

## THE CONTINUITY OF LITHUANIA'S STATEHOOD

by VYTAUTAS VAITIEKŪNAS

Vytautas Vaitiekūnas, jurist and journalist, has been long active in anti-Nazi and anti-Communist work. He is at present a member of the Committee for a Free Lithuania and a Lithuanian delegate to the Assembly of Captive European Nations.

I. Whether because of a lack of information or because of Soviet propaganda, many Western people — including intellectuals — believe that the state of Lithuania emerged merely as an aftermath of the East European international constellation at the end of the First World War, that it served simply to fill temporarily a vacuum that existed between the end of the First World War and the beginning of the Second, and that it was absorbed by the Soviet empire after the Second World War.

Actually, none of these assumptions is true. Lithuania is neither politically nor culturally a "new state" of Europe; she is as old as most of the other European nations, and she possesses a striking history replete with dramatic vicissitudes. The recorded history of an independent state of Lithuania dates back to the 11th century A. D. In the 14th and 15th centuries the Grand Duchy of Lithuania was a considerable military, political and cultural factor in Eastern Europe. In 1386, when the territories under Lithuania were three times as large as those of Poland, the Lithuanian Grand Duke Jogaila married the Polish Queen Hedwige d'Anjou, and for about 200 years the Lithuanian dynasty of Jogaila occupied the Polish throne. Then in 1569, at Lublin, a treaty of confederation was concluded between Poland and Lithuania. Both states retained their separate governments, arms, treasuries and law courts. However, affairs in the Polish-Lithuanian Commonwealth, with its racial, language and temperamental differences, began to deteriorate steadily. Internal dissensions and feuds undermined the strength of the dual state and afforded Russia, Germany and Austria an opportunity to partition it. In 1795 Lithuania was deprived of her independence.

Russian domination of Lithuania lasted 120 years, though almost every succeeding generation of Lithuanians challenged it in armed insurrections — in 1795, 1812, 1831, 1863 and 1905 — which were savagely suppressed by Russian might.

Then on Feb. 16, 1918, during the First World War, while the Germans still occupied the country, a Lithuanian National Council proclaimed the restoration of an independent Lithuania. But the conclusion of peace between the Allies and Germany did not bring peace to the newly restored Lithuanian Republic. At the end of 1918, Russian Bolshevik forces invaded Lithuania, and hostilities continued until, on July 12, 1920, relations with Soviet Russia were regulated by the Peace Treaty of Moscow. The first article of this treaty reads:

"In conformity with the right declared by the Russian Socialist Federated Soviet Republic of all peoples to free self-determination, including the right of full secession from the state of which they were a part, Russia recognizes without any reservations the sovereignty and independence of the State of Lithuania with all legal consequences resulting from such recognition, and voluntarily and forever renounces all sovereign rights possessed by Russia over the Lithuanian people and territory. The fact that Lithuania was ever under Russian sovereignty does not place the Lithuanian people and their territory under any obligation to Russia."

Soon after Soviet Russia recognized Lithuania's sovereignty and independence, Lithuania was admitted as a full-fledged member of the international community. On Sept. 22, 1921, Lithuania was received into the League of Nations. At that time she had already been granted de jure recognition by Argentina, Estonia, Latvia, Mexico, Switzerland and Germany. On July 28, 1922, Lithuania was granted de Jure recognition by the United States of America, and on Dec. 20, 1922, such

recognition was extended by the British Commonwealth, France, Italy, Japan and all the other member states of the League of Nations.

**II.** When the Second World War broke out, all the sympathies of the Lithuanian nation were on the side of the Western democracies. In view of her precarious geographical position and her limited military forces, Lithuania on Sept. 1, 1939, proclaimed her neutrality. She steadfastly rejected the summary demands of Nazi Germany that she join the Axis bloc. Lithuania's relations with Great Britain, France and the United States were friendly. Relations between Lithuania and the U.S.S.R. were based on three bilateral treaties —

- (1) the above-mentioned Peace Treaty,
- (2) the Treaty of Nonaggression and
- (3) the Convention for Definition of the Aggressor

— plus the rights and obligations resulting from the facts that Lithuania and the U.S.S.R. adhered to the 1928 Pact of Paris and that both states were members of the League of Nations. In brief, relations between Lithuania and the U.S.S.R. were based on

- (1) mutual recognition of and respect for each other's sovereignty and independence,
- (2) renunciation of force to settle and solve conflicts that might arise between them and
- (3) the obligation to submit to the Commission of Conciliation all disputes that could not be regulated by diplomatic means.

**III.** On Aug. 23, 1939, the U.S.S.R. signed a non-aggression pact with Nazi Germany. The first, but not the sole, fruit of this pact was the partition of Poland. It also involved certain proposals concerning Finland, Estonia, Latvia and Lithuania. Then on Oct. 10, 1939, soon after the outbreak of the Second World War, the U.S.S.R. forced Lithuania to sign the so-called Mutual Assistance Pact, under which she was compelled to admit Soviet garrisons and to grant air bases on Lithuanian territory. Even on this occasion, the U.S.S.R. solemnly reiterated its promise to respect Lithuania's sovereignty and not to interfere in Lithuania's internal affairs.

On June 15, 1940, in spite of all treaty obligations and friendly assurances, Soviet armies poured into Lithuania and occupied the whole country. Soon other measures were taken with a view to legalizing this occupation. On orders from Moscow and under the supervision of Moscow emissaries, "elections" to the "People's Diet" were organized. On June 25, all Lithuanian political parties and other political organizations, with the exception of the Communist Party, were dissolved. The free press was liquidated, leaving only the newspapers directed by the Communist Party. On July 12, about 2,000 Lithuanians — heads of political parties, journalists, publicists, high officials and people otherwise influential in Lithuanian public life — were arrested. The candidates to the People's Diet were always proposed by the Communist Party. Only as many candidates were nominated as there were delegates to be elected. These were not elections in the true sense of the word, but rather the mere approval of a list of candidates proposed by Moscow. Moreover, the question of Lithuania's incorporation into the U.S.S.R. was not even mentioned in the "election" period. The candidates thus elected were not invested with the right to ask for the incorporation of Lithuania into the U.S.S.R. But they had no other recourse. Here is what some delegates to the People's Diet themselves declared later in a resolution:

"Not a single member of the People's Diet might express a protest against such an act of violence" — the resolution petitioning for Lithuania's incorporation into the U.S.S.R. — "as, in view of the circumstances, such protest would have involved danger to his life. Moscow's representative, Mr. Dekanozov, and the members of the Soviet Legation openly threatened all those members of the People's Diet and their families who had dared to announce that they would not vote for incorporation."<sup>1</sup>

The Select Committee of the United States Congress's House of Representatives had this to say about the People's Diet in its report on Communist aggression:

"By the process of mock elections the political commissars of the U.S.S.R. did install puppet parliaments in Lithuania, Latvia and Estonia which on July 21-22, 1940, adopted a resolution prepared in Moscow, petitioning the Supreme Council of the Soviet Union for recognition as a Soviet Republic. This action by the puppet parliaments was in violation of the sovereign will of the Lithuanian, Latvian, and Estonian people and in violation of the legal constitutions of those nations. ...The evidence is overwhelming and conclusive that Estonia, Latvia, and Lithuania were forcibly occupied and illegally annexed by the U.S.S.R. Any claims by the U.S.S.R. that the elections conducted by them in July, 1940, were free and voluntary or that the resolutions adopted by the resulting parliaments petitioning for recognition as a Soviet were legal are false and without foundation in fact."<sup>2</sup>

**IV.** Such, in brief, are the circumstances of the suppression of Lithuania's independence. It was annexation pure and simple. Vladimir Lenin, the father of Soviet Russia, has this to say about what constitutes annexation: "Any incorporation of a small and weak nation into a large or strong state without the definite, clear and voluntary desire to that effect of that nation," and especially, "if this nation is not accorded the right to decide the problem of 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."<sup>3</sup>

But this "arbitrary appropriation" of Lithuania's statehood by the U.S.S.R. was short-lived; it lasted just over a year. On June 22, 1941, Germany suddenly attacked Soviet Russia and the German forces crossed into Lithuania. The Lithuanian people, disregarding everything else, saw in this one thing only — a chance to throw off the Soviet yoke and to assert their determination to regain their independence. On that same day, a general revolt against the Soviet rule broke out throughout Lithuania. In two days the Lithuanian insurgents, after bloody fights with Soviet troops, succeeded in gaining full control of the principal cities, Vilnius and Kaunas, as well as most of the provincial towns. A provisional national government was immediately organized — before German troops actually reached the capital.

In a few weeks, however, the Nazi German authorities suppressed the Lithuanian National Government and arrested a great many political leaders, and the country was placed under the rule of the Zivilverwaltung and the Gestapo, where it remained until the end of June, 1944. At the beginning of July of that year, the Red Army crossed the eastern boundary of Lithuania in its western sweep, and by the middle of October practically all of Lithuania found itself once more under Soviet occupation. This second Soviet occupation continues to the present day. The U.S.S.R. violated by this second forcible annexation not only the Peace Treaty of Moscow and the Treaty of Nonaggression but also the Atlantic Charter and the Charter of the United Nations. This forcible annexation of Lithuania was thus an illegal act under international law, constituting a violation of all the basic principles of that law, such as the principle of state sovereignty and independence, the prohibition of the violent seizure of territory and the prohibition of intervention. All these principles were explicitly recognized and embodied in the agreements concluded with Lithuania by the U.S.S.R. The U.S.S.R. obtained no more right of sovereignty over Lithuania by this second, 1944, occupation than it obtained over the Danish island of Bornholm, for example, which was also occupied by the Soviet Army during the same course of military operations. In the view of international law, therefore, the forcible annexation and incorporation of Lithuania into the U.S.S.R. must be described as an obvious act of aggression, and as such devoid of any legal foundation.

**V.** The principle of legality expressed in the maxim **ex iniuria ius non oritur** is fundamental to international, as to any other, law. Therefore the international community has not granted de jure recognition to the forcible annexation of Lithuania. Nonrecognition's true legal function is to qualify an illegal act as a null and void, thus destroying its law-creating faculty, and thereby to uphold and preserve those rights that have been violated. As Prof. H. Lauterpacht states, "This construction of nonrecognition is based on the view that acts contrary to international law are invalid and cannot become a source of legal rights for the wrongdoer. That view applies to international law on the general principles of law recognized by civilized nations."<sup>4</sup>

The doctrine of nonrecognition has gained especial strength and momentum on the American continent. The beginning of this movement is associated with the famous Jan. 7, 1932, notes addressed by the United States Secretary of State to China and Japan; the well-known March 11, 1932, resolution of the League of Nations Assembly concerning nonrecognition was inspired by this United States declaration. The nonrecognition of illegal acts of territorial conquest and forcible annexation has again and again been embodied in recent American conventions: in the Saavedra Lamas Treaty signed in Rio de Janeiro on Oct. 10, 1933; in the Dec. 26, 1933, Montevideo Convention on the Rights and Duties of States; in the March 8, 1945, Act of Chapultepec; in the Sept. 2, 1947, Treaty of Petropolis; and, finally, in the Charter of the Organization of American States signed in Bogota on May 2, 1948. Among other things, this Charter declares:

"The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized."<sup>5</sup>

We can find the U.S.S.R.'s attitude toward non-recognition in a statement made to a League of Nations meeting by Mr. Litvinov, at that time U.S.S.R. Commissar of Foreign Affairs, in which he declared:

"Among the means for combating aggression... nonrecognition does not by any means play a conspicuous part. It is improbable that anyone would assert that the mere threat of nonrecognition might avert aggression, or that nonrecognition itself might free the victim of aggression from the grip of the conqueror. (...It would be quite wrong, however, to assert that resolutions on nonrecognition are in themselves devoid of any particular value. While such resolutions have in every case a certain moral significance, and give satisfaction to public opinion, they also cause the aggressor some preoccupations and inconveniences, as is evidenced by the efforts which aggressors usually make to obtain recognition of their conquests, if only in an indirect way. 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 nonrecognition, would be equivalent to abetting the aggressor directly, and to stabbing his victim in the back by discouraging and demoralizing it."<sup>6</sup>

**VI.** The actual practice of the various states with regard to nonrecognition in the case of Lithuania is not uniform, however. Generally speaking, the states of the free world have adopted one of two policies: nonrecognition either **de jure** or **de**

**facto**, or nonrecognition **de jure** only.

The attitude of the United States is one of absolute and uncompromising nonrecognition. This attitude was made clear on July 23, 1940, in a statement by Under Secretary of State Sumner Welles:

"During these past few days the devious processes whereunder the political independence and territorial integrity of the three small Baltic Republics — Estonia, Latvia and Lithuania — were to be deliberately annihilated by one of their more powerful neighbors, have been rapidly drawing to their conclusion. From the day when the people 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 foundations upon which the existing relationship between the twenty-one sovereign republics of the New World rests. 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."<sup>7</sup>

On Oct. 15, 1940, soon after the first Soviet occupation of Lithuania, President F. D. Roosevelt told a Lithuanian-American delegation in Washington, "It is stated that Lithuania has lost her independence. It is a mistake to say so. Lithuania has not lost her independence; Lithuania's independence has only temporarily been put aside. Time will come and Lithuania will be free again."<sup>8</sup>

On June 14, 1952, President H. S. Truman declared in a telegram to the President of the Baltic States Freedom Committee: "On the occasion of the twelfth anniversary of the lawless invasion of the Baltic States by the Soviet Union, I send you warm greetings. The government and people of the United States feel an instinctive and profound sympathy for the enslaved people of Estonia, Latvia and Lithuania coupled with revulsion at the acts of the occupying power, whose forcible incorporation of the Baltic States we have never recognized. We pay tribute to the determined endeavors of the diplomatic and other representatives of Estonia, Latvia and Lithuania on behalf of their homelands. We shall not forget our Baltic friends. We extend through you to them, wherever they may be, our heartfelt hope that they may have the fortitude and the patience to live through the grinding tyranny now imposed upon them to enjoy once again independence and freedom within the community of free nations."<sup>9</sup>

On the occasion of the 700th anniversary of the state of Lithuania, Feb. 16, 1953, Secretary of State J. F. Dulles stated:

"In refusing to recognize the incorporation of the Baltic States into the Soviet Union, the Government of the United States has expressed the conviction of the American people that justice and law must govern the relations between the nations, great and small."<sup>10</sup>

The American courts also maintain this position clearly and forcefully. In implementing the government's policy they act on the assumption of the legal continuity of Lithuania, unbroken by illegal annexation.

The diplomatic and consular missions of Lithuania in the United States continue their normal activities on a footing of complete equality with all other foreign representatives.

**VII.** The policy of the Vatican, Portugal, Spain and the South American states is the same kind of nonrecognition. Lithuania's diplomatic and consular missions in Montevideo, Rio de Janeiro, Sao Paulo, Bogota and the Vatican engage in normal diplomatic and consular activities, including dealings with the respective Foreign Ministries, protection of Lithuanian citizens, legal protection of property and issuing and extending passports.

The attitude of Great Britain and the British Commonwealth and of France, Italy and the other states of the free world differs a little from that of the United States. There has been no official reaction comparable to Sumner Welles' statement. Following the annexation all funds belonging to Lithuania were frozen, vessels were not permitted to leave port and were later requisitioned by the government, and Lithuania's name disappeared from the Annual Edition of the Diplomatic Bulletin in London, although the personnel of the Lithuanian Legation enjoy full diplomatic privileges and continue to transact normal business, such as the protection of Lithuanian citizens, the issuing of passports and dealing with the Foreign Office.

The British position was to a certain extent clarified in the House of Commons by Under Secretary of State for Foreign Affairs McNeil. On Feb. 10, 1947, when he was asked by Prof. Savory "whether H. M. Government have ever approved of the incorporation of Estonia, Latvia and Lithuania in the U.S.S.R.," Mr. McNeil replied, on behalf of the British government, "No, sir, H. M. Government recognize that the Baltic States have **de facto** been absorbed into the Soviet Union, but have not recognized this **de jure**."<sup>11</sup>

Prof. H. Lauterpacht has this to say about **de facto** recognition as it affects **de jure** nonrecognition:

"...There would seem to be full scope for **de facto** recognition in situations where conditions other than effectiveness of power are a legitimate consideration. This applies in particular to recognition of a new international title which has its origin in an international wrong, as was the case of Italian annexation of Abyssinia in 1936. In such cases, **de facto** recognition, which takes into account the actuality of power while expressly refusing to admit its legality in the field of international law, is a proper device for combining disapproval of illegal action with the requirements of international intercourse."<sup>12</sup>

The recognition on the other hand of events that have taken place in Lithuania, and on the other hand the refusal to recognize these events *de jure*, combined with the continued recognition of diplomatic and consular activities, lead to the conclusion that the British Commonwealth and many other states still recognize the continuity of independent Lithuania, even though she has ceased to exercise **de facto** authority in her territory.

Two chief conclusions emerge from this brief survey of the principal requirements of international law and the free world international community's experience with regard to the forcible annexation of Lithuania:

(1) Lithuania's statehood has not been abolished and her sovereignty has not lapsed as a result of her illegal incorporation into the U.S.S.R. Modern international law, as Prof. W. Schaetzel rightly observes, provides the occupant of illegally annexed territory no means for legalizing his presence; "He will remain forever merely an occupant."<sup>13</sup>

(2) The legal continuity of an illegally suppressed state necessarily and logically implies its **de facto** restoration.

This does not mean that members of the international community must have recourse to war against the aggressor; it means only that they are under obligation to use every legal means of international law to restore the violated international order, and that the occupant has no right to protest against such interference in his internal affairs.<sup>14</sup> The effectiveness of international law and the dynamic of international developments must not be minimized or underestimated.

Besides, it would be easy for the U.S.S.R. herself to annul the illegal annexation of Lithuania by allowing Lithuania to make use of Article 17 of the U.S.S.R. Constitution. Here, too, a certain gradualism would be possible.

#### Notes:

- 1 E. J. Harrison, "Lithuania's Fight for Freedom," New York, 1952, p. 28.
- 2 Third Interim Report of the Select Committee, U.S. Government Printing Office, Washington, 1954, p. 8.
- 3 Lenin, "Collected Works," Vol. XII, p. 13.
- 4 H. Lauterpacht, "Recognition in International Law," Cambridge, 1947, p. 420.
- 5 United Nations Textbook, p. 295.
- 6 League of Nations Official Journal, 1938, pp. 340—341.
- 7 Documents on American Foreign Relations, Vol. III, p. 429.
- 8 E. J. Harrison, *op. cit.*, p. 29.
- 9 Archives of the Committee for a Free Lithuania, New York.
- 10 *Ibid.*
- 11 Parliamentary Debates, House of Commons, Official Report, Vol. CCCCXXXIII.
- 12 H. Lauterpacht, *op. cit.*, p. 341.
- 13 W. Schaetzel, "Der Friede mit dem Aggressor," Hamburg, 1953, p. 335.
- 14 K. Marek, "Identity and Continuity of States in Public International Law," Geneva, 1954, p. 582; B. Meissner, "Die Sowjetunion, die Baltischen Staaten und das Voelkerrecht," Cologne, 1956, p. 312.