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§ 14. End of War.

Phillipson, *Termination of War and Treaties of Peace*, London 1916; Nolde, *La fin de la guerre en Russie au point de vue du droit international*, *Rev. lég. comp.* 1923 p. 395 et seq.; v. Kirchheim, *Postliminium*, *Strupp Wörterb.* II p. 295 et seq.; Strupp, *Kriegsbeendigung*, *Strupp Wörterb.* I p. 713 et seq.; Björkstén, *Fredsfördraget mellan Finland och Sovjet-unionen av den 12 mars 1940*, *NTIR* 1941 p. 3 et seq.; Castberg, *Postliminium*, Uppsala 1944; Roed, *Oversikt over de økonomiske bestemmelser i Fredstraktatene med Italia, Finland, Ungarn, Romania og Bulgaria*, *TRV* 1947 p. 581 et seq.; Bentivoglio, *La «Debellatio» nel diritto internazionale*, Pavia 1948; Fitzmaurice, *The Juridical Clauses of the Peace Treaties*, *Rec. cours* 1948 II p. 259 et seq.; Kalijärvi, *Settlements of World Wars I and II Compared*, *The Annals of the American Academy of Political and Social Science*, May 1948 p. 194 et seq.; Schnitzer, *Das neue Recht der Friedensverträge insbesondere die Wiedergutmachungsklauseln*, 1948; Carlo, *Occupazione bellica, armistizio e trattato di pace*, *Rev. Sottile* 1950 p. 296 et seq.

Krigs-ende
A war may be ended in three different ways: through subjugation, simple cessation of hostilities, or the conclusion of a peace treaty.

1. Subjugation means the destruction of a belligerent as a State through its being incorporated in the victorious country by a unilateral act of the latter. Subjugation must not be confused with wartime occupation, which is only temporary condition without any change of sovereignty over the territory concerned. Even though the whole territory of a State were to be occupied, it would not necessarily mean final destruction, since the war might be continued elsewhere with the aid of allies and such national forces as had been sent abroad. Even though the fighting has come to an end, it is not certain whether the victor wishes to incorporate the whole of its enemy's territory in its own territory. It may, for political or other reasons, be content with less. Subjugation may be regarded as a kind of *annexation* although it should be noted that examples of annexation are found also in peacetime, and that annexation often rests (at least formally) on a voluntary agreement between the States concerned.

Subjugation is based on the fact that the *supreme power* of the vanquished State no longer exists. Subjugation may occur although the exiled Government of the subjugated State claims some kind of formal authority abroad even after the cessation of hostilities, and after it can no longer effectively carry out its governmental functions. Mere protests are insufficient in this respect. The requirement that subjugation shall be *effective* means that a proclamation of subjugation given during a war is insufficient. The proclamation made by Great Britain in 1900 during the South African War was without legal effect even though Great Britain later won the war. During the Second World War, Germany took certain measures in Poland which were legally possible only after a final conquest.

Subjugation has occurred several times even in recent times, e.g., in the case of Abyssinia in 1936. As was mentioned earlier, the right of subjugation has been greatly restricted by the League of Nations and the United Nations, and many authors think that subjugation is also contrary to general international law now prevailing.

2. Just as a war may begin merely by actual hostilities (intended as war operations), it may also be ended without any decision having been reached (as distinct from subjugation) and without a treaty of peace, by the belligerents simply bringing the operations of war to an end. Sometimes a special proclamation is issued (which may be even unilateral if the adverse belligerent makes no contrary declaration) stating that the Powers are no longer at war with each other. This occurred between China and Germany after the First World War, although a peace treaty was later concluded between these States to avoid uncertainty.

The cessation of hostilities must obviously be *mutual*, and many writers consider that this implies a kind of tacit agreement. If a war could be concluded by one party simply discontinuing the operations of war, the objects of the war would in most cases not be achieved. When the new rulers of Russia made their unilateral declaration on February 10th, 1918, that they no longer intended to fight against Germany and the other Central Powers, this did not prevent the