

1. International law permits nations which have won a war, such as that being waged by the United Nations against Germany, to accomplish the ends for which they have struggled by imposing upon the defeated enemy, in an armistice or a treaty of peace, such terms and such punishment as they consider necessary.

There is an abundance of material indicating clearly that the terms upon which hostilities are suspended by an armistice and wars ended by treaty rest completely in the discretion of the victorious nations. The victor having fought and won a war which did not itself violate the rules of war can, through an armistice agreement or a treaty of peace, accomplish the purposes for which the war was fought. As a matter of form there is generally an agreement between the belligerents but this does not in any sense imply that the free exercise of judgment by the defeated nation. Terms and conditions are imposed by force and not by contract.

A general armistice is essentially a cessation of hostilities pending the settlement of the terms of a treaty of peace. Although at one time an armistice could not provide for any advantage to one of the belligerents, it is now recognized that the victorious belligerent may impose any terms that he may desire upon his defeated adversary. As Phillipson says, "Again, whether the armistice convention is to contain provisions purely and simply for regulating the cessation of hostilities, or it is to include articles of surrender, or the vital conditions upon which peace proposals will be entertained, are matters also for the determination of the combatants--or depend, rather, on the will and dictation of the victorious belligerent."^{1/}

The history of the last 100 years reveals many examples of armistices which imposed severe terms upon the losing belligerent. The Armistice Convention of January 28, 1871 in the Franco-Prussian War provided for the delivery of the fortresses of Paris, the surrender of the armed garrisons of Paris, the payment by Paris of a "war contribution" of 200,000,000 francs, and the occupation by the German Army of large parts of France.

The protocol of peace in the Spanish American War stipulated that Spain would relinquish her sovereignty of Cuba, cede Porto Rico to the United States, and that the United States should occupy Manila until the fate of the Philippines was determined.^{1a/}

The terms imposed upon Germany by the Armistice of November 11, 1918, are well known. They included the evacuation of invaded and certain other territories, the surrender of specified war material, the delivery of certain amounts of rolling stock and other equipment, the repatriation without reciprocity of Allied prisoners of war, the surrender of all submarines as

^{1/} Phillipson, op cit. supra, p. 74.

^{1a/} Phillipson, op cit. supra. pp. 66-70.

well as a number of surface vessels of war, the repatriation without reciprocity of all interned civilian nationals of the Allies, the concentration and immobilization of all aircraft, and the evacuation of several ports. As stated by Hyde, these provisions "reveal an arrangement designed to accomplish far more than merely cessation of hostilities, and serving in case of the observance of its terms, to render it practically impossible for Germany to resume formidable operations against its enemies."^{2/}

Similarly, a treaty of peace is imposed by the victorious belligerent upon the defeated adversary. The element of force and duress in the execution of peace treaties has never been held to affect their validity. Phillipson states:

"In the case of conventions established during peaceful relationships, duress may generally be deemed a ground for repudiation; but in a treaty of peace, force and compulsion cannot be so held. Nearly every treaty of peace confers advantages on one side, and imposes disadvantages on the other. That is the fundamental nature of the transaction. If peace negotiation is not an actual extension, in another plane of conflict, of the military operations of the belligerents, it is at all events a substitute therefor, and cannot possibly be considered as being immune from all threats and pressure. There is not and cannot be any legal principle forbidding a peace negotiator to threaten that he will resume hostilities if his terms are not accepted; for the other party knows full well what will happen if the negotiations fail."^{3/}

Lawrence agrees with this principle and states:

"Most treaties of peace are made by the vanquished state under duress; but there would be an end of all stability in international affairs if it were free to repudiate its engagements on that account whenever it thought fit."^{4/}

Hyde confirms this view in the following words:

"The motives which compel a State as a whole to exercise its agreement-making power in such a way as to accept a treaty, are not deemed to affect the validity of the agreement. Thus the desire to end a war, the continuation of which threatens disaster to an unsuccessful belligerent, may induce it to agree to burdensome terms of peace. The validity of the agreement is not impaired by the reasons which forced acquiescence. Such appears to be accepted doctrine."^{5/}

^{2/} Hyde *op. cit. supra*, sec. 647

^{3/} Phillipson, *op. cit. supra*, p. 162

^{4/} Lawrence, *Principles of International Law*, (1923), p. 303

^{5/} Hyde, *op. cit. supra*, p. 8