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POSERS FOR THE LAYMAN

SINKING OF SHIPS

SPAIN AND THE LAW OF NATIONS.

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The sinking in circumstances peculiarly outrageous of another British ship off Spain, a long way outside territorial waters, forces once more into prominence questions of international law which we hoped had been buried at Nyon. What are the rights and duties prescribed by the Law of Nations for observance between any given country and the contending forces in a neighbour country the Government of which has been rebelled against? Clearly much confusion still prevails, in Parliament as well as outside, on this and allied questions of public international law, which are, indeed, full of pitfalls for the layman.

In a world not entirely populated by international lawyers, how easy it is for the un-instructed to confuse, say, the right of blockade with the right to search for and intercept contraband. In common speech we legitimately call ourselves "neutral" when in a personal dispute we do not intervene in support of either disputant. Who then, walking by the light of nature, would suspect that "neutrality" and "non-intervention" are incompatible, if not fundamentally opposed, conceptions? What is the effect of granting "belligerent rights" to rebels? Does the grant imply approval of the rebellion? The plain man not unreasonably thinks it does; but he is wrong. Are rebels, after their movement has attained a certain magnitude, legally entitled to a "grant of recognition of belligerency" or of "belligerent rights"? Much current controversy assumes such a right; but again, according to what seems the better view, mistakenly. Is there such a thing as a "recognition of insurgency" as distinct from "belligerency"? If so, what is it? And what is the bearing on the other issues of the distinction (which often bewilderingly intrudes on the argument) between action in territorial waters and action on the "high seas" outside the three-miles limit? To international lawyers the answers to some (not all) of these questions are plain. But the lay *intelligentsia* will perhaps not scorn an attempted elucidation of the subject, which includes some elementary matters, though it goes beyond them.

"BELLIGERENCY"

For brevity the country whose Government has been rebelled against will be called "Country Y," and any other country which has to consider its position *vis-à-vis* Country Y will be called "Country X." Thus England, France, and Germany are each X in relation to Spain (Y). The legal position as between X and the contending forces in Y differs according as X has, or has not, accorded to the insurgents in Y "recognition of belligerency."

Assume then, first, that X has not accorded

such recognition. What in that case are X's rights and duties under the rules of international law?

(a) Negatively, X is bound not to obstruct measures taken by Y's Government to suppress the rebellion. But it is not bound actively to assist these measures.

(b) Positively, X is entitled, but not bound, to supply the Government of Y with money, arms, and war material, and, indeed, men.

(c) X is bound to abstain from supplying the insurgents in Y with money, arms, war material, or men. (By X is meant, in this connexion, the Government of X.)

Here is the position which obtained between England and Spain in the absence of any non-intervention agreement. Neither England nor any other country outside Spain would have been entitled to assist the rebels. All would have been entitled, though not bound, to assist the Spanish Government. Incidentally any rebel cruiser interfering with the merchantmen of such countries would have been technically a pirate: subject to what is said below about "recognition of insurgency."

THE GRANT OF RIGHTS

Now let us assume that country X has granted the insurgents in Y "belligerent rights." The general effect of this is well understood. The position thenceforward will be the same, broadly, as if country Y were no longer a single State, subject to an internal schism, but were split into two distinct States at war with each other: with the consequent assumption by other countries (X) of the status of neutrals in a war.

Before considering what the rights and duties of a neutral are, a word should be said as to the circumstances in which belligerent rights can or should be granted. There are here three points of importance:—

(1) No country is *entitled* to grant such rights to insurgents in another unless the latter have made substantial headway, have occupied a definite portion of the present State's territory, have set up a regular machine of government therein, and certain conditions are fulfilled. We need not pause over these conditions, since no one questions that they have for some time past been realized in Spain.

(2) Even though such conditions are amply realized, yet (according to the better view) no country is *bound* to accord recognition to insurgents in another while the rebellion is in progress. It can consult exclusively its own interests or the general welfare of mankind.

(3) Recognition, if granted, does not imply approval of the grantee's cause. It is morally neutral. The contrary idea is a complete misconception: a misconception, however, so widespread that statesmen must take serious account of it in deciding whether to grant or withhold recognition.

Let us now imagine that, being entitled to do so, country X in fact grants belligerent rights to the insurgents in country Y. Then obviously, in the first place, the grant to the insurgents involves a corresponding grant to the Government of country Y. It assumes a state of war, and it takes two to make a war. A neutral cannot treat A as at war with B without treating B as at war with A. (Germany and Italy have "recognized" Franco's Government—not as one of two belligerents but as the only effective Government in Spain. This course, adopted while the struggle was still in progress and its result then (as it still is) undecided, was a breach of international law as against the Barcelona Government.)

To revert: If X has recognized the insurgents in Y as belligerents, and thereby itself become a neutral, what are the rights and duties of (1) the neutral; (2) the belligerents?

(1) A Neutral Government must not itself supply money, armed assistance, or war material to either belligerent, but is not bound to restrain its subjects from doing any or all of these things, at their own risk. The risk consists mainly in the exercise by either belligerent of the rights indicated under (2).

(2) A belligerent as such acquires two important rights against neutral shipping: the right of blockade, and the right of search for contraband. In pursuance of the first, either belligerent is entitled (if it can effectively do so) to prevent neutral ships