

## Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

relations, shall, in its correspondence with a foreign nation, assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this view, it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong. It is enough to know, that in the exercise of his constitutional functions, he had decided the question. Having done this, under the responsibilities which belong to him, it is obligatory on the people and government of the Union.”

“If this were not the rule, cases might often arise, in which, on most important questions of foreign jurisdiction, there would be an irreconcilable difference between the executive and judicial departments. By one of these departments, a foreign island or country might be considered as at peace with the United States; whilst the other would consider it in a state of war. No well-regulated government has ever sanctioned a principle so unwise, and so destructive of national character.”<sup>672</sup> Thus, the right to determine the boundaries of the country is a political function,<sup>673</sup> as is also the right to determine what country is sovereign of a particular region,<sup>674</sup> to determine whether a community is entitled under international law to be considered a belligerent or an independent state,<sup>675</sup> to determine whether the other party has duly ratified a treaty,<sup>676</sup> to determine who is the *de jure* or *de facto* ruler of a country,<sup>677</sup> to determine whether a particular person is a duly accredited diplomatic agent to the United States,<sup>678</sup> to determine how long a military occupation shall continue in fulfillment of the terms of a treaty,<sup>679</sup> to determine whether a treaty is in effect or not, although doubtless an extinguished treaty could be constitutionally renewed by tacit consent.<sup>680</sup>

***Recent Statements of the Doctrine.***—The assumption underlying the refusal of courts to intervene in cases involving conduct of foreign relations is well stated in *Chicago & S. Air Lines v. Waterman S.S. Corp.*<sup>681</sup> Here, the Court refused to review orders of the Civil Aeronautics Board granting or denying applications by citizen carriers to engage in overseas and foreign air transportation, which by the terms of the Civil Aeronautics Act were subject to ap-

<sup>672</sup> 38 U.S. at 420.

<sup>673</sup> *Foster v. Neilson*, 27 U.S. (2 Pet.) 253 (1829).

<sup>674</sup> *Williams v. Suffolk Ins. Co.*, 38 U.S. (13 Pet.) 415 (1839).

<sup>675</sup> *United States v. Palmer*, 16 U.S. (3 Wheat.) 610 (1818).

<sup>676</sup> *Doe v. Braden*, 57 U.S. (16 How.) 635, 657 (1853).

<sup>677</sup> *Jones v. United States*, 137 U.S. 202 (1890); *Oetjen v. Central Leather Co.*, 246 U.S. 297 (1918).

<sup>678</sup> *In re Baiz*, 135 U.S. 403 (1890).

<sup>679</sup> *Neely v. Henkel*, 180 U.S. 109 (1901).

<sup>680</sup> *Terlinden v. Ames*, 184 U.S. 270 (1902); *Charlton v. Kelly*, 229 U.S. 447 (1913).

<sup>681</sup> 333 U.S. 103 (1948).