to the crew of the ship captured, then all other law was silent and war prevailed, which condition would be most disastrous to the case of the claimant.

It was decided that the *Rose* was not entitled to take the law into its own hands and use force and that the seizure in 1799 and condemnation by the French authorities was lawful.

The Act of July 9, 1798 (1 Stat. L. 578), authorized the President "to instruct the commanders of the public armed vessels which are, or which shall be employed in the service of the United States, to subdue, seize and take any armed French vessel." The same Act authorized the commissioning of private vessels for a similar purpose.

The Act of July 7, 1798, had declared treaties between the United States and France at an end because "there is yet pursued against the United States, a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation."

There was no declaration of war, but there were acts which might properly be regarded as just cause for war. These acts were acts of reprisal against a specified state, sometimes called a condition of limited use of force.

The use of force has been authorized at other times by Congress, as in the *Water Witch* affair in 1858, and in the controversy with Venezuela in 1890.

In all cases where force is thus used by state against state it should be borne in mind that, as said by the Court of Claims in 1909, "while reprisals are acts of war in fact, it is for the state affected to determine for itself whether the relation of actual war was intended by them." (The Schooner *Endeavor*, 44 Ct. Cl. 242.)

GEORGE G. WILSON.

SANCTION FOR INTERNATIONAL AGREEMENTS

Whether or not justified, the lack of confidence in international agreements seems in some quarters to have become more general in recent years. Diplomatic agents, and those particularly concerned with international relations, seem, however, to have no illusions. In ancient times, and often in modern times, Deity has been called upon to witness agreements between tribal or political unities. In early Grecian tribal agreements, a money penalty was provided if either party failed in its obligations, and the penalty was to go as a tribute to the Olympian Zeus. Hostages were early given, and many other

attempts to secure observance of agreements through extraneous pledges may be found. A mediæval treaty makes the parties swear to its observance "by the name of God Almighty, by the Invisible Trinity, by all Divine things, and by the last Day of Judgment." While hostages have not been given for more than a century and a half, the call upon Deity has remained common. Even the Treaty of Paris of 1856 contains the well-worn formula "in the name of Almighty God." The treaty of 1848 between the United States and Mexico, which in Article 21 provides for arbitration in case of disagreement with respect to interpretation of the treaty itself "or with respect to any other particular concerning the political or the commercial relations of the two nations," also opens with the formula "in the name of Almighty God."

A distinguished English publicist in 1867, on reviewing the field of treaty agreement, wrote that "these varied and redoubled promises rested on nothing at all but the good faith they were meant to fortify, and that a penalty which is nugatory, or a pledge which can be circumvented, is not only ineffective, but worse, because it lends a treacherous satisfaction to the conscience, suggests the very subtleties that elude it, and assists the easy work of self-deception." Even if this opinion is too pessimistic it certainly was not based on lack of comprehensive knowledge and wide experience. An eminent German jurist has recently said, "Good faith and mutual confidence are the highest sanction of civil law; it is not so in international law." Other students of world affairs have in recent years felt the need of effective sanctions for treaty agreements. Such sanctions are especially needed at a time when it would be more advantageous for one of the parties to disregard rather than to keep its contractual agreement.

Some recent conventions, such as the Hague Convention of 1907, relative to the Opening of Hostility, provide for penalties. The above convention provides that, as to third parties who would become neutral, the existence of a state of war "shall not take effect in regard to them until after the receipt of a notification." The penalty for failure to make the state of war properly known is to this extent automatic. The Convention of 1907 respecting the Laws and Customs of War on Land, unlike the cosresponding convention of 1899, contained a provision that "a belligerent party which violates the provisions of said regulations shall, if the case demands, be liable to pay compensation." Thus there was introduced a penal sanction for violation of the rules.

Discussions such as those of the men experienced in practical poli-

tics, members of the Interparliamentary Union, show a growing feeling that agreements between states, however formally made, are not in themselves sufficient sureties for state conduct. If treaties are to be made under the proviso *rebus sic stantibus*, there is little to assure observance unless in the treaty itself there be some assurance that the question whether conditions remain the same shall be determined equitably and not by the opinion of one party only. There is demanded some international surety that treaties shall not be disregarded at the pleasure of one of the parties without consideration of the rights or supposed rights of the other. Various organizations, such as the League to Enforce Peace, the Central Organization for a Durable Peace, certain of the proposed organizations of neutral states, and other suggested unions, have as a part of their purpose to put a physical or other effective sanction behind international agreements.

There may be just ground for difference of opinion as to the best method by which the observance of treaty agreements may be made more certain. There seems, however, to be little difference of opinion in regard to the question that they should be made more secure. Certain persons claim that many existing treaties are worse than useless and that their provisions should therefore be disregarded. Doubtless there are many such treaties, but the admission of this fact does not imply that one of the parties may legally act in disregard of its treaty obligation. Certainly some method should be found to make it at least inexpedient for a state deliberately to break a treaty contract which it has assumed and upon the fulfilment of which the other parties are relying. It does not require searching investigation of the speeches and writings of those entrusted with the direction of state affairs, to find evidence that simple treaty obligations are not always by them held as prohibiting action in opposition to the treaty if such action would be decidedly for the supposed advantage or interests of the state which they serve.

It is also true that all states do not take the same attitude toward obligations embodied in treaty stipulations. Some states regard such obligations as strictly binding until the treaty is denounced; others have regarded treaties as convenient statements of present policy while some rulers have even gone so far as to declare they were not bound by acts of their predecessors.

The foreign offices of all the leading European states have, since 1914, made clear their desire for an effective sanction for international

agreements, and have further indicated that this sanction is not to be found in mere words. This has in a realistic way been demonstrated by Switzerland, which, in its own official statement is "situated on an island amidst the seething waves of the terrible world war," and is compelled "to maintain and defend, by all the means at its disposal its neutrality and the inviolability of its territory as recognized by the Treaties of 1815." If a treaty between two states is only as strong as the forces of the states, the value of the treaty in an extreme trial is questionable. It now seems to be the time, according to the pronouncements of both belligerent parties, to devise sanctions of whatever kind they may be, which shall be neither illusory nor impracticable.

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PROJECTS SUBMITTED TO THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

Of special interest to the readers of the JOURNAL is the *Rapport Questionnaire et Projets* which has been prepared for the American Institute of International Law by the distinguished Secretary-General of the Institute, Alejandro Alvarez. The *Report* is the result of five years of study and the synthesis of several prior publications, viz., *The Codification of International Law*, Paris, 1912; *The Great European War and the Neutrality of Chile*, Paris, 1915; and *The Future of International Law*, Washington, 1916.

The central task which the Institute has set for itself is the noble and all-important one of assisting in the creation of an organization which shall assure for the society of states a permanent peace. This work was inaugurated in December, 1915, when the Institute, upon the motion of its President, Hon. James Brown Scott, adopted a "Declaration of the Rights and Duties of Nations" intended to serve as a basis for the reconstitution of international law. There are those who contend that such a "Declaration" is mere verbiage or abstraction. This criticism might be justified if the Declaration were regarded as consisting of absolute, inherent, eternal, primordial Laws of Nature; but we can hardly conceive of any rational objection to a statement of fundamental principles which may serve as a basis or guide for structural organization and international regulation.

The coming session of the Institute will apparently be devoted to a study and discussion of the various plans which have been submitted