

January 1919

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Recommended Citation

Sterling E. Edmunds, *Mutations in States and Their Effect upon International Personality*, 4 ST. LOUIS L. REV. 170 (1919).

Available at: http://openscholarship.wustl.edu/law_lawreview/vol4/iss4/2

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MUTATIONS IN STATES AND THEIR EFFECT UPON INTERNATIONAL PERSONALITY

When the Peace of Westphalia (1648), ending the Thirty Years' War, recognized and confirmed the independence of a multitude of European States, the lingering political conception of world order as a federation, under the dominion of Rome, disappeared. In its place it was instinctively perceived that a community or society of states constituted the new order; and upon the maxim *ubi societas ubi jus*, a system of law for the government of the society became inevitable.

This society was not organized in the sense that agencies were instituted through which its will might be made manifest; on the contrary, the conception of state sovereignty as absolute power, susceptible to no earthly restraint, excluded the idea of accountability to the society as a whole.

The law of this society, special and general, was to be found in bilateral and multilateral treaties and conventions, and in custom and usage. As to the rights and duties of states as members of the society, they were vindicated not by common action but by states directly interested, as occasions arose. Violations of law were viewed as the concern of those states only directly suffering therefrom. It was not until the last few decades that a violation of the law of nations was conceived as an injury to all states in that it tended to weaken the law instituted for the protection of all.

This attitude of the society of nations may be partly explained by the variation in the character of its members in which autocracies predominated. As has been aptly said by former Secretary Root, autocracies can live without law; they proceed by commands; but democracies cannot live without law, the law is the very breath of life of a democracy. To an autocracy the law is an undesirable limitation upon its otherwise unlimited powers. In any society in which they were members, therefore, a readiness on their part to vindicate the law was not to be expected.

Yet the liberalizing tendencies of the last century, in their effects upon the internal structure of the states of the world, have resulted in a corresponding international tendency to organization in the society of nations. This movement has been accelerated during the last two decades through the clarification and codification of law by inter-

national conferences and the establishment of international organs, such as those at The Hague. Until the outbreak of the Great War the progress of the world was plainly toward the establishment of international rights and duties upon the foundation of definite law and a closer co-ordination of the members of the society of nations in its maintenance.

This growth has at least been checked by the actions of the Congress of Versailles and its proposal to organize society on a basis of preponderant power rather than on one of law. In this connection it may be pointed out that resolutions of the American Society of International Law and of other bodies, urging the calling of a general conference to meet after the peace, for the purpose of reviewing the condition of international law and of agreeing upon and stating in authoritative form the rules and principles thereof, were ignored by the Congress.

The proposed League of Nations—if it is put into operation unamended—will usher in a new world order, quite as unlike the present as the present was unlike that existing prior to the Peace of Westphalia. And yet there is a similarity between the system proposed and that obtaining prior to 1648.

The organization of the world under Rome, in its later days, bore the aspect of a loose federation; after the Peace of Westphalia the aspect was that of an unrestrained democracy, dropping at times into anarchy, but finally emerging toward liberty under law; the proposed organization bears some of the qualities of an international aristocracy, dominated by the Great Powers, with their ideas of what is good for the world substituted for a system of rights and duties defined and enforced under universal law.

In the first article of the Covenant of the League a radical break with the previous order occurs in the qualifications of membership, and the admission into the League of "any fully self-governing state, dominion or colony." A dominion or colony may be fully self-governing and still be dependent; in fact, most dominions and colonies are wholly without external sovereignty or the power to regulate their external or foreign affairs. Such a political entity was ineligible to membership in the Society of Nations, and essentially so, since the Society of Nations was a society of equals. If dependent states are to be admitted to membership in the League of Nations, the League necessarily becomes an association of unequals. If independence is no longer to be a test equality cannot exist, since the very absence of independence implies dependence upon another, thus multi-

plying the power and position of that other by the number of member-states dependent upon it.

It is inconceivable that the system proposed can last, even if put into operation; its only chance of survival lies in the restoration and restatement of the law, backed by an adequate sanction. The character of the structure would thus be wholly changed.

The compilation following is not prepared as a history of an age that has gone, but as a summary of the law, as it has evolved from the practice of nations, and as it must be held to exist today.

ESSENTIAL ATTRIBUTES OF SOVEREIGN STATES.

Section 1. A state must possess certain essential attributes as an international person, without which, although it might exist politically, it would not exist in contemplation of international law.

(Bry, No. 28; Bonfils, Nos. 160-162; 1 Calvo, sec. 39; Heffter, sec. 15; Pradier-Fodere, Nos. 69-81; 1 Moore, sec. 3.)

And there is substantial concurrence in the view that these essentials to legal state existence, entitling a state to recognition as an international person, include:

- (a) Definite territory;
- (b) A people permanently organized for political purposes;
- (c) A certain degree of civilization; and
- (d) A certain degree of autonomy and independence.

If a state permanently lose any of these necessary elements it loses title to recognition as an international person. But that the loss must be permanent, and not merely the temporary result of accident, to work a forfeiture of its status, is borne out in the consistent practice of nations with respect to states in the throes of revolution or war.

CHANGES EFFECTING LOSS OF INTERNATIONAL PERSONALITY.

Sec. 2. A state may cease to exist as an international person from one of any of the following causes:

1. If it permanently lose its territory, which may happen as an incident:

- (a) To conquest, coupled with annexation, cession or long continued possession;
- (b) To voluntary incorporation into or union with another state;
- or
- (c) To division into several states.

2. If it permanently lose its people; as from total emigration or the perishing of the whole population.

3. If it permanently lose its political organization; as from:

- (a) Permanent anarchy, or

(b) Total depopulation.

4. If it permanently lose its civilization; as from lapse into barbarism.

5. If it lose its autonomy and independence, or sovereignty through the investment of the powers of sovereignty in another state or states; which may happen as an incident:

(a) To voluntary or involuntary submission permanently to another state;

(b) To incorporation into or union with another state;

(c) To division into several states.

Thus international personality may be lost (a) as a result of the permanent loss of sovereignty—the supreme will of a society—through voluntary or involuntary submission of that will to another; or, (b) as a result of the permanent loss of a people in whom that will inheres; or, (c) as a result of the permanent loss of a government through which that will may be manifested; or, (d) as a result of the loss of territory in respect of which that will may be exercised. (Hall, 7th ed., p. 22.)

LIMITATIONS ON SOVEREIGNTY NOT AFFECTING INTERNATIONAL PERSONALITY.

Sec. 3. Sovereignty, defined as the supreme power inhering in a state (Bodin, *De La Republique*, I, c. 8; 1 Oppenheim, pp. 109-115), has the internal aspect of autonomy and the external aspect of independence.

It is essential to international personality that external sovereignty, particularly, remain unimpaired. Half- and part-sovereign states, says Oppenheim (Vol. I, pp. 529-530) may be parties to international negotiation, but so called Colonial States, such as the Dominion of Canada, can never be parties to international negotiation. Although Colonial States may be fully in control of internal sovereignty (self-governing) the absence of external sovereignty (independence) renders them incapable of possessing international personality. Thus viewed from the standpoint of the law of nations, the Dominion of Canada, the Commonwealth of Australia, New Zealand and the Union of South Africa are British territory. (Ibid, vol 1, p. 231.)

Yet sovereignty does not imply the boundless liberty of a state to do whatever it likes without any restriction whatever. Membership in the Society of Nations is itself a restriction, carrying with it rights as well as duties, and among the duties, those to respect the independence of all other states, to grant innocent passage in its territorial waters, to grant extraterritoriality to foreign sovereigns and diplomatic

agents, and the like. A state may impose many and extensive restrictions upon its freedom of action without thereby impairing the status as an international person, as in the conclusion of treaties of alliance and neutrality and in granting servitudes. (Oppenheim, pp. 182-183; Hall, 7th ed., p. 23.)

EFFECTS OF NEUTRALIZATION.

Sec. 4. Restrictions connected with neutralization do not, according to correct opinion, (1 Oppenheim, p. 179) destroy a state's independence, although it cannot make war except in self defense, cannot conclude treaties of alliance and is in other ways hampered in its liberty of action. (Jellinek, *Das Recht des mod. Staates*, 461-470; Le Fur, *Etat federale*, 438 ff.; 1 Merignhac, *Traite*, 219 ff.; Martens, *N. R. II*, pp. 157, 173, 419, 740.)

Much has been written on the effect of neutralization as a limitation upon the independence of the neutralized state; little upon the effect of neutralization as a limitation upon the sovereign powers of the guaranteeing states; yet the relation is a wholly reciprocal one.

States which solemnly pledge themselves to respect and defend the inviolability of another, in consideration of its pledge of neutrality, are plainly so far limited in their independence as to be legally incapable of warring against the neutralized states during the continuance of the validity of the obligations. And the obligations may be said to continue until there is a release by the common amicable assent of the parties. (Declaration of London, 1871.)

EFFECT OF PROTECTION.

Sec. 5. The position of protected states cannot be defined by general rule. Each case, differing in the degree of control exercised by the protecting state over the international affairs of the protected state, must be considered separately. Yet international personality is not affected by a treaty stipulation requiring that the protected state will never enter into a treaty with a foreign power which will impair or tend to impair its independence. (1 Oppenheim, p. 181.)

The test lies in the degree of control over external sovereignty reserved by the protected state; and if its subjects retain a distinct nationality and if its relations to the protecting state are such as to be consistent with its neutrality during a war undertaken by the protecting state, it is an international person. (The *Leucade*, Spinks Adm. Prize Cases, 1854-1856, 237; De Martens *N. D. II*, 663; Hertslet, 338; Hall 7th ed. pp. 27-29.)

Relations even of suzerainty and vassalage or dependence such as those formerly existing between the Holy Roman Empire and the

States of Germany from 1648 to 1806; and those of Napoleon to the Confederacy of the Rhine; and those between the Ottoman Empire and Bulgaria, Roumania and Servia, may not be a bar to international personality in view of the limited interference with external affairs. (Rougier, *Revue*, 1904, *Chronique*, 604 ff.; Snow, 2nd ed. p. 7.)

But if a state part with its rights of negotiation and treaty, and lose its essential attributes of independence, it can no longer be regarded as a sovereign state or as a member of the great family of nations. (1 Phillimore, secs. 75-76; 1 Halleck, Baker's 3rd ed. p. 69.)

VICISSITUDES OF STATE LIFE NOT AFFECTING INTERNATIONAL
PERSONALITY.

Sec. 6. Sovereign states, as members of the society of nations, undergo mutation and accident in common with the experience of the units in all other earthly societies; and, in response to the operation of certain laws established in that society, states come into being, they enjoy for a time a legal continuity of existence under vicissitudes incident to all living organisms, and they pass away.

There is a constant and gradual change in their citizens through deaths and births, emigration and immigration. There is a frequent change in those individuals who are at the head of the states and there are sometimes changes in their forms of Governments, or in their dynasties, if they are monarchies. There are sometimes changes in their territories through loss or increase of parts thereof, and there are sometimes changes regarding their independence, through partial or total loss of the same. Several of these and other changes in the condition or appearance of states as international persons, are indifferent to international law, although they may be of great importance for the inner development of the states concerned, and directly or indirectly for international policy. (1 Oppenheim, sec. 76; Hall, 7th ed., pp. 20-22.)

Those changes, on the other hand, which are or may be of importance to international law may be classified according to their influence upon the character of the state concerned, as an international person. (Westlake, 58-59; Despagnet, Nos. 87-88; Snow, Stockton's 2nd ed. p. 5.)

A state remains one and the same international person in spite of changes in its headship, in its dynasty, in its form, in its rank and title and in its territory. (1 Oppenheim, secs. 76-79), although, in respect of such changes, no official intercourse is possible between states refusing recognition and the state concerned.

While such changes—which may be effected by revolution or vio-

lence—are not wholly indifferent to international law, they neither affect a state as an international person nor affect the personal identity of the state concerned. (1 Oppenheim, sec. 77; Hershey, sec. 124; *Texas vs. White*, 7 Wall, 700; *Keith vs. Clark*, 97 U. S. 454; 1 Moore, secs. 43-58, 120, 139.)

TEMPORARY INABILITY TO GIVE EXPRESSION TO SOVEREIGNTY.

Sec. 7. Viewing sovereignty as an element distinct from government and territory—the media through and upon which it is exercised and manifested—it will be seen that a state may suffer accidents which for a time leave it unable to give expression to its sovereignty. This may happen:

1. From internal causes; as when:
 - (a) Civil strife overwhelms its government; or
2. From external causes; as when the government is set aside or the territory temporarily controlled by another state, through:
 - (a) Intervention, as an act of police; or,
 - (b) Military occupation, as an incident to war.

In the practice of nations a temporary loss of the media through which sovereignty is made manifest does not interrupt the continuity of international personality. Thus France, for example, has retained her personal identity from the time the law of nations came into existence until the present day in spite of changes in her territory, her dynasty and her form of government, her revolutions and her wars of victory and defeat. (1 Oppenheim, sec. 77.)

1a. THROUGH A LOSS OF GOVERNMENT.

The science of politics has learned to distinguish between sovereignty of the state and sovereignty of the organ which exercises the powers of the state. A state, as a juristic person, wants organs to exercise its powers. The organ or organs which exercise for the state powers connected with sovereignty are said to be sovereign themselves, yet it is obvious that this sovereignty of the organ is derived from the sovereignty of the state. (1 Oppenheim, sec. 69.)

It may happen that the government of a state is overwhelmed by uncontrolled internal violence, but unless the condition is long continued, taking the form of permanent anarchy, the state is not considered to have lost its international personality. Its sovereignty continues to inhere in the body of the people, although mute in the absence of an agency through which to express itself. (Snow, *Stockton's 2nd. ed. p. 7.*)

Other states usually maintain their legations in such state, at

least, until a continuance involves a high degree of personal danger. (Mexico, 1914-1916; Russia, 1917-1918.)

And their diplomatic agents usually carry on unofficial relations with such de facto authorities as may spring up, awaiting the re-establishment of a government capable of and willing to express the sovereignty of the state before resuming official relations. (1 Moore, secs. 43-58; *Texas vs. White*, 7 Wall 700; 5 Moore, Int. Arb. 4399-4459.)

2-a. THROUGH ACTION OF INTERVENING STATE.

Although the right of independence implies a corresponding duty to refrain from interference in the affairs of other states, it may happen that a state will so culpably fail in the discharge of its international duties as to leave to states injured no alternative but acquiescence under wrong or a resort to preventive or corrective force. Among the most potent form of the latter is armed intervention. Regarded from the point of view of the state intruded upon, it must always remain an act which, if not consented to, is an act of war. But from the point of view of the intervening state it is a measure of police, undertaken sometimes for the express purpose of avoiding war. (Hall, 7th ed., sec. 88; Bluntschli, Arts. 68, 474-480; Bonfils, Nos. 295-324; Despagnet, Nos. 193 ff.; Heffter, secs. 44-66; 1 Merignhac 284 ff.; Vattel IV, secs. 54-62; 1 F, de Martens, sec. 76.)

Although armed intervention may involve the existence of war in a material sense (*The Three Friends*, 1896, 166 U. S. 1, and Scott, 758) unless it assume the proportions of a public war in a legal sense, with its recognition on the part of other states by their assumption of the rights and duties of neutrals, war is not considered to exist.

If intervention do not eventuate in legal war, it can not give rise to the rights of war as they may affect the life of the state. The intervening force undoubtedly has a de facto authority within the territory effectively held; and it may perform administrative acts which will bind the de jure government upon its return, insofar as these acts operate within the tenure of de facto possession. (2 Westlake, 106.)

The tenure of the intervening state is, however, wholly temporary and exclusively one of force, the justification for which ceases with the removal of the provocative cause.

Since the permanent loss of a part of a state's territory does not affect a state's position as an international person it necessarily follows that a temporary sequestration incident to intervention, does not do so. (*China*, 1900; *Venezuela*, 1904; *Vera Cruz*, April 21, 1914.)

If the whole of the state's territory be occupied by an intervening force there occurs, not a suspension of sovereignty, but rather a temporary inability to give expression to sovereignty. The supreme will inhering in the state is not destroyed, but temporarily rendered unable to manifest itself.

In the course of such intervention other states usually continue to exercise the right of legation, carrying on unofficial relations with *de facto* authority in respect of territory controlled by it, and official relations with the legitimate government in respect of territory still under its control. (Cuba, 1906; Mexico, 1914; Belgium, 1914-1917.)

If the occupation of a state's territory by an intervening force continue over a long period of time, it may, of course, result in the extinction of the state as an international person, if its entire territory be involved.

2-b—THROUGH CONTROL BY A MILITARY OCCUPANT.

Military occupation, as an incident to war in a legal sense, differs from military occupation, as an act of police, in that while the latter is a local and temporary act of force, of which other states need take no notice, the former calls into operation the rights and duties of belligerency, in respect of the warring states, and the rights and duties of neutrality, in respect of all other states.

Belligerent occupation gives to the occupant the right to institute military government over so much of his enemy's territory as he effectively holds, using as far as possible the laws in force; but his position is that of a provisional administrator only. (Annex, Convention IV, The Hague, 1907; Law Review Quarterly, Vol. XXXIII, No. 132, p. 363—L. Oppenheim.)

During the continuance of war the occupant has only a usufructuary right, and the title of the former sovereign continues until a treaty of peace, by its silent operation or its express provisions, extinguishes his title forever. (Wheaton, Dana's 8th ed., sec. 545; Grotius III, Cap. 6, secs. 4-5; Vattel, III, Ch. 13, secs. 197-8; Marten III, Ch. 4, sec. 282; Kluber, secs. 254-259; Convention IV, The Hague, Arts. 42-56.)

While in former times occupation carried with it all of the rights of completed conquest, an occupant may no longer alienate the territorial property of his enemy to a third state so as to entitle it to claim against the legitimate sovereign. (Vattel, III, Ch. 13, sec. 198.)

Insofar as a state's territory is thus occupied, and to that extent,

there is a limitation upon its ability to give expression to its sovereignty; but the limitation is territorial only; and it in no manner limits its legal powers in respect of its territory not occupied. (2 Oppenheim, sec. 169.)

If military occupation become co-extensive with the territorial limits of the state there results a corresponding inability to express its sovereignty as to its entire territory. It cannot be held that sovereignty itself is suspended without a denial of the settled principle that the legal title to the territory continues to inhere in the legitimate sovereign until conquest is followed by annexation, cession or long continued adverse possession.

The legitimate sovereign's title can be extinguished in no other way; and the act of session, following conquest, involves a universal admission that the ceding sovereign had, up to the time of that act, a legal title, however extensively his territory may have been occupied.

And if the occupant be expelled, his administrative acts, carried out in accordance with the laws of war and the existing local law, must be adopted; but the occupant's acts can have no legal force beyond his tenure. (2 Westlake, 106; Wheaton, Dana's 8th ed., p. 421, N.; Phillimore, III, secs. 568-574; Heffter, secs. 188; Bluntschli, sec. 731; Calvo, sec. 3182.)

The inhabitants do not owe the occupant obedience under international law, but under martial law only; because he will crush them if they are not obedient. (Law Quarterly Review, XXXIII, p. 368, L. Oppenheim.)

There is not an atom of sovereignty in the occupant, says Oppenheim (*Supra*), since it is now generally recognized that the sovereignty of the legitimate government, although it can not be exercised, is in no way diminished by mere military occupation.

EFFECTS OF GUARANTOR'S USE OF FORCE AGAINST A NEUTRALIZED STATE.

Sec. 8. From remote ages states going to war have striven to spare their own territories as far as possible, even if to do so involved making neutral territory the battle ground. The fresh instance of this in the Russo-Japanese War of 1904 moved the Hague Conference of 1907 to make a declaration on the subject (Convention V.) which, having been universally subscribed to and ratified, became a settled principle of international law.

Among other things, the convention, embodying the declaration, sets out that the territory of neutrals is inviolable; and that the fact

that a neutral state repels by force an attempt to violate its territory can not be regarded as a hostile act. (Art. 10.)

Thus states are forbidden to violate neutral territory and neutrals are recognized as having a right to resist such violations without thereby being considered legally at war.

An invading state may nevertheless legalize its entry into a neutral state, however, by a formal declaration of war.

Yet it may happen, that the invaded state is not only neutral but neutralized. (1 Martens, N. R. 11, p. 379; XI, p. 390, and XVI, p. 790; Hertslet, 1 B. and M. 232 N.), in which situation it not only has the right to repel an attack upon its territory but may be under a solemn duty to do so; (Art. VII, Treaty of London, 1831; Belgium) having undertaken the duty of remaining neutral under all circumstances, it acquires the right to have its neutrality respected. (Baty and Morgan, War and its Conduct, p. 231.)

If a state not a party to the guarantee declare war upon a neutralized state, a legal state of war would arise. The state not a party to the treaty of neutralization, is, of course, not bound by the contracts of others.

But the situation is quite different where a state, seeking to make war upon a neutralized state, is a party to the treaty of neutralization; as between them, in view of their mutual obligations, war is legally impossible. There may be military violence and all of the accompaniments of war in the material sense, but the legal rights of a belligerent can not accrue to the guaranteeing state. It is a trespasser ab initio.

Nor can a declaration of war issued by the guarantor bring a legal state of war into existence. (Germany, Declaration against Belgium, Aug. 4, 1914.)

And in view of the treaty obligations of a neutralized state, it is doubtful that a counter declaration of war could create a legal condition of war; for it is an essential principle of the law of nations that no power can liberate itself from the engagements of a treaty, nor modify the stipulations thereof, unless with the consent of the other contracting powers. (Declaration of London, 1871; Hertslet, Map of Europe by Treaty, 1256-7, 1892-8, 1904.)

It follows, with respect to the invading guaranteeing state, since none of the rights of war accrue to it, that all destruction committed, all requisitions, contributions and fines levied, and all other of its military acts, are wholly outside the protection of the law.

SUSPENSION OF INDEPENDENCE A CONTRADICTION OF TERMS.

Sec. 9. The case of Holland during the period of Napoleonic ascendancy is cited (1 Moore, sec. 79, and Int. Arb. 4473-4476) as an instance of "Suspension of independence." During the period Holland had not only been subjected by arms, but had been rendered an enforced abettor of France, with a King of the Napoleonic family, Louis, placed upon the throne; and in 1810 by the decree of Rambouillet, Holland was declared formally united to the empire.

The abandonment of the claims of the United States against the Netherlands on account of acts of France within Dutch territory, was proper, not only, as the Dutch government argued, because the Netherlands were under the actual government of France (1 Moore, sec. 79), but also because the acts complained of were the acts of a military occupant in excess of his authority as such, and necessarily rendering his government liable.

To admit of the legal possibility of a "suspension of independence"—independence and sovereignty being synonymous—involves a denial of the entire modern doctrine of military occupation, with its limitation of the occupant to the position of a mere administrator, and legitimate sovereign's continuing title to the territory, as a corollary. Whether the enemy overrun a part or the whole of the territory enlarges in no way the occupant's authority. And the only effect of more extensive occupation in respect of the legitimate sovereign is to diminish, not his sovereignty, but the territory within which the exercise of that sovereignty would otherwise be unobstructed.

It must be accepted as a sound proposition of logic, as well as of law, that title to property can not inhere in a person whose being is suspended. And to say that a suspension of sovereignty occurs in any case short of completed conquest involves further—since the occupant can have no title—a recognition that the territory becomes *res or territorium nullius*, after the obsolete conception of the Roman law (Wheaton, Dana's 8th ed., p. 432, n.), and therefore open to the first occupant.. (Westlake, 137-155; Oppenheim, sec. 220.)

But the modern development of the law, with respect to territory, has been wholly contrary to the theory of conquest as a means of acquiring title. (P. Fiore, *Nouveau droit international public*, 2nd ed.; traduit de L'Italien par C. Antoine, 3 vols., Paris, 1880, sec. 1696; Bluntschli, *Das. Mod. Volkerrecht*, C. Lardy, Paris, 1895, sec. 286; Calvo, *Le droit international theorique et pratique*, Paris, 1896, 2 Gallison, 485; U. S. vs. Rice, 4 Wheaton, 246; Minutes, Int. Am.

Con. 1889-1890, pp. 789-806; 1 Moore, p. 292; Phillipson, Termination of War, etc., pp. 29-31.)

MUTATIONS OF STATES AND THEIR EFFECTS UPON TREATIES.

Sec. 10. Whether or not, and to what extent the vicissitudes of state life affect the binding force of treaties and the ability of a state to negotiate new treaties must be determined by the applicable rule of law in the light of the peculiar facts in each case.

EXTINCTION OF STATES AND SUCCESSION.

A. If a state cease to exist as an international person, its treaties, which the exception of those that are transitory or dispositive, necessarily lapse, though where the rights of third parties are concerned there may be a succession. (1 Westlake, pp. 67-75; U. S. vs. Proileau, 1866, 2 H. and M. 563, and Scott, Cases, 85, King of the Two Sicilas vs. Wilcox, 1851, Sim. N. S. 301, 327-363, as to succession see Despagnet, Nos. 86-102; 1 Piedelicore, No. 148; Rivier, pp. 72 ff; Bluntschli, Arts. 46-61; Bonfils, Nos. 214-233.)

EFFECT OF OUTBREAK OF WAR.

B. A respectable number—perhaps a majority—of the authorities hold that all treaties, with the exception of those contemplating war or a permanent condition of things, are annulled as between belligerents from the outbreak of war. (1 Kent, Com. 177; 3 Phillimore, sec. 530; 1 Twiss, sec. 252; Lord Stowell, The Frau Isabe 1801, 4 C. Rob. 64. See Contra: 1 Hallick, p. 242; Riquelme, Der. Pub. Int. liv. I tit. 1 Chap. XV; Hall, sec. 125; Woolsey, sec. 160; II Pradier-Fodere, sec. 1215; Dana's Wheaton, sec. 275, n. p. 143; II Oppenheim, sec. 99; I. F. L. Annuaire, XXIV, 1911, pp. 201-13, 220-221.)

Although there is lack of agreement as to what classes of treaties are suspended or annulled by war, there is agreement that treaties granting privileges are abrogated. (Snow, Int. Law, p. 99.)

TEMPORARY INABILITY TO EXECUTE.

C. But those events in state life which merely temporarily render a state unable to execute its treaties, whether from internal or external causes, do not ordinarily affect their continuing validity. (1 Oppenheim, p. 577; Snow, Stockton's ed., pp. 6-7; quoting Kent and Hall.)

STATES UNDER PROTECTION.

D. If a state becomes subordinated to another or enters a confederation of which the constitution is inconsistent with liberty of action in regard to the subject matter of its treaties, such treaties necessarily lapse. It is an implied condition to their continuing obliga-

tion, that the parties to such compacts shall keep their freedom of will with respect to the subject matter, except insofar as the treaty is itself a restraint upon liberty. (Hall, 7th ed., p. 369; Bluntschli, sec. 459; Kluber, sec. 164; Heffter, sec. 98; Wheaton, Dana, sec. 275.)

THE EFFECT OF VIOLATION ON LAW-WORKING TREATIES.

Sec. 11. Multi-partite compacts, in the nature of international law-making treaties—in the absence of stipulation as to the time and manner of their termination—are dissolved only by the consent of the parties. Thus a violation of a treaty of neutralization by one of the guarantors does not have the effect of releasing the violator from the obligation of the treaty nor does it affect the continuing validity of the treaty. (Declaration of London, 1871, *supra*.)

COMPETENCE OF OCCUPIED STATES.

Sec. 12. As to the competence of a state to conclude a treaty while part of its territory is occupied by an enemy, there is no question of its legal capacity, if it have a government representing the will of the nation. There is no diminution of sovereignty involved in the temporary or permanent loss of part of a state's territory. Even where the whole of a state's territory is thus temporarily lost it may not be properly contended that a loss of sovereignty occurs until the state ceases to exist through completed conquest. Until that time the legitimate sovereign is dispossessed of his territory; at that time he is divested of his title. (2 Westlake, 106; L. Oppenheim, L. Q. R. Vol. XXXIII., No. 132, p. 363.)

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