

THE INTERNATIONAL STATUS OF LITHUANIA

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In 1921, after the re-establishment of an independent Lithuanian state, Lithuania was admitted into the League of Nations, and in the years 1921-1922 she was granted de jure recognition by many leading countries. Thus Lithuania became a full-fledged member of the international community. On June 15, 1940, however, Lithuania was occupied by the Red Army, and on August 3 she was incorporated into the Soviet Union. On August 11, foreign representatives were informed by the government of the Soviet Union that it was now representing Lithuania in international affairs, and that all foreign embassies and consulates in Lithuania must be closed by August 25. As a result of this action and because of the existing state of occupation, embassies and consulates were closed on the following dates: Switzerland, August 31; United States, September 5; Hungary October 4, etc.¹

The principal justification advanced by the Soviet Union for this incorporation is the so-called will of the Lithuanian people, as expressed in the election of a People's Diet and in that Diet's subsequent request that the "Lithuanian Soviet Socialist Republic" be incorporated into the Soviet Union. That this title to possession, fabricated by the Soviet Union itself, has no legal foundation is evident, and there is no need to discuss the question anew. Suffice it to note that a committee of the United States Congress that investigated the incorporation of the Baltic states into the U.S.S.R. stated, "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 Republic were legal are false and without foundation in fact."²

Except among Communist writers, the view prevails that the incorporation of Lithuania into the Soviet Union was a unilateral action on the Soviet Union's part, an act of annexation. In recent times, especially on the American continent, the doctrine has been advanced that any act of annexation is illegal, since such annexation of the whole or a part of a nation's territory is contrary to the principle of national self-determination. This doctrine has been universally recognized since 1890 on the American continent, where it is known as the Stimson Doctrine. In the treaty of Saavedra-Lamas of October 10, 1933, that doctrine is expressed as follows: "Art. II—They declare that as between the High Contracting Parties territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement which is not obtained by pacific means, nor the validity of an occupation or acquisition of territory that may be brought about by force."³

This pact is now adhered to by 21 American states and 11 non-American states. It would seem that even Lenin's definition of annexation was influenced by these ideas. "In accordance with the legal conscience of democracy in general and especially of the working class, the Government considers as annexation or arbitrary appropriation of foreign lands any incorporation into a large or strong state of a small or weak nation without that nation's clear and definite desire, irrespective of what manner of violence may be employed in effecting the incorporation, irrespective of how developed or undeveloped may be the nation that is incorporated with violence or that is retained by force within the limits of that state and, finally, irrespective of whether the incorporated nation is in Europe or in some distant land.

"If any nation is retained within the limits of another state by force, if, contrary to its desire — irrespective of whether this desire is expressed in the press, at peoples meetings, in party resolutions or in uprisings against national servitude — this

nation is not accorded the right to decide the problem of the form of the state structure of said nation 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 act of arbitrary appropriation and violence"⁴.

Thus, an act of annexation is an illegal act, an act of violence. This same view is expressed in a resolution of the League of Nations adopted on March 11, 1932, which obliged the members not to recognize any treaty or situation that was achieved in a manner contrary to the stipulations of the League of Nations or the Pact of Paris. This resolution became the basis of the decision at the Nuremberg War Crimes Trials holding that the various annexations made by Germany were not only illegal but also punishable. "It was contended before the Tribunal that the annexation of Austria was justified by the strong desire expressed in many quarters for the union of Austria and Germany; that there were many matters in common between the two peoples that made this union desirable; and that in the result the object was achieved without bloodshed.

These matters, even if true, are really immaterial, for the facts plainly prove that the methods employed to achieve the object were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered."⁵

But there is a different view of annexation which holds that in spite of the illegality of an annexation, it can be legalized by the de jure recognition of leading powers. According to the first view, it is the duty of states to refuse to recognize annexation; according to the second, each state is free to recognize the new situation or to refuse to recognize it. The followers of the second theory maintain that in international practice the will of the state is the deciding factor, and that an illegal situation may be legalized by the granting of recognition.⁶ Bearing the above remarks in mind, we may examine the practice in relation to the annexation of Lithuania and the conclusions that may be drawn from this practice.

The United States. Once the fate of Lithuania became apparent, the United States, faithful to the doctrine of nonrecognition, on July 24, 1940, condemned the Soviet act through Sumner Welles: "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... 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."⁷

From among the many statements made by United State officials on the nonrecognition of the incorporation of the Baltic states into the Soviet Union, we will cite the following more significant ones:

- a) When representatives of the American Lithuanian Council visited President Roosevelt on October 15, 1940, to present a statement on the Lithuanian problem, the President noted: "...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."⁸
- b) In 1945 the Supreme Headquarters of the Allied Expeditionary Forces (SHAEF) issued a directive on the question of repatriation that stated, with regard to Estonians, Latvians and Lithuanians: "Up to the present the United States and British Governments have not formally recognized any territorial change brought about by the present war. Latvians, Estonians and Lithuanians... will not be returned to their native districts, repatriated to the Soviet Union or transferred to the U.S.S.R. zone in Germany unless they specially claim Soviet citizenship"⁹
- c) When during the Nuremberg War Crimes Trials Estonia, Latvia and Lithuania were mentioned as parts of the Soviet Union, the chief United States prosecutor, Robert H. Jackson, stated in a lengthy note that he agreed to the formulation in order to avoid delay, but that this did not signify that the United States recognized Soviet sovereignty over those countries.¹⁰
- d) At a foreign ministers' conference in Paris in 1946, Molotov attempted to introduce representatives of the so-called Baltic Soviet republics into the delegation as their "Ministers for Foreign Affairs". Representatives of the Western powers replied that these people might participate in the conference as representatives of the Soviet Union but not of the Baltic states.¹¹
- e) A U.S. State Department document of March 26, 1948, addressed to the governors of the various states, is of great importance in this question of the Baltic states; it specifically notes that citizens of the Baltic countries can be represented only by the diplomatic and consular agencies of those countries and not by the Soviet Union.¹²
- f) Finally, when in 1954 the Kersten Committee began its investigation of the incorporation of the Baltic states into the U.S.S.R., Secretary of State John Foster Dulles stated: "The United States, for its part, maintains the diplomatic recognition which it extended in 1922 to the three Baltic nations. We continue to deal with their diplomatic and consular representatives who served the last independent governments of these states."¹³

In view of this United States position, Lithuanian diplomatic and consular representatives continue to function and to possess all the prerogatives usually accorded such representatives. United States courts base their decisions on this position. For example, on December 1, 1953, Court of Claims Judge J. Whitaker, in dismissing plaintiff's petition, based on the 1940 nationalization decrees of the U.S.S.R., for the transfer of ownership of a Lithuanian ship requisitioned in a U.S.

port in 1942, noted: "The Executive Department of our Government has refused to recognize the incorporation of Lithuania into the Union of Soviet Socialist Republics and has refused to recognize the validity of any decrees issued by the Union of Soviet Socialist Republics or of the People's Commissars of the Soviet Socialist Republic of Lithuania relative to persons and property within the territory of Lithuania. That action having been taken by the Executive Department of our Government, the courts have also uniformly refused to recognize the validity of such decrees. For example, see *The Maret*, 3 Cir., 145 F. 2d 431, 433; *Latvian State Cargo and Passenger S.S. Line v. McGrath* ...188 F. 2d 1000; *The Florida*, 5 Cir., 133 F. 2d 719. We fully concur in these opinions."¹⁴

United States courts continue to recognize the right of Lithuanian consuls to protect the interests of Lithuanian citizens in American courts and to deny that right to Soviet consuls. For example, in the case of Mike Shaskus a demand was made that the Lithuanian consul-general be evicted from the court; the court turned down the demand on the grounds that the United States has, by treaty, granted *de jure* recognition to the Lithuanian government, and hence the Lithuanian consul is entitled to protect the rights of its citizens.¹⁵ In the *Adler's Estate* case, the court rejected the powers of attorney submitted to it that had been signed by a notary in Riga and later certified by the so-called Ministry of Justice in occupied Latvia and the Soviet Union's consul-general in New York, stating that since the State Department does not recognize the incorporation of Latvia into the U.S.S.R., nor the legality of any of the acts or decrees of that regime, and added, "As a corollary of this principle, a court may not give effect to an act of an unrecognized government, for by so doing it would tacitly recognize the government, invade the domain of the political department and weaken its position. If, therefore, the court may not give effect to an act of an unrecognized government, it may not give effect to an act of an official acting in behalf of that regime."¹⁶

Great Britain. The attitude of Great Britain toward the annexation of the Baltic states was not as strict as that of the United States. Nevertheless, immediately after the annexation the Baltic states' assets in Great Britain were frozen and the legations continued to function as before. Later, during the war, Great Britain signed a treaty with the Soviet Union extending *de facto* recognition to the incorporation. On May 26, 1942, the names of the Baltic states' representatives in the **Diplomat's Annual listings** were transferred to an appendix with this note: "List of Persons no longer included in the Diplomatic List but still accepted by H.M. Government as Personally Enjoying Certain Diplomatic Courtesies." No indication was given of the countries the people represented. This position has been maintained to the present day; the **Diplomat's Annual** still carries an appendix listing three ministers plenipotentiary of unnamed states. This extraordinary procedure has not, however, been followed by the Foreign Office List, which carries the Baltic diplomatic missions in the normal manner.¹⁷

Great Britain's representative at the Nuremberg War Crimes Trials made essentially the same reservation that was made by the United States prosecutor: that the listing of the Baltic states in the indictment as part of the Soviet Union had no relation to the British position on the question of Soviet sovereignty in the Baltic states.¹⁸

The British position was clearly formulated in the case of *Tallina Laeveuehisus v. Tallina Shipping and Estonian Shipping Line*, in which the court solicited the opinion of the Ministry for Foreign Affairs. The reply stated: "I, H.M. Government recognise the Government of the Estonian Soviet Socialist Republic to be **de facto** Government of Estonia, but does not recognize it as *de jure* Government of Estonia. 2. H.M. Government recognise that Estonia has **de facto** entered the Union of Soviet Socialist Republics, but have not recognized this **de iure**. 3. H.M. Government recognise that the Republic of Estonia as constituted prior to June, 1940, has ceased *de facto* to have any effective existence."¹⁹ What was here said about Estonia is **mutatis mutandis** applicable to Lithuania.

When, on February 15, 1954, the question of demanding from the Soviet Union reparations for losses suffered by British nationals in the Baltic states was raised, Dodds-Parker, a Foreign Ministry official, replied: "No, Sir. Her Majesty's Government are not prepared to take any steps which would imply or constitute **de jure** recognition of the Soviet annexation of the Baltic states."²⁰

Although Great Britain has recognized the annexation *de facto*. British courts, like U-nited States courts, have refused to recognize the validity of Soviet decrees respecting the Baltic states. Also the Baltic states' diplomatic missions continue to function as before and the Foreign Ministry of Great Britain maintains diplomatic ties with them.²¹ There is little difference in this respect between the British and the American practices. "It may thus be asked what exactly *de facto* recognition by Britain of the annexation of the Baltic States really signifies," writes K. Marek. "It may well be that the British Government has resorted to this particular form of recognition in order to acknowledge the existence of undoubted facts on the one hand, while registering its disapproval of these facts on the other. In view of the continued recognition of, and dealing with, the Baltic Legations in London, it can hardly mean more than this. The recognition of facts which have taken place in the Baltic States on the one hand, and the refusal to recognize these facts **de jure** as well as the continued recognition of the London Legations, on the other, leads to the conclusion that Great Britain still recognizes the existence of the Baltic States, even though they have ceased to exercise *de facto* authority in their territories."²² Marek quotes H. Lauterpacht, a noted British jurist, in support of his conclusions. Lauterpacht has this to say about **de facto** recognition: "There would seem to be full scope for **de facto** recognition in situations where conditons 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 the 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."²³

The members of the British Commonwealth have for the most part adopted the same attitude as Great Britain.

Canada. On May 17, 1954, when the question was raised in the Canadian Parliament, Benedick-son, an official of the Canadian Foreign Ministry, stated: "There has been no occasion when the government of Canada considered it necessary to reaffirm or withdraw formally **de jure** recognition of these states." However, in 1947, in the course of an action in Canada's Exchequer Court, the Secretary of State for Internal Affairs informed the court that the government of Canada recognized that "Estonia has Republics, but does not recognize this **de jure**."²⁴ Furthermore, when on March 12, 1948, the Soviet Legation in Canada announced that all former residents of the Klaipėda area should register at the Soviet consulate or embassy, in conformity to a Soviet decree of January 29, 1948, the Canadian government protested the action on the ground that the Canadian government had never granted **de jure** recognition to Lithuania's incorporation.²⁵ A Lithuanian consulate is functioning in Toronto and possesses full rights, but it does not figure in the official lists.

Australia. The government of the Commonwealth of Australia reacted just as Canada did to Soviet demands that all its citizens register at the Soviet legation. On May 9, 1948, the government told the refugees in Australia under the International Refugee Organization program to disregard the Soviet plea. The statement pointed out that Australia does not recognize the incorporation of Estonia, Latvia and Lithuania into the Soviet Union.²⁶

Ireland. The position of Ireland was stated in the *Zarins v. Owners* case, which involved the ownership of ships nationalized by Latvia and Estonia after their annexation. The High Court of Ireland reached this conclusion: "That the government of Eire having stated their opinion that the states of Latvia and Estonia were not under the sovereign independent authority of the Union of Soviet Socialist Republics, the court must treat as nullities the various transactions and documents alleged to have culminated in the alleged sovereignty and purporting to pass the property in those ships."²⁷ When the case reached the Supreme Court, the Ministry for Foreign Affairs stated that Ireland does not recognize, either **de facto** or **de jure**, Soviet sovereignty in Latvia or Estonia.²⁸

France. On August 15, 1940, immediately after the Baltic states were annexed by the Soviet Union, the Soviet Union's representative in France demanded that those states' legations in France be closed. In spite of strong protests by the Baltic legations, they were forced to hand over the keys of the embassies to a prefect, who then gave them to the Soviet embassy.

After the war Baltic representatives asked the French government to permit the renewal of diplomatic and consular activities. However, the request was denied.²⁹ If it might appear from this that France has recognized the annexation, such an interpretation was denied by the French Supreme Court in the case of *Gerbaud v. de Me-dem*. On January 10, 1951, the court stated: "Considering that no act of international significance has intervened to obliterate the recognition of the Latvian State; that no treaty has intervened to sanction the disappearance of that State as a holder of rights and liable to legal obligations; that the Court of Appeal rightly decided that so long as the Peace Treaty has not determined the fate of Latvia, it is impossible to say that Latvians at present have no nationality."³⁰

We must conclude, then, that the above-mentioned closing of the Baltic legations in France constituted only de facto recognition of the annexation. Nevertheless, Baltic representatives in France have only a personal status and maintain no official premises. They are, however, the agents of the diplomatic services of their respective states, and we should note, that in a 1948 audience with the President of France, the Baltic representatives were accorded the courtesies reserved for diplomatic representatives.³¹ Furthermore, with respect to Lithuania, official quarters duly noted the granting of the rank of minister to Dr. S. Bačkys by the chief of the Lithuanian diplomatic services; Dr. Bačkys had represented Lithuania in France prior to 1940.

West Germany. When West Germany was under Allied occupation, its courts maintained positions on the question of the Baltic states coinciding with the position of the occupational government of the respective zone. The position of West Germany itself was clarified only when that state was granted the right of international representation. On April 29, 1953, the Ministry of Foreign Affairs of the Federal Republic of Germany notified the judicial organs of the city of Berlin that it considered Latvia to be still in existence, since neither the German Reich nor the present federal government had ever recognized the annexation of Latvia.³² Also, a circular letter of the Foreign Ministry dated March 2, 1953, states that since the annexation of the Baltic states is not recognized in international law and the citizens of those states have not become citizens of the Soviet Union, the citizenship of these persons has remained unchanged. Passports issued by the diplomatic and consular services of Estonia, Latvia and Lithuania are valid so long as they conform to the usual regulations.³³

The functioning of the diplomatic and consular services of the Baltic states was suspended by the government of the German Reich in 1940. And at present the Lithuanian diplomatic service agent who protects Lithuanian interests in Germany, like his counterpart in France, maintains no official premises.

Spain and Portugal. Both Spain and Portugal are members of the Saavedra-Lamas pact. Therefore neither of them can recognize territorial changes accomplished by force. Immediately after the annexation, Portugal's Foreign Ministry announced that it did not recognize the annexation, but it suspended all treaties with the Baltic states so long as the situation remains unresolved.³⁴ Lithuania's representative in France was also the country's representative in Spain, before incorporation of Lithuania into the Soviet Union and it would seem that there are no barriers to a renewal of Lithuanian representation in Spain considering that at the present time Estonia is represented in Spain by her former representative to France.³⁵

The Vatican. The Lithuanian legation here functions just as it did before, with full prerogatives, since the Vatican has not recognized the incorporation of Lithuania into the Soviet Union. (Beginning with January 1959 the title of the chief of the Lithuanian Legation at the Vatican has been changed to that of *gerant d'affaires*.)

Switzerland. The position of Switzerland in regard to the Baltic states was set forth in a report of the Federal Council in 1946: "The Federal Council has reconsidered the status of the former Estonian, Latvian and Lithuanian diplomatic and consular missions and of their personnel. As of the 1st of January, 1941, these missions have not been recognized by the Federal Council. On November 15, 1946, the Federal Council passed a resolution whereby the public property of the above-mentioned Baltic states and also the legation archives located in Switzerland were transferred to the federation under a fiduciary title."³⁶ And so the property of the Baltic states in Switzerland were not transferred to the Soviet Union but assumed in trust by the federal government. In B. Meissner's opinion, this would constitute only **de facto** recognition.³⁷

Sweden. Sweden closed the Baltic legation in 1940. It would seem that Sweden is a clear exception to the already mentioned countries; its actions would indicate that it has granted **de jure** recognition to the incorporation of the Baltic states. However, Swedish courts are not unanimous on the question of the citizenship of Baltic nationals, whom they occasionally treat as persons without citizenship.

The Latin-American States. The Latin-American states, on the basis of international obligations arising from the Saavedra-Lamas pact, do not recognize the annexation of the Baltic states, whose diplomatic and consular legations function as before. Argentina alone in 1948 suspended the functioning of the Lithuanian legation until such time as the question of the Baltic states is resolved by the United Nations.³³ The Lithuanian delegation was transferred from Argentina to Uruguay, where it continues to function. Furthermore, the Lithuanian consulate in Rio de Janeiro, Brazil, was raised to the status of an embassy, and Brazil's Foreign Ministry recognized the grant of the title of Minister to Dr. F. Meier, formerly Lithuanian Charge d'Affairs in Brazil, by the chief of the Lithuanian diplomatic service. Also, a consulate was established in Bogota, Colombia, and on August 25, 1954, the Colombian government accepted the appointment of Stasys Sirutis as consul by the chief of the Lithuanian diplomatic service.

Conclusions to Be Drawn from State Practice. It is evident from this brief survey that the leading states of the Western world, along with many other states, do not recognize the Soviet annexation and continue to maintain relations with the representatives of independent Estonia, Latvia and Lithuania. There is a certain gradation in their attitudes, however: In some cases the missions and consulates retain their full functions; in others, they retain their functions with certain limitations, mostly of a protocol nature; while in still others they exist only *de facto*. Therefore, even if we held to the opinion that the illegal annexation of the Baltic states can be legalized and the "original sin" pardoned, so to speak, once the annexation is granted **de jure** recognition, so far this has not happened. In the face of these facts, B. Meissner makes the following conclusions: "An investigation of the attitudes of the several members of the international community shows that with the exception of several doubtful incidents, a large majority of the sovereign states, led by the leading anti-Communist powers, do not recognize the annexation of the Baltic states **de jure**. In refusing to grant **de jure** recognition to the annexation, the international community has challenged the legality of the Soviet intervention and has refused to justify the annexation, inasmuch as it is illegal. Within the framework of **de facto** recognition, several states have temporarily, and without essential commitment, accepted the situation. In this way, the international juridical personality of the Baltic states was not injured. Since their international personality has not been extinguished, their citizenship, their judicial system and even their material law remain as they were before 1940."³⁹

K. Marek reaches the same conclusion, that a large majority of states still recognize the continuity of the Baltic states. In her opinion, "not international recognition alone which is decisive for the legal continuity of the Baltic States. Such continuity cannot be considered as a result of an arbitrary action on the part of the international community. On the contrary, it conforms to the basic principle of all law, according to which illegal acts should be debarred from producing legal results. In the last resort it is therefore once again the principle **ex iniuria ius non oritur**, which, failing any other protective rule, constitutes the legal basis of the continuity of the Baltic States just as it constituted the legal basis of the survival of Czechoslovakia, Albania, Austria and, possibly, Ethiopia."⁴⁰

Notes:

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2. **Report of the Select committee to Investigate Communist Aggression and the Forced Incorporation of the Baltic States into the U.S.S.R.:** Third Interim Report, Government Printing Office, Washington, 1954, p. 8.
3. Robert Langer, **Seizure of Territory**, Princeton University Press, Princeton, 1947, p. 76.
4. **Sobranie Uzakonenii i Rasporiaženii Rabočego I Krestianskego Pravitelstva**, December 1, 1917, No 1.
5. Internationsl Military Tribunal, Trial of the Major **War Criminals**, Vol. XXII, p. 435. B.
6. F. List, **Voelkerrecht**, Berlin, 1919, p. 91.
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8. "Lithuanian Bulletin," No. 3, 1946, p. 32.
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12. "Congressional Record," Vol. XCIV, 1948, p. 6795.
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15. "The New York Law Journal," January 5, 1954, p. 12.
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18. R. Langer, op. cit., p. 284.
19. K. Marek, op. cit., p. 405.
20. B. Meissner, op. cit., p. 299.
21. K. Marek, op. cit., pp. 405 ff.
22. Ibid., p. 406.
23. H. Lauterpacht, **Recognition in International Law**, Cambridge University Press, Cambridge, 1947, p. 341. Cited from K. Marek, op. cit., p. 406.
24. B. Meissner, op cit., p. 301.
25. Ibid.
26. "The New York Times," May 10, 1948.
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28. Ibid., p. 490.
29. H. Chambion, **La tragedie des nations bal-tique**, Paris, 1946, pp. 198-199.
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33. M. Ruby, L'Evolution de la Nationalite Alle-mande, Baden-Baden, 1954, p. 398.
34. A. Makarov, op. cit., p. 706.
35. B. Meissner, op. cit. p. 302.
36. K. Marek, op. cit., p. 408.
37. Ibid., p. 409.
38. J. Repečka, op. cit. p. 293.
39. B. Meissner, op. cit., p. 309.
40. K. Marek, op. cit., pp. 412-416.