

Sec. 2—Powers, Duties of the President Cl. 2—Treaties and Appointment of Officers

ing been a formal exchange of ratifications.⁴⁴⁸ Of a kindred type, and owing much to the President's capacity as Commander in Chief, was a series of agreements entered into with Mexico between 1882 and 1896 according each country the right to pursue marauding Indians across the common border.⁴⁴⁹ Commenting on such an agreement, the Court remarked, a bit uncertainly: "While no act of Congress authorizes the executive department to permit the introduction of foreign troops, the power to give such permission without legislative assent was probably assumed to exist from the authority of the President as commander in chief of the military and naval forces of the United States. It may be doubted, however, whether such power could be extended to the apprehension of deserters [from foreign vessels] in the absence of positive legislation to that effect."⁴⁵⁰ Justice Gray and three other Justices believed that such action by the President must rest upon express treaty or statute.⁴⁵¹

Notable expansion of presidential power in this field first became manifest in the administration of President McKinley. At the outset of war with Spain, the President proclaimed that the United States would consider itself bound for the duration by the last three principles of the Declaration of Paris, a course which, as Professor Wright observes, "would doubtless go far toward establishing these three principles as international law obligatory upon the United States in future wars."⁴⁵² Hostilities with Spain were brought to an end in August, 1898, by an armistice the conditions of which largely determined the succeeding treaty of peace,⁴⁵³ just as did the Armistice of November 11, 1918, determine in great measure the conditions of the final peace with Germany in 1918. It was also President McKinley who in 1900, relying on his own sole authority as Commander in Chief, contributed a land force of 5,000 men and a naval force to cooperate with similar contingents from other Powers to rescue the legations in Peking from the Boxers; a year later, again without consulting either Congress or the Senate, he accepted for the United States the Boxer Indemnity Protocol between China and the intervening Powers.⁴⁵⁴ Commenting on the Peking protocol, Willoughby quotes with approval the following remark: "This case is interesting, because it shows how the force of circumstances com-

⁴⁴⁸ *Id.* at 49–50.

⁴⁴⁹ *Id.* at 81–82.

⁴⁵⁰ *Tucker v. Alexandroff*, 183 U.S. 424, 435 (1902).

⁴⁵¹ *Id.* at 467. The first of these conventions, signed July 29, 1882, had asserted its constitutionality in very positive terms. *Q. Wright, supra* at 239 (quoting *Watts v. United States*, 1 Wash. Terr. 288, 294 (1870)).

⁴⁵² *Id.* at 245.

⁴⁵³ *S. Crandall, supra* at 103–04.

⁴⁵⁴ *Id.* at 104.