The Enforcement of International Law Through Municipal Law in the United States

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PHILIP QUINCY WRIGHT, Ph.D.

PREFACE

The theory of international law upon which this study is based may be briefly summarized in a few statements. With the present system of world organization, effective enforcement of law is only possible through action by state administrative and judicial organs. International law, therefore, can not be effectively enforced except over persons subject to the jurisdiction of the state. We may therefore conclude that international law can be effectively enforced only in so far as it prescribes conduct for persons and subordinate agencies of government.

The essential feature of international law is not that it lays down rules of conduct for states, but that it holds states responsible for the conduct of persons. International law, therefore, should be regarded as the law binding the members, both persons and states, of a "supra-national" state or a "community of nations", the enforcement of which is delegated to the organs of the states composing it. The German Constitution, with its system of imperial law, binding on individuals but enforced largely through the administrative officers and courts of the component states, furnishes an illustration of such a system.

The recognition of this fact, that international law reaches down to individuals, is, therefore, important. International law can become effective through state enforcement in proportion as it lays down obligations for persons, rather than for states. Much of it now consists of rules prescribed for persons and officers of government and the greater part of it can be described in terms of such rules because the state can only act through human agencies. When we say that a state is obliged to do or abstain from doing certain acts, we can only mean that its chief executive officer, or its legislature, or its courts are bound to observe certain rules, which, by proper constitutional checks, it is possible for municipal law to enforce.

With this conception, that international law prescribes rules of conduct for persons and public officers and imposes obligations upon states, to enforce them, we shall consider the rules of municipal law enforced in the United States in pursuance of this international obligation.

The distinction between a legal and a political method of

enforcement has been kept in mind. Where action is left to the discretion of military, naval or executive officers or legislative bodies as cases arise, the rule is not considered one of municipal law. The term is only applied to the rules laid down as permanent and enforceable by governmental authority according to an established procedure, either judicial or administrative.

The title to be given this study caused the author much perplexity, and doubtless the one finally decided upon is open to criticism. Mr. A. V. Dicey entitled his book on private international law, "A Digest of the Law of England with reference to the Conflict of Law." Perhaps this thesis could be entitled "A Digest of the Law of the United States with reference to International Law." Such a title, however, would imply a more or less exhaustive treatment of the subject. The present work does not pretend to digest the whole of the law of the United States relating to the enforcement of international obligations. It is intended merely to suggest a field which the writer believes will bear further exploration. The title first considered was "The Extent to which International Law is Incorporated into the Law of the United States." Such a title would have excluded consideration of the rules which we have designated as laws supplementary to international law. These are municipal law enforcing international obligations but are not rules of international law incorporated into municipal law. The title finally settled upon is certainly inclusive enough and indicates that discussion is limited to the rules of international law enforced as *law* in the United States, excluding those enforced by executive authorities as "political questions."

The general subject of the relationship of international to municipal law has not been extensively considered in any English treatise. Holland's excellent article on "International Law and Acts of Parliament" published in his "Studies on International Law" is a brief but valuable contribution. Professors J. B. Scott and W. W. Willoughby in articles in the American Journal of International Law, Westlake in an article entitled, "Is International Law a part of the Law of England?" published in the Law Quarterly Review, and Lawrence in his "Essays on some disputed Questions of International Law" have discussed the nature of international law and its relation to municipal law, especially to the judiciary. Since this work was completed an excellent discussion of "The Relation of International Law to the Law of England and of the United States of America" by C. M. Picciotto has been published. This writer deals especially

with the relative legal force of statutes, executive orders, treaties and customary international law in the courts of England and the United States. Walker in his "Science of International Law", Westlake in his "Principles" as well as in his more recent work on "International Law", and A. H. Snow in several articles in the American Journal of International Law have emphasized the idea that international law is law governing individuals regarded as members of a society of nations, rather than law simply *between* nations, as the name suggests. The last writer in fact suggests the term "supra or super national" as a more appropriate term.

Writers on jurisprudence have sometimes considered the subject but usually very briefly. With Austin's example before them, they have excluded international law from the scope of their subject. Gray's "Nature and Sources of the Law" and Stephen's "History of the Criminal Law of England" contain particularly lucid expositions from this standpoint.

The most important contributions to the subject are in German. H. Triepel in his "Völkerrecht und Landesrecht" considers the nature, sources and relationship of international and municipal law. W. Kaufmann, in "Die Rechtskraft des Internationalen Rechtes und das Verhältnisse des Staats Organs zu demselben" covers somewhat the same ground, but emphasizes particularly the legal authority of international law and treaties as immediate sources of municipal law.

In the present work, the writer has attempted to discover the actual situation in the United States, with only incidental reference to the theoretical relationship of the two branches of jurisprudence. Primary reference has therefore been made to the treaties, statutes, executive orders and court decisions of the United States. Had it not been for the orderly arrangement of much of this material in Moore's "Digest of International Law", a monumental contribution to the science, the work would have been practically impossible. Moore's International Arbitrations have also been used, as have the collections of cases by Freeman Snow, J. B. Scott, Pitt Cobbett, and Norman Bentwich. Much use has also been made of the annual publications of the Naval War College, in which numerous points of prize law have been exhaustively discussed with especial reference to the practice of the United States. Professor C. G. Fenwick's recent work on the Neutrality laws of the United States has been constantly referred to in dealing with that subject. Tucker and Blood's edition of the Penal Code of 1910, Davis's edition of the Military

Laws and Howland's Digest of Opinions of the Judge Advocates General, all exhaustively annotated, have also been of assistance. The standard treatises on international law, of which those by Professors G. G. Wilson and Amos S. Hershey are particularly rich in references illustrative of American practice, have, of course, been examined.

The work has been carried through under the guidance of Professors J. W. Garner and Walter Fairleigh Dodd, to both of whom the author wishes to make grateful acknowledgement for many suggestions and much helpful criticism.

Champaign, Illinois,

January, 1916.

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INTRODUCTION

POSSIBILITY OF ENFORCING INTERNATIONAL BY MUNICIPAL LAW

It is the purpose of this thesis to discover how and to what extent international law is enforced by municipal law in the United States. For an adequate treatment of the subject a more or less definite meaning must be attached to the terms municipal law and international law. This is all the more necessary because, with a common view of these two branches of jurisprudence, our inquiry would be not only fruitless but impossible. Thus there is a common opinion which limits the connotation of international law to relationships between states regarded as independent political communities, exclusively.[1] With this view the state is regarded as a unit, an organism whose control is concentrated in a single will designated by the term sovereignty. It is with sovereigns alone that international law has to do.

Municipal law on the other hand is held to be law within the state. The sovereign enforces it but can not be bound by it. As well say that a dynamo can drive the engine which moves it, as to say the sovereign power can be controlled by the municipal law

[1]See Bentham, "With regard to the political equality of the persons whose conduct is the object of the law. They may, on any given occasion, be considered either as members of the same state, or members of different states. In the first case the law may be referred to the head of internal; in the second case to that of international jurisprudence. Now as to any transactions which may take place between individuals who are subjects of different states: those are regulated by the internal laws and decided upon by the internal tribunals of the one or the other of these states, the case is the same where the sovereign of the one has any immediate transaction with a private member of the other. * * * There remains, then the mutual transactions between sovereigns as such, for the subject of that branch of jurisprudence which may be properly and exclusively termed international law." Introduction to Principles of Morals and Legislation, Works, Bowring, Ed., 3;149. See also Travers Twiss, Law of Nations considered as Independent Political Communities, Oxford, 1884, p. 2; T. E. Holland, The Elements of Jurisprudence, 11th ed., N. Y., 1910, pp. 385-389, 402.

it makes and enforces.[2] How then can municipal law enforce international law? Clearly with this conception of international law it can not.

Although this theory of international law is often enunciated, it is never adhered to in discussions of the subject with the meaning just outlined. All writers on international law discuss rights and duties of ambassadors and consuls, of armed forces, of aliens, of neutral vessels in time of naval war, etc. International law as well as municipal law contains rules relating to the conduct of persons. Were such rules omitted from the subject, international law would be reduced to a few precepts telling when a state may make war, how far it may exercise jurisdiction, and how and when it may acquire territory, some of which on investigation would be found to be rules of policy rather than of law.

International law is not to be distinguished from municipal law by the assertion that the former relates to the conduct of states, the latter to the conduct of individuals within the state. Not state conduct, but state responsibility is the criterion of international law. International law prescribes rules of conduct which the individual must observe, but if he fails to observe them it pays no attention to the individual but declares that the state of which he is a member is responsible and liable. All rules, for the breach of which states will be held liable, are rules of international law.

Thus international law and municipal law are not mutually exclusive. The same rules may be prescribed by both. Both international law and the municipal law of the United States say

[2]Cf. Justice Holmes, a "A sovereign is exempt from suit not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends," Kawananako vs. Polyblank, 205 U. S. 349, 353, (1907), citing Hobbes, Leviathan, ch.226, 2; Bodin, Republique, 1, ch.8, ed. 1629, p. 132; Sir John Eliot, De Jure Maiestrate, c3; Baldwin, De Leg. et Const., Digna Vox, 2nd ed., 1496, fol, 51 b, ed. 1539, fol. 61. See also American Banana Co. vs. United Fruit Co., 213 U. S. 347; John Austin, Lectures on Jurisprudence, 5th ed., London, 1911, 2 vols., 1;263, 278; J. C. Gray, The Nature and Sources of the Law, N. Y., 1909, pp. 77-81; T. E. Holland, The Elements of Jurisprudence, 11th ed., N. Y., 1910, pp. 53, 365; J. W. Salmond, Jurisprudence, 2nd Ed., London, 1907, p. 110, 475-481; J. C. Calhoun, Disquisition on government, Works, vol. 6, Columbus, 1851, 1;146; J. W. Burgess, Political Science and Comparative Constitutional Law, Boston, 1902, 2 vol., 1;53.

that inhabitants of the United States shall not "set on foot military expeditions" when the country is neutral, and that naval forces shall not interfere with neutral commerce in time of war except for breach of blockade, carriage of contraband or similar cause. Municipal law, however, holds the individual criminally liable for setting on foot a military expedition[3] and the naval officer liable in damages for making a seizure without probable cause,[4] while international law in both cases requires the United States to make reparation to the injured states if these acts occur.[5] We believe therefore that it is possible for municipal law to enforce at least a part of international law so far as the obligations of that state are concerned.

RELATIONSHIP OF INTERNATIONAL AND MUNICIPAL LAW

International law consists of rules prescribing the conduct of persons, agencies of government and states, for breaches of which states are held liable.[6] This definition is undoubtedly

[3]Act Apr. 20, 1818, Rev. Stat., sec. 5286.

[4]Little vs. Barreme, 2 Cranch 176, (1804); The Thompson, 3 Wall., 155; The Dashing Wave, 5 Wall. 170. See Moore's Digest, 7; 593-598.

[5]Hague Conventions, 1907, v;art. 4; Declaration of London, 1909, art. 64.

[6]A number of different points of emphasis are made in definitions of international law. All agree that it consists of "rules of conduct regulating the intercourse of states" (Halleck, Int. Law, 3rd ed., 1;46). Many however enlarge this definition in its most limited sense, by emphasizing the fact that international law may prescribe conduct for persons, (Hershey, Int. Law, p. 1; Westlake, Int. Law 1, p. 1; Principles p. 1; Bonfils, Droit Int, pp. 2, 79). Walker, (Science, p. 44) emphasizing this idea, says, "International laws are rules of conduct observed by men toward each other as members of different states though members of the same international circle." Most writers, however, restrict the connotation of the term by requiring that the rules conform to some standard of objectivity. *"Actual observance"* is frequently considered enough (Bonfils, p. 1; Walker, Science, p. 44). Lawrence (p. 1) and Bonfils (p. 2) require that the rules *"determine conduct"*, Westlake (Prin. p. 1) that they *"govern* the relations of states", Hershey (p. 1) that they be *"binding* upon the members of the international community". Exactly how any of these standards can distinguish international law from international morality, it is difficult to see. They are so vague as to be almost meaningless. Hall's insistence that nations must "have *consented* to be bound" (p. 5) is more definite, while Holland (Studies, p. 194) is even more concrete when he says, "the law of nations * * is the public opinion of the governments of the civilized world with reference to the rights which any state would be

exceedingly vague. It is often difficult to tell whether a state will be held liable for the infraction of a particular rule or not. Often if weak it will, if strong it will not. There is no authoritative tribunal for defining rules of international law and saying for this act of a person or of an officer the state is responsible, for this it is not. The only test is that of actual practice. Where responsibility is habitually acknowledged or, in other words, where the consensus of opinion among nations recognizes that responsibility exists, the rule is one of international law.

Even more vague than the scope of international law is its sanction. The enforcement of the liability of states is not insured by any legal procedure. Such pressure as the inertia of habit, public opinion, commercial or military reprisal, threats of war, etc.,[7] alone compels states to observe international law, to enforce its observance among their subjects and, within their territory,

justified in vindicating for itself by a *resort to arms.*" Some writers emphasize the idea that international law is not real law. Holland calls it "public opinion", (Studies, p. 194), Austin, "international public morality" (1; 173, 226), Stephen (History of Crim. Law, 2;25) and Gray (Nature and Sources of the Law p. 125) convey a similar idea. It seems to us that such assertions are inappropriate in a definition of international law. Usage has applied the term so consistently that it would seem more proper to enlarge the definition of law so as to include international law. However, such definition may serve the useful purpose of indicating that the sanction of international law is different from that of municipal law, which is the significance given by these writers to the term "law". Our definition is doubtless as open to the criticism of vagueness as any. We make no immediate limitation according to the character of the parties obligated. Any rule of conduct is a rule of international law, if *states are held liable.* This connotative limitation under present conditions implies an exclusion of rules relating to parties of a certain character, for instance those defining relationships between persons of the same state or persons and their own government, because such matters being entirely internal, other states have no interest in exacting a liability. There have, however, been attempts to include *res interna* in international law, for example the principle of legitimacy by the Quadruple Alliance of 1815. If state liability were actually recognized, in such matters, they would become rules of international law. By the phrase "are held liable" we mean to assume an inductive and objective standard, requiring actual practice for the proof of this condition, and also a subjective standard similar to Holland's that opinion must recognize a resort to force as justifiable in enforcing this liability, a condition which is of course incapable of more than very indefinite verification.

[7]See Elihu Root, "The sanctions of International Law", Am. Jour. Int. Law, 2;451 (1908).

to acknowledge their liability and to make adequate reparation for infractions of its precepts.

But although it is difficult to tell what rules are within the field of international law and what sanctions enforce the liability of states, it is easy to state definitely many of the rules themselves and to show how they are actually enforced. This statement appears self-contradictory, yet there are many rules relating to diplomatic intercourse, condemnation of prizes, etc., which are capable of being stated in definite terms and are enforced by definite legal methods. They are also rules of international law; at least states have habitually acknowledged responsibility for their infraction.

For the definite statement and legal enforcement of international law we look to the municipal law of states. Municipal law consists of all general rules which the state enforces.[8] The most common agents of enforcement are judicial tribunals, but a rule enforced by an authoritative executive or administrative pro-

[8]Writers on general jurisprudence commonly give a similar definition to the term "law". Gray (Nature and Sources of the Law, p. 82) says, "the law of the state * * is composed of the rules which the courts * * lay down for the determination of legal rights and duties." Salmond (Jurisprudence p. 9) says, "The law is the body of principles recognized and applied by the state in the administration of justice". Both of these definitions recognize state enforceability as the most important feature of municipal law. Austin's conception (Lectures on Jurisprudence, 1;79, 88) was essentially the same although he emphasized the fact that the state "commanded" law rather than that it enforced it, thus being forced to the awkward explanation that "what the sovereign permits he commands" (2;510) to explain judge-made law. Maine's criticism (Early Hist. of Inst., pp. 377-387) that customary law is neither commanded nor enforced by the sovereign and can not be altered by him, seems to confuse the titular with the real sovereign. If customary law is applied in the village tribunals it is being enforced by the "sovereign" in the sense of political science even though Runjeet Singh, the titular sovereign, does not enforce it and can not alter it. Walker (Science of Int. Law, p. 44) attempts to parallel his definition of municipal with that of international law and says "municipal laws are rules of conduct observed by men or by men recognized as binding toward each other as members of the *same state*". He does not recognize positive state enforceability as necessary and he also limits the connotation of the term to rules between members of the same state. We disagree with him in both of these points. We intend to include as municipal law *all rules* of conduct binding either citizens or aliens, enforced by the state, either through a central or local authority, so long as this authority is recognized as legitimate.

cedure is no less municipal law. The rules of international law, so far as they lay down rights and duties of persons and officers, may be enforced by municipal law either directly through the application of international law by the court and executive officials or indirectly through the coercion of persons and officers in a manner not immediately prescribed by international law but calculated to cause an observance of the international duty.

It is true that they may not be. A state has entire control of its own municipal law and whether or not it chooses to enforce rules of international law, depends upon the force of the international sanctions pressing upon it.[9] But if it does enforce them, it thereby enforces its own duties under international law, and in so far as this enforcement is effective and complete it escapes liability under international law. It also gives legal definition and sanction to these rules.

It is thus an obligation, imposed by international law itself upon states, to enforce that part of international law relating to the conduct of persons within their jurisdiction, through their municipal jurisprudence.[10] It is for states to supply the lack of a world administration for the execution of international law.

[9]See W. W. Willoughby, The Legal Nature of Int. Law, Am. Jour. Int. Law, 8;357, in answer to an article of the same title by J. B. Scott, Am. Jour. Int. Law, 1;831. Also Westlake, Is Int. Law part of the Law of England?, Law Quar. Rev., 22; 14-26; Holland, Studies in Int. Law, p. 195.

[10]See judicial decisions on this subject, Res Publica vs. DeLongchamps, 1 Dall. 111; Talbot vs. Seamens, 1 Cranch 1, 37 (1801); Thirty Hogsheads of Sugar vs. Boyle, 9 Cranch 191; The Scotia, 14 Wall. 170, Scott 17; Hilton vs. Guyot, 159 U. S. 113; The Paquete Habana, 175 U. S. 677, Scott, 19. In Murray vs. the Charming Betsy, 2 Cranch 64, the court said that municipal law ought to be interpreted in harmony with international law if possible. *English cases*—Triquet vs. Bath, 3 Burr. 1478, Scott, 6; Heathfield vs. Chilton, 4 Burr. 2015, Scott 189; Le Louis, 2 Dods. 239, Scott 352; Emperor of Austria vs. Day, 2 Giff. 628; In the Recovery, 6 Rob. 348, the court even went so far as to assert that prize courts must apply international law in opposition to municipal statutes. This view was not maintained in West Rand Central Gold Mining Co. vs. Rex, L. R. 1905, 2 K. B. 391, Bentwich 1, which held that an act of state prevented the application of conflicting rules of international law. Regina vs. Keyn, L. R. 2 Ex. 63, Bentwich, 6, held that international law could not operate to increase jurisdiction; and Mortensen vs. Peters, 14 Scot. L. T. R. 227 (1906), Bentwich 12, applied a statute extending jurisdiction beyond the limits permitted by international law. See discussion of prize cases on this point, Holland Studies, pp. 193-199.

As state courts of the United States enforce the federal constition, laws and treaties, so it is the duty of independent governments to see that their courts enforce international law and that their executive authorities execute it.

It must not be overlooked that there are rules of international law which are incapable of enforcement as municipal law. Those which prescribe rules of conduct which the state considered as a unit must do or refrain from are directed solely to the sovereign power in the government. The commencement of war, the recognition of foreign states and governments, the submission of questions to arbitration, the acquisition of territory, the extension of jurisdiction are of this character. They are political questions and beyond the power of municipal law to control. The observance of such rules is in the hands of discretionary officers. In the United States congress and the president are responsible for the observance of such rules by the United States and they can not be coerced by municipal regulations. It is true that in these matters the political organs of the government act according to legal precedents as well as dictates of pure policy. But their action in either case is beyond the scope of municipal law and of our subject.

We are concerned with the rules of international law enforced directly as law in the United States and those enforced indirectly by the enforcement of laws supplementary to international law. The precedents and procedure followed by political organs of government in settling these political questions will not, therefore, be considered.

CLASSIFICATION

The doctrine of responsibility of states, which is the essence of international law, presents two possible methods of viewing the matter. We may consider the rule itself of primary importance; and thus private persons, ambassadors, consuls, military forces, naval forces, etc., as well as states would be subjects of international law for whom different rights and obligations are prescribed. On the other hand we may consider the liability or enforcement of the rule as of primary importance; and states, which are alone responsible, as the only subjects of international law. We should then describe the rights and duties of states, with reference to these various classes of officers and persons, considering them as objects of international law.

The latter is the course commonly pursued. States are said

to be the only subjects of international law. Persons and public officers as well as territory and other kinds of property are its objects.[11]

In our own opinion there is much to be said for the first view. There is a tendency for international law to impose a direct responsibility upon persons and officers[12] and if it is ever to be law in the Austinian sense of the term, this view will have to be recognized. The possibility of an effective law binding states as such was exhaustively discussed in the federal convention of 1787,[13] and the impossibility of enforcing such a law by ordinary lagal processes was demonstrated prior to the civil war. Even corporations when of considerable magnitude have proved surprisingly difficult things to control by law. A corporation or a state can neither be brought to court, nor put in jail. Law can never act upon it more than imperfectly.

As it is, however, the responsibility of states is the predominant feature of international law, and we will adhere to the usual custom of classifying the branches of that subject according to the rights and duties of states.

It is possible to discuss any body of law in terms of either rights or duties; either privileges or obligations; either liberties or restrictions. Every right implies a duty on the part of others

[11]See Lawrence, Int. Law, p. 73, "Probably it is best to say with Oppenheim (Int. Law, 1; 344) that persons, like territory, are objects of International law, and reserve the term subjects for those artificial persons who are either sovereign states or communities closely akin to them through the possession of some of the distinguishing marks of statehood."

[12]See, for instance, Hague Conventions 1907, in which occur such expressions as "Every prisoner of war is bound to give, etc." (IV, Art. 9) "a belligerent war ship may not prolong its stay, etc." (XIII, Arts. 14, 16, 18, 19, 20).

[13]See James Madison, The Journal of the Debates in the Convention which framed the Constitution of the United States, Gaillard Hunt, ed., N. Y., 1908, 2 vol., also in Madison, Works, Hunt, ed., vol. 3; Elliot, Debates, vol. 5; Farrand, The records of the Federal Convention of 1787, New Haven, 1911, Remarks by Madison, May 31, Wilson, June 25, King, July 14. Strong, July 14, says, "The practicability of making laws with coercive sanction for the states as political bodies had been exploded in all hands". See also Madison letter to Jefferson, Works, 1;344: The Federalist, Nos. 15, 16, 21, P. L. Ford, ed., pp. 87, 90, 91, 97, 123. A. C. McLaughlin, The Confederation and the Constitution, Am. Nation Ser., vol. 10, pp. 242, 245. The constitution of the German Empire does provide for the legal coercion of states through a process known as "Federal Execution", but the law of the empire acts directly on individuals.

to expect its observance. Treatises on international law, as on all other departments of law, commonly treat parts of the subject by describing duties, other parts by describing rights. In fields where liberty of action is the rule and restriction the exception, convenience dictates a treatment from the standpoint of duties, while when the reverse is true, when restriction is the rule and liberty of action the exception, a treatment from the standpoint of rights is most conservative of space.

For our purposes, however, a classification based exclusively on duties is necessary. Our purpose is to discover what obligations of international law are enforced by municipal law. We will therefore attempt to cover the whole field of international law from the viewpoint of duties. We will not consider the rights of the United States as such, but only in so far as they imply a duty to respect equivalent rights of other states.

Looking at international law as imposing obligations upon states, some of these obligations require action or abstention on the part of the government, while others require the state to enforce action or abstention on the part of its citizens or public officers. Duties of the first character are considered under four heads, abstention, acquiescence, vindication and reparation, those of the second under the head prevention.

The international obligations of a state differ somewhat according to differences in status caused by the advent of wars. Four general divisions are thus suggested—obligations in time of peace, obligations as a neutral, obligations as a belligerent toward neutrals and obligations as a belligerent toward enemies.

The questions relating to the transition from war to peace, peace to neutrality, etc., as well as to the advent of new states, involve the subject of recognition. This is a political question. Municipal law does not lay down rules saying when states shall be recognized, when belligerency and insurgency exist, and when they cease. In these matters the municipal law of the United States follows the political departments of the government as has been repeatedly affirmed by the courts.[14] It adjusts itself to the new status and recognizes the new condition.

[14]Rose vs. Himely, 4 Cranch 241 (1808); Consul of Spain vs. the Conception, Fed. Cas. 3137 (1819); Gelston vs. Hoyt, 3 Wheat. 246, 324 (1818); U. S. vs. Palmer, 3 Wheat. 610 (1818); The Divina Pastora, 4 Wheat. 52; Foster vs. Neilson, 2 Pet. 253, 307; Keene vs. McDonough, 8 Pet. 308; Garcia vs. Lee, 12 Pet. 511; Williams vs. Suffolk Ins. Co., 13 Pet. 415 (1839); Kennet vs. Chambers, 14 How. 38 (1852); The Prize Cases, 2 Black 635; U. S. vs. Yorba, 1 Wall. 412; U. S. vs. Lynde, 11 Wall. 632;

These matters are therefore beyond the scope of our subject. We will take the conditions of peace, war and neutrality for granted and discuss the municipal measures for enforcing national duties in each of these conditions, classifying such duties under the five heads, abstention, acquiescence, prevention, vindication and reparation.

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