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"Attributes of State — Territorial Property of a State — Territorial Jurisdiction of a State, on land & on the High Seas",

International Law

Lecture No.2 - Attributes of States.

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Part Sovereign States - States which are dependent on other States in respect to the exercise of certain rights, essential to perfect external sovereignty have been termed Semi-Sovereign States. As that term means an equal division only of sovereignty, the phrase Part-Sovereign States is said to be better and more comprehensive in description.

Three varying conditions may exist with respect to Part-Sovereign States:

The first is when a definite political community is obliged to submit itself habitually in matters of importance to the control of another State. When in this condition the Community which is Part Sovereign is said to be under the suzerainty of the other State. Bulgaria, Egypt and the little republic of Andorra are examples of Part Sovereign States of the present day. Korea was in the same state towards China and Thibet is now a suxeraig State of China.

The second condition is when a State is a member of the loose form of Confederation known as Staatenbund, whose members while giving the major portion of the external relations to the central authority retain certain portions for themselves. The members of the old German and Swiss Confederations were examples of this species of Part-Sovereign States but the Present German and Swiss Confederations have become closer unions.

The third condition in which Part-Sovereign States exist is that of permanently neutralized States like Belgium, Switzerland and Luxemburg. They are generally considered as

fully independent States but as their very existence and independence are guaranteed upon certain conditions by the Great Powers, it is difficult to call them fully sovereign States. These conditions are that they refrain from all belligerent operations save such as are necessary to protect them from actual or threatened attack.

It may not be out of place to explain how they have attained their anamolous conditions by a reference to their history.

First as to Switzerland. This country, composed as it is of peoples speaking three languages, no one peculiar to itself, was originally the Swiss Confederation. Maintaining itself as such both as to its independence and neutrality from the time of the peace of Westphalia to the French Revolution; in the latter era, in addition to its internal troubles, it was overrun by the French, Austrian and Russian armies. After the great overthrow of Napoleon in 1815, the Five Great Powers signed a declaration in which they recognized the perpetual neutrality of Switzerland and guaranteed the inviolability of its territory, which was to be defined by the Congress of Vienna. Tonthe strength of this combination and declaration of the Powers the Swiss have added a strength of their own in an efficient and well equipped force. No case of a violation of their territory has occurred since 1815.

Belgium was united with Holland by the Congress of Vienna, but in 1830 the Belgians rebelled against the House of Orange. This led to the Intervention of the Great Powers, a French attack upon Antwerp and an English Blockade of the Scheldt. Finally in 1831, the Powers by treaty agreed to recognize the Kingdom of Belgium, but Holland and Belgium

did not come to terms until 1839 when their agreement was confirmed by treaty by the Great Powers which treaty guaranteed the independence and neutrality of Belgium and required it to refrain from interference in the conflicts of other States. This obligation has been fulfilled by Belgium and so far it has itself been free from attack. The last of the European States to be permanently neutralized was the Grand Duchy of Luxenburg.

After the downfall of Napoleon I, Luxembourg was added to the domain of the King of Holland as a separate and independent State and also a member of the Germanic Confederation. Its capital was garrisoned by Prussian troops until after the disruption of the confederation in 1866. France objected to the presence of the Prussian troops in the Capital and demanded their removal with war as the alternative in case of refusal.

A conference of the Great Powers held in London settled the question by making the Grand Duchy a permanently neutralized territory. The fortifications of the capital city were to be demolished and the Prussian garrison withdrawn.

Belgium, as one of the States concerned, took part in the conference and agreed to the conditions of the treaty but was not allowed to sign the treaty on the ground that as the treaty guaranteed on the part of the signatory powers neutrality to Luxemburg and Belgium ~~being a permanently neutralized State~~ was ~~considered as~~ unable to enter into any agreement which might involve on her part the use of military forces for purposes other than that of self defense.

"This important indication", says Lawrence,"of the nat-

ure and extent of the obligations attached to a neutralized State by the public law of Europe renders the Conference of London memorable from the point of view of the jurist. But it also possesses a further title to his regard. The five great powers agreed to invite Italy to join them in sending representatives to deal with the matters under consideration. Their invitation was held to raise her to the rank of a Great Power. She has acted as such on all subsequent occasions; and her elevation seems to show that among the functions of primacy performed by the Great Powers must be reckoned the addition of fresh States to their number by a process of co-option."

On the death of the King of Holland in 1890 the accession of his daughter prevented the ruler or sovereign from acceding to the Duchy of Luxemburg, females, by its constitution being barred from succession. But this has made no difference in its neutralization and it passed through the period of the Franco-German War until the present time without any change in its state.

The limitation then of the external sovereignty of the neutral states as to war and in fact to an extent as to existence places them in the class of Part Sovereign States. They are under the protection and control of the Great Powers.

Equality of States.

All States - sovereign states - are equal in the eye of international law as to their legal rights. Like men whose equality was proclaimed in the Declaration of Independence this equality does not mean of course equality of strength, of power and influence. Power and influence counts in a community

of individuals and althou gh Holland and Russia, Germany and Greece are equal in the eye of International law so far as rights and regulations are concerned as a matter of fact weakness in States like weakness in individuals tells against them.

The Concert of Europe is the rule of the strong, at times it prevents war, but it also at times fosters the unworthy States and prevents proper intervention in behalf of the suffering.

The position of the United States towards the other American powers and especially with reference to the non-American powers in their relations towards the weaker American nationalities is that of a leading one somewhat analogous to the primacy of the Great Powers in Europe.

The question again presents itself as to the standing of the Oriental States particularly those of the extreme Orient, China, Japan, and Korea.

The late action of Germany in demanding reparation from China in excess of the usual indemnity extorted for the murder of missionaries brings this matter to the front again.

So far as Japan is concerned she has endeavored with fair success to follow the tenets of International Law in peace and war. Her government for the present is strong enough to do this. She has been able to make new treaties with most of the civilized States in which the privilege of exterritoriality is renounced. Practically with the end of this exterritoriality a general opening of the country and increased freedom of intercourse will follow.

With China it is different. She is weak internally and externally. The ruling dynasty is an unpopular one especially in the south. She has always been subject to pressure from the civilized powers. No response is made vol-

untarily and spontaneously to requests for punishments of offenders against European and Americans and pressure has to be brought to bear and a show of force made. Punishment by money indemnity or even by execution of the culprits does not seem to have a permanent effect - will loss of territory be any more effect? Without examining into the motives of the Germans which it must be presumed was ~~actuated~~ appeared by land hunger, it may be said that the attitude of no nation to China, is that of ~~a~~ one highly civilized State towards another. ~~In the same category~~.

Great Britain with her opium wars and her general pressure for commercial and tariff purposes, France with her Cochin China Policy, Germany with her Shangtung policy of occupation and finally the United States with her exclusion policy of Chinese subjects all act towards China in a way that the strong act towards the weak. Besides China in her weakness justifies to an extent her treatment. She accepts the ex-territoriality of foreigners, she is slow and weak in her internal administration and in her indemnities, and in time of war she fails to use the laws of war as well as the general principles of international law, to practice all of 6

In fact "China" as Dr. Holland says, "has given no indication of her acceptance of the usages of civilized warfare, and although she was prepared to exercise the rights conceded to belligerents against neutral commerce, took no steps, by establishing prize courts, to secure vessels engaged in it from improper molestation. x x x x x The Chinese have adopted only what I have already described as the rudimentary and inevitable conceptions of international law. They have shown themselves to be well versed in the ceremonials of

Embassy and the Conduct of Diplomacy."

There are certain rights and duties of a primary nature which pertain inherently to a State which may be termed the fundamental rights and duties.

The great fundamental rights of a state are:

1st. The right of independence and legal equality among other states.

2nd. The right of self government, with absolute and exclusive jurisdiction over its own territory.

3d. The right of self preservation, which includes the right to continue and develop its existence.

4th. The right to hold and acquire property.

1st. In dealing with the question of sovereign states we have already discussed to a consideravle extent the fundamental right mentioned as the first - i.e. the right of indepen-dence and legal equality among other states. In consequence of the limitations placed ~~upon me~~ by the limited ~~n~~umber of lectures, which in turn is a result of the limited time of the summer's course, I ~~will~~ can not treat the matter under this head to any greater extent but will pass on to the 2nd fundamental right

2nd. that of self government, with absolute and exclusive jurisdiction over its own territory. A State being independent has a right to live its life in its own way, so long as it refrains from interfering with the equal rights of other states to do the same. Thus a State may place itself under any form of government it chooses and form its society upon any model. Having formed its own government it can through that government exercise its jurisdiction over its own

territory to the exclusion of any other authority. It has included in this fundamental right

1. - The right of jurisdiction over all persons and things within its territory.
2. - The right of jurisdiction over all its ships on the high seas.
3. - A certain limited jurisdiction over its subjects or citizens abroad - as in China, Japan and the South Seas, and
4. - A jurisdiction over all pirates seized by its own vessels.

There are a few exceptions to these rules of jurisdiction which will be mentioned farther on.

The third great fundamental right that of self preservation which includes the right to continue and develop its existence, includes also many more things and is probably the greatest of all the fundamental rights.

It is not only a right with respect to other States but a duty with regard to its own constituent members and as Wheaton says "the most solemn and important which the State owes to them."

Among the rights included in this fundamental right of self preservation is the right of self defense. This again includes the right to require the military service of all the people, to levy troops, maintain a navy, build fortifications and to raise money to provide for all these purposes

As Wheaton says,"In the exercise of these means of defense, no independent State can be restricted by any foreign power. But another nation may by virtue of its own right of self preservation, if it sees in these preparations, an

occasion for alarm, or if it anticipates any possible danger of aggression, demand explanations; and good faith, as well as sound policy, requires that these inquiries, when they are reasonable and made with good intentions should be satisfactorily answered."

Mutual rights of self preservation and self defense have caused limitations to be agreed upon by treaty between States. These have taken form as in the razing of the fortifications at Dunkirk, France in 1763, as to the establishment of arsenals in the Black Sea after the Crimean War; and by arrangement between Great Britain and ourselves as to the limited size and number of the naval vessels to be maintained upon the great northern lakes.

The right of a State to increase its national domain its wealth, population, and power by all innocent and lawful means, such as the pacific acquirement of new territory, the discovery and settlement of new countries, the extension of its commerce and fisheries, the improvement of its finances arts, agriculture, etc. follows from its right to continue and develop its existence.

The fourth fundamental right to hold and acquire property has both a general and a special meaning. In a special way it means the right to hold and acquire such non-territorial property as museums and other public buildings, forts arsenals, and dock yards, vessels arms, tools, pictures, &c. These are non-territorial possessions. In a general way it means the control of the land and the water within the limits of the territory of the State, of the sea within three mile limit of its low water shore line; of the narrow bays that indent its coasts and of the narrow straits entirely within its territory. Though the State may not be distinctly a

proprietor of its land, it still holds a proprietary right over its territory so far as other nations are concerned and by the law of eminent domain can claim under certain conditions such portions of its territory as it may deem necessary for its purposes.

The primary obligations or duties that may be held to correspond to the fundamental rights of a State are those of good faith to all concerned; states and individuals, a readiness to redress wrongs; a proper regard for the dignity and rights of other states and general good will and courtesy towards them.

Recognition of New States.

The commencement of a State as a subject of international law dates from the time of its recognition as an independent state by existing sovereign states.

New States can become such in three general ways.

1st. Uncivilized countries by attaining a sufficient degree of civilization and of performance of duties so as to be considered as eligible to the family of nations. Such as Japan.

2d. States formed by civilized men in hitherto uncivilized countries - such as the Congo Free State and Liberia.

3d. States whose independence is recognized as a result of successful revolution - such as the United States and the South American States.

The first two methods require no further discussion; they speak for themselves.

The third method is the most frequent method in modern days of the formation of a State. But to have any claims for recognition as a separate nationality it should have the attri

butes of a sovereign state as defined in the last lecture. It should possess and control a fixed territory, within which there is a definitely organized government, ruling in a civilized manner, controlling the obedience of its citizens or subjects and duly authorized by them to carry on dealings with the existing sovereign states.

The recognition of the States should be a recognition of these facts, not an expression of sympathy or public policy. It should not be premature for that is both wrong and offensive to the mother country; but when the contest is virtually over a recognition is not inconsistent wwith the maintenance of peaceful relations with the mother country. The recognition of independence by the mother country is not nesessary as a final act for the revolutionary community but it is of great value as a conclusive evidence of the consumation of the independence of this community.

The methods of recognizing a new community are various but the common method is either by the establishment of free and complete diplomatic intercourse or by the negotiation of treaties.

A premature recognition by one state of a rebellious community is generally followed by war upon the part of the mother country against the recognizing state.

Effectn of change of nationality upon obligations and property.

As a general rule of international law when a new state is formed by a separatiin from another state the general rights and obligations remain with the parent state. Localized property rights and obligations placed within the territory of the new State go with it. Spacial conventions can of course arrange for an assumption proportionately of the debts and obligations.

Private rights and obligations are not affected by revolution, conquest or cession of territory.

Chief Justice Marshall reflects the continuous policy of the United States towards changes in governments and rulers when he says "The people change their allegiance, their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property remain undisturbed."

Belligerent Communities or de facto governments.

A belligerent community is a civilized political organization that has by successful hostilities, or otherwise, established itself to such a degree , over fixed territory, that it is the de facto government. It can not justly be recognized as a State if the struggle is going on with the parent state or former government, for it lacks the assurance of permanence. It however levies armies, possibly equips vessels of war, and carries on war in a regular and civilized manner, and those States brought into contact with it must define its status with view to its operations and its commercial intercourse. In the case just described the community is entitled to a recognition of belligerency, which gives the community all of the rights and obligations of a state so far as warlike operations and commerce is concerned - but no more. Its armies are lawful belligerents, its ships of war, lawful cruisers, its maritime captures are valid, and its blockades legitimate and proper. But the belligerent community has no standing in a peaceful sense, its intercourse with other nations must be unofficial and informal, it cannot negotiate treaties nor accredit regular diplomatic officials ~~ministers~~.

Practically the same questions of international law come up in all rebellions whether it is an attempt of a colony or community to obtain its independence or that of a party in a

State to overthrow the existing government with a view to ful-
ing in its place.

Before a rebellious community or party attains the posi-
tion of a belligerent community it is generally ~~for a time~~ in a
state of insurrection or insurgency.

The position of insurgency has until late years had no
standing in international Law. The operations of insurgents were not,
and are not yet considered as war, there are no neutrals le-
gally speaking and their ~~operations~~ movements afloat were defined as piracy
The tendency of late years is to give them at least freedom
of action afloat and the status of insurgentsa as pirates may
be said to have disappeared. Certainly they do not receive
the penalty of piracy as to persons.

In view of the insurrection now existing in Cuba and the dis-
cussion of the propriety of according to it the status of belli-
gerency it may be well to quote the words of ~~General~~ President Grant in
1875 eight years after the outbreak of the former insurrection
in Cuba. He says in his annual message for that year "I fail to
find in the insurrection the existence of such a substantial
political organization, real palpable and manifest to the world,
having the form and capable of the ordinary functions of govern-
ment towards its own people and to other states, with courts
for the administration of justice, with a local habitation,
possessing such organization of force, such material, such occu-
pation of territory, ~~such material~~ as to take the contest out of
the category of a mere rebellious insurrection, or occasional
skirmishes, and place it on the terrible footing of war
to which a recognition of belligerency would aim to elevate it.
The contest moreover is solely on land, the insurrection
has not possessed itself of a single seaport whence it may send

forth its flag, nor has it any means of communicating with foreign powers except through the military lines of its adversaries. No apprehension of any of those sudden and difficult complications which a war upon the ocean is apt to precipitate upont the vessels, both commercial and national, and upon the Consular officers of other powers, calls for the definition of their relations to the parties of the contest. Considered as a question of expediency, I regard the accordance of belligerent rights still to be as unwise and premature, as I regard it to be, at present, impossible as a measure of right."

One can hardly add much to this statement as to what should and should not be necessary to a condition of belligerency For after all it is conditions of affairs, matters of fact, that are required before a recognition of belligerency can be given.

T. I. Lawrence gives these conditions when he says -

"Two conditions are necessary (1) The struggle must have attained the dimensions of war, as wars are understood by civilized States, and (2) the interests of the power which recognizes must be affected by it."

Insurrection upon the part of a fleet without a port or land basis seems too ephemeral to entitle it to recognition of belligerency. Events in such case rapidly change the state of affairs either by the acquisition of ports and territory, or by the disappearance and collapse of the insurrection.

Territorial Property of a State.

It has been already said that the territorial property of a state consists of the land and water within that portion of the surface of the earth which is claimed by the State. When a watercourse runs through several States each owns the part within its boundaries while if the territory of the States be respect-

ively on opposite sides of a water course each owns to the centre of the navigable channel. The same holds good of frontier lakes. Along the open sea coast line the territorial property extends to ~~the~~ three miles from the law water mark. Spain has repeatedly claimed a six mile limit off the coast of Cuba but this claim has been repeatedly denied by the United States and Great Britain. Narrow bays and estuaries and straits where shores are both owned by the same state and are six miles or less wide are also enclosed in the territorial jurisdiction of a State. A State also is entitled to possess the islets fringing its coast especially if they are formed by deposit from its rivers, they are also held to be necessary for her safety and protection.

There is an undisputed right for purposes of navigation or what is called innocent passage on the ~~navigable~~ marginal waters of a country or through straits like those of Magellan which connect two or more free and unappropriated bodies of water. Though this ~~complete~~ right of navigation is free to merchantmen it does not extend necessarily to vessels of war and a State has always the right to refuse access to its territorial waters to the armed vessels of other States if it chooses so to do.

Ports and roadsteads are under the sole jurisdiction of the State in whose territory they are incorporated. This territorial ownership gives the State which possesses it the right to declare the ports free or closed to vessels of all sorts and free or closed to ~~men~~ vessels of war only. A port open to commerce is tacitly considered as accessible to all ~~kinds~~ classes of vessels of ~~war~~ other nations. There are and have been special reasons which lead States to refuse vessels of war admission to certain ports or which allow such admission with certain limitations as to time of entry, number of vessels and places of anchorages.

Vladivoostock 4 vessels, Spezzia no war, and inner harbor of Signapore none.

See also Special order No. 54 - 1896, as to the uses of French harbors in time of war.

It is customary for local authorities to direct that parts of harbors be reserved for commercial or national purposes; for torpedoes or other local defense and to forbid certain anchorages to vessels of war on account of their explosives.

Exceptions to the Rule. of Territorial Jurisdiction.

In the early part of this lecture it has been given as a fundamental right of a Sovereign State that it has absolute and exclusive jurisdiction over all persons and property within its limits. There are some few well defined exceptions to this rule which will now be discussed, the first tobe treated will be known as immunities. These immunities are traceable to the consent of the state and have grown up with the extension of international courtesy. They are the immunities shown sovereigns diplomatic agents, shipsof war, and merchant vessels.

The exemption of a sovereign who is naturally in the position of a guest, from arrest or detention within a foreign territory is an immunity which explains itself as a matter of courtesy due to his official. importance and dignity.

With the extension of diplonatic intercourse and with the positions that diplomatic agents held as personal representatives of the sovereign the immunities of sovereigns were graduallynextended to diplomatic agents. Although Republics have now ambassadors as well as Kings and Emperors, the system still holds, and besides the traditions and customs that favor it there are the additional grounds of courtesy and,expediency,and the dignity of state.

These immunities to Diplomatic agents exempt them from the criminal and civil jurisdiction of the place of their residence. The only crime for which an ambassador can be arrested is conspiracy against the safety of the State and for this he may be sent out of the State. The immunities of Diplomatic agents extend to their families, to the members of their official suite and even to their servants.

There is some question as to the status of a diplomatic agent travelling to his destination through the territory of states with whom his country is at peace, other than the one to whom he is accredited. As a matter of strict right it is probable that he is only entitled to the consideration of an ordinary traveller. As a matter of courtesy and friendship it is probable that his character as an agent would be recognized in the third country unless his stay is unduly prolonged therein. Commissioners appointed to carry out any treaty stipulations have no right to diplomatic immunities.

The residence of an ambassador or diplomatic agent is regarded as inviolable except in cases of great extremity. different States varying as to the extent of the immunities of the Ambassador's residence. France for instance holds that the privileges of this residence does not extend to acts done within it affecting the inhabitants of the country in which it exists.

Great Britain claims the right of arresting servants of the embassy within or without its limits. The position of Great Britain and France in regard to these matters is considered rather exceptional though the limits of the immunity of the residence are not well defined. Freedom of religious worship is permitted within the Ambassador's residence even when otherwise prohibited. Subjects of the country are not allowed to attend if such attendance would be in violation of the law of

of the country. The residence is free from taxes but not from charges for light and water.

A singular matter occurred a short time ago with respect to a Legation in London which may be of interest. An educated Chinaman named Sun Yat Sen charged with conspiracy against the Viceroy of Canton, had fled from China to the United States and thence to London and was seized in or near the Chinese Legation and detained there as a prisoner with a view it is said to have him taken by night to a steamer bound for China.

Naturally this was considered by the English government an abuse of the immunities allowed an Ambassador and his embassy, such immunity gives no right to exercise either powers of imprisonment or those of criminal jurisdiction. The English government finally demanded Sun's release which was complied with by the Chinese Embassador.

Consuls are not as a rule clothed with diplomatic powers hence are not entitled to the immunities enjoyed by by diplomatic agents. In the non-christian and semi-civilized countries however as they are clothed with judicial functions they have to a certain degree privileges like diplomatic officers. Besides their prerogatives of jurisdiction, they enjoy the right of religious worship and to an extent the right of asylum. They are exempt from both the civil and criminal jurisdiction of the countries to which they are sent and they are protected in their household and consular residence. They are exempt from taxation, so far as their personal property is concerned and in general from all personal impositions that arise from the character or quality of a subject of the country.

Consuls have no claims under international law to any

foreign ceremonial and have no right of precedence except among the Consular body of the place and in their relations to the army and navy officers of their own country. The precedence of Consular officers among others of the same grade of the Consular body of the place depends upon the date of the respective exequators.

A consul not engaged in business who is sent to a Christian or civilized country has the right to place the arms of his government over his door. Permission to display the national flag is not a matter of right, though it is usually accorded, and is often provided for by treaty or convention. A Consul under the circumstances named can claim inviolability for the archives and official property of his office and their exemption from seizure or examination. He is protected from the billeting of soldiers in the Consular residence and he can claim exemption from services on juries, in the militia, and from other public duties required from the citizens of the country to which he is sent. The jurisdiction allowed to Consuls in Christian countries over disputes between their countrymen is voluntary and it relates more especially to matters of trade and commerce.
A Consular convention is generally made with every country to which consuls are sent and under these treaties or conventions other privileges are exercised, but so far as international law is considered the immunities are as given above.

If the Consul is engaged in business and especially if he is a subject of the State in which he officiates, his privileges are still further curtailed and so far as his personal status is concerned it is doubtful under international law whether he can claim any immunity beyond that of any other subject.

You are all aware how extensive the immunity is that extended to vessels of war in foreign ports and harbors, but it can

hardly be realized that the doctrine of this immunity was finally accepted less than a hundred years ago and is based in its fullness upon a decision of our own Chief Justice Marshall. In 1810 in delivering the judgment of the Supreme Court in the famous case of the "Exchange" he placed permission to enter a foreign harbor upon the ground of implied license and after stating that a ship of war could not do her duty to her own country if she were subject to other authority, he said, "The implied license, therefore under which such a vessel enters a friendly port may reasonably be construed, as containing an exemption from all the jurisdiction of the sovereign within whose territory she claims the rites of hospitality."

Attorney General Cushing said at a later date (in 1856) that the courts of the United States had adopted unequivocably "the doctrine that a public ship of war of a foreign sovereign at peace with the United States coming into our ports and demeaning herself in a friendly manner, is exempt from the jurisdiction of the country." "This view" says Mr. T. J. Lawrence, the latest English writer upon International Law, "is shared by British and American writers of repute and by almost all of the International jurists of Continental Europe. Indeed it may be said to have been adopted by the publicists of the civilized world. x x x x If International Law is to be deduced by practise, the controversy on this point is at an end."

The immunity pertaining to a ship of war extends to her boats but ends there; when the officers or men of a vessel land or are on shore boats they are under the local jurisdiction.

There are other limitations to the immunity given to foreign men-of-war. A vessel of war must not appear as a disturbing agency in the ports of a friendly State; she must conform as previously stated to the rules as to quarantine, anchorages,

mooring, lights, &c. She is however free from visitation and examination by Customs Officers of the foreign port.

As mentioned previously the State has power to prevent the entrance of foreign men-of-war in its ports, to limit their numbers, or their stay and such vessel may be ordered to depart or if necessary force can be used to expel her. Vessels of war abandoned by officers have only property.

As to the immunities of merchant vessels in foreign ports they are very slight and are confined to the internal order and discipline of the vessel. There is a tendency on the part of foreign authorities to interfere as little as possible when vessels are in the stream and the peace and good order of the port is not disturbed.

Until this tendency becomes accepted the position of the United States, and most maritime countries, is well stated by the late Chief Justice Waite when he said:- "As to the general laws of nations, the merchant vessels of our country visiting the ports of another for the purpose of trade subject themselves to the laws which govern the port they visit so long as they remain and this as well in war as in peace, unless it is otherwise provided by treaty."

Right of Asylum

In legations and consulates there has grown up a usage in Spain, South American countries and in ~~the~~ semi-civilized countries of affording asylum to political refugees. The position of the United States is this respect is one of toleration rather than encouragement and though it is indisposed to forbid its agents to deny temporary shelter to persons whose lives are endangered by mob violence or by a coup d'etat it will not permit its diplomatic or consular representatives to offer such asylum or encourage a resort to its consulates and legations for that purpose.

vessels of war

On board ~~ship~~ the policy of the United States towards refugees is much the same. For criminals or persons charged with non-political crimes such asylum is forbidden. Such criminal cannot be arrested on board ship by the local authorities but he should not be received, or, if received should be landed as soon as his character is determined without waiting for the tedious delays of extradition. For political refugees the rule is much as it is on shore at legations, where local usage permits it, and humanity requires it, asylum can be permitted but officers of the navy are not directly or indirectly to offer such asylum to political refugees.

As to merchant vessels there is no right or correct usage allowing them to afford asylum to political refugees. Subject as they are to the jurisdiction of the country in whose waters they happen to be they are not free from visitation for the purpose of arresting the political or criminal refugee. The question of the merits of the case does not enter, no matter how unjust the law, or despotic the government, the right to afford refuge does not exist with merchantmen. As Lawrence says "The local law applies to them, they are under the local jurisdiction and the local authorities may enter them and arrest any of their subjects they may find there."

The case of Barrundia comes in this category, but with the facts not generally known that Barrundia had been for some time fomenting disturbance against the Guatemala government and that Mexico had been asked by the United States government, at the instance of Guatemala, to prohibit his operations based upon Mexican soil against Guatemala. With all these circumstances in view, with the fact of the existence of a war existing between Guatemala and Salvador and the further circumstances that Barrundia with an aid was, ~~and~~ it is reasonable ~~fair~~ to believe, ~~was~~ en route to Salvador to assist in the war

against Guatemala, no one can properly question the right of Guatemala to arrest Barrundia within, ~~in my opinion~~ its own jurisdiction, upon the Acapulco or any other foreign steamer.

That this right extends to firing upon a foreign steamer from a fort or battery within the jurisdiction of the territory of a state seems to have been decided so far as the United States is concerned in 1893 with respect to the "CostaRica at Amapala, Honduras when she carried off General Bonilla, a political refugee from Honduras. In this case when other and innocent lives and property ~~was~~ were jeopardized the United States protested and demanded an apology which was promptly tendered.

Territoriality in Eastern Countries.

There is an exception to the ordinary rules of territorial jurisdiction which rests upon treaties and not upon international law and that is the case of subjects and citizens of fully civilized states when in semi-civilized and other countries like China Japan, Korea and Siam, ~~and~~ also in the Barbary States or those that are still independent, in Turkey, and in certain islands in the South Seas.

This practice arises either on account of the defective or unusual to us, character of the administration of justice, or on account of the inferior positions assigned to Christians by the Mohamedan Code. This cession of jurisdiction over Christians comes by direct treaty or convention from the Governments concerned and will soon cease so far as Japan is concerned by the recent revisions of its foreign treaties. The jurisdiction over foreigners in these ccountries is now held by the Consular Courts with both civil and criminal jurisdiction. In case of criminals the person charged as such is tried in his own court, if the criminal is a subject of the local sovereign, he is tried in

the local courts; but in cases between subjects of various countries the case is tried in the Consular Court of the defendent while generally in civil matters between a foreigner and a native the trial is before a mixed tribunal. In Egypt a system of mixed tribunals have taken the place of the Consular Courts since 1876. There are variations in the rules in each country as provided by treaty.

Territorial Jurisdiction upon the high seas

We will now take up the subject of the jurisdiction of a state on the high seas over its persons and property, meaning by the high seas the navigable waters of the world, outside the territorial limits of any state. The persons and property concernd must be carried under the flag of the State exercising jurisdiction.

Claims to dominion over the high seas or any part of them may now be said to have been given up and to have no longer standing in international law. The last claims were those of Denmark for the exclusive fishing rights of alarge area around Iceland, and those of the United States over a large portion of the Bering Sea for the preservation of the seal fisheries. The claim of Denmark was relinquished finally in 1872 and in 1893 the International Board of Arbitration sitting in Paris decided that the control of the United States over any portion of the Bering Sea for any purpose was limited to the enclosed bays and gulfs of Alaska and by the marine league along its shores.

A sovereign state has sole jurisdiction over its public vessels on the high seas. This is absolute and does not permit the right of search or examination in peace or war. The reasons are self evident and are inherent with the qualities of sovereignty and equality of an independent State.

As to merchant vessels upon the high seas international law lays down the rule that each State exercisss jurisdiction over its own, and has no authority over those of any other nations unless thay have assumed the character of pirates or unless in time of war they have violated the rights of neutrals in which case they are liable to capture, trial and condemnation by the offended belligerent. Jurisdiction over vessels of its own upon the high seas carries with it complete jurisdiction over the persons and property on board whether they are foreign or not, and whether the persons are seamen of passengers. Any crime is to be tried in the courts in the country whose flag is carried by the vessel concerned.

The so called right of search which led to the war of 1812 between Great Britain and the United States was ~~not so much in dispute as~~ of daily not so irritating but the British claim to take from American vessels, British, and naturalized seamen of British origin, under the then held doctrine of indellible allegiance. It was really an exercise of jurisdiction and the execution of British laws upon the decks of American merchantmen or American territory. In 1842 Mr. Webster upon the part of the United States said ~~that~~ the last word stating that the U.S. would not allow it, and though the claim of the right has never been formally abandoned by the British Government; it has abandoned the claim of indelible allegiance and all modern English writers upon International Law consider the claim of the right of impressment from foreign vessels as indefensible and not likely to be revived.

A vessel of war may be said to have the right of approach with respect to another vessel of war though this must not be done in an offensive manner unless there are strong reasons for suspecting an enemy or pirate. A vessel of war can be almost always known to be such by her external appearance, her arma-

ment, and the military appearance of her crew. In addition the flag and pennant give a clew. If doubt is still entertained of her character this is solved in a legal sense by the word of the Commander or the display of the Commission of the State whose flag is carried.

The display of the flag of the State by a merchant or private vessel is prima facie evidence of her nationality legal evidence is found in the papers which she carries which are issued only when the laws of the country are complied with. The requirements of papers as to vessels of the United States and other countries will be found in the appendix to the manual based on Dr. Snow's lectures. A change has been made since this publication by the enactment of a law requiring all yachts in the future to be built in the United States in order to have the right or license to fly the American flag.

Vessels abroad still retain the right to carry the American flag when owned by Americans citizens, the flag being the evidence of the ownership of the property and entitling the vessel to the propection of all consular and naval officials. The vessel is not however a documented vessel of the United States and cannot legally import goods from foreign ports to the ports of the United States and also suffers certain disabilities in the coasting trade from which regularly documented vessels of the United States are exempt.

The right to make seizures beyond the three mile limit when a merchant vessel or some person on board commits an offense against the laws of a foreign territory while within that territory, can only be done properly when the chase is commenced while the vessel is within the three mile lim-

it or has just escaped beyond it. This right rests more upon international courtesy than upon international law. Case of the State chased by the Charleston -

-- Piracy --

At the present day piracy in or near Civilized countries is practically extinct. In certain Asiatic waters it may be found ~~also~~ though rarely practiced against European or civilized ownership.

A pirate has been defined as a highway robber of the sea, whose vessel and person is not under any acknowledged authority or national government. As the sea is the high way of all nations, he is the enemy of all nations and they are all in duty bound to stop his depredations.

This then is a pirate by the law of nations. A State may however declare any specific crime, as the slave trade, piracy, by municipal law; but in these cases other states are not by international law alone concernad or charged with jurisdiction.

A part of the definition of piracy would apply to insurgents upon the high seas but as previously stated this harsh interpretation is fading away and nothing beyond the confiscation of insurgent craft as piratical has occurred in modern times. In the case of the Brazilian and Chilean insurrections no attempts were made to hold the insurgent vessels in that capacity.

Hall makes a good diagnosis of these ~~cases of~~ Classic Chat insurgents are pirates when he says "It is impossible to pretend that acts which are done for the purpose of setting up a legal state of things, and which may in fact have already succeeded in setting it up, are piratical for want of an

external recognition of their validity, when the grant of that recognition is properly dependent in the main upon the existence of such a condition of affairs as can only be produced by the very acts in question."