EDITORIAL COMMENT

THE AMERICAN PUNITIVE EXPEDITION INTO MEXICO

On March 9, 1916, the territory of the United States was invaded by a force of some 1,500 men, under the command of Francisco Villa, who has disputed for the past year and more the authority of General Carranza, the First Chief of Mexico, whose government was recognized by the United States on October 19, 1915, as the *de facto* government of Mexico. The city of Columbus in New Mexico was the scene of the attack and a number of Americans were killed, including some soldiers, and many buildings were set fire to and burned before the intruders were driven across the international border into Mexico.

The day following the attack President Wilson decided that the circumstances required immediate action to be taken against Villa, and

on the 10th of March the following statement was given out at the White House:

> An adequate force will be sent at once in pursuit of Villa with the single object of capturing him and putting a stop to his forays. This can and will be done in entirely friendly aid of the constitutional authorities of Mexico and with scrupulous respect for the sovereignty of that Republic.

There can be no doubt that steps should immediately have been taken to secure a reparation for the violation of American sovereignty, that the perpetrators of the outrage—for outrage it was—should be punished, and that measures should be taken by Mexico to prevent a recurrence of the incident. Under ordinary circumstances the facts would have been laid before the Mexican Government, with a request that it be disavowed, that reparation be made, and that the perpetrators be apprehended and punished, and it would seem that the sending of American troops across the frontier into Mexico in pursuit of Villa and his band would constitute a violation of Mexican sovereignty, just as Villa's invasion of American soil had constituted a violation of American sovereignty.

But the situation in Mexico, and particularly in the north of Mexico, is extraordinary, not ordinary, and though the United States has recognized General Carranza's government as the *de facto* government of Mexico, the General is not in the saddle in all parts of his distracted country. However, having recognized General Carranza's government, it would seem that the United States is estopped from taking action which would deny in fact what the United States had recognized in theory, and that American troops should not cross the boundary except with the knowledge and permission of the government which the United States had recognized. It would seem that General Carranza should have been called upon as the *de facto* government of Mexico to disavow the outrage and to undo the wrong as best it might be done. Upon his unwillingness or inability to do so the United States would then be in a position to decide for itself whether it should enter Mexico to capture Villa and his band, if in the opinion of the American authorities such action should seem to be requisite. With the presence of Villa's troops in the north of Mexico and with the possibility of a renewed invasion of American territory, the American authorities might, it is believed, properly consider his presence as a nuisance and, taking the law in their own hands, proceed to abate the nuisance either without the coöperation or consent of the *de facto* authorities.

As examples of abating a nuisance in adjoining jurisdiction, the action of Great Britain in the case of the steamboat *Caroline* (2 Moore's Int. Law Dig., 409–414) may be cited, in which a party from Canada, during the insurrection of 1837, under the leadership of one McLeod, entered American jurisdiction and seized and destroyed the *Caroline*, a small steamer engaged in carrying arms and ammunition to the rebels.

The case of Amelia Island (1 Wharton's Int. Law Dig., 2d ed., pp. 222–4), is one in which the United States took possession of Amelia Island, then in possession of Spain, at the mouth of St. Mary's River, "the nuisance being one which required immediate action."

Mexico and the United States have had a long and trying experience with incursions of Indians near the international boundary into one or the other country. The views of the United States and the incidents in which those views were applied are to be found in 1 Wharton's Digest, 2d ed., pp. 229–234, and Moore's Digest, Vol. II, pp. 418–425, and were stated by a very distinguished Secretary of State, Mr. Marcy, in terms applicable to both countries. In regard to the right of the United States to enter Mexico, he said in a note dated February 4, 1856, to Mr. Almonte: "If Mexican Indians whom Mexico is bound to restrain are permitted to cross its border and commit depredations in the United States, they may be chased across the border and then punished." (Wharton's Digest, Vol. I, p. 230.)

In regard to the right of Mexico to enter American territory under like circumstances, Secretary Marcy said in the same note:

> If Indians whom the United States are bound to restrain shall, under the same circumstances, make a hostile incursion into Mexico, this Government will not complain if the Mexican forces who may be sent to repel them shall cross to this side of the line for that purpose, provided that in so doing they abstain from injuring the persons and property of citizens of the United States. (II Moore's Dig., p. 421.)

Admitting that the right exists in international law for a country to abate a nuisance in an adjoining country, and admitting the right, as stated by Secretary Marcy, to enter foreign territory in order to pursue and to punish marauders of that country who have committed depredations within the territory of the invaded state and have sought refuge in their own country, it is believed to be bad policy to exercise this right and to take the law into one's own hands. The proper method is for the countries threatened by the acts of marauders to come to an agreement by which raids of the kind specified shall be prevented and, if it be necessary for one country to enter the territory of another in

pursuit of marauders and there to punish them, that this permission shall be expressly given and the methods of its exercise determined in order that disputes and bitterness of feeling may not arise between the contracting countries. This is what Mexico and the United States have done in a series of agreements beginning in the year 1882, and to be found in Malloy's Treaties, Conventions, etc., 1776–1909, Vol. I, pp. 1144, 1145, 1157, 1158, 1162, 1170, 1171, 1177. These treaties or protocols relate only to Indians, but they consecrate the principle, and a bandit is a bandit, whether he be an Indian or not.

It is to be hoped and it is to be presumed that the United States and Mexico either have or will come to an agreement regarding the pursuit of Villa which, granting the right, will prescribe its method of exercise in such a way as to allay unjust fears that a punitive expedition can have any ulterior motives inconsistent with the sovereignty and dignity of Mexico.

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INSTRUCTIONS TO FRENCH NAVAL OFFICERS

On December 19, 1912, the French Government issued to its naval forces instructions in regard to the operation of international law in case of war. The one hundred and sixty-six articles of these instructions set forth clearly the general rights and duties which the naval officer should consider in taking action. In these instructions were embodied many of the principles stated in the Declaration of London of 1909. As these instructions were drawn up in time of peace it might be supposed that here would be found the body of international law binding, according to the French opinion, upon naval commanders and the law according to which hostilities would be conducted by others.

So far as the same subjects were treated in the manual relating to the laws of maritime war in relations between belligerents adopted by the Institute of International Law at its Oxford meeting in 1913, there were few differences. It seemed then, therefore, that the maritime law of war was becoming fairly clearly recognized. Of course there are matters which have arisen since July, 1914, for which no provision was made as there were at that time no precedents or grounds for action.

It is serviceable, therefore, to estimate as far as may be while rules are still under great strain how far rules prepared dispassionately and in time of peace have withstood the test of war. This is made possible