could, if they had been registered before August 15, be patented only if wells were already in operation or were being drilled.

The legal and economic position resulting from these decrees was unsatisfactory to the foreign operators, who refused to register their lands. The Government again did not join issue. A decree of August 12, only four days before the expiration of the preferential right of the owners and lessees, provided that no surveyed oil property in which capital had been invested should be open to claim, but that the owner or lessee might operate the property until the "special contracts" were prepared under which he was to be allowed to operate in the future. He must, however, pay the land tax and the five per cent. royalty on output.

The Mexican Government, without abandoning its position that the nation is the owner of the oil, which it emphatically defends in a statement dated August 25, has impliedly admitted that the operators should in justice be given concessions for the operation of the petroleum underlying land owned or leased by them, and which they had begun to develop. The rights arising from the concession, however, would be very different from those of an owner. The concessionaire cannot speculate on his oil for higher prices by holding it unused; he must submit to regulations, and, until the bases of the "special contracts" are made public, he will not know the limitations on his privilege or the rapidity with which he must develop the property conceded.

The Carranza Government, on November 23, introduced a bill into Congress dealing with the oil situation. The bill is based on Article 27 of the Constitution. Owners are given consideration in the provisions that lands in which capital was invested before May 1, 1917, for the exploitation of petroleum, shall not be subject to denunciation, and granting to the owner or lessee three months in which to justify his rights. These properties, however, must pay the land taxes and taxes on production. Leases are continued during the term fixed in each lease, subject to the 50 per cent. tax on the royalty paid under the lease; then the lessee may secure the oil rights on application within three months. The owner of lands, or lessees on leases made before May 1, 1917, who have not put capital into their land, are to have a preference for one year if they justify their right within three months.

The problem of the taxation of the oil fields is apart from the far more serious question of their ownership. Originally there was no taxation upon oil; indeed, following the policy of the Diaz Government in encouraging development of the natural wealth of the country, petroleum was included with certain other mineral products in an exemption from all Federal, local, and municipal taxes by the law of June 6, 1887.

Under the revolution, however, a light tax was laid upon petroleum, which subsequently developed into a tax of ten per cent. ad valorem, the value to be fixed every two months by the Mexican finance authorities, not on the basis of the price at Tampico, but on the basis of the price in the United States, whither most of the product was shipped. The tax is in effect an export tax, and is defended as an economic measure by the Mexican Government on the ground that Mexico was being deprived of the advantage of its petroleum deposits, since the developing companies were interested in

the large foreign market and paid little attention to the smaller Mexican needs. Consequently, this tax was used as an economic, as well as a fiscal, measure to make it worth while to the oil companies to develop the Mexican market. The tax is fixed every two months and is in addition to the royalty and the land tax provided in the decrees cited. It is also in addition to a land tax on mining claims.

The right of foreign Governments to protest against the confiscation of the property of their citizens is unaffected by the method adopted for the confiscation. The remedy, however, is limited by the legal situation. Since only by a constitutional amendment can the property rights affected be restored, the only remedies open are compensation, or the granting of concessions to oil-land owners or lessees, satisfactory, not necessarily to them, but to their Governments; for if the Governments require their citizens to accept an agreed settlement on condition of a withdrawal of support, the dispute will be over.

Compensation will be an unsatisfactory remedy. The operators have taken the risk and developed the industry in the expectation of profit from a growing business; they have invested in ships, refineries, and pipe lines; they have established trade connections and agencies which market their products; and no compensation which would be awarded would cover their prospective loss. Furthermore, if the basis of settlement is to be payment for the value of the oil properties, Mexico will face an indemnity which, in its present impoverished condition, it could scarcely meet, especially as the revenue from the oil fields would be temporarily, at least, cut down, if not altogether stopped, should the present owners cease work. It would probably be difficult for Mexico to induce new capital to enter the fields except on terms very unfavorable to the Government. Neither side would gain by extreme measures, and the increasingly conciliatory attitude of the Mexican Government, if met on the part of the operators and their Governments by realization of the practical impossibility of an amendment of the Constitution, makes it probable that satisfactory contracts of concession can be agreed to.

The tax question is not of equal importance. Whether the operators are taxed as owners, lessees, or concessionaires makes little difference; the Government, by changing the form of its royalty to a license tax, can compel them to pay the same amount of money, and it will not be seriously contended that the legislature, in 1887, in freeing "mines of petroleum" from taxation, bound the hands of subsequent legislatures. If a future Mexican Government attempts to confiscate property rights of foreigners by taxation or in any other way, the right of protest of their Governments will be the same whether the rights arose from concessions or from land ownership.

The Mexican oil question is evidently one for reasonable solution. The desire of the Government to raise revenue from so flourishing an industry is not unjust, provided that the taxes are fair; and the adjustment of taxes so that there will be an inducement to refine the oil in the country, and sell it or its products at home instead of exporting them, will not encounter objection in a country which, like the United States, is still committed to the principle of the protective tariff. The more thorny dispute over ownership can be settled by fair concessions which shall recognize, on the one hand, the Mexican desire to secure the orderly utilization of its national resources, and, on the other, the rights of the operators who have made investments in the country.

Lord Robert Cecil on World Peace

THE following is the larger portion of an address delivered by Lord Robert Cecil on November 12, on the occasion of his installation as Chancellor of Birmingham University. The introductory portion, which is omitted here, dealt in general with the war and the losses which it had occasioned. The address is reprinted from the *London Times* of November 13.

In the face of a catastrophe like this, it is right that men should ask whether nothing can be done to prevent its recurrence. Some demand the destruction of Germany and the predominance of her present enemies. That the realization by the Central Powers of their defeat is an essential condition of any future settlement is true enough. But it is more than questionable whether permanent peace can be established on the basis of the world domination of the Entente or any other group of Powers. To such a settlement I do not believe that the peoples of the world will ever be brought to submit for any length of time, and I must add that, in my heart, I do not wish that they should do so. World domination is, after all, only another word for international despotism, and however benevolent such a despotism might be, it must be inconsistent with that liberty without which all other political advantages are insipid and not infrequently degrading.

If, then, we reject the idea of a peace imposed on the world by some powerful alliance, there remains no other method by which peace can be safeguarded except some general agreement, or association, or league of nations. With this proposal almost every one expresses a general sympathy, and makes it the theme of more or less sincere perorations. But in their hearts there are many who are convinced that the whole thing is just a dream born of war-weariness and sentiment. To such men the old system of the balance of power and groups of allied nations watching one another with steadily increasing armaments, reinforced by secret treaties of insurance and re-insurance, is all that can be hoped for. Unless they are mad, they recognize that this means the recurrence from time to time of devastating wars. But I suppose they hope that, with our historical good fortune, we shall always be on the winning side. It is surely enough to point out to those who hold this view that, even assuming future wars were no worse than this one, it is doubtful whether European civilization could be relied on to withstand a repetition of the last four years. Revolution and anarchy have already overwhelmed Russia, and threaten to engulf Austria, and perhaps Germany. Moreover, terrible as this war has been, the next one would be far more terrible.

If, therefore, the league of nations is a dream, it is difficult to avoid despair. And yet it would be folly to ignore the strength of the case of those who doubt whether such an organization can ever materialize. They can point with undeniable force to previous history. They can quote, for instance, the state papers and proclamations of Alexander I. of Russia in the closing stages of the Napoleonic wars, which could, with scarcely any alteration, be printed in a leading article to-day, and they can add that the only outcome of these admirable sentiments was the creation of the Holy Alliance. For myself, I am not prepared to say that a holy alliance of democracies would really make for the peace of the world. The main defect of the Holy Alliance as an instrument of peace was not so much that it favored autocratic forms of government, objectionable as that was on other grounds, as that by its nature it became restricted to a certain group of nations. We must build on surer foundations than that if we are to hope to establish a better international order. Our new society of nations must not be a group, however large and important. It is absolutely essential