

-- Lecture No. 3. --

Nationality -- As before mentioned a State has jurisdiction over all persons within its territory, with the exceptions ^{given} in the last lecture.

The persons who are subject to the jurisdiction of a State within its territory may be divided into four classes, with somewhat varying rights and obligations. They are:

1. Native born citizens or subjects
2. Naturalized citizens or subjects
3. Domiciled aliens, and
4. Aliens who are travellers or otherwise are temporarily in the country.

Primarily it is a question of municipal or State law to define what a citizen or subject of a country is, but the question of protecting citizens abroad and the continuance of certain obligation towards the State on the part of such citizens abroad, brings the question of who is and who is not a citizen within the scope of international law.

Our treatment of the subject in this connection lies with the question of the protection of our citizens abroad, as our duty as naval officers arises from our separate responsibility and from an independence of the consular and diplomatic officials of our own country. Hence it is important that we should possess sufficient ^{upon} knowledge of the subject.

Concerning native born citizens of the United States there can be generally speaking no question as to their status so long as there has been no act upon their part or upon the part of the State to otherwise designate

their allegiance. To this class may be also added foundlings; as their parentage is unknown there is no other State to which they can be attributed except the one upon whose soil they have been discovered.

There are however certain persons, some born to the soil as to whose nationality there may arise doubts.

Following Hall we classify them as follows:

1. Children of the subjects of one State born within the territory of another.
2. Illegitimate children.
3. Married women.
4. Persons adopted into a State by naturalization.
5. Persons losing their nationality by emigration. and
6. Children of parents in the last two categories.

As to children born abroad the more important States agree that the children of a foreigner ought to be considered a foreigner unless he wishes to assume or retain the nationality of the State in which he was born. The law of the United States is that children of foreigners born there are American citizens if they choose so to declare themselves, while the children of American citizens born abroad are also citizens of the United States. The rights of citizenship do not however descend to children whose fathers never resided in the United States R.S. #1993

(2) As to illegitimate children, it is the general rule, and for manifest reasons, that they belong to the state of which the mother is a subject or citizen.

The nationality of a wife upon marriage becomes that of her husband. In the United States the rule is

held, ~~that~~, that an alien woman marrying an American citizen becomes an American citizen herself. ~~the~~ The converse has not always however been sustained. i.e. that an American woman marrying an Alien lost her nationality. Following the English rule which existed until 1870 the practice was for a long time that the wife retained her American nationality, but the continuance of this ruling is in doubt, and the best opinion now is that an American woman who marries a foreigner, becomes a foreigner, though not to the extent of losing her ability to transfer real property. It is not reasonable to suppose that the United States would claim the right to interfere on behalf of the American wife of a foreigner against the action of her husband's government. As to American widows of foreign husbands, the ^{ruling} ~~rule~~ is again conflicting, but the best opinion is that they remain of the nationality of their husbands unless they marry again to a person of another nationality. This matter has been brought up of late in the celebrated case of Mrs. Maybrick.

Naturalization and expatriation are not inherent rights as recognized by international law ^{even} though declared ^{to be} so by an act of Congress passed in 1868. As a matter of fact these questions in modern times are settled by individual states and in accordance with their own interests or by conventions and treaties with other States. The tendency of late years is to allow the right of expatriation and naturalization to the subjects and citizens of a State. In 1870, England renounced, by statute, the principle or doctrine of indelible allegiance.

With us the Act of Congress in 1868 provides that all nat-

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uralized citizens of the United States, while in foreign states shall be entitled to, and shall receive from the government the same protection of persons and property that is accorded to native born citizens in like situation and circumstances.

It is the policy of most states to receive without much trouble new subjects by naturalization though there is a general dislike on their part to have their subjects become through naturalization the citizens or subjects of other states. This even extends to us, who receive by naturalization so many but who are apt to think harshly of one who renounces his ^{American} citizenship to become the subject of an Alien State. In England a naturalized subject is placed on the same footing as a native born subject. In the United States he is not eligible to the office of President.

In the United States the child of a foreigner who is naturalized becomes ^{a citizen} ~~naturalized~~ - if he be a minor, by the naturalization of his father. In Austria any one emigrating without the permission, of the State loses his nationality. Under this rule it may ^{occur} readily that an Austrian who has left ^{Austria} without permission and who has not had time or desire to acquire other nationality may be "a man without a country". Such a person who declares his intention of becoming a citizen with us, is entitled to a certain amount of protection though not to a passport as an American citizen. Without a declaration of intention on the part of such a person he may be deemed when the question comes up for solution to have the nationality of his domicile.

Children of persons who have lost their nationality

arms against an external enemy who threatens the existence of social order. Aliens are subject to the authorities in control whether ^{such} ~~they~~ are only de facto or ^{and} recognized ^{rules}. They are not exempt from taxation.

Aliens residing temporarily in a country, or passing through it as travellers, must subject themselves to the laws of the land. They are under its criminal jurisdiction and any contracts they may make can be enforced by legal process against their persons or against any property they may have in the country. Their political rights are not however affected in any way.

-- Protection to Citizens Abroad --

Although technically a State can refuse the hospitality of its soil to some or to all foreigners, as we have done to the Chinese and to a less extent to other foreigners; still a refusal of that nature to all foreigners would not only be against the theory of the comity of nations and international law but would also be a virtual withdrawal from the family of nations and the brotherhood of civilized peoples.

Prima facie, Hall says "a state is of course responsible for all acts or omissions taking place within its territory by which another State or the subjects of the latter are injuriously affected. To escape responsibility, it must be able to show that its failure to prevent the omission of the acts in question, if not intended to be injurious, or its omission to do acts incumbent upon it, have been within the reasonable limits of error in practical matters, or if the acts or omissions have been intended to be injurious, that they could not have been prevented by the use of a watchfulness proportional to the apparent

nature of the circumstances, or by means at the disposal of a community well ordered to an average extent; or else it must be able to show that the injury resulting from the acts or omissions has been either accidental or independent of any act done within the territory which would have been prevented as being injurious."

States have a right to protect their citizens or subjects abroad, to the same extent and in the same ratio in which they are responsible for injuries done to foreigners within their own territory. They have the right to exact proper reparation for maltreatment of their citizens by the administrative agents of a state whether they are civil, naval or military. Unless such acts are promptly disavowed and their authors punished the State is directly responsible.

If the wrong or damage is done by judicial functionaries - the State is less responsible as such persons are less directly connected with the State and less under ^{its} ~~under~~ control. But foreigners, by the rules of international law are entitled to the same rights and to the same remedies as the subjects or citizens of the country. They cannot expect more - for a State naturally will not discriminate against its own citizens in favor of a foreigner. Hence if a fair ^{be given} trial and yet a discrimination exists against a foreigner and the judiciary is beyond the government of a State, legislation should be resorted to and the error rectified in that way.

If the offenses be committed by private persons over whom the State has only general control the responsibility of the State becomes less and its agency more remote. If the acts are those of common fame or report

then the State is responsible for lack of prevention. If the acts were concealed or from suddenness or otherwise the State was unable to prevent the acts, then the State is responsible only in case of neglect to punish. Here comes the question also of due diligence which was held by the Geneva arbitrators should be sufficient in degree to be commensurate with the emergency or with the magnitude of the results involved.

*Hall's
disaster*

It is a duty on the part of a State to provide sufficient means to fulfil its obligations to another state; but even that has its limitations. Probably the most ~~ex-~~ effective form of government for this is a pure despotism. But it is never expected that a state would adopt that form or any other unsatisfactory to itself in order to more effectually do its international duties. To do this would be to sacrifice one of the fundamental rights of a State, i.e. to organize itself in such a manner as it sees fit. On the other hand as Hall says, it cannot avoid international responsibility on the plea of a deliberate preference for anarchy.

(Look up Moore's Letter as to New Orleans riots.)
Justice Miller of the Supreme Court of the United States in his decision on the celebrated Slaughter House Cases, tersely says "Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty and property when on the high seas or within the jurisdiction of a foreign government Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States."

The protection of American citizens abroad is put by the Navy Regulations (Art.286) under the fundamental right

of self protection which includes the protection of the State, its honor, and its possessions and the lives and property of its citizens against military arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. x x x Force can never be exercised with a view to inflicting punishment for acts already committed."

Measures to be taken for protection of citizens abroad vary in accordance with the nature of the States concerned. In the states of the first rank, possessing stable institutions, the means and agents employed are invariably diplomatic, the naval forces being seldom required except when a warlike demonstration is found necessary.

In weak states, particularly those whose internal and local governments are unstable, in addition to diplomatic and consular protection the presence of men of war is most useful both to give moral strength and tone to the requests and demands of the civil representatives of the United States and also to obtain the action required to secure immediate and proper redress.

In semi-civilized and barbarous countries the decision and action may have to be taken and ^{initiated} even by the commander of the naval forces ~~initiated~~. In the presence of a consular or diplomatic representative, who in most of these countries is charged with judicial powers, it is well that the decision as to such action be concerted, even if the responsibility be upon the Naval Commander alone. Where there is no consular representative the matter is entirely in the hands of the naval commander to investigate and protect as required.

It happens at times that a request is made upon and complied with by the Commander of a vessel of war by sub-

jects or citizens of other States than his own for protection or refuge from riot, anarchy or savage attack. In China and similar countries arrangements are not unfrequently made by the Commanders of the various naval forces to so divide the duty that one European or American vessel of war is charged with the protection in turn of the various foreigners living in a certain treaty port. At other times when ^{le} service or negro insurrections have taken place, such as in the West Indies, different nationalities have been represented in rotation by their naval vessels. In these cases as well as in the others the general interests of humanity and civilization required such action.

Cases may also arise ^{when} ~~of~~ mobs, ^{or} ~~and~~ other forms of social disorder, ~~which~~ would justify favorable answers to the request of the local authority for the restoration of order and for the protection in general of women, children and property. These acts would be in the nature of police protection and would ^{like-} ~~otherwise~~ be in the interests of good order, civilization and humanity.

St. Cruz
1877

International Agents of a State.

The State abroad is represented by two classes of agents in foreign countries - Diplomatic and Consular agents. The political relations of States are carried on by the Diplomatic agents ranking from Chargé d'Affaires to Ambassador. A Charge' is credited to the Minister of Foreign Affairs the other diplomatic agents to the ruler of the State. ~~also~~ The commercial and to an extent the local political affairs fall to the consuls. Strictly speaking Consuls have no political or diplomatic matters to deal with. Though this is so technically, as a matter of fact

they have become by usage ^{local} representatives of the Minister accredited to the country. There may be circumstances, as for instance, in the absence of the Diplomatic Agent, which makes it proper for him to address the local government upon subjects which relate to the duties and rights of his office and which are usually dealt with through a legation. They rank from Consular Clerk to Consul General and in some countries like Korea and Japan - the Minister resident combines the official functions of Consul General and Minister resident. In the East, - in such countries as Korea, China, Japan, etc the Consuls combine judicial functions with their other duties and such officials as the Consul General at Yokohama and ^{at} Shanghai have cases of very considerable importance of ^{both} a civil and criminal nature brought before them. The Consul General in Cuba is ~~directly~~ responsible to the Department of State. *without any his' Madrid.*

A relative rank is prescribed by the United States Consular Regulations of 1888 by direction of the President of the United States by which

Agents or Consuls General rank with a Commodore U.S.N.

or Brigadier General, U.S.A.

Consuls & Commercial Agents rank with Captains U.S.N. or Colonels U.S.A.

Vice Consular Officers with Lieutenants U.S.N. or Captains U.S.A.

The precedence in same grade will go by date of commission. Consuls and Consuls General in colonies distant

from the mother country are as a rule allowed to make diplomatic representations to the local government on matters which occur locally.

^{also} Consular officials may be accredited in accordance with the R.S. of the United States with temporary diplomatic functions by direction of the President of the United States.

Amicable Settlement of Disputes.-- Treaties.

By the regulations of the Navy of the United States a Senior Naval Officer when abroad is directed to guard against any actual or threatened violation of the principles of international law, or treaty rights to the injury of the United States or its citizens on the part of foreign authorities. The responsibility for any action taken by a naval force rests solely upon the Commanding Officer thereof. It is hence desirable that when upon a foreign station that the Commanding Officers, ^{in command} and those likely to be, should make themselves familiar with the treaties with the countries within the limits of their station.

Treaties are not international law, but as contracts between nations, treaties are subject to a certain extent to the rules of International law. A treaty which is in any of its parts a direct violation of a well known fundamental rule of international law is not binding upon the parties concerned or third parties. A treaty for example which establishes jurisdiction over the high seas, fosters the slave trade or militates against the equality of sovereign States would be void and of no effect. Treaties do not make international law but do show tendencies which may eventually become accepted rules. When changes become well established it is not necessary to have treaty conditions upon the point.

Treaties as distinguished from conventions, protocols and declarations, are of primary importance, stipulating as they generally do concerning political or large commercial subjects. Conventions generally concern specific matters of minor importance. Protocol, a word generally used to describe the-generally daily minutes of a conference

is sometimes used as the name of a brief agreement or convention of binding force. Declaration is used often as an enunciation of a general doctrine or principles which shall be binding upon the assenting parties like the Declaration of Paris and St. Petersburg.

The right to make treaties is included in the fundamental rights of a sovereign state. It can be exercised also in a part Sovereign State like Egypt, to the extent permitted by the Suzerain power.

The treaty making power of a State is in the hands of its ruler, subject to more or less restriction, as the constitution of the State provides. With us for example the President can only conclude treaties with the advice and consent of the Senate. To make a treaty financially effective the House of Representatives is called upon also to act.

As Commander-in-Chief the President can acting alone, in the exercise of his military powers, conclude armistices, and arrange conventions with an enemy. So also can the Commander-in-Chief of an army or of a naval force. These and later are subject to review by the President, as in the case of General Sherman in North Carolina, subject to repudiation

The Constitution of the United States provides that all treaties made under the authority of the United States shall be the supreme law of the land and that the judges in every State shall be bound thereby, and anything in the Constitution and laws of any state of the Union to the contrary notwithstanding.

A treaty is not binding of course until it is duly ratified by the proper authorities of each State. Unless otherwise provided the treaty however goes into effect from the date of its signature.

The question of the interpretation of treaties is one that has given rise to many disputes, in our country as well as in others of greater age. Sentences, phrases and words have become the object of much wrangling.

T.J. Lawrence says upon this subject that we can hardly venture to go beyond the statements that ordinary words must be taken in an ordinary sense and technical words in a technical sense, and that doubtful sentences and expressions should be interpreted by the context, so as to make the treaty homogeneous and not self contradictory. But when states get into controversy about the interpretation of a treaty, they often make a new agreement, clearing up the disputed points in the way that seems most convenient at the time, which is not always the way pointed out by the strict rules of interpretation."

In regard to the order of the execution of a treaty; it is generally considered that the special provisions take precedence over the general provisions and other things being equal that the more important matters take precedence over the less important.

When two treaties made between the same states at different times conflict, the later treaty governs, it being made or is supposed to be made in substitution for the former treaty.

When two treaties conflict which have been made with different States at different dates, the earlier treaty governs, it being unfair to violate an engagement made with one party by a later agreement made with another party without the consent of the first. (Russia and Treaty of San Stefano 1878 vs. Treaty of Paris, 1856.)

The question of continuous obligations of treaties, especially of treaties of long ^{or} perpetual duration has

been one extensively discussed by publicists and statesmen. The Clayton-Bulwer treaty made between the United States and Great Britain which is a perpetual one, has caused long and acrimonious discussion ^{and} is an example of the bad nature of perpetual treaties. Two schools of publicists have gradually formed as to the binding force of perpetual treaties. One school would have the obligations of treaties enforced as strictly as the letter of municipal law and urges that no treaty should be abrogated without the consent of all the parties concerned. the other school, which may be termed the Continental school, urges that there may arrive a time in a nation's history, when by the nature of a treaty, or the changed condition of affairs, a State is justified in refusing to be longer held by a treaty. The dispute has been termed as Law vs. Progress. Sir Henry Maine says "In the case of progressive societies it may be laid down that social necessities and social opinion are always more or less in advance of law. Law is stable, society is progressive. The greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed." To my mind a conservative modification of perpetual treaties when outgrown should be made. if an iron bound refusal is met with then the abrogation of the treaty should follow.

The treaty of Vienna made in 1815 was violated when in 1850 Italy was unified. In the same way the consolidation of Germany in 1866 would have been stopped on account of the opposition of some of the minor German States.

A recent writer well says in closing a discussion upon the subject that "Each case has circumstances that are peculiar to it, and we must judge it on its own merits,

bearing mind on the one hand that good faith is a duty incumbent on States as well as individuals, and on the other that no age can be so wise and good as to make its treaties the rule for all succeeding time."

-- Forcible Steps Short of War --

The modes of putting stress upon an offending state which are of a forcible nature though short of actual war can be classified under two general heads of

Retorsions and reprisals:

Retorsions are retaliations in kind. They are always unfriendly though they may not always be forcible or warlike. If a State is wanting in courtesy or friendship if it has placed discriminating duties or restrictions upon intercourse or if it has given any specific cause for offence by certain conduct then the injured State can adopt a similar line of conduct in order to bring both the offending State to a sense of propriety and justice or to prevent a repetition of the offense.

Reprisals, these are sometimes known as General Reprisals to distinguish them from special acts done in the course of regular warfare and in accordance with the laws of war.

The following acts of general reprisal done without the existence of intention of war may be considered as having the sanction of usage and of sufficient authority.

1. The sequestration or seizure of the property of the offending State.
2. The sequestration or seizure of the property of citizens of the offending State.
3. Suspension, partial or complete, of commercial or other

intercourse between the two nations.

4. Suspension or annulment of treaties in part, or in whole.

5. Withdrawal of all privileges and rights to domiciled citizens of the offending state.

6. A pacific blockade.

1. The sequestration or seizure of property belonging to the offending state has been more than once threatened and actually enforced. Great Britain in 1849 in the Don Pacifico case enforced an embargo upon Greek shipping and seized several Greek ships of war in the Pireans.

In 1895 Great Britain having been unable to secure the required redress and indemnity from Nicaragua for the expulsion of the British Vice Consul and other British subjects and their property from Bluefields and the Mosquito reservation, sent a naval force to Corinto, a Pacific port of Nicaragua, and gave an ultimatum that unless the indemnity was paid in three days, Corinto would be occupied by the British forces. Proper response not having been made a force was landed and Corinto occupied. Ultimately the Government of Nicaragua agreed to pay the indemnity within fifteen days after the evacuation of Corinto by the English forces, the payment of the same being guaranteed by the Government of Salvador. The fleet left on May 18 1895, the public property of Nicaragua being in its possession during the occupation.

As to (2) the sequestration of the property of citizens of the offending State this was exemplified by Great Britain in 1861 by the seizure of Brazilian merchant vessels and in 1872 by Germany by the seizure of Haytian Merchant vessels.

3. As to Embargo or suspension of intercourse between two nations. A practical example of this occurred in 1807 after the attack upon the Chesapeake, in our own history it being further directed that all English men-of-war should be denied our ports. Great Britain apologized for this affair and offered indemnity for the victims.

4. Suspension or annulment of treaties in part or in whole.

In 1798 at the time of the quasi-war with France the United States annulled its treaties with France and directed seizure of armed French vessels in certain portions of the world.

5. Withdrawals of all privileges and rights to domiciled subjects or citizens of offending States.

6. Pacific blockades.

There are numerous cases arising of this species of reprisal or application of force.

The latest cases are of the Greek ports in 1850 by England, that of Formosan ports by France 1884, Greek ports by the Allied Powers in 1886, the Coast of Siam by France in 1893, and the blockade of Crete in 1897 by the Allied Powers.

The increasing tendency to use the powerful argument of a Pacific blockade to coerce a nation as a step short of war is somewhat due to the combination of the Six Great Powers of Europe with a view to keep matters quiet in the Levant for fear of a general European war.

The legal position of a Pacific Blockade is unsettled as the attitude of the blockaders towards vessels not of States not concerned has varied with almost every blockade and the blockade itself has always been applied by a strong naval power against a weaker one as a means short of war,

the alternative of war not being accepted by the weaker power on account of the disparity of forces and hopelessness of success.

It is an anomaly in international law - there being no war - there are no belligerents - no neutrals.

It is illegal to have a blockade apply to third or unconcerned powers when there is no war and yet such a blockade will not be effective in the vessels and goods of these powers are allowed to enter freely and if the blockade is confined to the blockading and blockaded vessels.

Each case will probably depend upon its own merits and above all whether it will be worth while for any third or outside great power to interfere. In the so-called Pacific Blockade of Formosa by the French which involved the capture of vessels other than Chinese and French, Great Britain took the position that it was not proper and would not be recognized by her unless regular war was declared against China. But in the late blockade of Crete by the European powers of which she was one, the right of search was exercised by the blockaders upon the so-called neutral vessels and they were prohibited to land cargo destined for the Greek troops in the interior.

De Martens says as to the legality that it is admissible but not logical; while Perels, the German authority, speaks decidedly of it as coming clearly under the head of reprisals and as an evil less than war. The last statement is probably the one that will make it acceptable alone and it will probably be treated in the future as a blockade with war powers but confined to a localized and definitely bounded area of operations.

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Two instances not mentioned in the text books may be

profitably discussed as late examples of this means of reprisal.

One is the blockade of Zanzibar in 1868 by Great Britain, Germany, Italy and Portugal and was specifically directed against the slave trade which the authorities of Zanzibar were ~~unable~~ unable or unwilling to stop. As this action was against a specific evil recognized as such by the civilized world no international complications were involved.

The Pacific Blockade of Crete commenced March 21st, 1897. The Naval forces of Great Britain, Austro-Hungary, France, Germany, Italy and Russia put the island of Crete in a state of blockade on that date at 8 a.m. The blockade was to be general for all ships under the Greek flag. The ships of the six great powers or of what may, for the locality, be called neutral powers were allowed to enter in the ports occupied by the blockading powers and to land their cargoes provided they were not intended for the Greek troops in the interior. The ships of the neutral and blockading powers were to be visited by the ships of the international fleet. The limits of the blockading operations are comprised between Long. 23 24 and 26 30 East of Greenwich and between 35 48 and 34 45 North latitude..

This though infringing the rights of neutrals was less radical than the first definite Pacific blockade of the French at Vera Cruz in 1838 where the vessels of the third powers were ~~seized~~ captured and confiscated.

So far as the great text writers upon international law are concerned, they can be divided roughly into three schools - (1) those who think the Pacific Blockade is absolutely unjustifiable - like Hautefeuille, Westlake, Geffken and Woolsey - (2) Those who believe in it as a necessary

evil but that it should not affect third powers, like De Martens, Calvo, Hall, Bluntschli, T.J. Lawrence and Fiore and (3) Those who believe in it as a reprisal, short of, and better than actual war and that it should affect third parties like Perels, Desjardens.

In 1887 the Institute of International Law, twenty seven members being present adopted the following declaration:

The establishment of a blockade outside of a State of war ought not to be considered as permissible by the law of nations except under the following conditions.

1. The ships of the third powers ought to be formally declared and notified and maintained by a sufficient force.

3. The ships of the blockaded power which violate the blockade should be sequestered. The blockade being raised they should be restored with their cargoes to their owners, but without any damages or compensation.

It can thus be seen that admitting the pacific blockade to be a legal means of restraint or reprisal short of war, still the tendency of writers and of States is to favor its exercise, as much as possible in a manner not to involve the third powers or to antagonize their interests. Localized as it should be in its field of operations it is far better than actual war, especially a European war - which would be likely to be a widely spread calamity.

If however the blockaded State resists - A State of war is created - and should be duly recognized and declared. If the blockaded State does not resist, but the interests of third States are injuriously affected to a very serious

extent this in turn may lead to complications and even war. Under either of these latter circumstances a pacific blockade, loses its peaceable character, fails of its end to effect reprisal or restraint without war, and becomes inadmissible.

-- General Questions as to War --

"The independent societies of men, called States", says Wheaton, "acknowledge no common arbiter or judge, except such as are constituted by special compact. The laws by which they are governed, is deficient in those positive sanctions which are annexed to the municipal code of each distinct society. Every state has therefore a right to resort to force, as the only means of redress for injuries inflicted upon it by others, in the same manner as individuals would be entitled to that remedy were they not subject to the laws of civil society. Each state is also entitled to judge for itself, what are the nature and extent of the injuries which will justify such a means of redress".

X The effect X of war X the X of X all X
"The right of making war, as well of authorizing reprisals, or other acts of vindictive retaliation, belongs, in every civilized nation, to the Supreme power of the State. The exercise of this right is regulated by the fundamental laws of municipal constitution in each country, and may be delegated to its inferior authorities in remote possessions, or even to a commercial corporation", such, for example, as the British East India Company of times past, or the British South African company of the present time, exercising as they do and did, to an extent certain sover-

sign rights with respect to foreign States or Savage Communities.

But with respect to the United States no such rights can be delegated. The exercise of the war making power is vested in Congress alone and the President has no constitutional right or authority to order aggressive hostilities to be undertaken.

As Secretary Cass said to Lord Napier in 1857 in regard to a combined expedition into China "Our naval officers have the right - it is their duty, indeed, to employ the forces under their command, not only in self defense, but for the protection ~~and~~ of our citizens when exposed to acts of lawless outrage, and this they have done both in China and elsewhere, and will do again if when necessary, but military expeditions into the Chinese territory cannot be undertaken without the authority of the national legislature

Punishment vs. Protection - Jno. Rotfus + Korea -
Peace, with respect to ordinary affairs and also in these days with respect to international law, represents the normal condition of things - war, the abnormal.

The effect of war upon the relations of all states is to change them radically. The contending parties become what are known as belligerents; the other States become neutrals. New rights and new obligations arise and no State can, strictly, speaking, be said to play an entirely passive or disinterested part.

As to the individuals of each belligerent State there also arises a change of relations whether they are directly involved in the military contest or not. A new theory has been advanced of late years as to individual relations during war between the subjects of belligerent

states.

The old theory was that all citizens of one belligerent state were enemies of all citizens or subjects of the other. The new theory is that war is a contest between State and State and that private citizens of the belligerent countries should not be molested either as to persons or property.. The practice and usage do not conform to either theory.

Private individuals, for instance, can not hold pacific intercourse with the enemy, it is treason for them to give the enemy military intelligence, they must not buy the funds nor securities of the enemy, commercial partnerships with the enemy's subjects are dissolved by war, no debts can be paid to enemy's subjects during war, ^{Contracts} cannot be enforced, ~~no~~ insurance of enemy property can ^{not} be effected and in fact all business relations are suspended.

In a military sense also war cannot be relegated to a duel of forces. A general uprising of the inhabitants of an invaded country cannot be prohibited. Requisitions and contributions can still be raised upon the non-combatants on the enemy's soil and at sea private enemy property is still subject to ~~the rules~~ capture by the rules of international law. On land devastation under certain circumstances, by which is meant a destruction of private resources available for enemy supplies is both permissible and proper. "The object of war, says Sir Henry Maine in a military point of view is to procure the complete submission of the enemy at the earliest possible period with the least possible expenditure of men and money." To accomplish this object much will be done and little respected.

Treaties existing between belligerents alone are in general abrogated or suspended during war. The principal exceptions are treaties regulating the conduct of belligerents toward each other in case of war. In these cases, naturally such treaties, suspended during peace, are brought into operation by war.

Treaties to which other powers ~~are parties~~ besides the belligerents ~~also~~ when the war is ^{are parties} ~~un~~connected with the treaty ^{not} ~~un~~affected. ^{unchanged} Ordinary treaties are generally suspended or abrogated with regard to belligerents but unaffected with regard to the third parties. Such general agreements like the Declaration of Paris and St . Petersburg go into effect with war so far as the signatory powers are concerned.

There is a class of treaties, of a permanent nature, duly fulfilled, which as between belligerents are held to be unaffected. They are of the nature of boundary treaties, treaties of session and treaties of recognition. They remain unchanged during the war, no matter if they are changed at its termination. The boundaries of two belligerent States may be changed at the end of a war as a consequence of the war, but during its continuance the ~~old~~ old boundaries remain until the conquest is completed and the readjustment effected by treaty.