

V

THE BELLIGERENTS

Vattel, iii. § 4—Phillimore, iii. §§ 92-93—Taylor, §§ 458-460—Wheaton, § 294—Bluntschli, §§ 511-514—Heffter, §§ 114-117—Lueder in *Holtendorff*, 4, pp. 237-248—Liszt, 56, A—Pradier-Fodéré, vi. Nos. 2656-2680—Rivier, ii. pp. 20-216—Nys, iii. pp. 23-26—Mérignhac, iii^a. pp. 136-139—Martens, ii. § 108—Heilborn, *System*, pp. 333-335—Rolin, §§ 936-950—Smith, *Great Britain and the Law of Nations*, i. (1932), pp. 261-333—Cavaglieri in *Rivista*, 2nd ser., 8 (1919), pp. 58-91 and 328-362.

Qualification to become Belligerent (facultas belligendi)

§ 74. As International Law recognises the status of war and its effects as regards rights and duties between the belligerents on the one hand, and between the belligerents and neutral States on the other, the question arises what kind of States are legally qualified to make war, and thereby to become belligerents. According to the Law of Nations, full sovereign States alone possess the legal qualification to become belligerents; half and part sovereign States are not legally qualified to become belligerents. Since neutralised States, such as Switzerland, are full sovereign States, they are legally qualified to become belligerents, although their neutralisation binds them not to make use of that capacity, except for defence. If they become belligerents because they are attacked, they do not lose their character as neutralised States; but if they become belligerents for offensive purposes, they *ipso facto* lose this character.¹

Possibility to become a Belligerent.

§ 75. Such States as do not possess the legal qualification to become belligerents are by law prohibited from offensive or defensive warfare. But the possession of armed forces makes it possible for them in fact to enter into war, and to become belligerents. History records instances enough of such States having actually made war. Thus in 1876 Serbia and Montenegro, although at that time vassal States under Turkish suzerainty, declared war against Turkey, and on February 28, 1877, peace was concluded between Turkey and Serbia.² When in April 1877 war broke out between

¹ The position of a neutralised State as a belligerent is discussed in detail by Rolin, §§ 936-950. See Racot, *Des neutralités durables* (1917), 3, pp. 171-173. ² See Martens, *N.R.G.*, 2nd ser., pp. 171-173.

Russia and Turkey, the then Roumania joined Russia, and Serbia against Turkey in December 1877 lacking the legal qualification to actually makes war, it is a belligerent war, and all the rules of International law apply to it.¹ Therefore, an armistice between a suzerain and vassal, or between a Power and more of its members, is war² in the term according to the Law of Nations.

§ 76. The distinction between legal power to make war explains the fact that a Power becomes a belligerent Power through the same principles governing recognition of belligerents as those relating to the recognition of Governments.³ Certain conditions are as unlawful by International Law—not to treat civil war as illegal—create the duty to grant recognition and the conditions of fact are: the existence of a state of general hostility accompanied by a measure of orderly administration of national territory by the insurgent Power under a responsible authority; the insurgent Power to define their attitude towards the third States to define their attitude towards the latter requirement recognition should be open to abuse for the purpose of a

¹ This is quite apparent from the fact that Bulgaria by accession became a party to the Geneva Convention at a time when she was still a vassal State under Turkish suzerainty. ² See above, § 56, and Baty, *International Law in South Africa* (1900), pp. 66-68. ³ See above, vol. i. §§ 71a, 75bb.

⁴ It is believed that the lawful Government is in any case entitled to assert belligerent status and the resulting belligerent rights. Thus, for instance, it has not been suggested that during the American Civil War it was open to the insurgent Power to proclaim exercise of the rights of a belligerent State in 1936. States in grant be See, e.g., *Agreement* 5568. A *Debate* of the Se 8, 1937, recognise the insur-

According = J samovarn med
posses = veritliche belligerents = krigførende

Insurgent = opprører