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Argentine Contributions to the Doctrine of Nonintervention

Nelly Eve Chiesa

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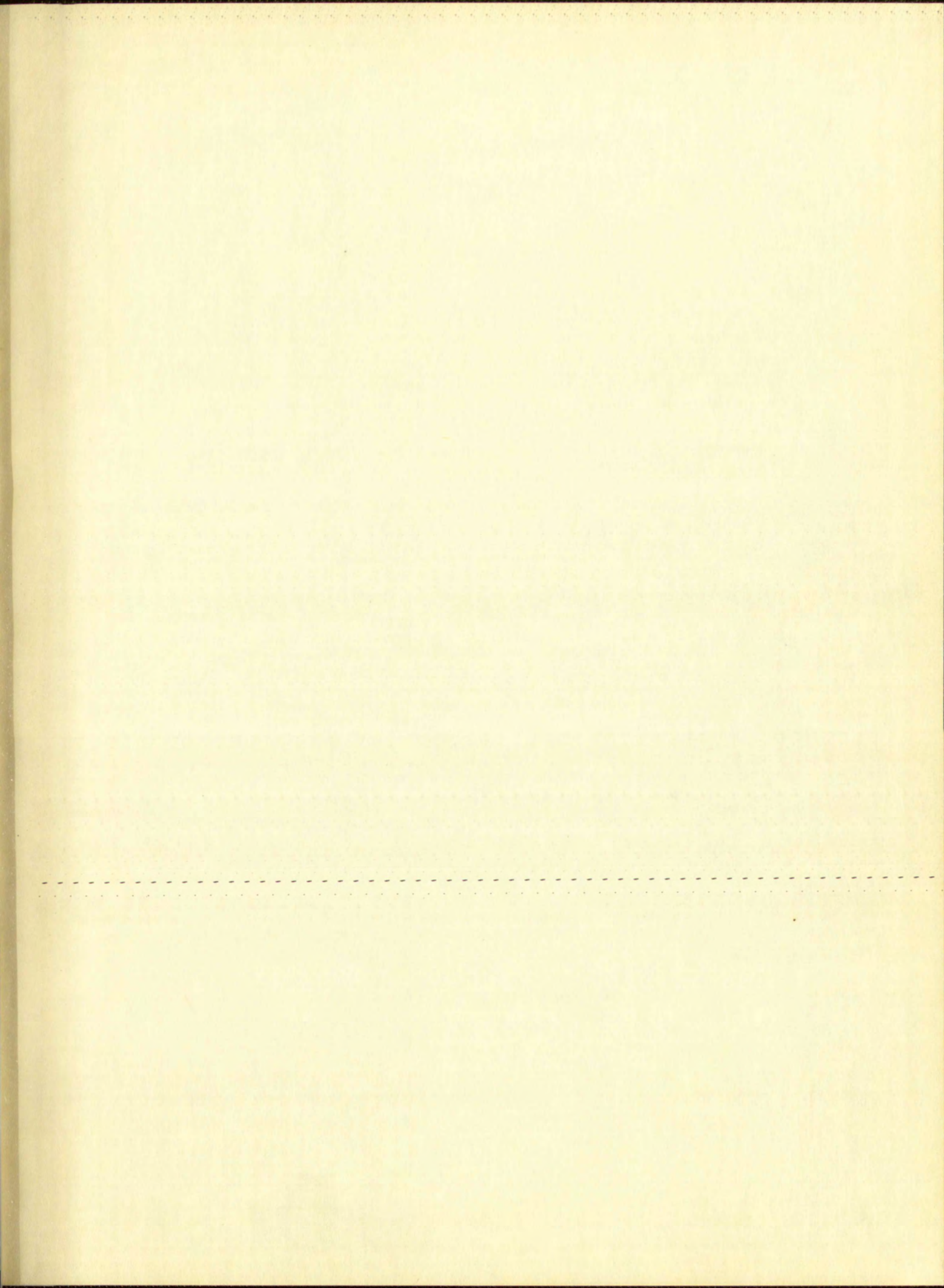


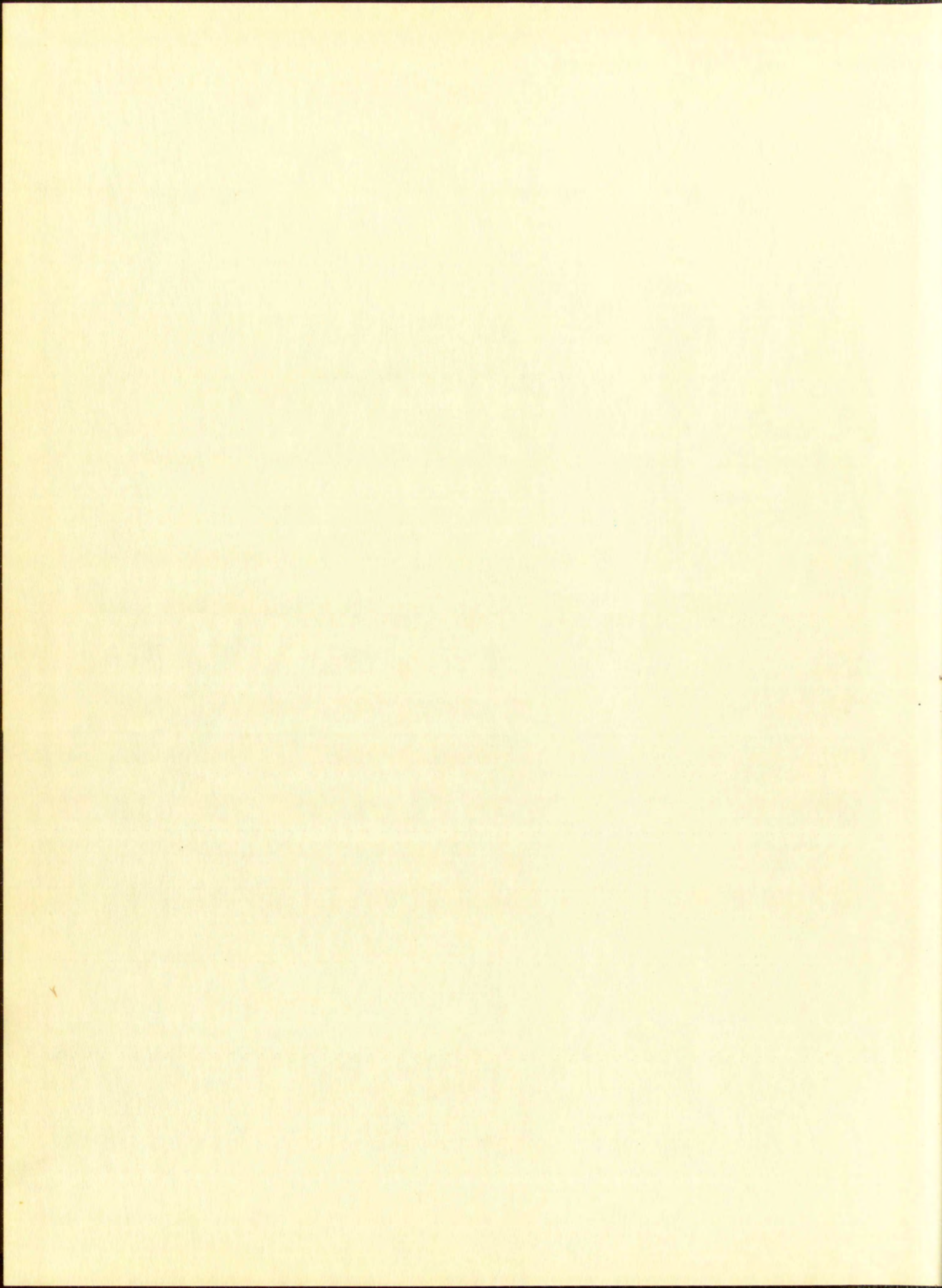
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ARGENTINE CONTRIBUTIONS
TO THE
DOCTRINE OF NONINTERVENTION

A Thesis
Presented to
the Faculty of the Department of Government
University of New Mexico

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
Nelly Eve Chiesa
May 1959



UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

A. T. T. T.

Presented to

the Faculty of the Department of Government

University of New Mexico

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

by

John W. Johnson

May 1953

This thesis, directed and approved by the candidate's committee, has been accepted by the Graduate Committee of the University of New Mexico in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

E. Castetter

DEAN

DATE

May 20, 1959

Thesis committee

Frederick J. Garrison

CHAIRMAN

Ernest L. Garrison

Frederick C. Garrison

This thesis, directed and approved by the candidate's com-
mittee, has been accepted by the Graduate Committee of the
University of New Mexico in partial fulfillment of the require-
ments for the degree of

MASTER OF ARTS

Charles L. ...

May 10, 1950

Thesis Committee

James H. ...
...
...

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TABLE OF CONTENTS

CHAPTER	PAGE
INTRODUCTION	1
I ARGENTINE FOREIGN POLICY AND INTERNATIONAL LAW	7
II CALVO AND DRAGO DOCTRINES	63
III NONINTERVENTION AND THE INTER-AMERICAN SYSTEM	119
CONCLUSIONS	178
BIBLIOGRAPHY	181

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TABLE OF CONTENTS

CHAPTER

PAGE

INTRODUCTION

i

ARGENTINE FOREIGN POLICY AND THE 1954-55

i

CAVALO AND BRAGA DOBRYNSKI

ii

NONINTERVENTION AND THE INTER-AMERICAN SYSTEM

iii

CONCLUSIONS

iv

BIBLIOGRAPHY

v

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INTRODUCTION

This thesis will analyze and discuss the contributions of Argentine jurists to the ultimate adoption of the doctrine of non-intervention as a governing principle of Inter-American relations.

The subject is treated in a three-fold way. First, there is a review of the diplomatic history of the country. Second, there is an analysis of the doctrines of Carlos Calvo and Luis María Drago. Third, there is a consideration of the evolution of the doctrine of non-intervention until its acceptance as a principle of public international law.

Chapter I deals briefly with the diplomatic history of the Argentine nation. It is part of its purpose to disclose some of the contributions this country has made to the development of International Law. It aims at presenting the deep-rooted traditions that have sustained the Argentine foreign policy, particularly when it has been concerned with intervention.

It has always been a fact that Argentine political opposition has ever supported the government in its handling of foreign affairs regardless of how much it has disagreed with the conduct of domestic affairs. Consequently, though politically immature in domestic terms, the external conduct of Argentina has shown the world that it will never be divorced of the moral element. In the realm of international law, a law deprived of the coercive power of national law, morality

This thesis will analyze and discuss the nature of the Argentine Junta as the ultimate authority of the Republic of Argentina, intervening as a governing authority in international relations. The subject is treated in a historical way, through a review of the diplomatic history of the Republic, an analysis of the doctrine of Carlos María de Céspedes, and there is a consideration of the evolution of the Argentine intervention with its acceptance as a principle of national law.

Chapter I deals briefly with the origin of the Argentine nation. It is part of the history of the Republic, the contribution this country has made to the development of the national law. It also presents the historical evolution of the Argentine foreign policy, and the various events that have been concerned with intervention. It has always been a fact that Argentine foreign policy has ever supported the government in the defense of foreign affairs, regardless of how much it has changed with the nature of domestic affairs. Consequently, foreign policy is always a reflection of the external conduct of Argentina, and it is never divorced of the moral element. In the realm of international law, a law derived of the common sense of national law, morality

is an elementary assumption if that law is ever going to operate.¹

There is a strong leaning toward pacifism, a trend equally shared by the government and people, which other nations often fail to understand. The country has also strived constantly for the right to its "own ways," albeit it has willingly agreed, in many instances, to achieve solidarity with its sister republics. The tendencies toward what may be called universalism and its opposition to regionalisms sometimes have been censured. Perhaps the criticisms are deserved since the country's general background has indeed been "world-minded." This particular "world-minded" attitude often has given to the nation the name of "anti-Americana."

Having offered in Chapter I the diplomatic and international tradition of the country, Chapter II gives a preliminary introduction to the works of Calvo and Drago, the content and origin of their pronouncements, their legal foundation, and their differences.

Chapter III deals with the evolution and final adoption of the doctrine of nonintervention in the Pan-American system and the part played in that process by the Argentine doctrines. The Pan-American movement itself is reviewed, but attention will be concentrated in the evolution of the anti-interventionist doctrine and its significant role as the cornerstone of the system.

¹"There has been a great deal of ink spilled on paper to prove or disprove that there is a legal obligation to obey international law. In orthodox theory the individual is not obligated because international law ignores him and addresses itself only to states." Phillip Jessup, Transnational Law (New Haven: Yale University Press, 1956), p. 35.

The Conclusion which follows has been drawn on the basis of the materials that have been used and shows the overall importance that the Calvo and Drago Doctrines exercised in the juridical and political development of the hemispheric community.

A summary of the legal literature and the legal philosophy of Argentine international jurists is included in this Introduction so that the first chapter can be devoted solely to the contributions contained in the political history of Argentina.

As far as the end of the eighteenth century, traces are found of some activity in the field of international law in the works of Professor Morelli of the old University of Córdoba. They were first published in Latin in Venice, Italy, in 1791. The second precedent was the publication in book form of the lectures delivered in 1854 by Professor Ramón Herrera, member of the Supreme Court, at the College of Tacna. Calvo's work came next; it was published in 1868 in two volumes and was written in Spanish. Later editions were published in French and all of them were printed in Paris. Amancio Alcorta published his general treatise in 1886, following the issue in 1878 of a brief elementary book on international law.²

²"The volume published in 1886 which deals with social groups and their laws, the character and elements of International Law, the basis and manifestations of it, social sciences and their relationship to International Law, the historical development of international relations and law, and includes an important chapter on the literature of International Law, was translated into French with an introduction by Ernest Lehr in 1887." See Edwin Brochard, Guide to the Law and Legal Literature of the ABC Countries (Washington: Library of Congress, U.S. Government Printing Office, 1917), p. 187. Extensive readings on this material could be found in other sections of this guide and also in the latest edition of it compiled by Helen L. Clagett, A Guide to the Law and Legal Literature of Argentina, 1917-1946 (Washington: Library of Congress, U.S. Government Printing Office, 1948).

The following table shows the results of the survey.

Materials that have been used and are available for reference.

Calvo and other authors have written on the subject of international law.

Development of the international law system.

A survey of the international law system.

Argentine international law is included in the following table.

The first chapter can be regarded solely as the first chapter in the history of international law.

in the political history of Argentina.

As far as the end of the nineteenth century, the history of international law is concerned.

of some activity in the field of international law in the nineteenth century.

Professor Novelli of the old University of Genoa, Italy, published in 1871.

published in Latin in Venice, Italy, in 1871. The second volume was published in 1872.

the publication in book form of the first volume appeared in 1871.

Professor Ramon Novelli, one of the best known authors of the nineteenth century, published in 1871.

of law. Calvo's work was first published in 1871 in the form of a book.

volumes and was written in French. Later on, it was translated into Spanish and Italian.

French and all of them were written in French. The first volume was published in 1871.

his general treatise in 1885, following the same line as the first volume.

elementary book on international law.

The volume published in 1885 was written with great care and

their law, the character and scope of the law, the scope and

manifestations of it, social conditions and the influence of the

national law, the historical development of international law, and

and finally an important chapter on the history of international law.

was translated into French with an introduction by the author in 1871.

See Edwin Booth, *Life in the Law and Legal Education in the United States* (Washington: Library of Congress, 1917), p. 127. For a more detailed account of the history of international law, see J. O. O'Connell, *A Guide to the Law and Legal Education in the United States* (Washington: Library of Congress, 1917), p. 127.

Works of minor importance followed these first large scope efforts until the turn of the twentieth century.

Today's leading figures in the field are Daniel Antokoletz and Isidoro Ruiz Moreno, having published general treatises on the subject.³ Their vast production comprises not only legal matters but numerous articles and books on international politics.

Private international law, the so-called "conflicts of law" in the Anglo-Saxon legal terminology, shows also an abundant production of treatises and general works. Instruction in private international law began in 1863 at the University of Buenos Aires under Professor Pinedo.⁴ Alcorta also published a leading work in three volumes in this particular branch of the law. They appeared between the years of 1887 and 1892. Handbooks of importance also began to be printed during those years and particularly worth mentioning are the well-known works of Victor V. Molina and Vargas Videla. However, the most outstanding work is that of Estanislao Zeballos, published in 1911 under the title of Positive International Justice. It is a philosophical and legal discussion of the rules of human society in their interstate relations from antiquity to his time.⁵ Calandrelli, former professor at the University of Buenos

³Daniel Antokoletz, Tratado de Derecho Internacional Público, (Buenos Aires: J. Roldán y Cía., 1924-1925). 2a. Edición Aumentada y Puesta al Día, (Buenos Aires: J. Roldán y Cía., 1928), 3 Volúmenes. 3a. Edición (Buenos Aires: J. Roldán y Cía., 1938), 3 Volúmenes. 4a. Edición (Buenos Aires: J. Roldán y Cía., 1944-45), 3 Volúmenes. Isidoro Ruiz Moreno, Apuntes de Derecho Internacional (Buenos Aires: El Ateneo, 1919) and Lecciones de Derecho Internacional Público (Buenos Aires: El Ateneo, 1934-35), 3 Volúmenes. 2a. Edición (Buenos Aires: Imprenta de la Universidad, 1940-41), 3 Volúmenes.

⁴Brochard, op. cit., p. 188.

⁵Ibid.

Aires and La Plata, published his work in 1915. In it he deals with problems of codification, discusses certain special topics such as property and ability to acquire it, international maritime law, capacity to marry in a foreign country, intervention of consuls in the administration of estates, and so on. He refers, too, to the problem of definitions and particularly he discusses domicile and nationality.⁶ Also among the distinguished publicists are Sylva Monsegur with El Derecho Internacional Privado en la Republica Argentina, as well as Raúl Orgaz's Condición Jurídica de las Sociedades Anónimas, printed in Córdoba in 1913. In this work Orgaz deals with the legal status of corporations. In recent times more systematic treatises have appeared and they all deal with the subject of the conflict of laws as an independent branch of international law.

Romero del Prado is "the acknowledged authority in these days and probably the most prolific for his contributions to the literature on private international law,"⁷ and his writings are the most comprehensive up to the present time. Minor works include the names of Pérez Ruiz and Vitale Nocera, Margarita Arguía, and César Abramovich.

With regard to their philosophical orientations, Argentine jurists of the nineteenth century can be lined with the positivists. This is the case of Calvo, "who covers a wealth of material and both his method and his confessed philosophy are of a positivist character." Among the eclectics stand Amancio Alcorta and his followers of the twentieth century

⁶A. Calandrelli, Cuestiones de Derecho Internacional Privado. Volúmen I (Buenos Aires: La Buenos Aires, 1911); Volúmen II (Madrid: V. Sueares, 1913); Volúmen III (Buenos Aires: V. Abeledo, 1915).

⁷Brochard, Ibid.

like Bidau and Podestá Costa, the latter probably being the most widely read author in present days.⁸ Alberdi, with whose writings we will become acquainted in Chapter I, as a rule is not considered within a certain school: first, because his writings differ completely from any of the others of his own time; second, because they lack systematization and lie scattered among his prolific contributions. Among today's positivists are Isodoro Ruiz Moreno and Daniel Antokoletz. (Albeit the latter, though normally included in this category, is not a declared positivist.)

⁸Luis A. Podestá Costa, Derecho Internacional Público. 2 Volúmenes (Buenos Aires: Tipografica Editora Argentina, 1955).

CHAPTER I

ARGENTINE FOREIGN POLICY AND INTERNATIONAL LAW

International law, conceived as the system of legal principles ruling the external affairs of nations, has been defined in hundreds of different ways. This disagreement characterizes not only its definition but also the question of its very existence as an independent branch of law. Its foundations have been so polemic as to create several schools of legal philosophy of international law, their supporters calling themselves naturalists, positivists, eclectics, and so on.¹ As the sources of the Law of Nations are examined, its essentially dynamic

¹We are aware of the fact that the treatment on none of these and related problems directly concerns the main object of this work; however, its mention is unavoidable for the purposes of introducing the subject. Therefore, for definitions, schools of legal philosophy, sources, elements, and so on, consult Antonio Sánchez de Bustamante y Sirvén, Derecho Internacional Público, t. 1 (Habana: Carasa y Cía., 1933); Andres Bello, Principios de Derecho Internacional (París: Librería de Garnier Hnos., 1848); J. B. Brierly, The Law of Nations (Oxford: Clarendon Press, 1949); Alejandro Alvarez, Le Droit International Américain. Son Fondement. Sa Nature (París: Pedone Ed., 1910); Heinrich Trieppe, Droit International et Droit Interne (París: Pedone, 1920); Green Hackworth, Digest of International Law. Vol. 1 (Washington, D.C.: U.S. Government Printing Office, 1940); John Bassett Moore, A Digest of International Law, Vol. 1 (Washington, D.C.: U.S. Government Printing Office, 1906); Herbert Briggs, The Law of Nations: Cases, Documents and Notes (New York: F. S. Crofts & Co., 1938); Charles G. Fenwick, International Law (New York: The Appleton Century Co., 1934); Edwin De Witt Dickinson, The Law of Nations: A Selection of Cases and Other Readings Chiefly as It Is Applied by British and American Courts (New York: McGraw Hill Inc., 1929); Hildebrando Accioly, Tratado de Derecho Internacional Público. t. 1 (Rio de Janeiro: Imprensa Nacional, 1945). For the classics, see Francisco de Vitoria, De Indi et De Jure Belli. Relectioni (Washington, D.C.: Carnegie Endowment for International Peace, 1917); Hugo Grotius, De Jure Belli ac Pacis Libri Tres, text of 1636 (Oxford: Carnegie Endowment for International Peace, Clarendon Press, 1925); M. de Vattel, Le Droit des Gens ou Principes de la Loi Naturelle, text of 1758, vol. LLL (Washington: Carnegie Endowment for International Peace, 1916); Christian Wolff, Jus Gentium Methodo Scientifica Pertractum, text of 1764 (Oxford: Clarendon Press, 1934); Samuel Puffendorf, De Officio Hominis et Civis Juxta Legem Naturalem, Libri Duo (New York: Carnegie Endowment for International Peace, 1927).

INTERNATIONAL LAW

International law, a body of legal rules governing the conduct of states and other international actors, is a subject of increasing importance in the modern world. It is a subject that has long been the province of scholars and practitioners alike, and it is one that has grown in scope and complexity over the years. The study of international law is essential for understanding the relations between states and for the development of a more just and peaceful world.

The study of international law is a complex task, and it is one that requires a deep understanding of the principles and practices of the law. It is a subject that has long been the province of scholars and practitioners alike, and it is one that has grown in scope and complexity over the years. The study of international law is essential for understanding the relations between states and for the development of a more just and peaceful world.

1. General Principles

2. Subjects of International Law

3. Sources of International Law

4. International Law and the State

5. International Law and the Individual

6. International Law and the International Organization

7. International Law and the International Court of Justice

8. International Law and the International Criminal Court

9. International Law and the International Human Rights System

10. International Law and the International Environmental Law System

nature becomes apparent. In other words, we are before a "law" devoid of sanction² to whose present growth several elements have contributed: the law of nature, customs, international agreements, works of jurists and jurisprudence in general.³ International law is basically a "living" law, and this is by far its most important characteristic. It has to change because it has to serve new needs, and in this constant process of adaptation its body is being constantly enlarged by new rules confirmed as valid by practice. It nourishes itself in the precedents offered by politics and diplomacy because law, politics, and diplomacy are but three manifestations of one reality: international life. The law profits from the achievements of politics obtained through diplomacy by incorporating them into its body as new rules confirmed by use and general consent.

The political history of a country is always a succession of events that shows us its permanent struggle to keep its internal integrity and sovereign rights, preserving them from external menaces. Consequently, its external activity "has to be the one its internal needs; its trade, its industries, its development, its population require."⁴ In this search for self-preservation, nations may find the

2. . . "The delict is undesirable behavior, especially forcible interference in the sphere of interests of another subject, a coercive act. The coercive act is therefore either a delict, a condition of the sanction--and hence forbidden--or a sanction, the consequence of a delict--and hence permitted. This alternative is an essential characteristic of the coercive order called Law," Hans Kelsen, Law and Peace in International Relations (Cambridge: The Harvard University Press, 1942), p. 30.

³See Hackworth, op. cit., V. L, pp. 1-44.

⁴Piñeyro, op. cit., p. 213.

formulae capable of achieving all this. Therefore they adopt particular attitudes in their relations with each other. The American continent for several reasons has had a prominent share in the field of international-juridical contributions. This realization has led to the development of a school of thought that sustains the existence in the American legal environment of a "new and different international law for the exclusive use of those nations."⁵ Without going as far as to recognize the existence in a "regional sense"⁶ of such a law, we have to admit the fact that there is an important compilation of particular interpretations of universally recognized principles of international law that serves the particular needs of certain geographical groups. However, the influence of certain social, political and geographical environments in the moulding of new norms reduces itself "to an adaptation with a new normative expression of an old principle of the immutable law."⁷ In the particular case of the American continent, several integrating factors have united themselves to create a legal current of thought that from very humble beginnings has come to be one of the most advanced regional juridical systems of the world. Perhaps geography could be enough of an element to explain the evolution. However, without falling into tempting

⁵F. Sánchez y Sánchez, Curso de Derecho Internacional Público Americano. Sistemática i Exegesis (Ciudad Trujillo: Editora Montalvo, 1943), p. 10.

⁶Ibid. "No existe ni podrá existir en sentido privativo un Derecho Internacional Americano, como no ha existido ni podrá existir un Derecho Internacional Europeo y así lo admiten Alejandro Alvarez y Federico de Martens."

⁷Sánchez y Sánchez, op. cit., p. 11. ". . . The Law as the expression of justice is one and eternal in the same way that the expression of one culture is but a new clothing for archaic principles thus acquiring a novel historical phisonomy."

"determinisms," it can be said that it could satisfactorily "explain though not justify certain doctrines like the Washington, Monroe, Calvo, Drago, Tobar, Estrada, Irigoyen, and others, that have developed around certain eternal norms of law to repel any political extracontinental offense injurious to the preservation of the American states."⁸ The right of self-preservation as such is one among the many natural rights of which states are creditors and which entitles them to provide the necessary measures for their defense. This is a general principle of the Law of Nations. However, this same rule applied in a certain area and conditioned to particular circumstances has generated certain doctrines, some of which will have no reason for existence if applied in other societies. Thus "a general principle of law generates a particular norm, which is not a new law, but a new application of it."⁹

Argentina, in its diplomatic history, has offered a constant development of ideas with reference to international relations which of course confirms the influence of general principles rather than the influence of the nation's foreign policy. However, since the international community does not have a unified legislative body but different legislative agencies whose works have been dependent upon the approval of the individual states, the practices of the latter have contributed to this slow process of formulating new rules. "Foreign policy is an important key to the rational explanation of international behavior. The entire fabric of international society is woven from the single

⁸Op. cit., p. 21.

⁹Sánchez y Sánchez, op. cit., p. 22.

strands of these and the myriad of other varied and often highly complex political, social, economic, and cultural contacts."¹⁰ In the application of the law to its international relations, a state is bound to do so according to its particular interpretation and under the influence of all these factors. Therefore, its foreign policy is the means a state uses to manifest its will in its relations with others. Law and politics unite here to give birth to the living foreign policy which history will record for the future. According to Fauchille, "foreign policy is the activity of the state that, watching for its particular interests and for the common and general interests of the international community tries to conciliate the law with its independence, sovereignty and autonomy, and with the needs of its cosmopolitan relations."¹¹ In other words, it tries to achieve a harmonious unity between legal rules that are fundamental rights of the state and those others that guide and make international coexistence possible. Law gives the principle, politics gives the way, and diplomacy tries to put them into effect as the "art" directed to carry with success the international interest of the nations. That is why the foreign policy of a country reflects its observance of ethical principles. As Von Holtzendorff points out, governments should always keep in mind in their foreign dealings the fact that "what is just is in the end what is most useful for the state."¹²

¹⁰Carlton Rodes and Tolton Anderson, Introduction to Political Science (New York: McGraw Hill Co., 1957), p. 500.

¹¹Paul Fauchille, Traite de Droit International Public (Paris: Pedone, 1922), t. 1er., Premier Partie, p. 65.

¹²Franz Von Holtzendorff, cited by Fauchille, Ibid.

Ever since it became an independent nation, Argentina has had an eventful international life. As is well known, "the trade was confined to a single circuitous route via Lima."¹³ The kingdoms of the Spanish crown had little or no share at all in their own affairs.¹⁴ However, a shift in European politics and diplomacy launched them into a dubious independent life that generated an intensive international intercourse looking for a definition of the newly acquired status. This fact proved to be very important, particularly in the case of the provinces of La Plata region and also remarkable, considering that they had never had any politics or a government of their own. Nevertheless, though they did not have their own foreign policy, "the rivalry between Spain and Portugal were reflected in this region: the fights between the Portuguese Colony of Brazil and the former Spanish colonies of La Plata River were the prolongation, no doubt influenced by the environment of the rivalry of their respective European metropolis."¹⁵

The international activities of the period of independence that goes from 1810 to 1825 had three main purposes:

- (1) to obtain recognition from the other nations;
- (2) to secure the protection of Great Britain in favor of the new government as a means to stop Portuguese penetration in the territory of the Vice-Royalty in its two expressions, actual domination and the aspirations of Princess Carlota;

¹³G. Pendle, Argentina (Royal Institute of International Affairs at the Broad Water Press, 1955), p. 12.

¹⁴"... The Spanish territories in America technically were not colonies or dependencies of Spain: they were kingdoms belonging to the Crown of Castile and the Spanish King appointed Vice-roys to administer them on his behalf." Ibid.

¹⁵Piñeyro, op. cit., p. 1.

(3) to reach an agreement with Chile to gain the solidarity of the other American nations for the revolutionary cause.

To start with, missions were sent to Europe and the United States to get the approval for their intentions of installing their own government prior to the summoning of a general congress.¹⁶ Moreno played an important part in the fulfillment of these purposes as the actual designer of the pattern of the revolutionary diplomacy. As Levene says, "he (Moreno) was as much in favor of increasing bounds of solidarity among the different sections of the Indian Empire as he was decidedly against any utopian plan for an American confederation."¹⁷ He demonstrated with success the unfeasibility of such a federative union of the Hispanic-American states, ideas that had sprung from Miranda's propaganda. However, anticipating later developments his aspiration was that the Provinces should organize themselves within the limits they had at that time and promulgate a Constitution in accordance with their needs but with the promise of helping each other. He also hoped that by postponing to a later time a federative system, at the moment impossible and dangerous, they could then form a close alliance to

¹⁶In missions were sent: Juan José Paso to Montevideo in 1810; Manuel de Sarratea to Spain in 1813 for a conciliation-deal with the Crown. In 1815 Bernardino Rivadavia was sent to Spain while Manuel Belgrano went to London. Most of them had orders "to negotiate a monarchy, but the establishment of such a government despite the monarchical tendencies of the majority of the men in the ruling class was, in the diplomatic scheme, a means to reach the main goal: independence." Piñeyro, op. cit., p. 8.

¹⁷Ricardo Levene, El Pensamiento Vivo de Mariano Moreno (Buenos Aires: Editorial Losada, 1942), p. 39.

support the fraternity that has to exist for ever among them.¹⁸ "The initiative for a continental confederation originated in Lima with the writings of Fiscal Cañete, member of the Real Audiencia, who sponsored the institution of a sovereign regency composed of the four vice-royalties whose destinies should be ruled in the name of Ferdinand VII."¹⁹ Moreno intercepted the official message sent to Viceroy Cisneros and after disclosing the hidden purposes of the scheme, urged the Junta of Buenos Aires to request of the Cabildo of Santiago de Chile the formation of a government. Again in this opportunity he sustained the position that once the King was dead there was no point in maintaining the unity; he reiterated this when the Chilean patriots insisted on limiting the Confederation idea to South America.²⁰ Also in those early years the instructions of the Argentine government to Alvarez Jonte, sent as representative to Chile, reveal with exactness the traditional policy of bilateral alliances, later on carried out by the republic. That famous mission was crowned with success when the so-called "Primera Unión del Sud" was signed on March 21, 1811.²¹ This same trend is shown in the instructions given to San Martín when he was about to begin his celebrated Chilean campaign. The old idea of a confederate continent was to

¹⁸ See Ibid., and also the original texts of Moreno's editorials in La Gaceta de Buenos Aires reproduced in Martín García Merou, Alberdi: Ensayo Crítico (Buenos Aires: La Cultura Argentina, 1916), p. 90.

¹⁹ Carlos A. Silva, La Política Exterior de la Nación Argentina (Buenos Aires: Congreso Nacional, Imprenta de la Cámara de Diputados, 1946), p. 6.

²⁰ For complete details of Moreno's ideas about the concept of Federation, see Silva, op. cit., p. 11 and ff.

²¹ Silva, op. cit., p. 13.

be revived by Monteagudo who exposed such a plan to Bolívar after the victory of Ayacucho. His ideas found expression in his famous "Essay on a Continental Confederation."²²

The problem of recognition was to cover a long period, and since this as well as the consolidation of independence ranked among the irrevocable purposes of the Revolution, its men showed great firmness in obtaining both. That was why the next diplomatic move was directed to procure the protection of the United Kingdom. The latter was seeking the independence of the former Spanish colonies to secure an enlargement of its sphere of influence in the form of new markets and new enterprises by opposing the intervention of the Holy Alliance in favor of Spain. This consequently gained for her the confidence of the revolutionaries. Lord Castlereagh directed this move which he intended to conclude at the Congress of Verona. He was unable to carry out this plan because of his death. Though Lord Wellington, his successor, undertook the task of presenting the British standpoint in the problem of recognition it was, however, with Canning that British diplomacy with the provinces reached its peak. The rivalry between the United States and Great Britain for political and economic interests became keener, "entering a more energetic era with the rejection of Canning's proposal of a joint declaration against European interference in the former Spanish Colonies,"²³

²²The complete text of this essay is reproduced in Silva, op. cit., pp. 16-21.

²³"Se ha estimado con fundamento que la proposición de Canning constituye un antecedente de la doctrina de Monroe." Piñeyro, op. cit., p. 29.

the promulgation of the Monroe Doctrine and the arrival at South America of consuls and diplomats from both countries."²⁴ In general terms the position of the United States with respect to the provinces of La Plata was one of unofficial "de facto" recognition. However, the recognition issue had in Henry Clay and Minister Rush two of its most ardent sponsors, who also sought for a policy independent of the moves of Britain.²⁵ On its side the United States was trying to improve its strained relations with Spain because of the possible purchase of Florida. Its pacific acquisition stood in the way of a closer policy toward South America. Relations with Great Britain followed a better course, and the influence of this fact in the developing life of the Provinces was noticeable throughout the period of independence²⁶ and the period

²⁴Fred Rippey, Rivalry of the United States and Great Britain over Latin America. 1808-1830 (Baltimore: The John Hopkins Press, 1929), p. 107. See also James Gantenbeim, The Evolution of Our Latin American Policy: A Documentary Record (New York: The Columbia University Press, 1950), p. 7. A letter from Robert Smith, United States Secretary of State to Joel Poinsett, appointed special agent of that country to South America, dated June 28, 1810; also see William R. Manning, Diplomatic Correspondence of the United States Concerning the Independence of the Latin-American Nations (Washington, D.C.: Government Printing Office, 1932), I, p. 6. Samuel Flagg Bemis, The Latin American Policy of the United States (New York: Harcourt, Brace and Co., 1943). Also John Latané, The Diplomatic Relations of the United States and Spanish America (Baltimore: The John Hopkins Press, 1900).

²⁵See Latané, op. cit., p. 57 and ff.

²⁶"In fact both governments profited from the consolidation of their relations: the Buenos Aires government seeking British support of incalculable value for the cause of independence in the international scene; the British government in what it was convenient to its hegemonic pretensions derived from its world-wide commercial and maritime interests." Piñeyro, op. cit., p. 140. For a complete account of how these motives worked in shaping British foreign policy, see C. K. Webster, Britain and the Independence of Latin America. 1812-1830 (London: Oxford University Press, 1938), p. 83.

immediately following it. Actually the period of independence extended from 1816 to 1825 and its initiation was marked by the Congress of Tucumán of July 9, 1816. The declaration of independence solemnly proclaimed:

"... in the face of the world that it is the unanimous and undoubted will of these provinces to break the forcible bounds which linked them to the sovereign of Spain; to recover the rights from which they were deprived and to invest themselves with the lofty character of a nation free and independent of King Ferdinand VII, of his successors, of the mother country and of any other foreign domination: ... Let this Act be communicated to all whom it may concern in order that it may be publicly known and that due respect be paid to the Nations of the world. . . ."²⁷

With all monarchical schemes being called off, the nation pledged the republican form of government and for a whole-hearted recognition of its rights as an independent nation. Once this was proclaimed and made known, a new plan occupied the minds of its statesmen and jurists: the preservation of its sovereignty. There are many proofs that the government was not fooled by the British attitude of compliance because it was aware of the hidden purposes of domination of the great powers. Piñeyro cites in his work a letter that Canning addressed to Minister Woodvane Paris on August 23, 1834:

"The fact has been accomplished: Spanish America is free and if we do not handle poorly our interests there, it also is English."²⁸

Next in importance to the preservation of its sovereignty was to obtain the acceptance as the new nation's boundaries corresponding to the Spanish administrative division of the colony.

²⁷For an English translation of the Declaration of Independence, see F. A. Kirkpatrick, A History of the Argentine Republic (Cambridge, G. B.: The University Press, 1931), p. 241.

²⁸Piñeyro, op. cit., p. 42.

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During this period of independence the country suffered the loss of the Banda Oriental. This was the unexpected diplomatic loss that crowned a victorious military campaign. As a result, the government of Buenos Aires renounced "all rights over the territory of the province of Montevideo."²⁹ The treaty was signed in 1828 with the mediation of Great Britain. Brazil lost the war in the field but won a diplomatic victory. Its most important consequence for La Plata Provinces was their forfeit of sovereignty over both banks of the River Plata, a circumstance that would carry great weight in the future relations among the La Plata nations. Early in 1824 Rivadavia was the first to declare in an official speech the resolution of the country to settle boundaries disputes. Soon after this, the chief of the Buenos Aires executive power, at the time in charge of the foreign affairs of the Provinces, said in his address to the fourth legislature that the "Argentine minister appointed in Washington has been instructed to indicate to the government of the Republic the need of adding to the two great Monroe principles of abolition of "privateering" and "non-European colonization" in America, another one expressing that none of the new governments of the continent would violently change their boundaries.

The doctrine of equality of states seems to have occupied the mind of Governor Las Heras. It is significant that this doctrine, based on their rights as persons of international law, appeared in a passage of Las Heras' message to the General Constituent Congress on the occasion of Bolívar's invitation to the Congress of Panama of 1826. In

²⁹Silva, *op. cit.*, p. 100.

During the period of the American Revolution, the rights of the people of the United States were not fully recognized. The Declaration of Independence, which was adopted on July 4, 1776, declared that all men are created equal and that they are endowed with certain unalienable rights, among which are life, liberty, and the pursuit of happiness. This document was a landmark in the history of the United States, as it established the principle of self-government and the right of the people to alter or to abolish their government.

The rights of the people were not fully recognized until the adoption of the Constitution in 1787. The Constitution established a federal government with three branches: the executive, the legislative, and the judicial. The executive branch was headed by the President, who was elected by the people. The legislative branch was headed by the Congress, which consisted of the House of Representatives and the Senate. The judicial branch was headed by the Supreme Court, which was appointed by the President and confirmed by the Senate.

The Constitution also established the principle of federalism, which means that the powers of the federal government and the powers of the state governments are separated. The federal government has the power to regulate interstate commerce, to coin money, and to declare war. The state governments have the power to regulate intrastate commerce, to issue licenses, and to maintain law and order.

The rights of the people were further protected by the Bill of Rights, which was adopted in 1791. The Bill of Rights consists of the first ten amendments to the Constitution. It guarantees the right of free speech, the right of a fair trial, and the right of privacy, among other things. The Bill of Rights is a cornerstone of American democracy, as it ensures that the government does not abuse the power it has been given.

The rights of the people were not fully recognized until the Civil War in 1861-1865. The Civil War was fought between the Northern states, which were opposed to slavery, and the Southern states, which were in favor of slavery. The war ended with the victory of the Northern states, and it resulted in the abolition of slavery. The Civil War was a turning point in the history of the United States, as it established the principle of equality for all people, regardless of their race.

The rights of the people were further protected by the Reconstruction Amendments, which were adopted in the 1860s and 1870s. The Reconstruction Amendments consist of the 13th, 14th, and 15th Amendments. The 13th Amendment abolished slavery, the 14th Amendment guaranteed the rights of citizenship, and the 15th Amendment guaranteed the right of the people to vote, regardless of their race.

The rights of the people were not fully recognized until the Civil Rights Movement in the 1950s and 1960s. The Civil Rights Movement was a period of social and political change in the United States, during which the rights of African Americans were fought for. The movement was led by Martin Luther King Jr., who was a prominent leader of the movement. The Civil Rights Movement resulted in the passage of the Civil Rights Act of 1964, which prohibited discrimination on the basis of race, and the Voting Rights Act of 1965, which guaranteed the right of the people to vote, regardless of their race.

The rights of the people are still being fought for today. There are many issues that are still being debated, such as the right of privacy, the right of free speech, and the right of a fair trial. The rights of the people are a cornerstone of American democracy, and they are something that we should all be proud of.

the document where he requested of the Assembly authorization to conclude a defensive alliance to safeguard the common independence against the encroachments of Spain or any other foreign power, he summarizes a project he wanted to have accepted by the other American nations. Among the most important points, the following have been extracted:

"Art. 1. The free determination of their peoples is the only and legitimate origin of governments . . .

"Art. 3. No government can reserve for itself the power to intervene in the interior affairs of another independent nation . . ." ³⁰

In spite of these governmental declarations, and although acceptance was sent to the Colombian government, Argentina was not represented at the Congress. It is believed that Rivadavia refused to comply with this acceptance even after the country's adherence was officially communicated. He was led by sound principles of law and politics, and this fact became evident when, in order to explain this stand, he said to the State Legislature that "the project of treaty of Colombia has not fulfilled the conditions that should be desirable because it only recognizes the "de facto" existence of the governments and not its legitimacy, and it does so regardless of the free representation each country has. - The treaties of alliances that are not ruled by a special treaty have always been used in fact for the so-called "casus foederis." What is needed then is to stop this and consider the representative regimes, the general and reciprocal state-to-state interests and not family alliances." ³¹

³⁰Silva, *op. cit.*, p. 22.

³¹Silva, *op. cit.*, p. 21.

the document which is submitted to the committee...
the committee of the House of Representatives...
project he would be asked to submit...
the most important project...
"Art. I. The first section of the Constitution...
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"Art. II. The second section of the Constitution...
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MILLER'S
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30 Oliver, St. 215
31 Oliver, St. 215

With the end of the year of 1825 the period of independence was over and, unfortunately for the prestige of the new nation, anarchy and sharp antagonism between the city of Buenos Aires and the provinces started. However, with regard to the objectives of its external policy, a new period can be delineated which extended until 1852. Though there is no agreement among the authors with regard to this period the majority agree that it was devoted to the defense and consolidation of the external sovereignty of the country.³² The first international complication of the period came with the famous incident of the Malvinas Islands.³³ The "Falklands" were declared a part of Argentine sovereign territory "through inheritance from Spain,"³⁴ in the year of 1829 during the brief government of Lavalle.³⁵ Accordingly a civil-military government was appointed there, and the incident ensued when the authorities seized three American vessels for illegal seal-fishing in the zone. This act was followed by a demonstration of force performed by Captain Duncan of the U.S.S. Lexington who, sailing from Buenos Aires to the islands, proceeded to destroy the settlement and imprison several Argentine citizens and officials, taking them back to Buenos Aires where the government indignantly refused to acknowledge the claims and least of all the violence used. The next thing history records in this

32. . . en la época turbulenta de nuestra edad media, en el período de la tiranía y en el inmediato se propuso principalmente defender y asegurar su soberanía exterior." Piñeyro, *op. cit.*, p. 2.

33 This is the Argentine denomination for them in the official map of the nation.

34 Harold Kirkpatrick, *op. cit.*, p. 246.

35 *Ibid.*

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regrettable episode is the occupation of the islands in 1832 by H.M.S. *Clio* in the name of the British Crown. For all these acts the country duly requested reparations; however, no diplomatic satisfaction was ever granted by the offenders since that time to the present. Manuel Moreno, then Minister in London, sent a letter to the British sovereign in which, after explaining the rights of the Argentine Republic to the islands, he established the validity of a principle of the Law of Nations with regard to the acquisition of territory that the country has endorsed ever since. He said, "the United Provinces have proved by irrefutable documents that its titles to the Falklands Islands, that is to say, the isle of Soledad or Puerto Luis (separated from Port Egmont by a branch of sea) is based upon a legitimate "purchase from France," "priority of occupation," "cultivation" and "formal settlement," in fine "well known and tranquil possession" for over half a century until the moment when they were forcibly despoiled on January 5, 1833. These titles are based especially upon the principle that occupation confers a real and exclusive dominion over the land in possession, a principle that, consecrated in the codes of nations as one of eternal justice, is the basis for the inviolability of all property, private and public. . . .

A nation can not better demonstrate its rights to the place which it occupies upon the face of the globe than that it has first taken possession of it, has cultivated it and has created the riches that are found within its district. . . ."³⁶

³⁶Ricardo Levene, History of Argentina (Chapel Hill: The University of North Carolina Press, 1937), p. 423-24. See also, W. S. Robertson, Hispanic-American Relations with the United States (New York: 1923), pp. 170-75.

vegetable yields in the occupation of the islands in 1832 by H.M.S. *Ontario* in the name of the British Crown. For all these acts the country duly requested recognition; however, no diplomatic action was ever granted by the Government since that time to the present. General Morone, then Minister in London, sent a letter to the British Government in which, after explaining the rights of the Argentine Republic to the islands, he established the validity of a principle of the Law of Nations with regard to the acquisition of territory that the country has acquired ever since. He said, "the United Provinces have proved by irrefutable documents that its title to the Falkland Islands, that is to say, the title of Solís or Puerto Luis (separated from Fort Argentino by a branch of sea) is based upon a legitimate 'purchase from France,' 'priority of occupation,' 'cultivation' and 'formal settlement,' in like 'well known and tranquil possession' for over half a century until the moment when they were forcibly despoiled on January 2, 1833. These titles are based especially upon the principle that occupation confers a real and exclusive domination over the land in possession, a principle that, connected in the codes of nations as one of eternal justice, is the basis for the inviolability of all property, private and public. . . . A nation can not better demonstrate its rights to the place which it occupies upon the face of the globe than that it has first taken possession of it, has cultivated it and has created the riches that are found within its district. . . .

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 Ricardo Lavigne, *History of Argentina* (Chicago: Hill, The University of North Carolina Press, 1937), p. 423-24. See also, W. S. Robertson, *Argentine-United States Relations with the United States* (New York: 1932), pp. 170-72.

The years that followed were marked "by a vigorous national foreign policy"³⁷ personally directed by Juan Manuel de Rosas. Several reasons have been given to explain his rough moves, the real one being considered the need to gain popular support and diminish the internal strain caused by his autocratic regime. Regardless of which was the real motive, the fact is that today, even those who should have opposed its internal regime of terror and violence would have openly approved of his handling of foreign affairs. His followers, doctrinarily very active at present as members of a revisionist school of Argentine history attribute to his foreign policy three clear and definite objectives:

- (1) Defense of the right of existence and sovereignty of the state by means of a diligent custody of national boundaries as appeared established in the Real Cédula of August 1776 of creation of the Vice Royalty of La Plata River.³⁸

It is customary to attribute to the performance of these objectives the Bolivian campaign, the nonrecognition of Paraguayan independence, the conflict with Chile, and the reclamations for the illegitimate seizure of the Falkland Islands by Great Britain.

- (2) Claims of absolute jurisdiction over the navigation of the rivers Paraná and La Plata though recognizing their international characters.

With this he meant to preserve the exclusive exercise of sovereign rights and jurisdiction for the state whose territory those rivers traverse in the main parts of their courses. He also wanted to base on reciprocity the concessions that should be granted for navigating them; all of this a hopeless dream against the universally recognized principle of the free navigation of international rivers.

³⁷Kirkpatrick, op. cit., p. 147.

³⁸Lucio Moreno Quintana, La Política Internacional Argentina (Buenos Aires: Imprenta de la Universidad, 1948), *passim*.

The years 1940-1941 were marked by a period of intense activity.

During this period, the organization was able to establish a strong

have been able to establish a strong and effective organization.

the need to establish a strong and effective organization.

by his extensive experience in the field of international relations.

last is that today, more than ever before, the world is in need of

regions of terror and violence, and it is the duty of the organization

of foreign affairs, to establish a strong and effective organization.

as members of a world organization, we have a duty to establish

his foreign policy, which is based on the principle of international

(1) Before the end of the year, the organization will be able to

state by means of a strong and effective organization, which is

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It is our duty to establish a strong and effective organization, which

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(2) Before the end of the year, the organization will be able to

the river, and the relations with the United States, and the

national organization, which is based on the principle of international

With this in mind, the organization will be able to establish a strong

rights and jurisdiction for the people of the world, and the

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on receiving the organization, which is based on the principle of international

them all of this, the organization will be able to establish a strong

principles of the organization, which is based on the principle of international

of the organization, which is based on the principle of international

(Dennis Street, London, E.C. 4, England)

(3) Intervention in Uruguay in defense of Oribe's regime, defeated in 1839 by Rivera.

This move is analyzed by his defenders as an attempt to make effective the principle of respect for legitimate and freely constituted authorities. Justifications are found in effect by invoking the Pact of Guarantees signed in 1828 between both countries to enforce Uruguayan independence. His critics in Argentina and abroad attribute to him the intention of reannexing Uruguay for his campaign against Montevideo. These activities are considered by many as the only aggressive intervention ever carried out by Argentina.

With regard to the first series of objectives it is interesting to point out that his troubles with Paraguay were the result of a policy of nonrecognition of independence, considering it a part of the Argentine Confederation. With Chile troubles arose over the possession of the Strait of Magellan. He claimed Argentina's rights to the zone as a consolidation of the principle of uti possidetis juri of 1810, at the time that the colonies revolted. Troubles with France gave him the opportunity to defend with commendable stubbornness the doctrine of equality of treatment before the law between foreigners and nationals. For several years there was a dispute with France over a law requiring foreigners living in Buenos Aires to serve in the provincial militia. Some pecuniary claims existing at the time helped to strain relations. In refusing to settle these claims, partly moved for reasons of internal politics, Rosas invited the French to take a more aggressive step which they actually did by declaring the blockade of the River Plate. Consequently, customs duties were cut down. However, this act did not bring any change in Rosas' attitude though customs were the main financial resource. This failure decided the French to beat him by giving help to his enemies

and supporting a revolution. None of these devices proved to be successful enough and the French retreated mainly because new troubles in the mother country and abroad called their attention elsewhere. The incident was closed with the signature of a treaty and a pledge for the arbitration of claims plus a compromise on nonintervention in Uruguay. It was in 1845 that Rosas charged Uruguay with the violation of this treaty. Again the blockade was declared, this time by Great Britain and France. Again the operation had to be called off, this time for troubles arisen in 1847 between Great Britain and France. New treaties were signed with both nations in 1849 and 1850, respectively. After the episode Rosas' prestige rose immensely. Enemies and followers alike were grateful to him for the defense of the national patrimony and for the prestige gained abroad. History is still debating between two powerful doctrinary interpretations of this period but the consensus is that whether Rosas acted in his own petty interests or for those of his country, the results favored the international prestige of the nation.

With the defeat of the dictator in February 3, 1852, by Urquiza's army, a new period began in the external relations of the country which lasted until the First World War. Under a liberal constitution the government followed the policy of open doors in every item of importance for the progress of the country: commerce, navigation, immigration, and so on. Numerous treaties containing the "most favored nation clause" were signed; the still unsolved boundary disputes were arranged. During this period international conflicts like the Pacific war, the regretful event of the Paraguayan war, international and Pan-American conferences, and finally the First World War demanded the attention of the government.

and supporting a... the other... incident was... application of... It was in 1945 that... treaty. After the... France. Again the... arisen in 1945... signed with both... episode... were grateful to him for the... the practice... powerful... in that... his country, the... With the... army, a new... located... government followed... for the progress of... as on. Numerous... were signed; the... this period... event of the... and finally the...

This lapse interrupted the reorganization of national affairs. Bitterly criticised by those who resented the overthrow of Rosas, the administration pursued--with regard to foreign relations--the following objectives: "no interference in the affairs of other states, closer relationships with all of them, justice and respect in mutual agreements and the demarcation of its frontiers with the neighboring countries."³⁹ "For its critics, this was the period of the loss of the territories of the Vice-Royalty, the submission to adverse arbitration of three boundaries disputes, the formulation of some legal theories more often than not injurious to the country and the creation of favorable circumstances for the political and economic exploitation of the Republic by foreign powers."⁴⁰ A certain amount of truth is contained in these conclusions, but an impartial judge will place the real facts between both stands because in the year of 1852 the independence of Paraguay was finally recognized and the free navigation of the Paraná and Uruguay rivers was granted to all flags; ports were opened and internal customs abolished. And every one of these steps was dictated by Articles 25, 26, and 27 of the 1853 Constitution.⁴¹ Numerous treaties were signed, those with the United States, Great Britain, and France among the most important. Opponents of Urquiza's regime often criticized measures like

³⁹Piñeyro, op. cit., p. 2.

⁴⁰Moreno Quintana, op. cit., p. 39 and ff.

⁴¹For the text of the 1853 Constitution, see Universidad Nacional de Buenos Aires, Estatutos, Reglamentos y Constituciones Argentinas. 1811-1898 (Buenos Aires: Departamento Editorial de la Universidad, 1956), pp. 183-205.

This paper is intended to be a critical study of the
bitterly criticized by some of the most prominent
administration officials. It is a study of the
objectives of the administration and the
relationship of the administration to the
and the determination of the results of the
For its criticism, the administration is
of the Vice-President, the administration is
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than not inferior to the country and the
attention for the political and economic
by foreign powers. The administration is
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abolished. And the new administration
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27. *Review*, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

the "most favored nation clause" arguing that all of them endangered the country's sovereignty because of the notorious "inequality" between the concessions granted to foreign countries and the lack of reciprocity on their part. It was also during Urquiza's government that the old confederationist idea was revived in the continent. It was the year of 1856 and the Caribbean was the scene of filibuster expeditions. Accordingly some American republics decided on a treaty of mutual defense first signed by Chile, Ecuador, and Perú, called "tripartito," and later on transformed into the Continental Treaty. Urquiza refused to allow Argentina to participate in this because he still trusted partial treaties more than he did integral alliances. However, he gave repeated evidences of his americanist vocation during his rule. In an often quoted message to the nation on March 1854, he said: ". . .the security of international peace and solidarity--not only continental but universal--are ordered to our rulers as sacred duties by Article 27 of the Constitution."⁴² However, among the most criticized of his international undertakings, the treaty subscribed with Spain in April 27, 1857, is probably the one that has been considered as the greatest blunder. Incidentally, this controversial agreement will allow us to introduce in this work the figure of Juan Bautista Alberdi. The purpose of the treaty was to obtain the still pending recognition by Spain of Argentine independence. However, it harmed the interests of the country because,

⁴²Martín García Merou, *op. cit.*, p. 203. Article 27 of the 1853 Constitution says: "El gobierno Federal está obligado a afianzar sus relaciones de paz y comercio con las potencias extranjeras por medio de tratados que estén en conformidad con los principios de derecho público establecidos en esta Constitución." See Universidad Nacional de Buenos Aires, *op. cit.*, p. 887.

although in its articles there was an expressed resignation by Spain to its aspirations to any sovereign rights or actions that were of the exclusive competence of the Republic within its territory, it also consecrated the doctrine of jus sanguinis with reference to citizenship. This clause was obviously an injurious step taken against a nation mainly populated by foreigners. This wrong was corrected, but not until 1863, with the signature of a new treaty. General Mitre directed those negotiations and left established in them, clearly and unmistakeably the principle of jus soli or natural citizenship.

Alberdi's personal merit on this occasion was the recognition of independence he obtained from Spain. Unfortunately, the citizenship clause was his greatest failure, for which he was to be blamed for years. However, though his management of the situation was erroneous, his reasoning was soundly based on the text of the provincial Constitution. Therefore he says, that "in what concerns the nationality of foreigners--according to the Constitution that does not impose the nationality of the country upon them, citizenship is "a title and not a burden," and that is the interpretation given to the problem by the private international law of European countries."⁴³ In this instance, as well as in so many others, his error appears to be his failure to conciliate the modern and positivist criteria of his thought with his passionate idealism.⁴⁴ He was so much ahead of his time in matters of international law and relations between state and individuals that this circumstance can be credited for the

⁴³ Pablo Rojas Paz, El Pensamiento de Alberdi (Buenos Aires: Ediciones Lautaro, 1943), p. 118.

⁴⁴ Ibid.

misunderstandings he suffered during his lifetime. He explained this to a certain extent when he said that he had established his domicilio de eleccion in the future.⁴⁵ His main ideas are comprised in The Crime of War of which the English editor has said with good reason that "should it have been published in French in Paris, in London or Berlin, it should have produced sensation, circulating profusely in numerous editions and at this date it should have conquered the subtitle of "The Gospel of the Peace."⁴⁶

In Alberdi's conception, international law is nothing more than the civil law of human race. This being confirmed in his opinion, every time it is said that any war between civilized and Christian peoples tends to be a "civil war."⁴⁷ Its denomination depends upon the kind of relationship that the law, unique and universal, regulates: therefore, it could be called interpersonal if it regulates relations among persons, international if among nations.⁴⁸ In dealing with the problem of the object and subject of international law he says: "The juridical person in the Law of Nations (derecho de gentes) as in the Common Law (derecho civil) is man considered in his state. Man, collectively considered as forming a group with a certain number of men, constitutes that person called the nation. Thus, the nation as a "public person" (persona pública) is nothing more than man considered in certain state. From here he

⁴⁵Juan Bautista Alberdi, Obras Selectas. El Crimen de la Guerra (Buenos Aires: Imprenta "La Facultad," 1920), p. 2.

⁴⁶Alberdi, op. cit., p. 1.

⁴⁷Alberdi, op. cit., p. 62.

⁴⁸Alberdi, op. cit., p. 50.

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follows that the right that serves as the natural law to rule the relations between man and man in the bosom of the nation is identical and the same one that rules the relationship between nation and nation."⁴⁹ In so stating he anticipated the consideration of this subject in the same terms in which it is considered today in the most modern doctrines of international law. As an example of this we can mention the similarity of Alberdi's ideas with those supported by Phillip Jessup and his followers. Without doubt, as regards "Alberdi's conception of the persons of international law, he alone among nineteenth-century Latin-American writers views the individual in the light of having international personality. In this regard, he anticipated one of the most momentous of twentieth-century developments in the field of international law."⁵⁰ In fact, he summarizes all his philosophical conception of the Law of Nations when he asks: "What is it that this law is lacking in its role of international rule to have the sanction and obligatory force that law has in its national or interpersonal expressions?" And he answers: "It lacks the existence of a government to sanction it as law, to apply it as a judge and to execute it as a sovereign. Such a government ought to be universal as the law itself. To obtain this international government, what is it that is needed? That the nations populating the earth form one sole society constituted under a kind of federation to be known as the United States of the World (Estados Unidos de la Humanidad)."⁵¹

⁴⁹Ibid.

⁵⁰H. B. Jacobbini, A Study of the Philosophy of International Law as Seen in Works of Latin-American Writers (The Hague: Martinus Mighoff, 1954), p. 72.

⁵¹Alberdi, op. cit., p. 53.

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MILLERS FALLS
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He concentrated on this idea of the pueblo mundo around which all his system appears to revolve.⁵² He is convinced that such a society exists already because of the natural law that has created each nation. Every day that union seems to get closer and closer because of the common needs that compel nations to unite themselves to be richer, stronger, and happier. And he adds, "proportion as space is annihilated by the marvelous power of vapor steam and electricity . . . the nations of the world find themselves standing closer to one another, so that they seem to form a single country. Every international railway is worth a dozen alliances; every foreign loan is a frontier wiped out; the three Atlantic cables (recently laid) have destroyed and buried the Monroe Doctrine without the least formality."⁵³ He also said that before the world could form a sole and vast association the most natural thing to do would be to organize it in as many big unitarian sections as there are continents. However, not only continents will determine the great geographical divisions of humanity. The different religious beliefs and races will also be the elements of that order. He was so strongly convinced of the fatal accomplishment of such a process that he denounced "tariffs and customs, as taxes that gravitating on the peace of the world are as many

⁵²"Los gobiernos, los sabios, los acontecimientos de la historia son los instrumentos providenciales de la construcción secular de ese grande edificio del pueblo-mundo que acabará por constituirse sobre las mismas bases, según las mismas leyes fundamentales de la naturaleza moral del hombre en que reposa la Constitución de cada estado separadamente." Ibid. For a modern analysis in similar terms, see Phillip Jessup, Transnational Law (New Haven: The Yale University Press, 1956).

⁵³See Alberdi, op. cit., passim, and also Silva, op. cit., p. 32.

other Pyrenees that make of each nation a Spain, and as many China walls that make of each state another Celestial Empire in isolation."⁵⁴ Nevertheless he also recognized that "the peoples of the world have yet to pass through a stage of regional or continental organization before they are ready for the final stage: the universal."⁵⁵ If he encouraged the formation of the "world state" it was because of his conviction that it will of necessity result in the erection of a legal structure in accordance with Cicero's principle that ubi societas, ubi ius. He is also listed among the forerunners of the principle of the punishment of those responsible for a nation's guilt. This certainly anticipated the Nuremberg Trials "and is another evidence of Alberdi's modernity."⁵⁶ He demonstrated juridically that war is a collective death to be condemned and punished by the human conscience as is the case with individual deaths. War is the penal justice applied by the offended party in conflict. However, he reasons, as no one can be an impartial judge, neither of himself nor of his enemy, war is often the negation of justice, that is to say, a crime clothed with the gowns of the Law. Thus, the jus gentium throughout history is the history of the crime of nations, a crime bilateral in essence because it has always had two guilty parties, and as many criminals as belligerents just as in individual duels.⁵⁷ Alberdi openly

⁵⁴Alberdi, op. cit., p. 65.

⁵⁵Arthur Whitaker, The Western Hemisphere Idea: Its Rise and Decline, (Ithaca: The Cornell University Press, 1954), p. 1.

⁵⁶Jacobini, op. cit., p. 71.

⁵⁷Alberdi, op. cit., Vol. V, p. 246. "If modern war is undertaken against the government of the country and not against its people, why not to admit that the government makes the war and not the people on whose name the war is brought to other countries?"

other persons in a state of mind which is not only not
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those responsible for a nation's actions, and who are
Humboldt's "The Spirit of the Age" is a book which
He demonstrated that the present system is a system
demanded and sustained by the present system, and that
despite the fact that the present system is a system
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throughout history as the history of the present system
in essence because it has always had the same purpose
maintains as the present system, and the present system

²⁴Alfred, op. cit., p. 10.
²⁵Arthur Schopenhauer, "The World as Will and Representation,"
Berlin, (Prussia), 1819, p. 10.
²⁶Schopenhauer, op. cit., p. 10.
²⁷Alfred, op. cit., p. 10.
against the government of the present system, and the present system
to state that the government of the present system is a system
name the war in France, and the present system

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condemned intervention and labeled the Monroe Doctrine as "the intervention against intervention." It is an interesting fact that many years later, President Theodore Roosevelt gave that same interpretation to it in the belief that since it expressly forbids the European interventions it sanctions as a logical corollary the propriety of the intervention of the United States to stop those carried out by extracontinental powers.⁵⁸

Alberdi's ideas with reference to the existence of an American Public International Law suffered a certain amount of change with the years. Though he first sustained the existence of a regional international law proper to the continent, later on he modified his views stating that "law is one and universal, as gravity is." This concept of his of the unity of law "is mainly a demonstration of his naturalism."⁵⁹ Often Argentine publicists have affirmed that Alberdi explained the phenomenon of an American International Law in 1844, long before Alvarez himself did. At that time, Alberdi submitted to the University of Chile a paper in order to get his licenciado degree.⁶⁰ Here is where those precedents could be found. He favored a United America, but his Americanism is not aggressive. Instead it is based on the "mutual interests"

⁵⁸Isidoro Ruiz Moreno, "El Pensamiento Internacional de Alberdi," Revista de la Facultad de Derecho y Ciencias Sociales, Año I, No. 1, Tercera Época (Buenos Aires: Imprenta de la Universidad, 1946), p. 166 and ff.

⁵⁹Jacobbini, op. cit., p. 67.

⁶⁰For the complete text of his thesis, consult Alberdi, op. cit., Vol. VI, Diplomacia Argentina y Americana, pp. 3-38.

contained information and I believe the information is correct
version against information. It is a very interesting and
later, President Roosevelt's speech to Congress in 1941
in the belief that there is a very real danger to the
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Alfred's speech will be a very real danger to the
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national law proper to the country, it is a very real
stating that "it is one and the same, in principle,
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Often Argentina publishes laws which are in violation of
phenomenon of an American international law is a very
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MILLERS FALLS

of the South American nations in the fulfillment of which each and every one of them, without endangering their independence, is an indispensable element. However, he says, this common edifice built by the American revolution is subordinated to the supreme law of equilibrium that rules its existence in common with other groups.⁶¹

It is time to consider another of the figures of the period: Bartolomé Mitre. When Mitre took over the government of Argentina, the "foreign policy of the country, still engaged in a crucial internal debate, could be said to be nonexistent; it was utter confusion."⁶² To this fact we have to add that relations with neighboring countries were uncertain in every respect. Thus his efforts were first directed to consolidate a policy of continental integration "on the basis of democratic governments."⁶³ His external policy was summarized in his now well-known expression, "argentino ante todo, el gobierno no dejará de ser americano y buen vecino," meaning that although being Argentine above any other consideration, the government would not cease because of that to be American and a good neighbor as well. In so doing he stated the policy of good neighborliness and long anticipated Roosevelt's proclamation. His concept of solidarity had a definitive reach: problems and common dangers. However, he advised the nation to refrain from alliances and federations. Moreno's instructions were still guiding the country's foreign policy. And Mitre, faithful to this tradition, believed

⁶¹Rojas Paz, op. cit., p. 121.

⁶²William Jeffrey, Mitre and Argentina (New York: Library Publishers, 1952), p. 185.

⁶³Op. cit., p. 186.

in the efficacy of temporary arrangements. This position was confirmed in 1862 when the government of Peru invited Argentina to participate in the Continental Treaty. That was when Spain reannexed Santo Domingo and France invaded Mexico; the time was ripe at last for a comprehensive alliance. However Mitre again objected to his country's participation as his predecessors had done so many times before. Argentina's answer, in Minister Elizalde's words, was: "Independent America is a political entity that does not exist and is impossible to build up by means of diplomatic conspiracies. America, comprising in itself independent nations with needs and means of government of their own, could never be one political entity. Nature and facts have divided it and the efforts of diplomacy will be fruitless if what they intend is to oppose the existence of these nationalities, and with the necessary consequences deriving from such an act."⁶⁴ Part of the official note was the assurance given to the Peruvian government that "foreigners in Argentina enjoy more rights than those provided for by the Continental Treaty and that if the independence of any American state were at stake against the provisions of Public Law, the republics would not hesitate, in agreement with the other governments, to revindicate their rights and guarantee their security."⁶⁵ This message undoubtedly reflected Mitre's ideas. Because, although he was proud of America, he was also equally proud of his country's European background and in consequence his advice was to maintain as close relations with Europe as possible.

⁶⁴Silva, op. cit., p. 26.

⁶⁵Silva, op. cit., p. 26.

Mitre tried to put in practice his good-neighbor policy and smooth relations with Brazil. Both neighbors were united, thanks to his inspiration, by a close understanding of their mutual international needs and duties. After Rosas' outrageous handling of foreign relations, Mitre had to work hard to overcome ugly feelings of mistrust and enmity, the result of long years of strained relations. The considerations of continental geopolitical realities led him to the conviction that cordiality among these two countries was the first requirement to build up the continental unity. And he was right. His smart handling of the stale problem of the treaty with Spain of 1856 led to the signature of a new one. He succeeded in getting Spain to accept the formula of ius soli instead of that of ius sanguinis for the acquisition of citizenship. The prior arrangement was disadvantageous for the future of a country seventy-five percent of whose population was composed by immigrants. Private international law in the continent has accepted ever since the principle of ius soli, finally validated by the Congress of Montevideo of 1889.

In the year 1864 a new Spanish incursion this time against the Chincha Islands spread the fear of aggression. Consequently efforts were doubled to convoke a conference that finally met in Lima that same year. Argentina adhered to it with reservations, and this meeting gave Mitre an opportunity to give some definitions about his conception of Americanism. He criticized the exclusion of the United States at a congress that was intended to invigorate the republican system of government while Brazil, a monarchy, was invited to participate. Again this time, as he had done on the occasion of the Continental Treaty, he refused to accept the exclusion of the country that proclaimed the Monroe

Doctrine. This sole fact was enough for him to consider the Treaty unacceptable and inefficient.⁶⁶

The governments sponsoring the Congress of 1864 explained the exclusion giving as a reason the contempt with which Lincoln's administration was seen in South America. Nevertheless Mitre blamed the Congress all the same. He argued that "in case Spain supported the senseless declarations of its agents, Argentina had the courage to face the situation instead of resorting to the poor and fruitless idea of an American Congress born of the hatred for the United States, and whose sessions have functioned without plan and with no objective."⁶⁷ He definitely preferred alliances instead of congresses, and with alliances all the consequences of war if war should come; because in such a situation no hesitation is possible. Therefore "it should be considered as ruled by imbecility the American republic who faced with a manifest and clear danger loses its time in ineffective congresses instead of uniting itself to others to revindicate its honor."⁶⁸ In the case of Spain and Peru, he wanted to spare Argentina a war with Spain if possible. But he also was convinced that in case of actual war it should be the duty of his country to enter it to help Peru.

⁶⁶ That was the policy of Argentina: continental union, not partial but integral, with no racial blocs or odious exceptions, but pure Americanism. Brazil was at the time still a monarchy and Minister Elizalde, in the note we have quoted, remarked the uselessness of opposing other countries just because their systems of governments happen to be different from ours. See Silva, op. cit., p. 27 and ff.

⁶⁷ and ⁶⁸ For this remark and complete accounts of Mitre's standpoint in the occasion, see Academia Nacional de la Historia, Mitre. Homenaje de la Academia en el Cincuentenario de su Muerte (Buenos Aires: Imprenta de la Academia, 1957). Consult particularly those articles by Emeterio Santovernia, Mitre y Sus Ideas Americanas, pp. 133-42, and Arturo Garcia Nieto, La Guerra Internacional de 1865 y la Reinvidicacion de Mitre, pp. 145-86.

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DEPARTMENT OF STATE

OFFICE OF THE SECRETARY

Postscript. The following is a summary of the results of the investigation conducted by the Department of State in connection with the above-captioned matter. It is to be understood that the results of the investigation are based on the information furnished to the Department by the various sources mentioned in the report, and that the Department does not assume any responsibility for the accuracy or completeness of the information so furnished. The investigation was conducted by the Department of State in connection with the above-captioned matter, and the results of the investigation are set forth in the report. The report is divided into two parts, the first of which contains a summary of the information furnished to the Department by the various sources mentioned in the report, and the second of which contains a summary of the results of the investigation. The results of the investigation are based on the information furnished to the Department by the various sources mentioned in the report, and the Department does not assume any responsibility for the accuracy or completeness of the information so furnished. The investigation was conducted by the Department of State in connection with the above-captioned matter, and the results of the investigation are set forth in the report. The report is divided into two parts, the first of which contains a summary of the information furnished to the Department by the various sources mentioned in the report, and the second of which contains a summary of the results of the investigation. The results of the investigation are based on the information furnished to the Department by the various sources mentioned in the report, and the Department does not assume any responsibility for the accuracy or completeness of the information so furnished.

66 That was the policy of the Department of State in connection with the above-captioned matter, and the results of the investigation are set forth in the report. The report is divided into two parts, the first of which contains a summary of the information furnished to the Department by the various sources mentioned in the report, and the second of which contains a summary of the results of the investigation. The results of the investigation are based on the information furnished to the Department by the various sources mentioned in the report, and the Department does not assume any responsibility for the accuracy or completeness of the information so furnished.

67 and 68 That was the policy of the Department of State in connection with the above-captioned matter, and the results of the investigation are set forth in the report. The report is divided into two parts, the first of which contains a summary of the information furnished to the Department by the various sources mentioned in the report, and the second of which contains a summary of the results of the investigation. The results of the investigation are based on the information furnished to the Department by the various sources mentioned in the report, and the Department does not assume any responsibility for the accuracy or completeness of the information so furnished.

These feelings were made known to the Spanish government in a note where Mitre firmly warned that, unless difficulties with the American republics were avoided, Argentina would be placed in the position of performing "painful but imperative duties."⁶⁹

His Pan-Americanism never disturbed the inborn equilibrium that characterizes the statesman. Therefore, as regards the existence of an American Public International Law, he said that "it is truly an absurdity that places us outside the normal conditions of the law and of reason, the presumption of creating a public law of America against that of Europe, of the republic against the monarchy." And he added "if an American republic is in conflict with a European one or with a monarchy it can not be adopted as an invariable rule of law, as some appear to expect it to be, that the American republic is right and that the entire continent has to arm itself to defend her and do whatever it is that she does not do or does not know how to do."⁷⁰ His critics attribute his "singular" American ideas to his desire of not endangering the peace, commerce, immigration, and Argentina's credit in Europe. He despised those imputations and attributed them to the foolishness of some, though he accepted them as the best commendations ever made of his policy. His Americanism was summarized with the assistance of a close collaborator in ten maxims which have come to be known as Mitre's international decalog:

⁶⁹Op. cit., p. 135.

⁷⁰Ibid.

- "(1) To grant to all men that accept the hospitality of the Republic, the fullness of civil and social rights without distinctions of race and demanding no reciprocity;
- (2) To respect the rights of individuals and nations as well;
- (3) To maintain the means of defense of the weak against the powerful;
- (4) To preserve the principle of natural citizenship;
- (5) To avoid antagonisms with European governments and peoples;
- (6) To eliminate opposition against other countries on account of their different form of government;
- (7) To favor and consolidate the reconstruction of the American nations unwisely divided and sub-divided;
- (8) To seek harmony between the United States and the sister republics instead of favoring exclusions and nonconformismity;
- (9) To resist all kind of aggressions against the American states with purposes of reconquest or for the substitution of the republican form of government;
- (10) To conclude alliances for the defense and for the security of concrete interests and rights."⁷¹

Being a pacifist by nature and education it was his unfortunate fate to engage his country in the war with Paraguay, although he did his best to preserve neutrality. As a rule the latter secures peace, but in this particular case it degenerated into war. The invasion of Argentine jurisdiction by the Paraguayan Army automatically turned its precious neutrality into belligerency as the immediate result of Mitre's interpretation of the violation committed. It could not be otherwise. For him to cede a country's territory for the passing of a foreign army in route to fight against a third country was an act of force against the sovereignty of the latter that called for a declaration of war. To interpret such an act differently would have amounted to disowning his pacifist convictions. In consequence the grievous, unpopular war was declared.

It was the aftermath of this conflict that witnessed the formulation of a doctrine that has ranked ever since among the most cherished

⁷¹For more of this material, consult Academia Nacional de la Historia, op. cit., pp. 133-42.

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traditions of Argentine foreign policy. We are referring to the famous statement claiming that "victory gives no rights." It was Sarmiento, always unpredictable and passionate, who formulated it during his term of office as Mitre's successor. However it was the latter who bravely tried to discourage its acceptance in defense of the legitimate rights of the nation, saying, ". . .and when victory has crowned the hopes of a nation in defense of its existence we cannot say to its people after having asked for its blood in order to obtain it that victory gives no rights and that the dead have been sacrificed in a holocaust to the defeated who provoked the war. If this is true, it would have been much better not to have gone victoriously through the war to finally impose it as a self-damage to the country."⁷² This statement serves to prove once again that Mitre was always against sentimentality without reflection: he denounced the formula as romantic, and insisted on the fact that it could not possibly constitute a political doctrine.

The final adoption of the doctrine totally annulled the provisions of the Treaty of the Triple Alliance as regards the settlement of limits. "Paraguay denied all arrangements that did not recognize its dominium over Chaco and Villa Occidental: consequently the Alliance was broken, and the casus belli ceased to exist. In the end we submitted to arbitration, and lost what we could have kept as a legitimate right of victory. In so doing, we ridiculously lost both, the cause and the merit of a spontaneous generosity."⁷³ He continues saying, "it sounds logical to agree on being generous with the defeated, but to

⁷²Academia . . . op. cit., p. 149.

⁷³Ibid.

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exalt this generosity to the category of an absolute principle by declaring that in all cases victory gives no rights will only mean to lose everything that has been acquired at the cost of great sacrifice."⁷⁴ Therefore, due to the persistence of the government in carrying out this unusual doctrine against Mitre's best judgment, troubles arose with Argentina's former ally, Brazil. Relations were strained, frontiers endangered, and war was considered imminent. It was Mitre's triumph again to be appointed by his government to a mission that was successful in reaching a compromise to abate war and strengthen peace.

Sarmiento was a passionate idealist who promoted a movement toward a Pan-American revival.⁷⁵ Whitaker likes to call him "the cosmopolitan patriot" whose enthusiasm for the United States carried him to the point of publicly endorsing the Monroe Doctrine. However, his cleverness was more evident in his handling of the internal affairs of Argentina than it was in his management of the country's foreign relations. Therefore, he will not be discussed here.⁷⁶ It was during Avellaneda's term of office that the final treaty with Paraguay was signed and by it, it was agreed to submit to the arbitral decision of President Cleveland the definitive limits of Villa Occidental and Río Verde. It was also during those years that Carlos Tejedor succeeded Bernardo de Irigoyen at the

⁷⁴Op. cit., p. 161. For the complete text of the memorandum sent to the Brazilian government by Minister Varela, see Silva, op. cit., pp. 136-37.

⁷⁵For background reading of the current philosophical tendencies of the times and the influence of liberalism between 1850 and 1890, consult Leopoldo Zea, Etapas del Pensamiento en Hispano-América (Mexico, D.F.: El Colegio de México, 1949).

⁷⁶Whitaker, op. cit., p. 67.

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Chancellery. A case of extradition requested by the Italian government gave the Minister the opportunity to express in the answer to that government that "the delivery of a delinquent to a foreign power is a right that governments can either grant or not according to their best judgment when no treaty has been signed that makes it obligatory." This, later known as the Tejedor Doctrine, was meant for the protection of foreigners incorporated to the life of the country and to deal with such cases as asylum, political exile, deserters, and criminals. In defense of the doctrine its author says: "In other times, asylum was general and inviolable. The modern tendency is different: a greater number of offenses are being excluded and greater facilities for extradition are granted. I believe this to be the true doctrine of justice that does not recognize territorial boundaries. However, the preventive imprisonment resolved without documents seems to me a flagrant violation of constitutional rights. The delivery of a criminal to a foreign nation is a right that governments can either grant or not according to their own judgment when there is no treaty to make such a thing obligatory."⁷⁷ In the Argentine Republic, the right only exists for its authorities "from the moment the law is in force; therefore they can not proceed against persons without having the authority to do so, nor they can give to the law a retroactive effect which the Constitution forbids."⁷⁸ A corollary to this doctrine was the acceptance of the fact that when it refers to the limitation of its rights as a sovereign state, a country can only grant it freely

⁷⁷Silva, op. cit., pp. 443-45.

⁷⁸Ibid.

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exercising its will, manifested in a treaty or in any other kind of legal instrument. In cases of indemnity for damages suffered by foreigners in a civil war, he reiterated the traditional principle of equality of treatment before the law for both citizens and aliens. When Great Britain presented a claim for damages suffered by an English subject during the war of Entre Ríos, Tejedor stated that "foreigners from the moment they enter a country are subjected to its laws and authorities. Those laws are not the same in all places, but regardless of how different or unfavorable they could be they bind the foreigner likewise. Consequently an alien, in order to file a claim to which he considers himself entitled, has to request from the authorities of the country of residence the invocation of its laws and must abide to their decisions as citizens do. Otherwise, foreigners would constitute a state within a state: a political monstrosity."⁷⁹

The frequent civil wars that plagued Argentina and Uruguay in like manner during and after the period of national organization produced numerous interpretations of the right of asylum and of internment of political refugees. Under those circumstances and with the purpose in mind of freeing the Chancelleries of both countries from having to sustain this doctrine every time, Minister Tejedor tried to get Congress interested in a project of law on the subject. Meanwhile he kept sustaining his theory particularly in the numerous requests sent by the Uruguayan government for the internment of refugees of that nationality. Tejedor on those occasions sustained that "internment is not a perfect right that originates compulsory duties but a function of good neighborliness,

⁷⁹Silva, op. cit., p. 454.

the extension and conditions of which can only be determined by the state that is willing to grant it."⁸⁰

In 1876 an incident occurred between the authorities of the province of Santa Fe and the Rosario Agency of the Bank of London and South America which gave origin to the so-called Irigoyen Doctrine. The incident broke out after the Bank failed to comply with the provisions of a state law ordering the conversion to gold of the paper money issued by the local government. The incident moved Minister Irigoyen to state the position of the government by denying nationality to corporations formed with foreign capital and constituted within the territory of the Republic. Consequently corporations (sociedades anónimas) are denied the right of diplomatic protection on the ground that "no son las personas las que se ligan sino los capitales que se asocian."⁸¹ This association of capital operates under an anonymous form, therefore there is no name, nor nationality or individual responsibility compromised.

The Pacific War declared between Chile on one side against Bolivia and Peru on the other contributed to the failure of the two earliest attempts to organize an all-American movement. In fact the United States and Colombia in 1880 had expressed their interest in a meeting of the representatives of all the continental nations, and invitations were sent with that purpose. This move, which marked the abandonment of the traditional isolationism of the United States led effectively to the First Inter-American Conference of Washington of 1889. In his report to Congress on the Colombian invitation, Minister

⁸⁰Silva, op. cit., p. 458.

⁸¹Silva, op. cit., p. 463.

Irigoyen declared that such a congress should incorporate the principle of arbitration to the American International Law because it was his belief that this continental doctrine---which he hoped to have accepted---was the best guarantee for the territorial integrity of the Hispanic-American nations since it would lead to the rejection of conquests obtained by violence, as well as forbid interventions. It was also his intention to get official recognition of the doctrine of the uti possidetis juris.⁸²

The acceptance of the principle of pacific settlement of disputes was definitely proclaimed in 1902 when the May Pacts were signed to end the limit dispute with Chile by submitting the controversy to the arbitral decision of Edward VII, King of England. And, albeit the problems of limits continued to dominate Argentine foreign policy during those years, one by one a solution was found for all of them. Arbitration or bilateral treaties resolved the difficulties, with Bolivia in 1889 (further arrangements were completed in 1922 and 1929); with Brazil in 1895 by means of Cleveland's arbitral decision. On that occasion Argentina lost a valuable belt of territory in the Misiones region. Later on in the first part of the twentieth century a "status quo" was arranged for the territorial jurisdictions for the River Plate and in 1916 the "twalweg line" was adopted as the definitive boundary division.

However, the two great events that marked a series of successes in the international life of Argentina were: the South American Congress of Private International Law of Montevideo, that met from August 1888 to February 1889, and the First Continental Conference of Washington, from

⁸²Silva, op. cit., p. 44.

October 1889 to April 1890. In the first one, seven important treaties and conventions were signed, all of them obligatory for the parties. They amounted to fundamental modifications in their civil, commercial and penal legislations which have ruled ever since the conflicts of law among the participating countries.

The Conference of Washington in which only a few recommendations were presented officially initiated the Pan-American movement. However even if it actually failed to produce a convention "its results were not null as was generally believed. Though less tangible at the time, they were not less important because of that."⁸³ As Alvarez said, "mais le résultat le plus important fut l'échange, pour la première fois, d'idées et des sentiments entre les représentants de tous les Etats de l'Amérique."⁸⁴ The purposes were primarily commercial and economic with the exception of the problem of arbitration. This one, eminently political, had one sole purpose: to prevent wars in America. Argentine delegates to that meeting were Manuel Quintana and Roque Sáenz Peña. From the very beginning sessions were plagued with organizational troubles and in this wrangling over rules and procedures, Argentine and United States delegations clashed repeatedly.⁸⁵ Argentine delegates were opposed to the manifest enthusiasm of the United States for a customs union among the American nations. Roque Sáenz Peña, in the name of the delegation, sustained the opposition on the

⁸³Alejandro Alvarez, *op. cit.*, p. 217.

⁸⁴*Ibid.*

⁸⁵For a detailed report of these troublesome procedures, see the account presented in Thomas F. McGann, Argentina, the United States, and the Inter-American System. 1810-1914 (Cambridge, Massachusetts: Harvard University Press, 1957), pp. 130-164.

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ground that such a policy would lead to the isolation of the continent. In his final speech he worded what McGann calls "a challenge that was immediately picked up and echoed as a rallying cry by Argentines in the decades ahead,"⁸⁶ but what the world has understood in less violent terms. On a strictly personal basis Sáenz Peña said: ". . . let no one see in what I have said anything but fraternal affection for all the nations and governments of this continent . . . I do not lack affection or love for America, but I lack ingratitude or distrust toward Europe. I do not forget that Spain our mother is there, and that she watches with earnest rejoicing the developments of her ancient domains. I do not forget Italy our friend and France our sister . . . who has just called the world together on the Champs de Mars, that are also there . . . The nineteenth century already called by many the century of America beholds our trade with all the nations of the earth, free witnessing the noble duel of untrammelled labor of which it has been truly said, God measures the ground, equalizes the weapons and apportions the light. Let America be for humanity."⁸⁷

The adoption of a hemispheric system of arbitration was proposed to the consideration of the General Welfare Committee by Brazil and Argentina. This common move achieved by the two countries is believed to have been made in an effort to demonstrate to the others "their

⁸⁶ McGann, op. cit., p. 157.

⁸⁷ For the complete text of this address, see Silva, op. cit., p. 45. Also La Nación, leading Buenos Aires newspaper that published a series of interesting editorials written by its Washington correspondent, José Martí.

ground that such a policy would be to the detriment
in his final speech he stated that the United States
immediately placed a embargo on arms and munitions to the
Soviet Union, but that the United States would not
boycott Soviet goods. On a strictly economic basis the United States
was in what I have said before a position of isolation
nations and governments in the world... I do not believe
or love for America, but I have confidence in the future of America.
I do not forget that there are other nations, and that we must
with respect to the United States and the world, that we
not forget that we are a part of the world, and that we must
defend the world against the forces of evil. The nineteenth century
holds our (read with it) the forces of evil, and we must
not be dual or unbalanced in our policy. It is our duty to
maintain the peace, and we must not be divided in our policy.
Let America be for the world.
The adoption of a policy of isolationism is a mistake
to the consideration of the United States and the world.
Isolationism. This means that we must not be divided in our policy.
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McGowan, p. 137.

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For the complete text of this speech, see McGowan, p. 137.
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bilateral solidarity,"⁸⁸ and to abate suspicions among the sister republics. The proposed formula did not authorize the creation of a compulsory arbitral agency because the point that the delegates had in mind was that of independence, which they wanted to preserve in all cases. Quintana produced the report for the Committee stating that "in the eyes of American Public International Law there are in this continent neither great nor small nations. All are equally sovereign and independent, all equally worthy of consideration and respect. The arbitration proposed is consequently not a compact of abdication of vassalage or of submission. Before as well as after its conclusion all and each of the nations of America will preserve the exclusive direction of their political affairs, free from any interference on the part of the others. . . . Such has been the predominant idea of the Committee which has constantly tried to eliminate all suggestions tending to attribute to its stipulations a compulsory character, even though it could be purely moral."⁸⁹

The sincere preoccupation shown by the American nations to find the right formula for arbitration induced the Argentine Minister of Foreign Affairs, Dr. Alcorta, to word what since then has been known as the "Argentine formula" of arbitration. He conceived it as follows:

"Las Altas Partes Contratantes se obligan a someter a juicio arbitral todas las controversias de cualquier naturaleza que

⁸⁸Silva, *op. cit.*, p. 221. For the complete text of the project, see Dotación Carnegie Para la Paz Mundial, Conferencias Internacionales Americanas 1889-1936. Recopilación de Tratados y Otros Documentos (Washington, D.C.: 1938), p. 40.

⁸⁹Silva, *op. cit.*, p. 223.

por cualquier causa surgieren entre ellas en cuanto no afecten a los preceptos de la Constitución de uno u otro país y siempre que no puedan ser solucionadas mediante negociaciones directas."⁹⁰

This clause was used officially for the first time in 1898 in the Treaty with Italy and in 1899 in those signed with Paraguay and Uruguay. What the Argentines actually achieved in this phase of the First Pan-American Conference was to point out in behalf of the rest of the Latin American republics the danger of trusting "great" nations who sought a condition of "vassalage" for their smaller neighbors.⁹¹ Probably this was the top contribution and also the last, that the Generation of the Eighties made to the country in the persons of two of its most representative figures: Sáenz Peña and Quintana.⁹² After the century was closed new problems darkened the international and economic politics of the country, starting a trend that has not yet been controlled.

In 1902 the Second Inter-American Conference met in Mexico City. During its sessions Argentine delegates proposed the signature of a multilateral treaty of arbitration, giving as an example the use of

⁹⁰ Silva, *op. cit.*, p. 223.

⁹¹ McGann, *op. cit.*, p. 148. "They have fought successfully for the equality of states, the principle of nonintervention and the preservation of sovereignty. They have upheld the doctrine of arbitration as a vital force in international relations. They not only brought the United States to accept arbitration but have caused the Secretary of State of the United States to descend to playing the role of delegate in a conference that he summoned into existence."

⁹² "An elite of landowners and lawyers, merchants and statesmen built twentieth century Argentina. They called themselves the Generation of the Eighties. A later ruler of Argentina described them and their descendants as "oligarchs." Imbued with European ideas and living by European patterns, the aristocrats of the Pampas dealt with hundreds of thousands of European immigrants, successfully at first. They directed the expansion of the city of Buenos Aires to metropolitan and cosmopolitan rank; they evolved and brilliantly supported a consistently successful foreign policy." McGann, *op. cit.*, preface.

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such a formula made by Argentina in several treaties. The same sequence corresponded to the Third and Fourth meetings celebrated in Río in 1906 and Buenos Aires in 1910 respectively. Arbitration was the focus, the main issue discussed in all of them. It was after the Conference of 1902 was over that, faced with the events in Venezuela--to which we will refer later in detail--the "Argentine government elicited a statement of policy, which achieved the stature of a "doctrine": the Drago Doctrine."⁹³ The Río Conference was overshadowed by the mutually aggressive feelings of Argentina and the United States as regards the Drago and Monroe Doctrines. Neither wanted the other's views to be considered by the Conference. Finally, and in order to resolve the situation, Argentina voted to send to The Hague the views and opinions of the American states with reference to the compulsory collection of public debts by a foreign power. The Argentine delegation adhered there to the initiative sponsored by the United States about arbitration and also the creation of a Permanent Court of Justice. Sáenz Peña addressed the Assembly during the closing sessions endorsing these proposals of the United States and finally decided to sign the convention on pecuniary claims that enacted the Potter Amendment and not the Drago Doctrine. Delegates also supported obligatory arbitration and the institution of the said International Tribunal. Again this time, as at the Conference of Washington, Sáenz Peña repeated his words assuring the continental nations of Europe that the love and affection for America was also extended to Europe. This he did to show to the rest of the nations that, though convinced of the goodness of institutionalized

⁹³Loc cit., p. 218.

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Pan-Americanism and heartily participating in the growing fraternal movement, Argentina was still conscious of the dominant position of the United States in the Hemisphere. Years later in 1910 in a letter to his friend Minister Wilde, Sáenz Peña remarked ". . . I am an opponent of the policy of intervention against sovereign nations. . . . The right that is adduced to avoid revolutions, will it not be invoked tomorrow to promote them? The right of intervention is dangerous for all the states of South America."⁹⁴

It was also during the first part of the twentieth century that the traditional Argentine concept of Pan-Americanism was defined, meaning by that continental cooperation and solidarity based on moral law and justice; exalting as fundamental rights of each and every one of the American states those of sovereignty and self-determinations, and refusing to accept benefits that could amount to inflict a damage to any of the sister republics. In other words, up to that time and for years later until the final Pan-American development began in 1939, Argentina tried to avert the conclusion of military alliances and political pacts. Big political and economic issues were avoided in order to preserve a free hand in foreign policy. This originated aggressive criticisms and accusations of non-conformism particularly when Argentina opposed unilateral international moves. Doubtless this behavior reflected a tradition bequeathed to the country by the founding fathers.

The First World War marked for humanity a fundamental event that justifies all the changes experienced in the relations among nations. It

⁹⁴Biblioteca Nacional, M.S.S., Roque Sáenz Peña to Eduardo Wilde. Private Correspondence, July 19, 1910, No. 16034, cited by McGann, *op. cit.*, p. 267.

also marked a distinctive period in the diplomatic history of Argentina characterized for its fruitful resolutions and achievements. However it was also plagued with resentments and misunderstandings. These characteristics remained when the Second World War broke off. Some authors distinguish this period as being concerned with the affirmation of the national sovereignty. However, others, Piñeyro among them, tell us that "the period particularly emphasized an absolute disengagement from the internal affairs of other states, justice and respect in mutual relations and the solution of boundaries problems."

Argentina was neutral in the First World War and in 1916 this initial position was definitively secured when Irigoyen took over the Presidency. This policy of his, supported even by his political enemies, again was put into effect during the Second World War. In both occasions strong movements of opinion arose against the country.

Economically speaking, as so often this attitude is analyzed, neutrality was of benefit to the country. However, to look only for the economic gains in the position assumed is simply to miss the main point in such an important issue. If we base our judgment strictly on the Law of Nations, Argentina's neutrality was a truly "diplomatic beligerency." When in 1918 Irigoyen summarized the great difficulties for the international life of the country as a consequence of the conflict he showed his determination to stick to the proclaimed policy. He said, "The position of the Argentine Republic having been defined as one of peace and friendship with all nations of the world, there was no reason to modify it when faced with the European conflict. The government, convinced that the Republic had lived up to its responsibilities was positive in the judgment of the different incidents in which its opinion

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was required, and absolute in the presentation of its claims having been respected every time by the decisions arrived at and the satisfactions that were granted."⁹⁵ For him it was perfectly natural that since pacifism and arbitration for the solution of disputes were the watch-words of the country's foreign policy, a declaration of war could not proceed. The mere idea of it was foreign to the country's tradition and to its people. Irigoyen did not stop there: he went as far as to declare that neutrality always exists "de facto." Therefore, it is not a special status that has to be specifically declared, adding that "it is peace which is the normal condition among the nations' relationships, and everything that tends to break it is exceptional."⁹⁶ Heartily believing this he did not listen even to the vote of Congress recommending a break with Germany. Following this principle, he handled the country's claims for incidents occurred during the unrestricted submarine campaign launched by Germany and which led to the sinking of several Argentine vessels. Incidents with England and the United States were caused by certain tactless expressions worded by their representatives. The President, very resentful of the occurrences requested satisfaction from the offenders. His moves had a double purpose: to secure the proclaimed disengagement of the country and to have it duly recognized.

A very important instance included in this period was marked by the signature of the Treaty of the A.B.C., concluded in Buenos Aires on May 25, 1915. It is commonly accepted that the creation in Paris of a

⁹⁵Silva, op. cit., p. 170.

⁹⁶Lucio Moreno Quintana, La Diplomacia de Irigoyen (La Plata: Imprenta de la Universidad, 1928), p. 95.

Latin-American Academy of Art, sponsored by the governments of Argentina, Brazil, and Chile led to the conclusion of the now famous A.B.C. Pact. Its main purpose was to adopt a rule of procedure to facilitate the friendly solution of the conflicts that were excluded from arbitration by former pacts. With such a purpose the three governments agreed on the signature of a special treaty establishing that:

(1) Disputes of any nature arising among the member states and that could not be solved by diplomatic means or arbitration should be submitted to the investigation and report of the Permanent Commission;

(2) The High Contracting Parties pledge themselves not to practice hostile acts until after the Commission has produced a report and then after a year's term has passed;

(3) Controversies should be sent to the Commission after diplomatic means have failed.

In other words, the treaty provided for a supplementary means to add new securities, new guarantees to the already existing ones in order to maintain the peace. The idea of this treaty among the three most powerful nations of South America aroused the suspicions of the other nations toward this movement.

The war's aftermath brought to the attention of the world the need of an international agency capable of maintaining peace among nations. As early as 1915 Estanislao Zeballos submitted to the consideration of the Institute of International Law of The Hague a project in this respect that he called "International Juridical Organization."⁹⁷ Argentina as a neutral attended the meetings of the Preliminary Conference of the Peace of 1919. Though accepting in principle the formation of a League of Nations as proposed by President Wilson, Argentina made a very important reservation. Since the proposed league "was going to establish and rule the future

⁹⁷For references about this project, see Silva, op. cit., p. 548.

peace among all nations, there was no point in distinguishing between belligerents and neutrals." Final adherence to the project for a League of Nations was formalized on January 16, 1920. Delegates were sent to the first meeting with two watchwords in their instructions: equality and arbitration. The first one was meant to seek the incorporation of all sovereign states, a question that the delegates were instructed to clear previous to any prior discussion. Since this proposal, after having been submitted, was deferred for later consideration, the Argentine delegation, following the instructions of its government, left the Assembly. President Irigoyen soon afterward justified the attitude taken by stating that "since the universality of the League of Nations and the principle of equality of sovereign states have been deferred, it was impossible to hope to arrive at the final goal."⁹⁸ In 1926 when called to state its position with regard to the reorganization of the Council of the League, Argentina ratified the principle of equality and democracy which repudiates hegemonies and their derivative: interventions. The government also objected to the acceptance of the Monroe Doctrine as a regional international declaration, considering that it was a unilateral manifestation of foreign policy. This was the attitude of the nation in the bosom of the international organism, and it was maintained unmodified through the years, until World War II put an end to the existence of the League.

⁹⁸ The text of the State of the Union message of 1921 which contains this assertion has been reproduced in full in Silva, op. cit., p. 566 and ff.

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The text of this document is contained in the following pages: p. 500 and 51.

The period from 1923 to 1939 was full of diplomatic events of great importance. The Pan-American movement, already under way, received great impulse in a number of conventions and declarations prepared and approved in the various meetings that took place during that time.⁹⁹ The last chapter will deal in detail with them. In 1939 in view of the world tension because of Hitler's advances, Argentina promoted a meeting to consider the possibilities of common action in the matter of neutrality. The United States, disregarding the existence of this initiative, hurried the meeting of a conference at Panama where declarations of neutrality and solidarity were approved. Among the most significant measures taken there the creation of a continental security belt ranked first. The Argentine government, however, objected to this measure because it would amount to the enlargement of the territorial seas. Objections were based on three important circumstances:

⁹⁹In 1932 the Argentine Minister of Foreign Affairs, Dr. Saavedra Lamas, submitted to the consideration of the governments his project for an anti-war treaty of nonaggression and conciliation. Though the idea was not new at the time, since the Briand-Kellogg Pact had very many provisions in common, the most significant feature was the statement of principles in the first three articles: condemnation of "war of aggressions," and resolve to settle all disputes by peaceful means; denial of the validity of territorial acquisitions or occupations by force; and prohibition of intervention, "either diplomatic or armed." Samuel Flagg Bemis, The Latin American Policy of the United States (New York: Harcourt, Brace and Co., 1943), pp. 267-68. Having in mind the problems arising from the Chaco War the author explains that the motives that led the Argentine Chancellery to the formulation of the said project were recent experiences among American nations that have demonstrated a spiritual community of highly pacifist ends. Therefore it intended not only to reestablish harmony among them but also to give a permanent character to the generous movement of unity that had been initiated. "It aspires to world peace," he says, "since it begins by creating a pacifist regime that secures it in one continent, consecrating the compromise of neither resorting to wars of aggression nor trying to resolve territorial controversies by the force of arms." The exposition of motives of the author have been reproduced in full in Silva, op. cit., pp. 275-85.

- (1) Because of the material difficulties in patrolling such a wide zone;
- (2) Because the country, being neutral, could not possibly assume such an obligation if it involved any disciplinary action of whatever sort against the belligerents;
- (3) Because it was impossible to accept such a line while its rights over the Falkland Islands were not duly recognized.

During that meeting Argentina made a declaration concerning those islands. It maintained the nonrecognition of the existence of colonies or possessions of European nations in the territorial extension of the Argentine coast and within the zone that has been delimited as free of hostile acts, adding that the country particularly reserves and maintains for itself the legitimate titles and rights to islands like the Malvinas or any other kind of territory located within that line. This position was reiterated in 1940 in the Havana Conference. At the time, colonialism in the continent presented a great problem to the American nations. They feared the possible occupation by Germany of the American possessions of European nations at the time under Nazi occupation.

As regards the Inter-American movement, it is evident that Argentina was the last American nation to tie up its foreign policy in absolute terms. Traditionally withdrawn, individualistically minded, a lover of peace and almost convinced of its "manifest destiny" as a neutral, this nation, its government as well as its people, reluctantly witnessed the evolution of Pan-Americanism in a direction so as to make neutrality almost impossible. That is why at the Havana Conference of 1940, Argentina adhered to the proposition that the aggression to one American state should be considered as continental, it did so with a very significant reservation: in such an event a consultation meeting should be called to adopt the necessary measures. When Japan attacked the United States, thus forcing the latter to enter the war, Argentina thought it

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to be its duty to declare the sister republic under a nonbelligerent status. Still the defender of the principle of self-determination and sovereignty the country invoked them in Rio de Janeiro to support its stand against the Mexican proposition of mass rupture. Not necessarily dishonest but still clinging to procedures of consultation Argentine delegates declared . . . "we went to Rio with our ideas and our needs which, naturally, are not and can not be the same as those of other countries. However, difference does not necessarily mean divergence or open opposition. Example: we think that our declaration of nonbelligerent with regard to the United States can be much more valuable to that country than any other extreme position, because it makes possible a collaboration with it that only a few other American nations are in a position to furnish."¹⁰⁰ In 1914 Argentina rebuffed the Uruguayan proposition of granting nonbelligerent status to those American nations at war with extracontinental powers, but years later she took that stand.

We have to enter now a very critical period in the relations of Argentina and the United States which is not our intention to discuss extensively. The period is still the object of the most controversial interpretations. However it is generally accepted that the main reason for the disagreement lies in the fact that Argentina was reluctant to endorse the policy of collective self-defense. It was not until 1947, when the last phase of the evolution of the Pan-American system was accomplished, that Argentina decided to abandon its most cherished tradition. The realization of new needs in a world divided into two

¹⁰⁰Report of the Argentine Delegates to the II Consultation Meeting. Rio de Janeiro, 1942. IV Part. Consult Silva, *op. cit.*, pp. 867-880.

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blocs, from which the former threat of American imperialism had disappeared to give place to a greater menace, brought this change into reality. The pledge contained in the Rio Treaty of Reciprocal Assistance changed the formula of consultation and self-determination of 1942 for broader powers bestowed upon a consultation organ whose resolutions have to be accepted after being voted in favor by two-thirds of the member states. This treaty amounts to the abandonment of neutrality or, rather, to a radical evolution in its concept. An American country can no longer remain neutral if an aggression occurs against one of them. If decreed by the consultation organ the rupture of relations proceeds automatically and is obligatory to every one of them. This is the high price they have to pay for their collective security.

Argentina joined her sister republics in San Francisco in the proceedings that led to the creation of the United Nations. At that time, its firm stand for neutrality in the war caused strained relations not only with the United States but also with Great Britain. The ever insufficiently justified insistence of the United States to get Argentina to declare war brought about a series of measures (economic pressure among them) that did nothing but upset the public opinion of the country.

Ramirez's government, Castillo's successor by virtue of the Revolution of June 4, 1943, continued the former neutral policy in spite of the reprisals. Consequently its regime had to undergo the punishment of nonrecognition on the part of the United States and the exclusion of Argentina from very important international conferences then being

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held.¹⁰¹ Naturally the country was absent from the Mexico City Conference of 1943. Still the United States was clinging to the idea that "neutrality must be a mask for German sympathies. Consequently, those who are not for us must be against us. So most Americans reasoned."¹⁰² Argentina had originally suggested in October 1944 to the Pan-American Union Board the meeting of a conference for public justification of its attitude since relations were already strained at the time. On January 8, 1945, the Board answered that no pronouncement with reference to the invitation was possible at the time. However, on February 21, 1945, the Mexico City Conference was inaugurated following a suggestion of the United States. The noncommittal position adopted by Argentina has been interpreted in different ways: some want to interpret it as the natural result of resentment, because the United States took the leadership of the Pan-American movement which Argentina has for so long desired to organize as a Latin-American bloc. Others consider the part played by economic interests.¹⁰³ Inside the country in the minds of the majority of the people, spiritually inclined to democracy, the obstinacy of the United

¹⁰¹"In 1943 Argentina failed to receive an invitation to either the United Nations Conference on Food and Agriculture held at Hot Springs, Va., or to the United Nations Relief and Rehabilitation Administration Conference held in Atlantic City. In 1944 Argentina was excluded from the Monetary and Banking Conference at Bretton Woods and the Aviation Conference in Chicago. See Edward Guerrant, Roosevelt's Good Neighbor Policy (Albuquerque: The University of New Mexico Press, 1950), p. 49.

¹⁰²Austin MacDonald, Latin America. Politics and Government (New York: Thomas Y. Crowell Co., 1954), p. 50.

¹⁰³The country was blamed, among other reasons, for the reversion of the declaration formulated in 1914 refusing to consider food-stuffs as contraband of war and forbidding the inspection of the cargoes of neutral vessels.

States turned them to back the foreign policy of disengagement sponsored by a government which they opposed in domestic terms. Ramirez's declaration of severance of relations came too late, both for the country and the Allies. Nobody was benefited by it. Totally unexpected and appearing as the reversal of a declaration issued only a few days before, it was not welcomed by the people,¹⁰⁴ at the time well aware of the hidden pressures that hastened this move. And they were resentful, "because they have been pressured by the great powers into a move that they would never have taken of their own accord."¹⁰⁵

When the declaration of war was issued on March 27, 1945, Perón was way up in his ascendent road to prestige and power. Knowing the deep feelings of the people toward neutrality and how much they cherished the sovereignty of their country, he emphasized the United States' attitude as that of an open enemy of the nation. Whether his story was wholly believed or not, it produced, nevertheless, a scornful reaction which was to increase when finally he took over the Presidency.

As regards the international meetings that were under way in the meantime, the Conference of Chapultepec for instance, though it deliberated without Argentina it left open to its later decision the possibility of adhering to it, which Argentina did in May 27, 1945, by means of a governmental decree. After the declaration of war the country rejoined its

¹⁰⁴"It must be clearly understood that even among those Argentines who warmly espoused the Allied cause, the sympathy was for Great Britain and France, not for the United States or the Soviet Union. The United States was a long time rival; it was regarded as a greedy nation whose entry in the war had doubtless been prompted by a desire to protect its own interests," MacDonald, op. cit., p. 50.

¹⁰⁵MacDonald, op. cit., p. 59. Consult also for interesting documents related to the times, James Gantenbein, op. cit.

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international activities and when in April 1945, the San Francisco Conference was initiated, the Allied Powers found the Latin American nations united as they have ever been to their Argentine sister. Their friendly sentiments never failed to be sincere and it was their victory to obtain the incorporation of the Republic to the world organization against Russian opposition. Since its entrance, its participation has been active and again, as had happened in the bosom of the League of Nations, she tried to protect the doctrine of equality among the member states, opposing the right of veto self-bestowed on themselves by the Great Powers. In matters concerning the admission of new members the Argentine delegation developed the so-called Arce Doctrine that attributes to the Assembly without any restriction the power to decide about the admission of new members: the power of the Security Council being reduced to give advice or recommend on the matter.¹⁰⁶

The principles contained in both the Declaration of Mexico and the Declaration of the United Nations have never been alien to Argentine sentiments and practices. So much so "that there exists none among them which has not been sustained and anticipated throughout history by its statesmen."¹⁰⁷ In the American realm, "the Act of Chapultepec and the Declaration of Mexico were the most fundamental steps ever advanced by the continent to democratize the American Union."¹⁰⁸ To participate in

¹⁰⁶ See José Arce, United Nations: Admission of New Members (Madrid: Blas S.A. Tipográfica, 1951), and by the same author, Right Now (Madrid: Blas S.A. Tipográfica, 1951).

¹⁰⁷ Silva, op. cit., Preface p. VII.

¹⁰⁸ Silva, op. cit., Preface p. IX.

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such a process Argentina did not need to be present in the congresses that voted them and from which she was eventually excluded. "The principles there sanctioned and incorporated into pacts have been made its own since long ago, and for the Nation they have always been more than simply written principles: for it they never have ceased to be practiced principles, in full operation."¹⁰⁹

¹⁰⁹Ibid.

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CHAPTER II

THE CALVO AND DRAGO DOCTRINES

Chronologically speaking, Calvo's Doctrine came to life after two other so-called doctrines of nonintervention were drafted. The first one was worded by President Washington in his famous Farewell Address in which he stated the principle of aloofness practiced henceforth for more than two centuries by the United States in its foreign dealings. The other was the Monroe Doctrine in which the principles of aloofness, non-colonization, and nonintervention can be found. The only element common to all is a condemnation of intervention. From that point on, their differences are great, particularly if we consider that the first two were meant as declarations of national policy, and the third one was intended to be the wording of a principle of international law of universal validity. In fact, Monroe's message--despite a long controversy in which attempts have been made to prove otherwise--was the well-timed advice of a statesman to his countrymen. Different interpretations given to it, and the intrinsic value of its text, favored both the diffusion and acceptance of its principles by the majority of the American sister-republics. However, imperialistic acts committed in later years against some of these sister republics by the United States were sufficient proof that the pronouncement was not enough guarantee in itself to spare them from intervention.

When Calvo put his ideas into words he truly meant to have at least some of them incorporated as principles to the body of rules of the Law of

THE CALVO AND BROWN DOCTRINES

Chronologically speaking, Calvo's doctrine came to the fore two other so-called theories of nonintervention were created. The first one was worked by President Washington in his famous message to Congress in 1793 in which he stated the principle of absolute prohibition of war with any nation not a member of the United States in the foreign domain. The other was the Monroe Doctrine in which the principle of absolute non-intervention was stated. The only other reason to all is a combination of intervention. From that point on, the differences are great, particularly if we consider that the first two were meant as declarations of national policy, and the third was intended to be the wording of a principle of international law of universal validity. In fact, Monroe's message--despite a long controversy in which attempts have been made to prove otherwise--was the well-known advice of a statesman to his countryman. It is not interpretation given to it, and the intrinsic value of the text, founded both on the situation and acceptance of its principles by the majority of the American states, is public. However, the principle was contained in later years against some of these states repudiated by the United States were an attempt made that the government was not bound to remain in itself to secure them from intervention.

When Calvo put his ideas into words he really meant to have it said some of them incorporated as principles in the body of rules of the law of

Nations. He was not a politician but a jurist, and whenever he dealt with political problems it was only to find a legal solution for them. His principal motive was the realization that, aside from political reasons, interventions in the Western Hemisphere have nearly always had other pretexts. The more obvious ones have been injuries to private interests caused by civil wars, violence, false arrest, imprisonment, expulsion, breaches of contracts, claims, and demands for pecuniary indemnities in behalf of subjects or even foreigners whose protection in most cases finds justification neither in the wording nor in the spirit of the law.¹

Carlos Calvo, diplomat, historian, and jurist, was born in Montevideo in 1824, and died in Paris in 1906. Most of his life he devoted to the service of his country in many diplomatic affairs. He also served some of the sister republics in a similar capacity, as, for instance, in the case of Paraguay which he represented in London. His diplomatic fame and his growing reputation as a jurist brought about his appointment as one of the arbitrators in the settlement of the Alabama Claims. He also was one of the founders of the Institute of International Law (Gante, 1873). Although he is not considered an innovator but rather as a compiler, his work is not deprived of a certain originality of which the principle of nonintervention is but one example. He has been ranked among the positivists whom we have already discussed in the first chapter. No doubt about it, his main contributions have been his Treatise of International Law and a very

¹Carlos Calvo, Le Droit International Théorique et Practique (Paris: Guilleaumin et Cie., 1886), 2 vols.

complete compilation of American treaties.² His great privilege, however, was to state the principle that foreigners should not enjoy more prerogatives or rights than those granted to nationals by the local laws. In other words, equality of rights for aliens and citizens alike, rather than having the alien rely upon diplomatic protection or, eventually, intervention by his country in order to obtain special treatment.

"The diplomatic protection of nationals," as Jessup says, "against injuries suffered in a foreign country is one of the most important institutions of international law."³ Nothing could be more truthful because diplomatic protection, as such, is one of the oldest principles of the Law of Nations, and the origin and reason for the existence of the institution of diplomacy. However, after centuries of being practiced, it degenerated into a weapon too freely used by the colonial countries for the "protection" of their nationals abroad. This universal right was exercised only by the powerful of the world, in detriment to weak nations, unable to provide for the defense of their sovereign rights. That was precisely the case of the Latin American nations at the beginning of the twentieth century. Then the formula once created to counteract the illegal encroachments of one state in detriment to the citizens of another, and to keep a sort of equilibrium amongst them, was valid no more. To re-establish it, or as Jessup says, to redress the balance, the Calvo and Drago Doctrines were evolved.⁴ The need for them was so urgent that with the passing of time,

²Carlos Calvo, Colección Histórica Completa de los Tratados, Convenciones, Capitulaciones y Armisticios y otros Actos Diplomáticos de Todos los Estados de América Latina. 1493 Hasta Nuestros Días (first edition, Paris: Librería de A. Durand, 1862).

³Phillip Jessup, Transnational Law (New Haven: Yale University Press, 1956), p. 33.

⁴Ibid.

and in open disregard of their authors' ideas, they were used by other jurists to advocate theories diametrically opposed to the original ones.

Calvo formulated his doctrine in view of the frequent threats to which the American nations were subjected, and with the purpose of restoring to them that equality of treatment which the European states never failed to observe amongst themselves. At that time, pecuniary indemnities, frequently granted without previous examination of their legality, and their amounts hazardedly estimated under the threat of force, as a rule, were the recognized origin of the European claims in this continent. It was evident then that intervention, the classic pattern of European politics, only proceeded among those nations in order to preserve or restore a certain equilibrium, known as the balance of power, occasionally disturbed by religious or political motives. Consequently, Calvo stated: "According to strict international law the recovery of debts and the pursuit of private claims does not justify de plano prima facie the armed intervention of governments. Since European states invariably follow this rule in their reciprocal relations, there is no reason why they should not also impose it upon themselves in their relations with the nations of the New World."⁵ This statement fully voiced the aspirations of the American nations which "though requiring and seeking foreign investments and immigration sought to maintain the usual prerogative of sovereignty."⁶

⁵Calvo, Treatise, I, pp. 350-51. See also Silva, op. cit., p. 464.

⁶Edwin Brochard, "Calvo and Drago Doctrines," Encyclopedia of the Social Sciences (New York: The MacMillan Company, 1933), III, p. 153.
 "... Thus they endeavored to find a legal means of preventing the too frequently diplomatic interposition of foreign governments in behalf of their citizens, and to deny to foreigners the advantageous status which they have deemed to enjoy."

and in open disregard of their authors' views, they were used in order
to advocate theories diametrically opposed to the original ones.
Calvo formulated his doctrine in view of the frequent foreign
which the American nations were subject to, and with the purpose of ad-
vancing to them that equality of treatment which the European states have
failed to observe amongst themselves. At that time, however, international
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restore a certain equilibrium, known as the balance of power, consequently
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intervention of governments. Since European states invariably follow this
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not also impose it upon themselves in their relations with the nations of
the New World." This statement fully voiced the aspirations of the
American nations which through repatriating and seeking foreign investments
and immigration sought to maintain the normal perspective of governments.

Calvo, *Treatise*, I, pp. 120-21. See also Silva, *op. cit.*, p. 104.

John B. Hays, "Calvo and His Doctrine," *International Law*
Journal (New York: The Macmillan Company, 1923), I, p. 122.
Thus they endeavored to find a legal means of preserving and
frequently domestic information of foreign governments in behalf of
their officers, and to deny to foreigners the advantages which
they have deemed to enjoy."

By claiming that foreigners are bound by the law of the country of residence and denying the right to claim for injuries suffered in civil wars or in mob violences, Calvo started a process of reform of the traditional "right of intervention" that stopped only when, by common accord, the American nations pledged themselves to abolish it without reservation. Calvo sustained in absolute terms the nonresponsibility of governments for damages and losses of any nature suffered by foreigners during times of internal troubles. To admit the principle of indemnity in those cases would be tantamount to creating a fatal and exorbitant privilege, essentially favorable to powerful states and injurious to weak ones. It would also create an unjustifiable situation of inequality between foreigners and nationals. When, through no fault of its own, damage is suffered, a state could not be held responsible. Otherwise, the independence of nations would be compromised because their essential element, territorial jurisdiction, would be destroyed. As Calvo says, herein lies the real significance of the frequent recourse on the part of European nations to diplomatic channels for settling disputes which, by their nature and surrounding circumstances, belong to the exclusive domain of the ordinary courts.⁷ In such cases there is only one thing that foreigners are entitled to ask: the due punishment of those responsible, by the authorities of the country of residence. He assumes that foreigners in their private litigations must exhaust all local remedies and establish a denial of justice before diplomatic protection could be requested. As Brochard says, this statement of Calvo's gave final expression to a long cherished desire of the American nations in their efforts to obtain the acceptance of the

⁷Calvo, *op. cit.*, III, par. 142.

by claiming that Calvo's... and denying the... non-violence, Calvo... of intervention... nations pledged themselves to... sustained in... measures and... internal... would be... essentially favorable... would also... Calvo's... suffered, a state... powers of nations... territorial... the real... nations to... and surrounding... occurs. In such... to ask: the... country of... nations must... before diplomatic... statement of Calvo's... the American nations...

principle that "the foreigner is bound by the local law; that he cannot claim for injuries arising from civil wars or mob violence, under conditions not available to nationals; that in his private litigation he must exhaust the local remedies and establish a "denial of justice" before invoking diplomatic protection; and that in his litigation with the government arising out of concession, contracts, or franchises, he must make the local courts his final forum."⁸

Calvo summarizes his doctrine as follows:

(1) The principle of indemnity and diplomatic intervention in behalf of foreigners for injuries suffered in cases of civil wars has not been admitted by any nations of Europe or America;

(2) The governments of powerful nations which exercise or impose alleged rights against relatively weak states commit an abuse of power and force which nothing can justify, and which is as contrary to their own legislation as to international practice and political expedience.⁹

When he has to determine specifically what kind of intervention is forbidden, Calvo does not distinguish between armed and diplomatic intervention. In fact he condemns them all, as the prima facie means of collecting debts or indemnities for injuries or losses.¹⁰ Three principles of the Law of Nations find enforcement in Calvo's doctrine: (1) national sovereignty; (2) inviolability of territorial jurisdiction; and (3) equality . . . of states. These are also the legal foundations of the doctrine which departs from the assumption that sovereignty and its corollaries, equality

⁸Brochard, op. cit., III, p. 154.

⁹Calvo, op. cit., VI, par. 256, and III, par. 1271. See also Hershey, op. cit., pp. 28-29.

¹⁰Calvo, op. cit., I, par. 267.

and independence, grants to a nation freedom from the interference, without specification of kind, of another nation or nations in its own affairs. To agree upon this with reservations or qualifications will mean to agree in violating a nation's rights according to the circumstances. Consequently, the core of the doctrine is the denial of the legal capacity of a state to the compulsory or diplomatic collection of foreign debts, regardless of kind. It has to be so, in defense of the right of jurisdiction of their own courts, granted to all nations by international law. Sánchez y Sánchez, when discussing the subject, brings about the opposite stand taken by some international jurists, and it is very interesting to search for their reasons.

Le Fur, for example, rejects Calvo's ideas on the basis that a state, sheltered by its privileges as a sovereign, cannot declare itself insolvent, and hence leave unfulfilled its international financial obligations. He sustains that when a state delays in paying back its debts and when it is impossible to have it do so by means of treaties or other kinds of obligations (delicti or causi-delicti), the only means left to collect the overdue payments are the compulsory ones.¹¹ Le Fur wanted to defend the absolutism of the European nations in their dealings with Americans, and he did so by blindly endorsing the legality of the use of force and compulsion. For him, sovereignty was not a valid excuse for insolvency. It is surprising how both authors, Calvo and Le Fur, seem to have arrived at the same conclusion by means of opposed arguments. In fact, the authors who have rejected Calvo's thesis on the grounds that

¹¹For a full discussion of Le Fur's ideas, see Antonio Sánchez y Sánchez, Derecho Internacional Público Americano (Ciudad Trujillo: Editora Montalvo, 1943), pp. 630-31 and 642-43.

it favors irresponsibility, and those who have endorsed it to abolish the institution of diplomatic protection; all of them have absolutely distorted the original doctrine. Calvo does not deny the responsibility of the state, nor does he deny the legality of the principles that regulate it. "He does not find fault with them, but with their disregard and abuse by the stronger nations, whom he condemned for imposing upon small states a measure of duties different from those which they observe in their relations among themselves. What he deplored was the practice of seeking special privileges and favors for foreign subjects which the local law did not provide for citizens."¹² If what the author tried to emphasize was the principle of equality and the mutual respect that has to prevail in state relations, he could hardly have done so by enacting the legality of negligence and default. A contemporary Argentine jurist, Podestá Costa, has explained the feasibility of the presumption contained in Calvo's teachings with his own doctrine, the so-called "community of fortune." This author--fully aware of the difficulty and complexity of the problem of determining the international responsibility of the state--has created an original concept which tries to define the juridical relationship established between the state and the foreigner who comes to live in it: the foreigner accepts not only the laws of the country but its social and political conditions as well.¹³

¹²Alwyn Freeman, "Recent Aspects of the Calvo Doctrine and the Challenge to International Law," American Journal of International Law, XL (January-December, 1946), pp. 132-33. See Calvo, op. cit., I, p. 140 and ff.

¹³Luis A. Podestá Costa, Derecho Internacional Público (tercera edición; Buenos Aires: Tipográfica Editora Argentina, 1955), I, p. 461.

its favor irresponsibility, and those who have answered it to the effect that the institution of diplomatic protection; all of them have answered it in favor of the original doctrine. Calvo does not deny the responsibility of the state, nor does he deny the liability of the individual that resides in it. He does not find fault with them, but with their disregard and abuse of the sovereign nation, whom he condemned for imposing upon small states a measure of duties different from those which they observe in their relations among themselves. What he deplored was the practice of creating special privileges and favors for foreign subjects which the local law did not provide for citizens.¹² If what the author tried to emphasize was the principle of equality and his actual request that not to prevail in state relations, he could hardly have done so by asserting the legality of privileges and favors. A contemporary Argentine jurist, Roberto Gons, has explained the legal liability of the presumption contained in Calvo's teachings with his own doctrine, the so-called "community of fortunes." This author truly aware of the difficulty and complexity of the problem of determining the international responsibility of the state--has created an original concept which tries to define the juridical relationships established between the state and the foreigner who comes to live in it: the foreigner occupies not only the laws of the country but its social and political conditions as well.¹³

¹² Alfaro Bressan, "Present aspects of the Calvo Doctrine and the Challenge to International Law," *American Journal of International Law*, XL (January-December, 1946), pp. 122-31. See Calvo, op. cit., I, p. 140 and IV.

¹³ Luis A. Podesta Gons, *Problemas Internacionales Juridicos* (Lima: Editorial Buenos Aires: Tipografia Litografica Argentina, 1952), I, p. 141.

This material, moral, and juridical submission is almost complete, except for the preservation of the alien's "essential rights." Among these rights the author lists the rights to life, liberty, and property. Since the state does not and cannot guarantee complete immunity to the persons and wealth contained in its territory, this principle applies to foreigners and citizens without distinction. Notwithstanding, the state could be held responsible for losses or damages inflicted to a foreigner when his "essential rights" have been violated and the wrong directly originates from fraud imputable to the State. Therefore, while "the community of fortune is the rule that governs the foreigner's life in a foreign country, the preservation of his essential rights is the only exception that in very special circumstances could be opposed to the full validity of that fundamental norm."¹⁴ When Podestá Costa issued this thesis he intended to solve the differences of opinion existing when dealing with claims arising from damages caused to foreigners during civil wars. Entering in the legal aspect of the problem, he bases his proposition on the assumption that "responsibility supposes the existence of two essential juridical elements: (1) a legal obligation (contractual or extracontractual) violated by action or omission of action; and (2) the imputability of such action or omission."¹⁵

The mere fact of a damage originated in civil wars does not necessarily imply responsibility for the state. "Revolution, under certain social conditions, is a constant phenomenon in the history of civilization, and

¹⁴Podestá Costa, *op. cit.*, I, p. 462.

¹⁵*Ibid.*

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of action; and (2) the responsibility of such action or omission.
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Robert G. Coates, Jr., M.A.
1918.

an inalienable right of the people. On the other hand, armed action on the part of the government, organized to re-establish and secure the public order, is achieved by right, and in the performance of a duty."¹⁶ The whole doctrine abuses concepts and principles of the Common Law (Derecho Civil). The author, however, makes good use of analogies and successfully applies them to a problem of international law, and has provided the "local remedy rule" of more convincing foundations. His trend of thought is shared by many authors; Hackworth in his Digest, when dealing with state responsibility, says: "The admission of aliens into a state immediately calls into existence certain correlative rights and duties. The alien has the right to the protection of the local law and assumes a relationship toward the state of his residence sometimes referred to as "temporary allegiance." If the alien receives the benefits of the same laws, protection, and means of redress for injuries which the state accords to its own citizens, there is no justifiable ground for complaint, unless it be shown that the system of law or its administration falls below the standard generally recognized as essential by the community of nations."¹⁷ "When local remedies are available the alien is ordinarily not entitled to the interposition of his government until he has exhausted those remedies and has been denied justice."¹⁸

¹⁶Sánchez de Bustamante y Sirvén, op. cit., III, p. 535. For further explanations of Podestá Costa's thesis, consult the following works by the author: Responsabilidad del Estado por Daños Causados a las Personas o a los Bienes de Extranjeros en Luchas Civiles (Buenos Aires, 1922), and Ensayo Sobre las Luchas Civiles y el Derecho Internacional (Buenos Aires, 1926).

¹⁷Hackworth, Digest, VI, p. 472.

¹⁸Op. cit., VI, p. 471.

This is, in fact, Calvo's main idea when he says:

"It is certain that aliens who establish themselves in a country have the same rights to protection as citizens have, but they cannot claim a more extended protection. If they suffer any wrong, they ought to count on the government of the country prosecuting the delinquents, and they ought not to claim any indemnity from the state to which the authors of the violence belong."¹⁹

Calvo's doctrinal outburst had one unquestionable element to favor a rapid headway: it was well-timed and in accord with the needs and international position of a certain group of nations which adopted it while the powerful states either flatly rejected (Europe) or half-way accepted (United States) it. Such a disparity was not exclusively restricted to the governmental spheres, but also shared by the jurists; particularly some of them appeared to be very disturbed by the newly developed theory. Freeman, for example, does not hesitate in calling it "a destructive aberration from the classical conception of international law."²⁰ On the other hand, words of praise were spoken by Latin American jurists who thought the theory to be a means to put an end to the numerous interventions by foreign powers in the continent, under the disguise of diplomatic protection of citizens abroad. As was to be expected, the effusive enthusiasm of the Latin Americans immediately faced the stern opposition of the foreign powers; this circumstance compelled the Latin American jurists to resort to various devices and techniques to implement the doctrine. The first step was to have it incorporated, as the "Calvo Clause," in contracts celebrated by the Latin-American governments with foreigners. Thus included, the clause pledges

¹⁹Calvo, op. cit., V, par. 204, and also VI, pars. 256 and 231.

²⁰Freeman, op. cit., p. 134.

This is, in fact, Calvo's main thesis. He says:

"It is certain that alien who settles in a country have the same rights as protection as citizens, but they cannot claim a more extensive protection. If they suffer any wrong, they must go to court as the government of the country representing the alien, and they must not to claim any indemnity from the state in which the alien of the violence occurs."¹⁹

Calvo's doctrinal outlook had one important element: to favor a rapid highway. It was well-known and in accord with the needs and international position of a certain group of nations which adopted it while the powerful states either flatly rejected (United States) or accepted (United States) it. Such a doctrine was not exclusively related to the governmental sphere, but also shared by the private particularly some of them seemed to be very disturbed by the newly developed theory. However, for example, does not hesitate to define it as a restrictive abstraction from the classical conception of international law.²⁰ On the other hand, states of practice were spoken by Latin American jurists who thought the theory to be a means to put an end to the numerous interventions by foreign powers in the continent, which the doctrine of absolute protection of citizens abroad. As was to be expected, the effective enthusiasm of the Latin American immediately faced the stern opposition of the foreign powers. This circumstance compelled the Latin American jurists to resort to various devices and techniques to implement the doctrine. The first step was to have it incorporated, as the "Calvo Clause," in contracts negotiated by the Latin American governments with foreigners. Thus excluded, the clause placed

¹⁹ Calvo, op. cit., V, par. 204, and also VI, par. 230 and 231.
²⁰ Freeman, op. cit., p. 134.

the foreigner not to resort to the protection of his government in connection with contracts or concession privileges. However, the clause leaves to the alien the right to do so in case of flagrant denial of justice. The wording of the clause has varied slightly in the different documents in which it has been included, "sometimes the mere statement that the doubts shall be submitted to the local courts with no further stipulation as to the renunciation of diplomatic protection. Sometimes such a renunciation is added to the stipulation for exclusive jurisdiction of the local courts with the promise that cases of denial of justice are excepted."²¹ But for the most part, the clause generally reads:

"The doubts and controversies that may arise on account of this contract shall be decided by the competent courts of the Republic in conformity with the laws and shall not give rise to any international reclamation."²²

Among the later developments undergone by the original idea contained in Calvo's teachings, perhaps the most important is the so-called Cárdenas Doctrine that enacts the integral validity of the Calvo Clause.²³ Attempts like this one, sponsored by Mexico in an effort to avert any possibility of intervention, have been condemned by international authorities in international law as a real challenge meant to overthrow the system of diplomatic protection in favor of aliens, and with it the

²¹Harvard Law School, Research Group in International Law, "Responsibilities of States for Damages Done in Their Territories to the Person or Property of Foreigners. Draft of Convention," American Journal of International Law, XXIII (April 1929), p. 208. In this draft of Convention the Study Group manifested its total opposition to the limited or any kind of validity that could be granted to the Clause. We will refer to this in detail at the end of the present chapter.

²²Ibid.

²³Salvador Mendoza, La Doctrina Cárdenas (Mexico, D.F.: Ediciones Botas, 1939).

whole system of guarantees that the Law of Nations has developed to counteract the wrongful doings of a state against foreigners.²⁴

O'Shea, in his complete work on the Calvo Clause, denies the existence of a real recognition of the doctrine as a principle, and as such he reports it dead.²⁵ However, he devotes more than two hundred pages to display the numerous arbitral decisions, governmental attitudes, and international declarations where the clause has been invoked. No doubt the complexity of the issue that the clause intends to solve accounts for the disparity of arguments that intend to judge it; because the clause aims at reconciling the two-fold aspect of the problem of intervention: the legal and the political one. When Calvo enunciated his point of view as early as 1868, he maintained that:

"Apart from a treaty it was contrary to fundamental principles of international law to give foreigners in some countries a more favored position than in others, and that it was an abuse of physical power for stronger states to exact pecuniary indemnities from a weaker state under circumstances which would not allow them to make such claims among themselves."²⁶

These views--applied to concession contracts or to any other kind of convention between a government and an alien--provide, whenever the parties agree, that:

- (1) - The foreigner renounces all rights to prefer diplomatic claims in regard to rights and obligations derived from the contract;
- (2) All disputes or doubts of any kind that could arise under it, shall be submitted to the local courts.

²⁴For a complete account of the position of European and American jurists in this delicate subject, consult Freeman, op. cit., *passim*.

²⁵O'Shea, op. cit., p. 20.

²⁶Brochard, op. cit., p. 154.

whole system of guarantees that the law of Nations has developed to
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"Apart from a treaty it was contrary to fundamental principle
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 demnities from a weaker state under circumstances which would
 not allow them to make such claims among themselves."²⁶

These views--applied to commercial contracts or to any other kind
 of convention between a government and an alien--provides, whenever the
 parties agree, that:

(1) The foreigner renounces all rights to prefer diplomatic
 claims in regard to rights and obligations derived from the contract;
 (2) All disputes or doubts of any kind that could arise under
 it, shall be submitted to the local courts.

²⁴For a complete account of the position of European and American
 jurists in this delicate subject, consult Freeman, *op. cit.*, par. 11.

²⁵O'Shea, *op. cit.*, p. 20.

²⁶Freeman, *op. cit.*, p. 124.

Agreement upon these conclusions is almost complete if we consider that, thus analyzed, the Calvo Clause is reported "as merely confirmatory of international law and unobjectionable."²⁷ However, this starting accord ceases to exist when one group of nations, mainly the Latin Americans, understands that such a renunciation to claim for diplomatic protection and the tacit acceptance of the jurisdiction of the local courts are absolute. The Europeans and the United States, however, give to the principle only a relative validity; in fact, these countries have constantly opposed that interpretation because of their reluctance to see their citizens rely upon local remedies for the adjustment of their claims. However, the firmness of Calvo's thought is reflected still today in the attitude of the Latin-Americans; they most certainly adhere to the jurist's assertion that "if foreigners suffer any wrong, they ought to count on the government of the country to prosecute the delinquents, and they ought not to claim any indemnity from the state to which the authors of the violence belong."²⁸ This attitude has a natural explanation in the fact that the clause "is perhaps the only legal concept that has furnished some meaningful degree of protection against the real and imagined abuses of diplomatic interposition."²⁹

In short, then, Latin Americans aim at seeing the Calvo Clause accepted by all nations under the following conditions:

(1) The clause is not to be considered as a mere obligation to resort to local tribunals and exhaust the legal resources at that level;

²⁷Ibid.

²⁸Calvo, op. cit., I, pars. 204 and 350.

²⁹O'Shea, op. cit., p. 34.

agreement upon these conditions is almost complete. It is not surprising, therefore, that, thus analyzed, the Calvo Clause is reported as merely contradictory of international law and unobjectionable. However, the situation is not so simple as it seems. It is true that there are no group of nations, within the Latin American area, that such a renunciation to claim for diplomatic protection and the tacit acceptance of the jurisdiction of the local courts are absolute. The European and the United States, however, give to the principle only a relative validity; in fact, those countries have constantly opposed that interpretation because of their reluctance to see their citizens rely upon local remedies for the adjustment of their claims. However, the firmness of Calvo's thought is well attested today in the attitude of the Latin-American; they most certainly adhere to the jurist's assertion that "if foreigners suffer any wrong, they ought to resort to the government of the country to prosecute the delinquency, and they ought not to claim any indemnity from the state to which the authors of the violence belong."²⁸ This attitude has a natural explanation in the fact that the clause "is perhaps the only legal concept that has furnished some meaningful degree of protection against the real and imagined abuses of diplomatic intervention."²⁹ In short, then, Latin Americans are at issue the Calvo Clause accepted by all nations under the following conditions:

(1) The clause is not to be considered as a mere obligation to resort to local tribunals and exhaust the legal remedies at that level;

²⁸ Ibid.

²⁹ Calvo, *op. cit.*, I, para. 304 and 350.

³⁰ O'Shea, *op. cit.*, p. 14.

(2) It has to be accepted as the positive, effective clause that can alone limit the exercise of the right of diplomatic protection.

The strongest argument against the clause and the principle of law that it contains is perhaps the fact that it creates a subordination of international law to the commands of the national laws. This is the interpretation given by the Commission of Experts for the Codification of International Law of the League of Nations, and also that of the Research Group of Harvard Law School to which we have referred in former pages.³⁰ Ramón Beteta is perhaps the most passionate among the Latin American supporters of the complete validity of the clauses. At the Eighth American Scientific Congress of 1943, he declared:

"Es evidente que una persona física o moral no puede restringir ni anular en materia internacional la acción protectora del Estado a que pertenece; pero por otra parte, éste no puede reclamar a otro sino cuando existe un reclamante individual y un daño a él causado. La existencia del reclamante, nacional del Estado que protege y la de un perjuicio que es reclamado al Estado delincente son indispensables y fundamentales para toda reclamación internacional."³¹

Therefore, when an alien agrees that the acts of the state where he resides will not produce damages to his patrimony, because the benefits received will compensate those possible losses, there is no cause for an international claim. Likewise, when he agrees not to resort to his government in case of discrepancies or misunderstandings arising from a contract of which he is a part, he has no right to present any claims in any

³⁰Ramón Beteta and Ernesto Henríquez, "La Protección Diplomática de los Intereses Pecuniarios de Extranjeros en los Estados Unidos de América," Proceedings of the 8th American Scientific Congress. International Law. Public Law and Jurisprudence, X (Washington: The Government Printing Office, 1943), pp. 27-48.

³¹Loc. cit., p. 34.

(2) It has to be pointed out that the Commission is not a court of law and that it cannot make a binding decision.

The present situation is that the Commission is not a court of law and that it cannot make a binding decision. The Commission is not a court of law and that it cannot make a binding decision. The Commission is not a court of law and that it cannot make a binding decision.

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Therefore, the Commission is not a court of law and that it cannot make a binding decision. The Commission is not a court of law and that it cannot make a binding decision. The Commission is not a court of law and that it cannot make a binding decision.

30. The Commission is not a court of law and that it cannot make a binding decision. The Commission is not a court of law and that it cannot make a binding decision. The Commission is not a court of law and that it cannot make a binding decision.

international court. Beteta interprets that this is a typical case of absence of the claiming part; therefore if there is no claimant, there is no place for an international claim; therefore there will be no case for diplomatic protection either, which could only be exerted in cases of flagrant denial of justice. This is the reasoning of a distinguished Mexican scholar which has been judged by many as totally divorced from the traditional principles of international law governing the subject. However, in the analysis and evaluation of this doctrine it is necessary to keep in mind the fact that its author is the citizen of a country which has faced many times the menace of serious economic problems which had endangered its sovereignty as an independent nation. The conflict created by capitalistic interests pretending to rebuff the jurisdiction of Mexico's courts of law led some of its most capable jurists to defend the principles of the Calvo Clause in most radical terms. At the Eighth American Scientific Congress Brochard, representing the United States views on the subject, opposed Beteta pointing out, to the consideration of the rest of the Latin American nations there represented, the consequences that such an attitude--as sponsored by the Mexican jurist--could bring upon them. He pointed out that foreign capital would possibly abstain from migrating "to a country that supports the doctrine that private property is there on sufferance and that the country can do with it what it chooses."³² He also complained that if in such cases international law cannot stop the arbitrary attitude of a state, "Of course, force will be

³²Edwin Brochard, "Remarks on Papers of Dr. Beteta and Cruchaga Ossa," Proceedings of the 8th American Scientific Congress, op. cit., p. 70.

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³² ...
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p. 70.

used again."³³ And then it will be a case of real intervention. This realization led him to an earnest defense of "diplomatic protection or the international responsibility of the state, as qualified and defined by hundreds of arbitral decisions as a guaranty of the supremacy of the law, rather than of pure force and power politics."³⁴

Developments such as the Beteta thesis and the Cárdenas doctrine depart so much from Calvo's original statements that one cannot be sure of how he would have evaluated them in our times. Probably Calvo, imbued as he was of a practical historic-positivism, could hardly have imagined these singular transformations; he certainly was concerned with the dangers lying ahead for the Latin American nations and he wanted them to be aware of them and avert them in safeguarding their sovereign rights. However, his so-called "nonresponsibility" doctrine never wanted or meant the abolition of the institution of protection. If some jurists by twisting his original conception went that far, their justification for their action is to be found in the hardships of international life. Mexico is a good example of a country that has suffered it in the form of a stern battle for self-preservation. Therefore, the reaction that was observed in that country was quite understandable, and it did not take too long to become effective; in 1917, Mexico incorporated the Calvo Clause to its Constitution. Article 27 reads:

"Sólo los mejicanos por nacimiento o por naturalización y las sociedades mejicanas, tienen derecho para adquirir el dominio de las tierras, aguas y sus accesorios, o para obtener concesiones de explotación de minas, aguas o

³³Ibid.

³⁴Ibid.

dead again." 33 And then it will be a case of real intervention. This realization led him to an earnest defense of "diplomatic protection or the international responsibility of the state, as qualified and defined by hundreds of arbitral decisions as a guaranty of the supremacy of the law, rather than of pure force and power politics." 34

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"Sólo las empresas por mandato o por autorización y las sociedades mineras, tienen derecho para adquirir el dominio de las tierras, aguas y sus subsuelos, o para obtener concesiones de explotación de minas, aguas o

33 Ibid.

34 Ibid.

combustibles minerales en la República Mexicana. El Estado podrá conceder el mismo derecho a los extranjeros, siempre que concedan ante la Secretaría de Relaciones en considerarse como nacionales respecto de dichos bienes y en no invocar por lo mismo, la protección de sus gobiernos por lo que se refiere a aquéllos; bajo la pena, en caso de faltar al convenio, de perder en beneficio de la Nación los bienes que hubieren adquirido en virtud del mismo."³⁵

Therefore, when in 1938 President Cárdenas worded his doctrine of nonextraterritoriality of nationality and citizenship, no one was surprised by such a move. In his argument against Cárdenas' thesis Brochard pointed out that by following its reasoning one arrives at the absurdity that, "since the country has no more rights than its nationals; therefore he has none; therefore the country has none."³⁶ This absurdity leads to an indefensible situation that convinced even Mexico of the convenience of making some reservations. The clause "in contemporary jurisprudence, probably does not bind the state of the alien from interposing, but it does bind the alien from seeking such interposition,"³⁷ was then added. The fairness of such an interpretation was publicly recognized by Mexico in 1926. In the opportunity Foreign Minister Sáenz, in an official note to the United States Department of State expressed:

"The Mexican government, therefore does not deny that the American government is at liberty to intervene for its citizens; but that does not stand in the way of carrying out an agreement by means of which the alien agrees not to be the party asking for the diplomatic protection of his government. In case of infringement of any international duty such as a denial of justice would be, the right of the American government to take with the Mexican government

³⁵Mendoza, op. cit., p. 28.

³⁶Brochard, Remarks . . . op. cit., p. 74.

³⁷O'Shea, op. cit., p. 36.

adequate action to seek atonement for injustice or injury which may have been done to its citizens, should stand unimpaired. Under these conditions neither would the American government have failed to protect its citizens, nor the Mexican government to comply with its laws."³⁸

This compromising attitude allowed to conciliate the opposite views of both the Latin-American republics and the United States.

What has been, in general terms, the position of the United States in this matter? The United States has consistently maintained that "the Calvo Clause cannot be used to prevent the diplomatic interposition by a government which is otherwise justified under the generally recognized rules of international law."³⁹ This interpretation leaves untouched the right to resort to it in case of denial of justice. However, by introducing this concept as the regulating element of further action, an endless controversy starts in order to determine the exact scope of the expression. "The term denial of justice is sometimes loosely used to denote any international delinquency toward an alien for which a state is liable to make reparations."⁴⁰ The Latin Americans' point of view is that "if the courts give a decision of any kind there can be no denial of justice and consequently no responsibility of the State for their conduct. Nothing but the denial to foreigners of access to the courts can be properly regarded as a denial of justice."⁴¹ The position of the United States in

³⁸United States Department of State, American Property Rights in Mexico (Washington, D.C.: The Government Printing Office, 1926), p. 46. Note of Mexican Foreign Minister Sáenz to Secretary of State Kellog, October 7, 1926.

³⁹Clyde Eagleton, The Responsibilities of States in International Law (New York: The University Press, 1928), p. 172.

⁴⁰J. L. Brierly, The Law of Nations (Oxford: At the Clarendon Press, 1949), p. 212.

⁴¹Brierly, op. cit., p. 213.

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³⁸United States Department of State, American Property Rights in Mexico (Washington, D.C.: The Government Printing Office, 1926), p. 40. Note of Mexican Foreign Minister Gomez to Secretary of State Kellogg, October 7, 1926.

³⁹Clyde Wakeman, The Responsibility of States in International Law (New York: The University Press, 1928), p. 178.

⁴⁰L. E. Brown, The Law of Nations (Oxford: at the Clarendon Press, 1949), p. 212.

⁴¹Arturo, op. cit., p. 213.

this respect is said to be contained in the memorandum of Secretary of State Root to the President, of March 27, 1908. There, the Secretary more or less worded the formula accepted by the United States conferring relative validity to the clause.⁴² This position was determined by the general attitude of the country with respect to the institution of diplomatic protection. "The right of diplomatic protection," says Kellog, in a communication to the Mexican Government sent in January 1926, "is not a personal right, but exists in favor of one state against another. It is a privilege which one state under the rules of international law can extend or withhold in behalf of one of its citizens. Whether or not one of its citizens has agreed not to invoke the protection of his government, nevertheless his government has--because the injury has been inflicted by one state against the other--the right to extend what is termed as diplomatic protection."⁴³ In other words there will be no acceptance by the United States government of any contractual clause by means of which a renunciation of the diplomatic protection by the individual could result in any changes or modifications in the rules of international law.⁴⁴ This was the position adopted in the famous case of the North American Dredging Co. of Texas against the Mexican Government.

Because the opposition against the clause has grown so much with the years, O'Shea believes that at the present time it is almost obsolete. He is right, but only if we consider his expression as meaning that,

⁴²The memorandum is reproduced in Hackworth, Digest . . . , V, pp. 630-37.

⁴³United States Congress, Rights of American Citizens in Certain Oil Lands in Mexico, Senate Exe. No. 96, 69th Congress, First Session, 1926 (Washington: Government Printing Office, 1926), pp. 22-23.

⁴⁴Ibid.

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because the Latin American nations and the United States have found an all-American legal formula which, accepted by them without reservations, has completely averted the chances that dangers, such as those the Calvo Doctrine originally intended to deter, could happen again. That formula is the principle of nonintervention which enjoys today the universal recognition of the American republics. The clause as it was first conceived is perhaps obsolete. However, if that is true, it is only because the situations it tried to avert have been contemplated and taken care of by a better principle of law directly inspired in it.

Going back once more to the position of the United States in this matter of the Calvo Clause, it is interesting to observe that--despite the fact that both the government and the American international jurists are opposed to it--the government has not gone as far as to actively discourage its inclusion in contracts or to advise against the acceptance of a Calvo Clause commitment by an American citizen.⁴⁵ In this sense the jurists' position in admitting the possibility of such an agreement is narrower than that shown by the State Department. The latter has interpreted it in a restricted sense; however, by doing so, it has granted a limited degree of validity to it.⁴⁶ Therefore, the position of the United States seems to be close to that expressed by Mexican Minister Sáenz, that is to say that the Calvo Clause, though res inter alios acta regarding his government, does bind the individual who signs it. This is also the accepted interpretation of most of the non-American powers

⁴⁵O'Shea, op. cit., p. 42.

⁴⁶Loc. cit., p. 191.

which traditionally have been closer to the United States than to the Latin American nations in matters of codification.

As regards the interpretation of the clause made by international courts in the approximately thirty cases in which it has been involved, decisions have varied in nature. In fact, while in eleven cases they sanctioned against their validity, eight famous ones are cited as accepting it. They are the Fay, Garrison, Tehuantepec, Woodruff, Orinoco, Turnbull, Kunhardt, and Nitrate Railway Co. cases. In seven of these cases (with the exception of Kunhardt's) there have been no exhaustion of local remedies and jurisdiction would have presumably declined even without the renunciatory waiver in accordance with the local remedies rule.⁴⁷ Therefore, "it should appear that none of these cases actually can be cited in any listing of decisions that have upheld the validity of the Calvo Clause."⁴⁸ It is the common belief among specialists, like O'Shea, that only if local remedies have been exhausted and international jurisdiction is still being declined because of the clause, would those cases be significant in demonstrating an application of the Calvo Clause.⁴⁹ Actually, it is being sustained that in none of the cases already mentioned the clause has been put to a test to such an extent that "its existence actually determined the final disposition of a case."⁵⁰ It is also the

⁴⁷ Ibid.

⁴⁸ O'Shea, op. cit., p. 192.

⁴⁹ Ibid.

⁵⁰ O'Shea, op. cit., p. 193. O'Shea qualifies the clause as "a convenient hook" on which to hang a decision and it undoubtedly did serve to emphasize the local remedies rule. "However, since the clause per se did not determine the decisions, this fact, united to the inconsistency showed in dealing with the concept in it contained, led him to substantiate the statement that "the clause did not play a determinating role in international arbitral jurisprudence up to 1926," and in consequence, inclusion of these early cases in any pro and con listings of decisions on the Calvo Clause is actually without any real value." Ibid.

general opinion when analyzing these arbitral decisions in which the Calvo Clause has been invoked that the North American Dredging Co. case was the first one where this clause was truly considered. As expressed before, none of the preceding cases tried to prove its validity. The binational commission created by the Convention of 1923⁵¹ between Mexico and the United States for the solution of claims involving the citizens of both countries, produced a carefully thought report, the contents of which represent a most valuable precedent for the analysis and evaluation of the clause. Among the most important of the Commission's decisions are the following:

(1) It was the first court ever to grant any validity to the principle of law contained in the clause. This occurred when the government of the United States presented a claim to the Commission for damages suffered by the North American Dredging Co., after a breach in a contract signed by the latter with the Mexican government. The first problem for the Commission emerged when the Mexican government challenged the jurisdiction of the court on account of Article I of the contract signed by the parties and in which there is an explicit resignation of the right to claim "in regard to the interests of the business connected with this contract . . . to any other rights or means to enforce them than those granted by the laws

⁵¹Article I of the Convention signed between the United States and the United Mexican States on September 8, 1923, provides, inter alia, that all claims except the so-called "special claims" of the citizens of either country against the other country for "losses or damages suffered by persons or by their properties" and all claims "for losses or damages originating from acts of officials or others acting for either government and resulting in injustice and which claims may have been presented to either government for its interposition with the other" and "which have remained unsettled . . . shall be submitted to a commission consisting of three members for decision in accordance with the principles of International Law, justice and equity." Hackworth, V, p. 640.

of the Republic to Mexicans, nor shall they enjoy any other rights than those established in favor of Mexicans" . . . "They are in consequence deprived of any rights as aliens and under no conditions shall the intervention of foreign diplomatic agents be permitted in any matter related to this contract."⁵² In other words, the parties are considered as Mexicans in all matters concerning the execution and fulfillment of the contract.⁵³ Regardless of the said contractual pledges, the Commission overruled the request for denegation of jurisdiction. The Mexicans challenged it on two grounds: (1) claims based on nonperformance of contractual obligations are outside the jurisdiction of the Commission; and (2) a contract containing the so-called Calvo Clause deprives the party subscribing to the said clause of the right to submit any claims related to his contract to an international court. Nevertheless, the overruling was sanctioned by the Commission on the basis of a previous decision (Illinois Central Railroad Co.), and because of the acknowledgment that there is no international rule forbidding the right a nation has to protect its citizens abroad. However, the court recognized the fact that an alien has full rights to make such a promise provided that in so doing he does not deprive his government of its undoubted rights to apply international remedies to violations of international law committed to his damage.⁵⁴ In that resolution the Commission demonstrated the partial

⁵²Hackworth, V, p. 641.

⁵³For a discussion of problems of jurisdiction in international arbitrations, see Jackson Ralston, International Arbitrations from Athens to Locarno (Stanford: At the University Press, 1929), pp. 58-67.

⁵⁴Hackworth, V, p. 642.

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²² Mackworth, V, p. 641.

²³ For a discussion of problems of jurisdiction in international arbitration, see Jackson, *Relations, International Arbitration from Athens to London* (Stanford: At the University Press, 1930), pp. 52-57.

²⁴ Mackworth, V, p. 642.

validity of the clause when it established that "while any attempt to so bind his government is void, the Commission has not found any generally recognized rule of positive international law which would give to his government the right to intervene to strike down a lawful contract The obvious purpose of such a contract is to prevent abuses of the right of protection, not to destroy the right itself."⁵⁵ The most important part of the Commission's report refers to the interpretation of the Calvo Clause contained in that contract. Regarding the purposes of Article I, the Commission acknowledges the fact that it was meant "to bind the claimant to be governed by the laws of Mexico and to use the remedies existing under such laws." So as to reassure the parties of its middle-of-the-way position the Commission also added that "it understands that the said provision" did not take from the claimant his undoubted right to apply to his own government for protection if the Mexican courts or other authorities available denied him justice as that term is commonly used in international law. That would be a case not of violation of contract but on denial of justice. The basis of his appeal would be an internationally illegal act."⁵⁶ It was the Commission's firm conviction that claims of said nature could be brought before it by the claimant's government, because, according to Article 18 of the same contract, the alien renounced to claim to his government only in matters of interpretation or fulfillment of the contract. However, such is not the case "if he has a claim for denial of justice, for delay of justice or gross injustice or for any other violation of international law committed by Mexico to his damage.

⁵⁵Ibid.

⁵⁶Ibid.

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In such cases a claim might be presented by the alien to his government, which in turn could present it to the Commission.⁵⁷

As a consequence of the aforesaid the Commission understood that the North American Dredging Co. claim, though falling in the first clause of Article I of the Convention of 1923 "it is not a claim that may be rightfully presented by the claimant to its government, and hence is not cognizable here . . . "⁵⁸ As important as these decisions are, they only prelude the most significant of all those contained in the report:

"Where a claim is based on alleged violation of any rule or principle of International Law, the Commission will take jurisdiction notwithstanding the existence of such a clause in a contract subscribed by such claimant. But, where a claimant has expressly agreed in writing, attested by his signature that in all matters pertaining the execution, fulfillment and interpretation of the contract he will resort to local courts, remedies and authorities and then will-fully ignores them by applying in such matters to his government, he will be held bound by his contract and the Commission will not take jurisdiction of such claim."⁵⁹

This statement has become the most significant legal precedent for the advancement of the Calvo Clause; its merit lies in the fact that it tested for the first time the validity of the clause and successfully searched for the principle of law in it.

(2) Emphasis on the role of the individual in front of international law. In fact the Commission denied that the rules of international public

⁵⁷Hackworth, V, p. 643.

⁵⁸Ibid. Referring to the reach of its decision the Commission made it clear that "each case involving application of a valid clause partaking of the nature of the Calvo Clause will be considered and decided in its merits."

⁵⁹Ibid.

law apply only to nations and that individuals cannot under any circumstances take a personal stand under it.⁶⁰ This statement placed the Commissioners among the first to advance the role of the individual as the subject of international law, according to the most modern philosophical interpretations of the Law of Nations.

(3) As a consequence of the former statement underlining the importance of the individual's role, the way was left open to the acceptance of the "limited validity" of the Calvo Clause, and this in turn was a very significant development in the future of the clause when some authors reported it already dead. "Although theoretically," the report says, "the state is the only claimant, the Commission acting on the premise that the state is not the only subject of international law, took into consideration the fact that the individual does have "status" under this law and does possess rights and duties, and thus, can be held to the obligation of his contractual commitment by an international court."⁶¹

The Commission's handling of the problem gave a certain amount of prestige and respect to the Calvo Clause; however, its decision was not generally accepted and moreover it was qualified as timid, backward, of no consequence, a political solution, and so forth. Nevertheless, the consensus among jurists today is to consider this ruling as a firm step in the right direction. It is evident now that the Dredging Co. case "is definitely the landmark in the international arbitral jurisprudence involving the Calvo Clause."⁶²

⁶⁰Consult O'Shea, op. cit., p. 224 for the complete text of the opinions of the Commissioners.

⁶¹Ibid.

⁶²Ibid.

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60 Council Opinion, No. 228, p. 234 for the complete text of the opinions of the Commission.

Later adjudications invoking the Calvo Clause have had in mind this famous case.⁶³ The Dredging rule has become more and more important in arbitral decisions granting limited validity to the clause by denying the jurisdiction of international courts when faced with a renunciatory clause.

What is it that this expression "limited validity" really means? A definition is quite difficult, but we can at least mention two consequences of importance resulting from it: (1) when pacta, it binds the individual, requiring of him to seek redress in local courts; and (2) it does not bind its government in case a delinquency such as denial of justice is performed.⁶⁴ That a certain development has been achieved in the opinions of scholars is evident in the fact that today it is possible to find some determinative effect being ascribed to it in expressions like the following: "... a state may prescribe the terms on which it grants a concession . . ."⁶⁵

Perhaps the heaviest blow ever aimed against this slow progress is represented by the draft of the convention on the responsibilities of states prepared by the Harvard Research Group on International Law. Article 17, which deals with the responsibilities, says: "Finally the right of the government to submit the claims of its citizens to an internal tribunal is superior to the right or competency of the individual to contract it away, for whatever the individual's power to renounce a personal

⁶³United States (International Fisheries Co.) v. United Mexican States; 1931. Great Britain (Mexican Union Railways Ltd.) v. United Mexican States; 1930. Interoceanic Railway, Vera Cruz Railway and Pistol cases.

⁶⁴O'Shea, *op. cit.*, p. 299.

⁶⁵Charles Hyde, "Concerning Attempts by Contract to Restrict Interposition," *A.J.I.L.* XXXI (April 1927), pp. 298-99.

right or privilege, he does not represent the government and is, therefore, incompetent to renounce a right, duty or privilege of the government. In sum total, the better opinion seems to be that the renunciatory clause has no effect insofar as any changes or modifications in the ordinary rules of international law are concerned."⁶⁶

Next in importance to Calvo's doctrine stands Drago's thesis, which also represents a contribution to the advancement of the Law of Nations.

The year of 1902 was plagued with worries and problems for the Venezuelan nation; the political uncertainty of the country ended up in a civil war that damaged the national economy. As a consequence of these developments, foreigners with investments affected by the conflict made numerous claims. This circumstance, plus the interruption of the payment of the external debt, determined the diplomatic reclamations of Germany, Great Britain, France and Italy, countries that, when not given immediate satisfaction, proceeded to perform hostile acts against the debtor country. However, hostilities did not start until after they gave assurance to the United States that no attack to the Monroe Doctrine would be carried out in terms of occupation of territories. Germany's note, for example, explains the following to the United States:

"... But we consider it of importance to let, first of all, the government of the United States know about our purposes, so that we can prove that we have nothing else in view than to help those of our citizens who have suffered damages, and we shall first take into consideration only the claims of those German citizens who have suffered in the civil war. We declare especially that under no circumstances do we

⁶⁶O'Shea, op. cit., p. 281.

right or privilege, he does not represent the Government and is, therefore, incompetent to renounce a right, duty or privilege of the Government. In sum total, the better opinion seems to be that the renunciations of claims has no effect insofar as any changes or modifications in the ordinary rules of international law are concerned."

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consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory."⁶⁷

The explanations given by the other countries proved also satisfactory enough to the government of the United States, and its President reiterated the country's resolution not to defend any state against the attacks its bad conduct could originate, provided that such acts do not amount to a territorial acquisition of territory by a non-American nation. Secretary Hay's reply of November 13, 1902, to Sir Michael Herbert, British Ambassador at Washington, says:

"The United States government although it regretted that European powers should use force against Central and South American countries could not object to their taking steps to obtain redress for injuries suffered by their subjects, provided that no acquisition of territory was contemplated."⁶⁸

Therefore, after the President and the Secretary of State left established the position of the United States, those declarations were followed by the pacific blockade of the Venezuelan ports. Even more, certain hostilities were performed, such as the bombardment of Puerto Cabello and the sinking of vessels. In view of this situation, Venezuela addressed a communication to the sister republics denouncing the outrageous action. Luis María Drago, Foreign Minister of Argentina, felt that the opportunity called for a definitive action seeking not just the solution of the present conflict, but in similar ones in the future. In consequence, on December 29, 1902, he addressed a long letter to the

⁶⁷"Promemoria of the Imperial German Embassy at Washington," December 11, 1901, in Moore's Digest, VI, p. 589. The copy of the first "Memorandum of the claims interposed by Germany against Venezuela" is also reproduced in Moore's Digest, Ibid.

⁶⁸Moore, Digest . . . , VI, p. 592. Mr. Hay's reply to Sir Michael Herbert, British Ambassador at Washington, November 13, 1902.

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Secretary Ray's reply of November 11, 1901, to the British Ambassador at Washington, says:

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Moore, William...
Herbert, British Ambassador at Washington, December 11, 1901.

Argentine Minister at Washington, Dr. García Merou, where he carefully explained the reaction and surprise of the government, and anticipated the stand to be adopted in the opportunity. This exposition became known later as the Drago Doctrine. The communication, essentially doctrinal in content, intended to prove the unrighteousness of the compulsory collection of foreign debts on the grounds that it destroys state sovereignties.⁶⁹ The author began by acknowledging in his note as the twofold origin of the conflict, the damages caused to foreigners by the numerous revolutions and civil wars that have taken place in Venezuela, as well as the decision of that government to stop the payments of the external debt. To the first order of claims he did not refer particularly, because they strictly concerned the laws of the different countries but, as regards the other kind, the Argentine government thought it opportune to express how strongly it felt about it.

It began with a reference to the position of those bankers or investors who made loans to a sovereign state. According to Drago they should take into account the possibilities and resources of the country and the chances of repayment. That is the reason why different governments enjoy different credits in accordance with their degree of civilization and culture and the business conditions in their territories. All these circumstances have to be measured and weighed before contracting any governmental loan. From the very beginning the creditor must know that he is contracting with a sovereign entity, and that it is an inherent

⁶⁹Complete text of the note will be found in: Luis María Drago, Cobre Coercitivo de Deudas Públicas (Buenos Aires: Coni, Hnos., 1906), pp. 1-26; Moore's Digest, VI, pp. 592-93; in Recueil des Cours, VIII (1925), p. 8 and ff; Silva, op. cit., pp. 493-96.

qualification of all sovereignties that no executorial procedures for the execution of a judgment may be instituted or carried out against it. Such a form of collection would compromise its very existence and lead to the nullification of its governmental attributes, rights of action and independence. "Among the fundamental principles of public international law that humanity has endorsed, perhaps the most precious is the one that establishes that all states, regardless of the power they have at their disposal, are entities of law, perfectly equal between them, and on that account, reciprocally creditors to the same treatment and respect."⁷⁰ Therefore "the acknowledgment and liquidation of the debt could and ought to be done by the nation without detriment of its rights as a sovereign entity. The immediate and compulsory collection of it in a given moment, by means of force could not account but for the ruin of weak nations and the absorption of their government and all their powers by the stronger ones. Others are the principles proclaimed in the American continent."⁷¹ In one of the most significant passages of his note, Drago stated:

"The military collection of foreign loans supposes territorial occupation to make it effective and territorial occupation means the actual suppression or subordination to the local governments of the countries over which the action is extended. Such a situation should appear as contradicting the principles many times proclaimed by the American nations and particularly by the Monroe Doctrine with so much zeal sustained and defended in all times by the United States, and to which Argentina had adhered."⁷²

To avoid the misunderstandings that he was sure would arise in the interpretation of his note, Drago also declared that he did not state,

⁷⁰Silva, op. cit., p. 493.

⁷¹Silva, op. cit., p. 494.

⁷²Ibid.

qualification of all sovereignties that no exceptional procedures for the execution of a judgment may be instituted or carried out against it. Such a form of collection would compromise its very existence and lead to the nullification of its governmental attributes, rights of action and independence. "Among the fundamental principles of public international law that humanity has endorsed, perhaps the most precious is the one that established that all states, regardless of the power they have at their disposal, are entitled of law, perfectly equal between them, and on that account, reciprocally creditors to the same treatment and respect."

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Vol. 22, p. 453.
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however, that the South American nations were exempted from the responsibilities of all sorts "which violations of international law imposes on civilized peoples nor was his intention to defend bad faith, disorder and insolvency."⁷³ However, "the state should not be deprived of the right to choose the manner and the time of payment."⁷⁴ To discourage possible violent criticisms coming from extracontinental nations, he clearly expressed that the note did not mean either, to deny the European powers the rights to protect their subjects.⁷⁵

The implicit assumption embodied in the note was not favorably accepted in the United States, although its government did not force any pronouncement on it. Instead, immediately after the reception of the note, a communication was issued making reference to President Roosevelt's messages of 1901 and 1902. Secretary Hay, signer of the memorandum sent to the Argentine government declared that without expressing assent or dissent from the proposition ably set forth in the Argentine note, the position of the United States on the matter was made clear in the said messages of the President. On December 3, 1903, Roosevelt made sure again to all nations that the United States "will not defend any State against punishment in case of misconduct, provided that such a repression does not take the form of an acquisition of territory by a non-American power." Before that date, on December 2, 1902, twenty-seven days before Drago wrote his note, Roosevelt had affirmed that no independent nation in America needed to have the slightest fear of aggression from the United States.

⁷³Drago, Cobro Coercitivo . . . , p. 14; Moore, VI, p. 593.

⁷⁴Moore, Ibid.

⁷⁵Drago, op. cit., p. 20; Moore, VI, p. 593.

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MILLER...
WILSON, J.H...
THOMAS, H. H...
COTTON...

He had also asked each and every one of them to maintain order within their borders and to discharge their obligations to foreigners. "When this is done they can rest assured that, strong or weak, they have nothing to fear from outside intervention."⁷⁶

In the meantime, and in order to avert misunderstandings, President Roca tried to make clear the exact scope of the doctrine in his State of the Union message corresponding to 1903. The President said:

"The Argentine note enunciates elementary principles that contemplate the unquestionable rights of these nationalities to grow and develop under the protection of international law. Its doctrine neither excludes any of the duties that the Law of Nations imposes on civilized peoples nor does it recognize privileges or lessen responsibilities. It limits itself to proclaim the sovereignty of the American nations, expressing at the same time, the disturbance and alarm that any attempt of colonization or conquest in any continental region would cause among them."⁷⁷

The sincerity of the Argentine communication immediately aroused the interest of the sister republics who, seeing in its content the only deterrent of future troubles, proposed to include it in the program of the Third International Conference of American States that met in Rio de Janeiro a year later. The Argentine government appointed Drago as its delegate but much to its regret, he resigned his place in order not to contradict his personal convictions as regards the Monroe Doctrine; in fact, the government's position openly conflicted with his own in this respect. His resignation gave him the opportunity to expose to public

⁷⁶For the complete texts of these messages, see Moore, VI, pp. 596-97; Silva, *op. cit.*, p. 496 and ff; Drago, *op. cit.*, pp. 26-35; and for the memorandum of Sec. Hay to Minister García Merou, see Moore, VI, pp. 593-94.

⁷⁷The complete text of President Roca's State of the Union Message of 1903 is cited in Silva, *op. cit.*, pp. 496-97 and in Drago, *op. cit.*, p. 37 (extracts).

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The sincerity of the Argentine communication immediately aroused the interest of the other republics who, seeing in its content the only deterrent of future troubles, proposed to include it in the program of the Third International Conference of American States that met in Rio de Janeiro a year later. The Argentine government appointed Braga as its delegate but much to his regret, he resigned his place in order not to contradict his personal convictions as regards the Monroe Doctrine; in fact, the government's position openly conflicted with his own in this respect. His resignation gave him the opportunity to expose to public

⁷⁶For the complete texts of these messages, see Moore, VI, pp. 126-127; Silva, op. cit., p. 436 and VI; Braga, op. cit., pp. 34-35; and for the memorandum of Sec. Hay to Minister García Heron, see Moore, VI, pp. 393-94.

⁷⁷The complete text of President Roca's State of the Union message of 1903 is cited in Silva, op. cit., pp. 196-97 and in Braga, op. cit., p. 37 (extract).

opinion the inner reasons of his note and the scope he intended to give to it. In the text of the resignation sent to the Foreign Minister Montes de Oca he said:

"The doctrine sustained by Argentina with reference to the compulsory collection of public debts contained in the note of December 29, 1902, makes clear the desire of the Republic "to see recognized as such, the principle that public debts cannot give rise to armed intervention, and least to the material occupation of the soil of American nations by European powers. . . . The easiest way for the appropriation of territory and the usurpation of legitimate authority by European powers is precisely that of financial interventions."⁷⁸ . . . We have thus sustained an American thesis in solidarity with the nations of this continent, and we meant it to have a continental value and purpose. We stated it in connection with the conflict in Venezuela, because Venezuela is a sister republic. We should not have taken such a decision if the country had been Turkey or Greece. We have done so, because what interests us politically--and is in accordance with our history, with the present exigencies of our civilization and with its future possibilities--is the suppression in the existing state of our international relations, of the only way, or pretext by which the powerful of the earth may trouble the march of the nations of the Western Hemisphere which will become, with the aid of their liberal institutions, the seat of a great civilization."⁷⁹

He explains next the main discrepancy with his government, in the following terms:

" . . . Notwithstanding, your Excellency understands that the Argentine doctrine should not be limited to America, but that it should be accepted as an universal juridical principle, applicable to all civilized nations, of the Old and New World, as well. This circumstance creates a fundamental difference between my personal thinking and that of your Excellency. The doctrine of the note of December 29, 1902, is not properly

⁷⁸From Drago's letter to Minister Montes de Oca, cited in Silva, op. cit., pp. 497-98.

⁷⁹Luis María Drago, "State Loans in Their Relations to International Politics," American Journal of International Law, Part I (April 1907), p. 709, hereafter referred to as Drago, "State . . .".

opinion the former version of this note is more correct than the latter.
2011. In the text of the memorandum sent to the President, the
words are now as follows:

"The doctrine maintained by the United States in the
congressional collection of this note is that the
note of December 22, 1911, is the correct one. The
President's note is now regarded as an error, and the
public should be advised to correct its impression.
In the original collection of the note, the
note is by the President's order. The
the organization of the note and the President's
legitimate authority is now being corrected. The
of the United States is now being corrected. The
which is a mistake. The note is now being corrected.
of this country, and we want to be sure that the
note and purpose. The note is now being corrected.
country in Venezuela, because Venezuela is a
republic. We should not have a country that is
the country had been taken over by a
because that is not a policy. The note is now being corrected.
country with our history, with our present
of our civilization and of the United States.
the suggestion in the collection of the note is
relations, of the only way, or the only way
powerful of the earth may be the only way
of the United States, with the only way
of their liberal institutions, the only way
action."

He explains now the main difference between the two versions, in the
following terms:

"... Regarding your note, I am sure that it is
Argentine doctrine should not be put in the
that it should be corrected as an error. The
applicable to all civilized nations, and the
as well. This document is now being corrected.
between my personal thinking and that of the
The doctrine of the note of December 22, 1911, is now being corrected."

From Brago's letter to the President, dated December 22, 1911, it is
no. 111, pp. 127-28.
"The note is now being corrected."
"The note is now being corrected."
"The note is now being corrected."
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legal though it invokes in its support very solid principles of law; it is, before and above all a doctrine of American international politics, that only as a political doctrine we could have formulated, and to the success of which we can only aspire for political reasons. This is in truth, one of those typically proverbial cases in which "lo mejor es enemigo de lo bueno." At first sight it appears to be more sublime, more generous, more in conformity with reason and Law to condemn the compulsory collection of public debts in the whole extent of the world, but it does not interest us, politically speaking, the recognition of this principle as a rule of universal conduct. Since conquest has been eliminated and overruled as a principle of law, what we want is to eliminate it also under the disguise of financial intervention."⁸⁰

The author manifested his disapproval of an extension of the doctrine⁸¹ because of his conviction that it would attract the hostility and wrath of the European chancelleries and, on the whole, the result would be infinitely less satisfactory. Nevertheless, it was clear that the main inhibition was represented by his personal position of acceptance of the

⁸⁰Silva, *op. cit.*, p. 498.

⁸¹In a speech delivered in Buenos Aires on August 17, 1906, welcoming the eminent Secretary of State of the United States, Mr. Elihu Root, to the city, Drago expressed similar ideas. He said: "It was in obedience to that sentiment of common defense that in a critical moment the Argentine Republic proclaimed the impropriety of the forcible collection of public debts by European powers, not as an abstract principle of academic value or as a legal rule for universal application outside of this continent, which is not incumbent to us to maintain, but as a principle of American diplomacy, which, whilst being founded on equity and justice, has for its exclusive object to spare the peoples of this continent from the calamities of conquest disguised under the mask of financial interventions, in the same way as the traditional policy of the United States, without accentuating superiority or seeking preponderance, condemned the oppression of the nations of this part of the world, and the control of their destinies by the great powers of Europe. From this point of view we add that even in the event that financial intervention could be theoretically acceptable, juridically justified, and constituted into a legitimate means for the protection of subjects abroad we should maintain that they cannot be executed in South America. The principle proclaims and presents in this circumscribed form a new phase that is eminently diplomatic and absolutely independent of its possible legal intent and significance." Drago, "State . . .", p. 710.

lateral through it because in the present case it is not
of any importance. It is not a matter of fact, but
international relations, and the only way to settle
could have been by a judicial decision. This is the only
only way to settle the question. It is not a matter of
those who are not in a position to do so. It is not
de la justice. It is not a matter of fact, but
more generally, it is not a matter of fact, but
the company which is not in a position to do so.
of the world, and it is not a matter of fact, but
the possibility of a judicial decision. It is not
fact. It is not a matter of fact, but
principles of law, and it is not a matter of fact, but
the dignity of the judicial power.

The author has not a single word to say about the
doctrine because of the complexity of the question.
and with of the present situation. It is not a matter of
be infinitely less than before. It is not a matter of
inhibition was represented by the present situation.

30 Olive, No. 11, p. 110.
In a speech delivered in the Chamber of Deputies
the eminent Secretary of State of the United States, Mr. Taft, expressed
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Monroe Doctrine. The position of the Argentine government was not necessarily his own, because, whilst having accepted the Monroe Doctrine on repeated occasions (at an early date during Sarmiento's visit to the United States, in 1885 by Minister Quesada, and in 1902 by the same Drago himself), the fact was that the governmental circles were still reluctant to believe or trust it wholeheartedly; the activities of the United States in the Caribbean, where repeated interventions took place, led to this reticent attitude against a full acceptance of the doctrine. Drago's personal stand was totally different: he did not fear the Monroe Doctrine; he did not consider it as a dangerous device against national sovereignties; he did think of it as the device that helped to consolidate independence and safeguarded the continent from the ambitious projects of reconquest "nourished" by the European colonial powers. His personal convictions and his duties as a representative of his government were opposed; therefore, he resigned. However, and against what was generally expected, the Third International Conference of American States did not consider the matter; instead, and through the recommendation of Secretary of State Root, the Conference referred the case to the Second Conference of The Hague of 1907, after the suggestion obtained the general approval of the continental nations. The Second Conference of The Hague approved the limitation of the employment of force for the recovering of contract debts. The American delegate, General Potter, introduced a project that, though inspired in the Drago doctrine, was not as comprehensive. This project had not, by far, the vast reach of the former. Article I reads as follows:

"The Contracting Powers agree not to recourse to armed force for the recovery of contract debts claimed to the government of one country by the government of another country as being

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lowing:

"The Contracting Powers agree not to recourse to armed force
for the recovery of contract debts claimed to the government
of one country by the government of another country as being

due to its citizens. This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration or, after accepting the offer, prevents any compromise or, after the arbitration, fails to submit to the decision."⁸²

Eleven countries made reservations to this project, Argentina among them. The reason was the realization that the Potter Amendment, as it came to be known, makes the use of force conditioned (1) to the refusal by the debtor state to arbitration; (2) to the obstruction of a compromise after arbitration has been accepted; and (3) to the failure in carrying out an arbitral decision. However, it was evident that, at least in one aspect, this doctrine of Potter's advanced Drago's: it extended the prohibition from "public debts" to all kinds of contractual obligations.

During the deliberations, Saenz Peña, one of the delegates to the meeting of The Hague, violently opposed the tendency to singularize the doctrine with South America. It was his conviction that such a thing would amount to deprive the pronouncement of the universal quality that is the characteristic of a doctrinal principle of law. "The Law of Nations," he said to the Assembly, "is by its nature, universal, because it departs from the maxim of the equality of the states, and proclaims indivisible truths for the relationship among nations. If this is so, and if the principle we want to see set forth is just, it has to be sustained and applied by all the nations, by the powerful as well as by the weak, by American as well as by European nations."⁸³

⁸²Carnegie Endowment for International Peace, The Hague (II) Convention of 1907 Respecting the Limitation of the Employment of Force For the Recovery of Contract Debts (Pamphlet No. 11. Washington, 1907), p. 1.

⁸³Silva, op. cit., p. 500.

However reasonable this appeared to be, such an assumption as the one exposed by Saenz Peña was bound to antagonize those supported by the author of the principle. Drago was against the universal validity of a doctrine which eventually could have produced resistance from European states like England, who kept Egypt under its control for debt reasons, as well as other European states that had made interventions in Turkey.⁸⁴ Though aware of this situation, the Argentine delegation thought its duty was to appoint Drago to deliver the final speech, and sustain the Argentine position. Therefore, in the session of July 16, 1907, Drago himself stood in front of the Assembly, and throughout a substantial exposition, he passed review on the various aspects of his doctrine, the Potter Amendment, and its differences with the original Argentine thesis.⁸⁵ From the long document we have extracted the following conclusions which summarize the Argentine standpoint:

(1) General satisfaction was shown for the headway made by the note and proved in the numerous projects of arbitration in conflicts for pecuniary claims introduced to the consideration of the Assembly;

(2) All projects agreed upon abolishing the use of violent means in questions like claims--by nature a subject too delicate and complex to be handled without a previous and careful analysis;

(3) This is particularly true if we consider that claims can acknowledge a manifold number of origins: they can originate in damages suffered by foreigners because of illegal acts committed by the government

⁸⁴Ibid.

⁸⁵The text of the speech and memorandum appear cited in Silva, op. cit., pp. 501-05.

or citizens of the country of residence; from contracts or conventions celebrated between citizens of the creditor state and the authorities of a foreign country; and from public debts created by governmental loans by the issue of bonds traded in the stock exchange markets;

(4) In cases of damages originated in illegal acts (delicti and causi-delicti), the investigation of facts and the evaluation of indemnities belong, according to the Law of Nations, to the courts of the debtor state. The same occurs with conventions celebrated by the citizens of a nation with a foreign government. Being purely contractual relations, the government acts in its character of persona juridica with respect to the state patrimony and is subjected, as other entities, to the principles of the private law;

(5) Though all political constitutions provide the procedure to follow in such cases, it is an universally accepted rule that, in the cases of contracts, causi-contrato, delicts and causi-delicti, local remedies are to be exhausted before recurrence to diplomatic means (limited validity of the Calvo Clause);

(6) In Argentina as well as in the majority of the American states with the exception of the United States, the government may be summoned to court and the same happens with states' governments: the Eleventh Amendment to the United States Constitution forbids this. In consequence neither the nation nor the particular states can be demanded in court, and foreigners are deprived of this privilege, unless reciprocity is practiced among governments;

(7) The absence of courts for claims, and the negative of forming one, as well as verdicts pronounced in violation of fundamental principles

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(7) The absence of courts for claims, and the same is true for
 one, as well as verdicts pronounced in violation of international principles

of law, will constitute what jurisprudence calls "denial of justice," condemned by the Law of Nations;

(8) Arbitration shall proceed, after and not before the injustice and illegitimacy of the sentence of the courts of the debtor state have been thoroughly proved. After all pacific means have been exhausted the employment of other methods of redress could be justified;

(9) The case of foreign loans is different; they originate in legislative decisions, partaking of the attributes of national sovereignty of which they cannot be separated; the State concludes them in the full exercise of an act of sovereignty;

(10) When a government discontinues the service of its debt, foreigners, owners of those bonds, are bound to suffer the same kind of loss common shareholders undergo when they risk or, rather, gamble their money in a private enterprise. This is precisely the case of a shareholder of a corporation that becomes bankrupt; however, the only advantage of the owner of public bonds is the certainty he has that the state does not disappear, and that sooner or later it will be solvent again. A bankrupt corporation, an ideal juridical person, exists no more as far as the law is concerned, and the duties of the legal entity toward the shareholders come likewise to an end;

(11) The financial misfortunes of foreign subjects have no effect on the existence and progress of the community to which they belong. They are not significant in themselves to justify a war, pretexting that these same subjects, instead of dealing with individuals, have contracted with governments seeking for better and more secure profits;

(12) The constant transactions on public bonds in the stock exchange enable a state that has performed an armed intervention against a

debtor to have the certainty that it is doing so in the interest of its own subjects;

(13) The suspension of the services of the public debt cannot constitute casus belli among sovereign and equal nations. War is not justifiable in the absence of sufficient causes which can put at a stake the nation's destiny, and among those causes it will never be possible to list the absence of payment of a debt to its "occasional" holders;

(14) Arbitration is always welcomed in these cases because the denegation of justice that might have been committed by the debtor is a common felony against the Law of Nations for which duly reparations have to be provided in every case. However, public loans are a different matter because they are in themselves the result of sovereign acts and because it is so difficult to determine with exactness the financial conditions of a nation at a given moment;

(15) If the arbitral decision is not acknowledged and carried out some authors are of the opinion that the compulsory collection by force could be resorted to. It is evident that such a prospect, besides being dangerously discretionary, does not give a solution: its application could momentarily drive the problem away, or perhaps even postpone it. However, it will never solve it;

(16) To accept the use of force in cases of default in carrying out the arbitral decision would be the same as to enact the recourse to war as an ordinary instrument of law, and this in turn would originate a new case of legitimate war;

(17) The use of force could also produce a flagrant disparity between the performed repression and the real magnitude of the offense inflicted, with the corresponding dangers for local sovereignties, and the

debtors to have the certainty that it is being no in the interest of the
own subjects;

(12) The suggestion of the possibility of the public debt cannot
be considered as a purely technical question and a legal matter. It is not
justifiable in the absence of sufficient reasons which can put at risk
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tween the performed responsibility and the real magnitude of the offense in-
fllicted, with the corresponding dangers for local sovereignty, and the

resulting consequences for the welfare of neutral nations. To this it is necessary to add the lack of justified cause in an act which will only amount to an excessive protection of cosmopolitan and changeable shareholders.

Drago's final words really caused surprise among the delegates, as he presented his position on the issue of the universalization of the doctrine stated by him in 1902. "The doctrine--albeit resting on very important considerations of law--is a principle of politics, and of active politics, that cannot, and that we will not admit to be, either discussed or voted in this Assembly. I enunciated it, however, to reserve it expressly as a doctrine of the country, contained in the complete dispatch sent by my government to its representative at Washington, on December 29, 1902."⁸⁷ In accordance with these ideas, the Argentine delegation made a reservation to the The Hague (II) Convention of 1907; the same attitude was followed by all American nations with the exception of Nicaragua and the United States. The Argentine reservation reads:

- "1. With regard to debts arising from ordinary contracts between the citizen or subject of a nation and a foreign government, there will be no arbitration except in the specific case of denial of justice by the courts of the country which made the contract, the remedies before which courts must first be exhausted.
2. Public loans secured by bond issues and constituting the national debt shall in no case give rise to aggression or material occupation of the soil of American nations."⁸⁸

With but slight variations all reservations reflected the same sincere belief in exhausting the local remedies in private contracts

⁸⁷ Silva, op. cit., p. 505.

⁸⁸ Carnegie Endowment for International Peace, op. cit., pp. 4-7.

before recouring to arbitration, and to repudiate military aggression or any form of intervention to proceed to the collection of public debts.

We will now refer to Drago's speeches in the House of Representatives on June 24 and 26, 1914, when, in opportunity of answering some criticism by his political opponent, Dr. Estanislao Zeballos, Drago disclosed the circumstances that produced the note. After summing up the international situation back in 1902 he expressed: "It was then that Germany, Great Britain, France, and Italy bombed the Venezuelan ports with the consent of the United States."⁸⁹ The fact produced great commotion in all American states, and he emphasizes the alarm observed in the streets of Buenos Aires, and the feeling of uneasiness which reached its peak when it was known for sure that the actual motive of such outrageous military undertaking was the compulsory collection of Venezuela's debts. Mass hysteria took possession of the public opinion of the country, and proofs of this can be found today in the newspapers of that time and in the suggestions of all kinds that the Argentine government received from the people. Drago explains that after long hours of meditation he wrote the note and submitted it to the consideration of President Roca. The President, whilst having accepted the terms of the note, was hesitant about its remittance for fear that the other American nations could believe that Argentina was looking for some kind of hegemony over them; that explains Argentina's invitation to Chile and Brazil to endorse the declaration. Also Drago reveals that under the President's advice he went to General Mitre to request his opinion on the matter. The latter's

⁸⁹Silva, op. cit., p. 505 and ff, or in "Diario de Sesiones de la Cámara de Diputados," Congreso Nacional. República Argentina. Sesiones de Junio 24 y 26 de 1914.

response was, as Drago describes it, perentory; "I believe," Mitre said, "that it has to be sent immediately."⁹⁰ Drago also mentions the unwillingness, and perhaps jealousy shown by the American nations when the note started making headway. He sincerely regretted their failure to understand the Argentine attitude, and the fact that for quite a while they persistently chose to ignore that Argentina was making arrangements for them also to participate in the common action.⁹¹

When asked to explain the reasons of the note's success, Drago flatly stated that it made its way because it was sent at the right moment and because it meant action. "It was not an academy's legal doctrine, of the kind that are born and die in books; it was a vital, dynamic principle; it was the voice of the American nations rising against the pride of force, and against the oppression of the weak; that is the explanation of why it made its way."⁹²

As regards the paternity of the doctrine, he did not hesitate a moment to say that he did not know exactly what the roots of the principle were, but "I can only assert that I myself wrote the note in a moment of great agitation, under the pressure of events, without consulting libraries or indexes. I only wanted to express my thought vigorously: public debts . . . cannot be collected by force," and I added, "in the American nations."⁹³ The only unfortunate remark Drago made in his report was his reference attributing to the note, the nature of a corollary to the Monroe Doctrine,

⁹⁰Silva, op. cit., p. 506.

⁹¹Silva, op. cit., p. 507.

⁹²Ibid.

⁹³Ibid.

or as Drago himself said, a financial Monroe Doctrine. We have to remember his firm belief in the Monroe Doctrine to understand his point. However, this realization proved to be more upsetting to the United States which could have reluctantly accepted the principle contained in the note, but never a foreign addenda to the nationally cherished Monroe Doctrine.

In an effort to depersonalize, once and for all, the question of the originality of his doctrine, Drago said:

"In matters of government, patents of invention do not interest at all. It is always easy to find that someone else has said before something similar in similar circumstances. This is so because there is not one principle, idea, or way of action--unless absurd and consequently totally devoid of logic--which does not have its deepest roots in the human conscience, and that it has not been expressed before, as a yearning, as a lamentation, or simply as a free word that later on the erudite takes, and interprets, and adjusts."⁹⁴

A bit of irony was not absent in this interchange of words, and Drago, in typically parliamentary language, challenged his adversary, Dr. Zeballos, saying:

"The representative for the Federal District (Zeballos) has found that in 1520 or so, a German (Vattel) who studied international relations, established that the intervention of a nation in the affairs of another is inadmissible; that, this German was also the one who foresaw the A.B.C. powers since 1500 or so. But I say this is also the German to whom no attention was paid, because his were the times of the greatest interventions and conquests. Extremely curious results, therefore, that in the year of 1520 this ambitious German created principles applicable to public loans that were only contracted since 1820 on."⁹⁵

When his critics from in the country and abroad wielded the accusation that Hamilton had already expressed the ideas contained in his note, Drago reminded them that he was careful enough to quote Hamilton

⁹⁴Ibid.

⁹⁵Silva, op. cit., p. 508.

on as Drago himself said, a liberal, honest man. He had to recognize his first belief in the Monroe Doctrine to understand the point. However, this realization proved to be more powerful to the fact that Drago would never have voluntarily accepted the principle contained in the note, but in an effort to demonstrate, once and for all, the validity of

the originality of his doctrine, Drago said:

"The nature of government, practice of nations do not depend at all. It is always easy to find some reasons after the fact before something else is stated as a principle. This is no reason there is not one principle, ideal, or way of action unless stated and immediately stated as a principle. It does not have the least roots in the human condition, and that it has not been expressed before, as a principle, as a principle, or already as a law that later on the statute takes, and interprets, and adjusts."

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"The representative for the Federal District (Zeballos) has found that in 1890 or so, a German (Vetzel) who studied international relations, established that the intervention of a nation in the affairs of another is inadmissible; that this German was also the one who founded the A.D.U. movement since 1890 or so. But I say this is after the fact to whom no attention was paid, because his work was the first the greatest international and commercial. Extremely original results, therefore, that in the year of 1890 this movement German created principles applicable to public loans that were only accepted since 1890 or so."

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in his note in regard to the legality of actions carried out against a nation before its own tribunals. Drago quoted before the House of Representatives William T. Stead's words that prefaced the work of Santiago Perez Triana on "La Doctrina Drago" to defend the authenticity of his note. Stead, in his characteristic sharp-tongued style, qualifies as mean, and based in no historical proof whatsoever on any opinion seeking to deny Drago his rights of authorship. He also rebuffed the pretensions of those who tried to attribute to Hamilton and Lord Palmerston to have anticipated Drago in the prohibition of the use of armed forces for the collection of profits belonging to foreign shareholders. Stead said:

"There are controversial figures and free thinkers of the weakest nature among their own kind, who perversely have tried to prove, that Jesus Christ has no right to be considered the founder of Christianity. They prove with more or less erudition that this or that doctrine, or this or that rite, considered today as distinctly Christian, already existed centuries before the Christian era. However, the most perverse of those polemicists restrain themselves from proclaiming Nero as one of the founders of Christianity. And in this sense, they show more prudence than those Americans of the North, who in their zeal to prove that the Drago doctrine existed before Drago himself, have managed to convince themselves that Lord Palmerston was the original author of the doctrine. The truth is that Lord Palmerston not only thought the opposite, but he also acted in that way; and when it happened that out of convenience he behaved differently, he put real emphasis in explaining that his abstention from the use of force was as such, not a matter of principle, but of expediency. He used force against Portugal, and against the South American countries that failed to pay the interests of English-owned foreign bonds, and when he was requested to use force against Spain in similar circumstances, he refused to do it in the same speech in which his ideas are more opposed than ever to the principles Drago enunciated later on."⁹⁶

⁹⁶"Lord Bentinck in a debate on the subject of the Spanish debt in the House of Commons on the 7th of July, 1847, to obtain information, stated with confidence the amount of the debt due by Spain to British subjects on which no interest was paid, to be \$46,000,000 sterling. Lord Bentinck attempted to prove both the right and the duty of Great Britain to go to war with Spain for the recovery of this debt if the object could not otherwise be accomplished

As Stead stated, Drago cannot ever be mistaken with Palmerston. As regards Hamilton, he only remarked that "he was fortunate enough to die before the era of foreign bond-owners' began; therefore, the pretense that Hamilton's ideas gave origin to Drago's doctrine resembles that one which would favor Abraham the Patriarch with the authorship of the Sermon on the Mount."⁹⁷

Regardless of the author's personal stand, the doctrine very soon began to travel the world's roads under the sponsorship of the American nations that--after early fears and excessive zeal were overcome--made the doctrine their own. As the Monroe Doctrine--which it interprets and complements--Drago's political theory, proclaimed, passed from the stage of the unilateral declaration of a state that speaks in the name of national interests, to the category of an international law. However egotistic its main purpose might be judged to be, it harmonizes perfectly

and he significantly referred to the revenues of the islands of Cuba and Puerto Rico as furnishing ample means not only for the payment of interests, but for the liquidation of the principal. Lord Palmerston, in reply, admitted the right of the British Empire to wage war against Spain for the recovery of the debt, but denied its expediency under the then existing circumstances." He concluded his remarks, however, by stating: "But this is a question of expediency and not a question of power; therefore let no foreign country who has done wrong to British subjects deceive itself by a false impression either that the British nation or that the British Parliament will forever remain patient under wrong; or that if called upon to enforce the rights of the people of England, the government of England will not have ample power and means at its command to obtain justice for them." Lord Bentinck was so assured by this language that he withdrew the motion, confident of the fact that the government will in no other cases exercise the same energy, when the proper time arrives to have it exercised." Hall, International Law, Fifth edition, pp. 280-81, cited in Moore's Digest, VI, pp. 286-87.

⁹⁷William Stead in the Preface to Perez Triana's book La Doctrina Drago (London, 1907), LXVIII to LXXX, cited in Silva, op. cit., p. 590.

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Rejection of the author's personal aims, the doctrine very soon began to travel the world's roads under the sponsorship of the American nations that--after early years and excessive work were overcome--made the doctrine their own. As the Monroe Doctrine--which it inspired and complemented--Drago's political theory--gradually, passed from the state of the unilateral declaration of a state that speaks in the name of national interests, to the category of an international law. However, egoistic its main purpose might be judged to be, it harmonizes perfectly

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⁹⁷ William Stead in the preface to *Foras Trinitas's book in London* (London, 1907), LVIII to LXXX, cited in Hall, op. cit., p. 280.

with the ideal of international justice that the Monroe Doctrine and American Public International Law try to make effective. The "national doctrine" was of international value, and fitted to be incorporated to a Law of Nations more advanced than the one preceding centuries had known. In fact, "after the France of 1792, the United States of 1776 and 1823, and the Italy of 1848, Argentina in 1902 became one of the liberal nations protesting against the use of force in international relations, claiming total independence for the weak, requesting arbitration for the settlement of international disputes: all new principles that today are not only American formulae but which deserve to acquire world value."⁹⁸ As these words of Paul Fauchille foretold, such a trend was getting so strong that Drago's authority and even his words were inadequate to stop it.⁹⁹ However, he never ceased to render clear and evident the continental character he had in mind for it, and he reminded to the supporters of the doctrine:

"When the United States proclaimed that they would consider it an unfriendly act on the part of any power to oppress the nations of this continent or to control in any manner their destinies, they limited their action to that which in reality concerned them. It would have been more generous perhaps, and more in conformity with reason and the ideas of humanity to generalize in the proclamation, and protest against the oppression of civilized nations in all the extent of the globe. But this would have had infinitely less adequate results."¹⁰⁰

Two conclusions emerge from the contents of the original note:

(1) There is a firm preoccupation on the part of the author to distinguish between cases of claims from ordinary contracts, and claims for debts originated in public loans;

⁹⁸ Drago, "State Loans . . .", p. 706.

⁹⁹ See ^{supra} ~~infra~~, p. 49.

¹⁰⁰ Drago, ibid.

(2) The note is concerned only with the second kind, to set a principle of the prohibition of the use of armed force for its collection.

As regards the first kind of obligations Drago manifested: "In cases of purely conventional obligations the subjects of a country who make contracts with a foreign government enter into definite relations to it in regard to the properties in question, which creates perfectly defined reciprocal obligations. The government in this case acts as an ideal or juridical person. It does not act in its character of a sovereign power, but as a party under the rules and provisions of private law. Its jurisdictional faculties as a political entity are not affected, nor are they in the least impaired; it acts as a civil person and nothing further is involved than the revenues of the exchequer."¹⁰¹

The case of bonds of the public debt causes a completely different situation, because "bonds constitute an exceptional class of obligations; they are issued by the state, as is its currency; they are authorized by legislation and do not present any of the general characteristics of the contracts of private law, since there is no specified person in whose favor the obligations are incurred, payment being promised always to the bearer without discrimination."¹⁰² Therefore, it was concluded that "when payment on a public debt is suspended, there is no such thing as an appeal to the government nor is there judicial action in the courts, because the interruption in the payments occurs in virtue of the sovereign authority of the state, manifested jure imperii."¹⁰³ Here lies in fact the main difference

¹⁰¹Drago, "State Loans . . .", pp. 693-94.

¹⁰²Drago, op. cit., p. 695.

¹⁰³Drago, op. cit., p. 696.

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As regards the first kind of obligation, the author writes:

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¹⁰¹ Drago, "State Loans . . .", p. 693-94.

¹⁰² Drago, op. cit., p. 692.

¹⁰³ Drago, op. cit., p. 696.

between obligations arising from contracts ruled by private law, and those originated in contracts of public loans. In the first case where the state acts as a party and in an administrative capacity, jure gestioni, "it may be summoned to answer for its acts or omissions before a court of claims according to the provisions of jurisdiction established by its own institutions."¹⁰⁴ Furthermore, in the eventuality that courts with jurisdiction on cases such as these are not available, special ones can be created "at any moment, spontaneously or through diplomatic intervention."¹⁰⁵

On this basis, that is to say, by acknowledging the legal distinction between a state acting as jure gestioni and as jure imperii, no exceptional or privileged position was claimed for the American nations, and the undeniable rights of other states were also recognized. Drago says referring to this fact:

"The Argentine note clearly states that it does not claim for the South American states any exceptional situation in their relations to the powers of Europe, which have the right to protect their subjects as amply as in any and every other part of the globe, against the persecutions and injustice of which they may be the victims. It is only where justice has been denied or unreasonably delayed by the courts of justice of foreign countries, where they are used as instruments to oppress American citizens or deprive them of their just rights that they are warranted in appealing to their government to interpose."¹⁰⁶

¹⁰⁴Ibid.

¹⁰⁵Ibid.

¹⁰⁶Drago, op. cit., p. 696. Cases of this nature appear listed in Moore's Digest, VI, p. 660. See especially Mr. Seward, Secretary of State, to Mr. Barton, Minister to Colombia, No. 137 (April 27, 1866), Dip. Cor., 1860, Moore, III, pp. 522-23.

between obligations arising from contracts and obligations arising from the exercise of public powers. In the latter case, the state acts as a party and in an administrative capacity. It may be assumed to answer for the acts of its organs and agents in relation to the provisions of international law. Furthermore, in the exercise of its administrative functions, the state acts as a party and in an administrative capacity. It may be assumed to answer for the acts of its organs and agents in relation to the provisions of international law. Furthermore, in the exercise of its administrative functions, the state acts as a party and in an administrative capacity. It may be assumed to answer for the acts of its organs and agents in relation to the provisions of international law.

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104 Ibid.

105 Ibid.

106 Grays, op. cit., p. 696. Cases of this nature appear in Moore's Digest, VI, p. 660. See especially Mr. Justice Brandeis, dissenting in Mr. Burton, Minister to Colombia, No. 137, (1900), 110, 109, 180, Moore, III, pp. 323-24.

Therefore following this reasoning which agrees with recognized principles of private and public law, claims arising from foreign loans have of necessity to follow a completely different procedure. To begin with, there is not a chance to place a request for "denial of justice," because the court not only does not exist, but it is impossible even hypothetically to conceive such a court.¹⁰⁷ Westlake, who ranks at the top among the opponents of the doctrine, has criticized Drago's argument of the prohibition of the use of force because such an exclusion as sponsored is so vast in its scope as to bar out as unjust, and, therefore, to make impossible the defense and support of national claims, with the occasional use of force, as in a war. Drago, however, proved that the foundation of the Argentine thesis is the theory of the sovereignty of the debtor state, "against which no forcible procedure is possible, and the legal process, even in cases in which it consents to be brought to judgment is not admissible."¹⁰⁸ Since the creditor knows that he is dealing with a sovereign entity, as the note says, he also must be aware that one of its attributes is that no legal process can be carried out against it.¹⁰⁹ "Sovereignty," he says, "is a historic fact and may be studied in each of the phases of its long and slow evolution, but it has attributes and

¹⁰⁷ Drago, op. cit., p. 696.

¹⁰⁸ Drago, op. cit., p. 699.

¹⁰⁹ The translator of the original note "has transformed the expression procedimientos ejecutivos (procedure exécutoire) into procederes ejecutivos (procedes exécutoires). Consequently, Prof. Westlake observed with good reason that to accept that principle is equivalent to saying that war "procede exécutoire" par excellence, for the support of national claims, is never just." "Procedimientos ejecutivos," in the technical legal language of Spanish speaking countries, means "methods of compulsion for the recovery of a certain kind of debt." Ibid.

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¹⁰⁷ Drago, op. cit., p. 595.

¹⁰⁸ Drago, op. cit., p. 593.

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prerogatives which may not be disregarded without danger to the stability of social institutions."¹¹⁰ One sovereignty is limited by another, but the aggression of the one upon the other is not justified unless it be necessary to secure its own existence.¹¹¹ And that is not necessarily the situation in cases of default in the payment of the public debt. This property as a result of its singular nature is one of the most active assets in commerce in the world markets, and is constantly passing from one hand to the other with no more formality than simple transmission (*traditio*). Therefore, it appears to be rather inconsistent with reality and also with the natural risks involved in international business of all types, to pretend that a country's existence is put at a stake because a suspension in the payments of its public debt is decreed by a debtor state, and it does happen that a certain number of citizens of the first state are circumstantially the holders of some of those bonds. Lord Campbell Baunerman, once Prime Minister of Great Britain, expressed at the discussion in the House of Commons of the British action in Venezuela:

"I venture to say that nothing could be more mischievous than that we should even seem to accept the doctrine, if it deserves to be called a doctrine, that when our countrymen invest in risky enterprises in foreign countries and default follows, it is our duty to rescue them. Every man who invests money in a country like Venezuela knows what he is doing. It would, I suppose, not be quite accurate to say that great risks always mean high dividends, but it is more accurate if you put it the other way about: that high dividends generally involve great risks; but if the whole power of the British Empire is to be put behind the investor, his risk vanishes and the dividends ought to be reduced accordingly."¹¹²

¹¹⁰Drago, *op. cit.*, p. 700.

¹¹¹Drago, *op. cit.*, p. 701.

¹¹²Drago, *op. cit.*, p. 703. This passage has been taken from Hansard's "Parliamentary Debates," Session of February 7, 1903, 4th Series, Vol. 118, p. 7.

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of Great Britain, expressed at the discussion in the

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110. *ibid.*, p. 100.

111. *ibid.*, p. 101.

112. *ibid.*, p. 102.

Sir Campbell's words, spoken not more than a year after the events in Venezuela, was a most pleasing realization for the supporters of Drago's doctrine because these words made clear that the rule of "purchaser of bonds beware" (caveat emptor) was gaining more and more acceptance in the international circles and in the opinion of leading statesmen. This definitely was a sign of progress in the right direction in spite of the fact that almost at the same time the Court of The Hague gave preferential treatment to the blockading powers in their demands against Venezuela, mainly because of Britain's prestige and power.

Up to this point the doctrines of Calvo and Drago have been considered separately. However, a comparison between them must be made to establish clearly in what they differ, and to what extent they do so. In spite of the fact that both are in general terms opposed to the compulsory collection of international debts, there is nothing repetitious in their contents. Opinions are divided about which one is the broadest. A large number of jurists insist, nevertheless, that the wording of the Drago Doctrine makes the outlawing of intervention more comprehensive than Calvo's. The ground for this assertion is offered by Calvo's own words, because he actually does not reject intervention in absolute terms, but rather conditions its use to the exhaustion of local remedies. In other words, he alleged that the collection of debts, and the pursuit of private claims do not justify de plano, prima facie, the use of armed intervention. Therefore, a contrario sensu, the lack of other means of redress could eventually justify the use of force. Drago, instead, as we have already observed in detail, condemned intervention with no reservations whatsoever. But, if in this particular instance his doctrine appears to be broader than Calvo's, it is also in this point that it demonstrates its more reduced

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 words, he alleges that the collection of debts, and the pursuit of private
 claims do not justify *de jure* intervention, the use of armed intervention.
 Therefore, a *restraint* against the lack of other means of redress could
 eventually justify the use of force. Gago, instead, as we have already
 observed in detail, considered intervention with no restrictions whatsoever.
 But, if in this particular instance his doctrine appears to be broader than
 Gago's, it is also in this point that it demonstrated the more reduced

scope. Because, while Calvo makes reference to a variety of reasons (injuries to private interests caused by civil wars, violence product of mobs, false arrest, imprisonment, expulsions, breaches of contracts, claims and demands for pecuniary indemnities), which do not justify in themselves the recourse to force, Drago was only concerned with outlawing the forcible collection of public debts. In Calvo's doctrine there is a comprehensive condemnation of diplomatic as well as armed intervention as legitimate methods of redress for public or private claims, whether they are strictly of pecuniary nature, based on contracts, or resulting from civil wars, insurrection or mob violence, the taken-for-granted equality of foreigners and nationals, and the actual operation of this principle, was the key to his doctrine. If no special prerogatives are granted in favor of foreigners and, instead, equality of rights is recognized, then diplomatic protection or intervention in defense of citizens is automatically overruled. Drago makes a very subtle distinction between cases in which the state acts jure imperii or jure gestioni to determine if a demand proceeds against it. Calvo does not stop to analyze these facts but, instead, he proclaims the doctrine of the final jurisdiction of the local courts over the claims of aliens, denying the right to recourse to diplomatic protection. Drago's doctrine, intended to be a corollary to the Monroe Doctrine against the use of armed force for the collection of public debts, did not overrule diplomatic interposition in general. Drago's was "before and above all a statement of policy," and its central point was to stress the fact that "violent method of recovery are not applicable to the American nations, because they either represent from

neops. Because, while Latin makes reference to a variety of reasons
(attributed to private interests, general or special, which are common to
nations, false motives, immorality, egoism, etc.), which in reality are
often and demands for general principles, which in reality are
themselves the reasons for force, Drago has only a nominal right to
the forcible collection of public debts. In Drago's doctrine there is a
comprehensive condemnation of international law as it stands, and a
legitimate method of redress for nations on private claims, who have
are strictly of pecuniary nature, based on contracts, or resulting from
civil wars, intervention or non-violence, the nation's right to
of foreigners and nationals, and the actual operation of this principle
was the key to his doctrine. If no special provisions are made in
favor of foreigners and, instead, equality of rights is recognized, then
diplomatic protection or intervention in defense of citizens is auto-
matically overruled. Drago makes a very subtle distinction between cases
in which the state acts justly or unjustly, and in which it does not
demand proceeds against it. Latin does not stop to analyze these details
but, instead, he proclaims the doctrine of absolute jurisdiction of the
local courts over the claims of citizens, denying the right to resort to
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the Monroe doctrine against the use of armed force for the collection of
public debts, did not override diplomatic intervention in general.
Drago's was "before and above all a statement of policy," and its central
point was to stress the fact that "urgent action on recovery cannot
be applicable to the American nations, because they either were not from

the outset or may ultimately involve the subordination and conquest which the traditional policy of both Americas forever excluded."¹¹³ It was of a restricted continental and circumstantial value; it never intended to become a principle of law. Calvo's, on the other hand, was worded with that intention in mind, because the author was convinced of the need of some development in the traditional concepts and justifications of interventions to stop the unlawful encroachments of powerful nations.

It is not difficult to conclude that what both Drago and Calvo had in mind was to devise a formula that could eventually lead to the complete outlawing of interventions. However, they were aware that the circumstances were not ripe at the time to undertake such a task on absolute terms. Therefore, they started by putting limitations to forcible actions, based on the teachings of the traditional Law of Nations that recognizes the principle of equality of states, and the rights of preservation and self-defense. That was their main achievement, and however defective the wording of their respective doctrines, their initial pledge for limitation in the use of force and coercion helped to set off an anti-interventionist current of thought among international jurists and politicians demanding more patience, and submission to arbitration in international conflicts. . . . Today the paternity of an idea is perhaps immaterial unless we want to pay due respects to the creator. In this particular case Drago's and Calvo's everlasting merit is to have furnished the traditional legalism of the Western Hemisphere nations with the first tools to obtain universal recognition of the principle of nonintervention. Calvo based his standpoint on the principle of equality; Drago, on that of sovereignty. Although they chose different roads, they both reached the destination.

¹¹³ Drago, op. cit., p. 726.

CHAPTER III

NONINTERVENTION AND THE INTER-AMERICAN SYSTEM

World politics--as it was once conceived in European terms--could be accurately defined by listing three concepts: balance of power, alliances, intervention. This was the magic formula that the European nations discovered to make their coexistence possible. To this unusual aggregation of power and force, the American republics answered with a formula of law: nonintervention. In fact, the traditionalism of European power-politics found in the growing legalism of the former colonies a hard enemy which was to oppose the force of arms by the sturdiness of law. They lacked the necessary material strength to undertake their own defense against the threat of reconquest but they showed enough ambition to pioneer a movement for a modified international law in which concepts such as justice, equality, and independence were to be effective. Above all, the idea of juridical equality made a rapid progress in America, and, as a consequence of this, the existence of no superior nation was acknowledged as the depository of right. In a society of equal like the one they formed, power and force were not recognized as titles of supremacy. According to the principles of the Grotian Law of Nations that the Western Civilization has made its own, states are equal, independent, and sovereign. These rights should be enough to enact as a law the right to complete liberty the nations have, in handling their own affairs and in facing their needs according to their best judgment. However, Europeans and Americans have always understood this fundamental assumption differently: while the Europeans understood these three basic rights in absolute terms, the Americans have interpreted them in terms of plenitude. They realized very soon the

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World politics--as it was conceived in former times--was
essentially defined by the fact that it was a system of
intervention. This was the main reason that the system was
created to make this possible. In this system, the
of power and force, the system was created with a number of
noninterference. In fact, the traditional system of
found in the growing system of the former system, a new system
was to oppose the force of arm in the system of law. The law
the necessary material strength to undertake this and to prevent the
threat of noninterference but they showed a new system of
for a modified international law in which everyone must be
equality, and independence were the basic principles. The system
mutual equality made a new progress in law, and as a result
of this, the existence of no intervention was established as the
positivity of right. In a society of equal men, the concept of
and force were not recognized as a matter of course. As a result
principles of the system of law that the system of law was
made its own, states are equal, independent, and sovereign. The system
should be enough to create a new law of the system of law, the system
have, in handling their own affairs and in making their own decisions
their best judgment. However, the system of law is a system of law
stood this fundamental assumption of the system of law. The system of law
stood these three basic principles in the system of law. The system of law
interpreted them in terms of the system of law.

impossibility of coexistence of these three rights if sovereignty and independence were not kept under control by equality. Therefore, it was for them, not a matter of absolute rights, but rather one of mutually related full rights. Equality was to buffer any possible encroachment of a sovereign state threatening the independence of another, and once equality is thus acknowledged the doctrinal problem of the coexistence of the rights of independence and self-defense is also solved, because only equality can be an absolute right.

That is why even today to define "intervention" is a difficult task. In international law there is no problem that surpasses in complexity that of intervention, or at least, as Fenwick says, "none is more challenging."¹ When dealing scientifically with a problem, a definition of the subject under discussion is needed; however, this is not the case with intervention. Although it has been discussed for centuries and thousands of definitions have been attempted, only a few have barely succeeded in their commitment. As a consequence, "intervention" still remains a loosely-defined concept, an interpretation loose enough to put at stake the security of any state of this world. For the most part the authors err when using elements of generalization to define an eminently restrictive concept. The fact that "practice on the matter has been determined more often by political motives than by legal principles"² also obscures the situation. We must not forget

¹Charles Fenwick, "Intervention: Individual and Collective," *A.J.I.L.* XXXIX (October 1945), p. 645. See also for a very complete aggregate of jurists' opinions on the subject of definition, the "Right to Protect Citizens in Foreign Countries by Landing Forces," Memorandum of the Solicitor for the State Department, October 5, 1912, 2nd Revised Edition (Washington: United States Government Printing Office, 1929).

²L. B. Brierly, *The Law of Nations* (Oxford: At the Clarendon Press, 1949), p. 284.

impossibility of coexistence of two states, one of which is not
independence and the other is not. It is not a matter of
for them, not a matter of making them, but a matter of
related this right. It is not a matter of making them, but a matter of
a sovereign state. It is not a matter of making them, but a matter of
is that acknowledged the fact that the right of self-determination
of independence and self-determination is a right of the people
be an absolute right.
That is why even today we are not able to make a decision
in international law. It is not a matter of making them, but a matter of
of intervention, or at least, as far as we are concerned, it is a matter of
When dealing with international law, we are not able to make a decision
under discussion is needed. It is not a matter of making them, but a matter of
Although it has been discussed for centuries and centuries, it is not a matter of
have been attempted, only a few have been successful in making them.
As a consequence, "international law" is not a subject which should
an interpretation based on the fact that the right of self-determination
this world. For the most part, it is not a matter of making them, but a matter of
generalization to define an authority in the field of international law.
"practice on the matter" has been discussed for centuries and centuries, it is not a matter of
than by legal practice, it is not a matter of making them, but a matter of

Charles Leggett, International Law, 1914, p. 100.
A. L. L. MILL (October 1914, p. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 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that political expediency and complete disregard of the existing rules of law have been the guiding principles of intervening powers. Certain authors try to explain this failure in defining the subject of intervention by pointing out that intervention could only be defined once the liberty of states to go to war could in like manner be made effective, or when states could be restrained by law of some of the anti-social uses of the right of independence.³ Another typically vague form of defining intervention points out to its causes or, what is even more confusing, to its consequences. On the other hand there exist those who try to solve the obstacle by discouraging all defining efforts on the ground that there is not such a need for the definition of the concept as there is for the description and analysis of a group of internationally recognized practices and rules. Hershey, in his complete treatise, says that "like war, intervention is not commonly or strictly speaking a law or a right in the ordinary legal sense of these terms, although, like war, it may become a source of legal rights and duties."⁴ Calvo, very concisely, but also very convincingly says: "Intervention signifies the interference of one state in the affairs, internal or external of other states."⁵ Hodges explains that "intervention is an interference by a state or states in the external affairs of another state without its consent, or in its internal affairs with or without its consent."⁶ No doubt in this subject of intervention

³Brierly, op. cit., p. 285 and ff.

⁴Hershey, op. cit., p. 244.

⁵Calvo, I, par. 110, p. 266.

⁶Henry Hodges, The Doctrine of Non-Intervention (Princeton: The Banner Press, 1915), p. 1.

that political expediency and complete disregard of the existing value of law have been the guiding principles of intervening powers. Certain authors try to explain this failure in defining the subject of intervention by pointing out that intervention could only be defined once the liberty of states to go to war could in like manner be made effective, or when states could be restrained by law of some of the anti-social uses of the right of independence.³ Another typically vague form of defining intervention points out to its causes or, what is even more confusing, to its consequences. On the other hand there exist those who try to solve the obstacle by discouraging all defining efforts on the ground that there is not such a need for the definition of the concept as there is for the description and analysis of a group of internationally recognized practices and rules. Harashy, in his complete treatise, says that "like war, intervention is not commonly or strictly speaking a law or a right in the ordinary legal sense of those terms, although, like war, it may become a source of legal rights and duties."⁴ Calvo, very concisely, but also very convincingly says: "Intervention signifies the interference of one state in the affairs, internal or external of other states."⁵ Hodges explains that "intervention is an interference by a state or states in the external affairs of another state without its consent, or in its internal affairs with or without its consent."⁶ No doubt in this subject of intervention

³Harashy, op. cit., p. 282 and ff.

⁴Harashy, op. cit., p. 284.

⁵Calvo, I, par. 110, p. 266.

⁶Henry Hodges, The Position of Non-Intervention (Ithaca: The Banner Press, 1912), p. 1.

the greatest difficulty is to limit the reach of the terms used. Nevertheless it is customarily accepted in international law that intervention is the interference of a state in the internal or external affairs of another which is not under its dependency, with the purpose of forcing it to comply with the will of the intervening state. It has been said that it actually amounts to a substitution of the sovereignty belonging to the intervened in benefit of the intervening power. From this general concept, two constitutive elements come forth: (1) it is an abusive act seeking the usurpation of sovereign attributes; and (2) its object is to impose the will of a foreign state.⁷ Strupp defines it saying that "intervention is the extra-juridique action by means of which one or more states commit ingerence in the interior or exterior affairs of other or others, to impose the performance or the abstention of certain actions, being unable to base such attitude in a juridical title arising from the customary international law or from special bilateral treaties binding the nations in question."⁸

A classification of the different kinds of interventions is perhaps not very useful for practical purposes because, as Calvo says, "the form under which intervention takes place does not alter its character. The intervention by use of a diplomatic process is none the less an intervention: it is an intervention more or less direct, more or less dissimulated, which is very often merely the prelude of an armed intervention."⁹

⁷Hildebrando Accioly, op. cit., I, p. 278.

⁸Karl Strupp, "L'Intervention en matiere finaciere," Recueil des Cours, VIII (1925), p. 8.

⁹Calvo, ibid.

However, since it has been manifested under various forms, it is likely to be found under different headings. For example, it is called diplomatic when it is practiced by means of verbal or written presentations; armed, when it is openly supported by armed forces. This kind is now definitely condemned even by the great powers of the world. It can also be individual or collective depending on the number of states participating in it. Some authors want to distinguish between what is called open intervention, when clearly performed as such, and simulated or negative when by its means the intervention of another state or states in the affairs of a third one can be stopped.

Armed intervention, however drastic a measure as it is, actually is not to be mistaken with war, although in most cases, war is its natural and immediate result. This dreadful resource to armed intervention, however rejected by the majority of the authors, has been defended by others in the category of right. It is true that the legality of intervention in certain circumstances has been enacted by international agreements like the Covenant of the League of Nations, the Charter of the United Nations, and to a certain extent by the Charter of the Organization of the American States. But no matter how broad the interpretation of such circumstances could be, the principle does not apply to a case of armed intervention.

The above mentioned pacts provide for the action on the part of the organizations against nonmember states to ensure that they will act in accordance with the principles of the Charter.¹⁰ There is also the problem created by

¹⁰Leland M. Godrich and E. Hambro, Charter of the United Nations. Commentary and Documents, 2nd Edition (Boston: The World Peace Foundation, 1949), p. 584. See with preference Article 2 for purposes and principles of the U.N.O.

However, since it has been handled under various forms, it is likely to be found under different headings. For example, it is called intervention when it is preceded by means of verbal or written representations; armed intervention when it is openly supported by armed forces. This kind is now exclusively condemned even by the great powers of the world. It can also be individual or collective depending on the number of states participating in it. Some authors want to distinguish between what is called open intervention, when clearly performed as such, and disguised or masked intervention when by its very nature it intervenes in the affairs of another state or states in the affairs of a third one and be stopped.

Armed intervention, however, despite a measure as it is, actually is not to be mistaken with war, although in most cases, war is the natural and immediate result. This (disguised) recourse to armed intervention, however, ever rejected by the majority of the authors, has been followed by others in the category of right. It is true that the legality of intervention in certain circumstances has been asserted by international agreements like the Covenant of the League of Nations, the Charter of the United Nations, and to a certain extent by the Charter of the Organization of the American States. But no matter how broad the interpretation of such circumstances could be, the principle does not apply to a case of armed intervention. The above mentioned texts provide for the action on the part of the organs of the organization against member states to ensure that they will act in accordance with the principles of the Charter.¹⁰ There is also the problem created by

¹⁰ Leland M. Gottlieb and E. Hamner, Charter of the United Nations, 1945, p. 384. See with reference Article 2 for purposes and principles of the U.N.O.

law and morality to justify intervention for humanitarian purposes. However, in those cases, justifications are to be found in other principles rather than in the legal ones. As regards legal interventions, general agreement seems to admit that they "may conveniently be brought under three heads: self-defense, reprisals, and the exercise of a treaty right."¹¹ But even if these three instances appear to be precise enough, how is the scope of each one to be determined? How is a case of self-defense to be defined with due precision? The application of these concepts to specific cases is bound to be difficult always. This disagreement is but the natural consequence of the phenomenon of intervention. Intervention is the result of international politics, and consequently it shares the same complex physiognomy that circumstances imprint on the former. Before this realization, it is not surprising that the counterpart of intervention, namely nonintervention, shares also this conceptual uncertainty. However, this is not necessarily a common case of counterparts in which by stating that nonintervention is that what intervention is not, the subject would be defined. Intervention is said to be a positive norm, while nonintervention by its very denomination denotes negativeness. However, the negativeness in nonintervention is what makes it a principle with a positive object: defense. In the world today, the recognition of the validity of this negative formula is the minimum necessary assumption that makes possible the peaceful coexistence of the American nations. Therefore, its positiveness lies in its being the sine qua non condition of international life. Nonintervention as such is reported to be the creation of the Latin-American nations to defend themselves against aggressions of

¹¹Brierly, op. cit., p. 288.

all kind; it is also in this sense that we can say that intervention is European and nonintervention, American. The reason of its appearance and triumph in the hemispheric continent explains for itself its origin and first causes. It is interesting to realize the preoccupation of the American jurists to embody in a formula of law these ideas that originated immediately after independence was consolidated. In Europe, the classics were not concerned with intervention, at least as it came to be known in modern times. In European politics, intervention was the natural pattern of conduct, and perhaps this fact distracted the minds of the scholars from developing its theory. Grotius, Vittoria, and others do not deal with intervention or nonintervention. Vattel is commonly acknowledged as one of the first theorists to deal with the subject together with Wolff, who wrote at a later date. A very interesting passage in Vattel says:

"Since men are by nature equal and their individual rights and obligations the same, as coming equally from nature, Nations which are composed of men and may be regarded as so many free persons living together in a state of nature, are by nature equal and hold from nature the same obligations and the same rights, strength or weakness in this case counts for nothing. A dwarf is as much a man as a giant is; a small Republic is no less a sovereign state than the most powerful kingdom. From this equality it necessarily follows that what is lawful or unlawful for one nation is equally lawful or unlawful for every other Nation."¹²

However, in spite of so promising assertion, Vattel ended by enacting the right of intervention in a number of cases, and by means of exceptions he made it the general rule. On the contrary, in the case of nonintervention, the evolution operated in its concept was possible, because jurists and politicians concluded the impossibility of the existence of a right of intervention for the absurdity that implies to admit as

¹²Vattel, *op. cit.*, p. 78.

all kind; it is also in this sense that we can say that intervention is European and non-European. The reason of its European and non-European character is explained for itself its origin and its nature. It is interesting to realize the predominance of the American jurists to study in a formula or law these ideas that originated immediately after independence was consolidated. In Europe, the ideas were not concerned with intervention, at least as it came to be known in modern times. In European politics, intervention was the natural pattern of conduct, and perhaps this fact distracted the minds of the scholars from developing the theory. Grotius, Vattel, and others do not deal with intervention or non-intervention. Vattel is commonly acknowledged as one of the first theorists to deal with the subject together with Wolff, who wrote at a later date. A very interesting passage in Vattel says:

"Since men are by nature equal and their individual rights and obligations the same, as coming equally from nature, Nations which are composed of men and may be regarded as so many free persons living together in a state of nature, are by nature equal and hold from nature the same obligations and the same rights, strength or weakness in this case counts for nothing. A dwarf is as much a man as a giant; a weak Republic is as much a sovereign state as the most powerful kingdom. From this equality it necessarily follows that what is lawful or unlawful for one nation is equally lawful or unlawful for every other nation."¹²

However, in spite of no prevailing assertion, Vattel ended by asserting the right of intervention in a number of cases, and by means of exceptions he made it the general rule. On the contrary, in the case of non-intervention, the evolution operated in the opposite way possible, because jurists and politicians concluded the impossibility of the extension of a right of intervention for the expediency that implies to exist as

valid the proposition of the existence of a right against the right of independence of the state. Intervention being the most absolute negation of such a right, it also annuls the essential attributes of the state, without which it is not such. Therefore, to acknowledge the doctrinal existence of the right of intervention will be tantamount to authorize the violation of the fundamental rights of the state. Once this is done, the foundations of international society based on the mutual respect of its members' sovereignty and independence would also be destroyed. Fauchille thinks that "intervention is thus not so much a right as a sanction of the rights of the states. It constitutes for a state a means of assuring the fulfillment by other states of the duties which they owe to it."¹³

Regardless of differences of opinions it is a fact that at present the principle of nonintervention is considered the general rule, the legal postulate capable of maintaining the long desired international harmony, and intervention only a right of exception, namely a right to be exercised by an international agency in the name of the international community, and never by an individual state. This is the only possible interpretation we can give to Stowell's expression that "intervention in the relations between states is the rightful use of force or the reliance thereon to constrain obedience to International Law."¹⁴ The principle of nonintervention is not exclusively legal in nature. Its foundations partake of both a legal and a political character. Politics has inspired it, seeking

¹³Fauchille, op. cit., I, p. 556.

¹⁴Ellery Stowell, Intervention in International Law (Washington: John Ryne and Co., 1921), p. 36.

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vention is not exclusively legal in nature. Its foundation rests on
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¹ *Annals of the American Academy of Political and Social Science*, Vol. 1, p. 250.
² *Library Science: Intervention in International Law*, Washington:
John Ryne and Co., 1921, p. 30.

to satisfy the state's needs and interests while law tries to provide the proper formula to define it. The American nations for reasons of necessity manifested themselves diametrically opposed to the policy of intervention held by Europe and they expressed their opposition in very strong terms until they succeeded in outlawing intervention and in raising nonintervention to the category of the legal duty of abstention from any interference whatsoever in the affairs of other states. "The duty of non-intervention, in any question concerning the political constitution of the state and the free exercise of any sovereign function and power within and without the state, is the indispensable condition of the real and effective autonomy and independence of the state. Every right is correlative to a duty and it is clear that the right of sovereignty implies the correlative duty of respecting law and refraining from any interference on the part of other states."¹⁵ DeMartens says that it is not allowable to speak of the right of intervention, and Lawrence, although admitting a legal right to intervene, prefers to restrict it to the minimum. Nevertheless he bitterly admonishes the defenders of nonintervention. Here is what he says:

"So prone are powerful states to interfere in the affairs of others and so great are the evils of interference that a doctrine of absolute non-intervention has been put forth as a protest against incessant meddling. If this doctrine means that a state should do nothing but mind its own concerns and never take an interest in the affairs of other states, it is fatal to the idea of a family of nations. If, on the other hand, it means that a state should take an interest in international affairs and express approval or disapproval of the conduct of its neighbors, but never go beyond moral persuasion in its interference, it is foolish.

¹⁵Pasquale Fiore, International Law Codified and Its Legal Sanction, 5th Edition, trans. by Edwin Brochard (New York: Bakers, Voorhes, and Co., 1918), p. 265.

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 acknowledge the existence of nonintervention. Here is what he says:

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¹² *League of Nations, International Law Codified and the League of Nations*,
 5th Edition, trans. by David Greaves (New York: League of Nations,
 1933), p. 255.

To scatter abroad protests and reproaches and let it be understood that they will never be backed by force of arms is the surest way to get them treated with angry contempt. Neither selfish isolation nor dignified remonstrance is the proper attitude for honorable and self-respecting states. They should intervene very sparingly and only on the clearest grounds of justice, and necessity. But when they do intervene, they should make it clear to all concerns that their voice must be attended and their wishes carried out.¹⁶

After pages like this are read, it is with great satisfaction that we find others like Kelsen, expressing the belief that the idea of law, in spite of everything, seems still to be stronger than any other ideology of power. Because this was a sound belief the so-called duty of nonintervention in the internal or external affairs of the other states has evolved into a principle legally imposed to the nations as the surest means to maintain peace. It is in fact a principle which conforms with law and justice and which every civilized government has to respect as its first obligation toward its citizens and toward humanity as a whole. Kant is generally attributed the paternity of the nonintervention idea when, in his Essay on Perpetual Peace written in 1795, he declared that "no state should interfere in the constitution or government of another state."¹⁷ However it is also true that some authors have almost demolished the validity of this assumption. Thomas and Thomas, for example, in their work previously mentioned in this paper, complain that authors like Hershey who stands for the Kantian precedent fail to realize that "Kant's absolute prohibition of intervention and his stand for unfettered sovereignty is modified by his statement that the civil constitution in every state shall

¹⁶T. J. Lawrence, Les Principes de Droit International (5th Edition, Oxford; Imprimerie de L'Universite, 1920), pp. 130-40.

¹⁷Hershey, op. cit., p. 243.

be republican."¹⁸ Some reservations could be made as regards the non-intervention policy expressed in 1823 by President Monroe or earlier than that by Adams in 1821. Although both were the natural outgrowth of the principles laid down by Washington in his celebrated message of 1796, they actually came into existence to put a definitive stop to the real or imagined encroachments of the Holy Alliance in the New World. They did not aim to declare nonintervention as a principle of international law but as a principle of political expediency, perfectly suited to the needs of the times. Nevertheless, these declarations represented a valuable precedent that was used later on in the advancement of the nonintervention doctrine. As Stowell points out, it is in the general practice of all the states that international law is discovered. This has also been the case with intervention and nonintervention despite the fact that there exists no other case like this one in international law where principles and actual practices stood more apart. The merit of the American republics was to strive to bring both so close together as to achieve an almost perfect identification between them.

Before going into the treatment of its achievements let us briefly review the origins and background of the western hemisphere regional system. It is necessary to understand before going any further that between the western hemisphere regional system that was in the minds of its statesmen in the early nineteenth century and today's system, only one element of comparison has remained unchanged: the geographical. The old idea and the new system are so peculiar in nature and purpose that it is not without

¹⁸ Thomas and Thomas, op. cit., p. 7.

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logic that Prof. Leonard said that "Pan-Americanism is a system that defies definition."¹⁹ That is why many authors, in the impossibility of defining it, have tried to describe it. Dr. Alfaro, a prominent Pan-American figure, asked: "Is Pan-Americanism an advocacy, an idea, a sentiment, an aspiration, a tendency, a principle, or a doctrine?" And he answered: "I submit that it is none of these things alone but in some way it partakes of the essence of all of them."²⁰ It is evident that from the very beginning of the movement, the world was confronted with a unique situation that was going to produce a unique system of solidarity and cooperation. The evolution operated has been great and it has gone so far in its adaptation to new needs that in the present situation of the world the most essential of the reasons that gave rise to the hemispheric system, namely hostile feeling against Europe, have completely disappeared. Actually the old western hemispheric system has united its fate to that of Western Europe for the defense of a common civilization and way of life. It is necessary to remark that in spite of the fact that the creation of a hemispheric entente had for its main purpose the isolation of America from

¹⁹Larry Leonard, International Organization (New York: McGraw Hill Book Co., 1957); p. 303.

²⁰Ricardo Alfaro, Commentary on Pan-American Problems (Cambridge: Harvard University Press, 1938), p. 6. "It is an advocacy founded upon solid ground of reason, of experience, of expediency; it is an idea that corresponds to a tangible reality; it is a sentiment created by the strong inescapable facts--both natural and historic--which have shaped international life in the American continent; it is an aspiration insofar as its action is aimed at definite purposes; it is a tendency engendered by a sentiment of moral unity; it is a general principle of intercontinental policy, if by principle we understand a permanent cause producing certain effects; it is a doctrine based on tenets or specific principles which are deeply imbedded in the popular conscience of America such as independence, territorial integrity, equality, democracy, justice, love of peace, hatred of force and adherence to law." Ibid.

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¹⁹ Larry Isom, *International Organization* (New York: McGraw-Hill Book Co., 1937), p. 303.

²⁰ Ricardo Alfaro, *Commentary on Pan-American Problems* (Geneva: Harvard University Press, 1933), p. 6. "It is an ideology, an ideal, a movement, a solid ground of reason, of experience, of expediency; it is an ideal that corresponds to a tangible reality; it is a sentiment created by the group inseparable facts—both natural and historic—which have shaped it. National life in the American continent; it is an aspiration, a tendency, its action is aimed at definite purposes; it is a tendency suggested by a sentiment of moral unity; it is a general principle of international policy, it by principle we understand a permanent cause producing certain effects; it is a doctrine based on certain principles which are deeply imbedded in the popular consciousness of America such as independence, territorial integrity, equality, democracy, justice, peace, hatred of force and adherence to law." Ibid.

Europe, as a concept the idea was never fully accepted by the American nations: they embraced it as a natural reaction meant to preserve the newly acquired independence from the mother country, and in no case the idea had for the Latin-American republics the same scope or even the aloofness as recommended by Washington in his Farewell Address, had for the United States. As a matter of fact the strict enforcement of this policy of aloofness was responsible for the failure of the first attempts toward a continental movement and for the consequent split of the original Pan-American idea into a formula of Latin-Americanism. It was then that the hemispheric vision was almost lost and narrowed down to a South-American unity movement. As Whitaker says: "at Panama in 1826 Uncle Sam left the Spanish American bride waiting at the church. In Mexico the following year the scene was re-enacted but with the roles reversed: this time it was Uncle Sam who lingered at the altar in vain. After that, the unhappy couple drifted further and further apart for nearly forty years."²¹ In 1856 the Continental Treaty of Santiago was signed by Chile, Peru, and Ecuador and it was definitely aimed against the United States for its expansion in detriment of Mexico. Later on in 1864 the European threat regained importance and once again the Latin-American nations pulled together for a political alliance to provide for the common protection; a Treaty of Union and Defensive Alliance was signed "that linked with the politico-military tradition of the Congress of Panama."²² However, by the time the first international conference of American States met at Washington

²¹Arthur Whitaker, The Western Hemisphere Idea. Its Rise and Decline. (Ithaca: Cornell University Press, 1954), pp.41-2.

²²Whitaker, op. cit., p. 57.

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²¹ Arthur Whitaker, *The Mexican Hemisphere Idea: Its Rise and Decline* (Ithaca: Cornell University Press, 1921), pp. 41-2.

²² Whitaker, op. cit., p. 51.

in 1889, the confederationist idea had been dropped and a new concept of a family of nations was gaining the favor of the republics: that was also the birth of Pan-Americanism. It was also during those last years of the nineteenth century that the decision of the Latin-American republics to create a device of some sort to counteract in diplomatic terms the questionable activities of the United States foreign policy became evident. "The attack," beyond any doubt, "was initiated by Calvo";²³ the weapon the Latin-Americans chose was the codification of international law; the purpose was mainly to put an end to the policy of intervention. However, and against what it could have been expected, the process did not have a snowballing sequence, but rather its advancement followed a slow and troublesome series of failures and successes. Not until very recently were its achievements worthy of being mentioned and it was only after the decade of the thirties that the process sped up in the presence of favorable circumstances. It is generally believed that by the time the Conference of Montevideo of 1933 met, "the principle of nonintervention was the main weapon in the arsenal of Argentine diplomacy," and actually "for all practical purposes, it was the legal tool by which the power and political initiative of the United States was to be neutralized."²⁴ The evolution of the doctrine, however, recognizes two main sources: one is positive and formed mainly by the numerous doctrinal principles and the general jurisprudence of the Latin-American nations; the other is negative, and it is represented by the story of the United States interventions in that particular area. But perhaps we should not call this second source

²³Strauss Hupe and Possony, op. cit., p. 342.

²⁴Op. cit., p. 345.

in 1885, the... family of... the first of... nineteenth century... presents a... question... that... nearly the... law... However, and... not have a... also and... recently... after the... of favor... Congress... was the... after all... political... evolution... positive and... general... and it is... that...

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negative because, after all, it was its presence in the international politics of the continent that brought the doctrine into existence. However, we have to analyze the ingredient of negativeness that it contains in terms of violated sovereignties in particular, and state-rights in general. Since practically all interventions rest on a more or less open repudiation of the principle of equality of states,²⁵ it was not until the moment both Americas endorsed the abolition of intervention as the sine qua non condition for peaceful coexistence that the Pan-American movement began to appear as a reality: until that time it was nothing but a speculative elaboration, still dwelling in the minds of the jurists, but devoid of practical significance.

The great significance of Calvo's principles in this evolution was to have impressed the Latin-Americans with sufficient arguments to center the discussion of the feasibility of the doctrine of nonintervention around the principle of absolute equality of states. Equality stresses the fact that states, without being identical to each other, are nevertheless equals before international law and therefore equally constrained to obey its principles. The acceptance of this fact led of necessity to accepting the inviolability of state sovereignties regardless of any qualification in terms of power, size, form of government and economic welfare. From there on, the Latin-American states could stand the chance to work out a way to abolish interventions. However, before they could ever dream of submitting a principle such as that of nonintervention to an open discussion and strive for its acceptance, they needed to apply the

²⁵Jackson Ralston, A Quest for International Order (Washington: John Byrne and Co., 1941), p. 122.

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ever dream of submitting a principle such as that of non-intervention to an
open discussion and strive for its acceptance, they needed to study the

²² Jackson H. Hays, A Study of International Law (Washington:
John Byrne and Co., 1901), p. 107.

strategy that eventually led to it. In fact, they began by partially applying the aforesaid principle under various headings to a number of situations. This legalistic pursuit began to ripen in the Second International Conference of American States at Mexico City in 1902 where a resolution was passed to create a committee of jurists to prepare a code of Private and Public International Law; the next Rio Conference of 1906 officially created the Commission of Jurists. As is well known, it was not too long after the Conference of 1902 was over that the episodes of Venezuela gave the Latin-Americans the second chance to enlarge their doctrinary efforts to enforce nonintervention. In that opportunity Drago addressed his doctrine, as we have already seen in Chapter II, against the employment of coercion for the collection of public debts. Next the world witnessed a general movement among several countries to include the so-called Calvo Clause in contracts with foreigners. Mexico went as far as to make it part of its constitution. This example was closely followed by others.

These, that we could call humble beginnings, culminated in 1936 when the Conference of Buenos Aires formally recognized nonintervention as the foundation of the Inter-American system. From then on it has acquired the stature of doctrine and today the once theoretically possible doctrine has evolved into an obligatory principle, whose violation amounts to aggression and subjects the trespasser to all the consequences involved in a delict against the Law of Nations.

A review of the Pan-American movement and its legalistic crusade will show us that after the period of the so-called romantic continentalism was over, the republics devoted all their attention and energies to find

strategy that eventually led to this. In fact, they began by partially applying the economic principles under various headings to a number of situations. This economic principle began to ripen in the second international conference of American States at Mexico City in 1901 where a resolution was passed to create a committee of jurists to prepare a code of private and public international law; the next Rio Conference of 1906 officially created the Commission of Jurists. As is well known, it was not too long after the Conference of 1901 was over that the epidemic of Venezuela gave the Latin-American the second chance to air their doctrinaire efforts to enforce reservation. In that opportunity Bago addressed his doctrine, as we have already seen in Chapter II, against the employment of coercion for the collection of public debts. Next the world witnessed a general movement among several countries to include the so-called Calvo Clause in contrast with foreigners. Mexico went on far as to make it part of its constitution. This example was closely followed by others. These, that we could call humble beginnings, culminated in 1936 when the Conference of Buenos Aires formally recognized reservation as the foundation of the Inter-American system. From then on it has required the stature of doctrine and today the once theoretically possible doctrine has evolved into an obligatory principle, whose violation amounts to aggression and subjects the trespasser to all the consequences involved in a belief against the law of nations. A review of the Pan-American movement and the legalistic crusade will show us that after the period of the so-called romantic constitutionalism was over, the republics devoted all their attention and energies to find

the right doctrinal answers for the sui generis problems of international law that were so peculiar to the continent.

The United States Congress, by an act passed on May 24, 1888, authorized the President to invite the governments of the other American nations to join in a meeting to be held at Washington in 1889. The gathering, the First International Conference of American States, was consequently summoned and its program prepared. The latter included items like the formation of an American custom union; how to preserve peace and promote prosperity among the American States; how to increase communications; a proposition to adopt a common silver coin for currency, and so on. However, the interest of all the delegations was concentrated in the possibility of adopting a definitive plan of arbitration of problems, disputes, or questions of any kind that could affect the good relations of the American nations. Though the balance sheet of the conference does not offer a proof of great success, and although no treaties were signed and the meeting was--rather than a conference--a "general advisory meeting," it is highly interesting to examine some of the recommendations and resolutions adopted because they deal directly with the subject matter of this work. Compulsory arbitration was the key-word of the conference, and the plan of arbitration submitted by the Committee on General Welfare establishes:

"Believing that war is the most cruel, the most fruitless and the most dangerous expedient for the settlement of international differences . . . and considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves, . . . Do solemnly recommend all the governments to conclude a uniform treaty for the adoption of arbitration as a principle of American International Law for the settlement of differences,

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gathering, the first International Conference of American States, was consequently summoned and the program proposed. The latter included items like the formation of an American union; how to preserve peace and promote prosperity among the American States; how to improve communications; a proposition to adopt a common silver coin for currency, and so on.

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it is highly interesting to examine some of the recommendations and resolutions adopted because they deal directly with the subject matter of this work. General assembly arbitration was the key-note of the conference, and the plan of arbitration submitted by the Committee on General Arbitration

Believing that war is the most cruel, the most wasteful and the most dangerous expedient for the settlement of international differences . . . and considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world supports, do solemnly recommend all the governments to conclude a treaty for the adoption of arbitration as a principle of American International Law for the settlement of differences

disputes, or controversies that may arise between two or more of them."²⁶

The right of conquest was denounced at that early date on the grounds that "there is in America no territory which can be deemed res nullius, and,

"Whereas in view of this, a war of conquest of one American nation against another would constitute a clearly unjustifiable act of violation and exploitation Be it therefore resolved by the International Conference of American States, that the principle of conquest shall not during the continuance of the Treaty of Arbitration be recognized as admissible under American International Law."

Among the numerous recommendations approved the one dealing with claims and diplomatic interventions was particularly important, as a precedent of the application of Calvo's teachings, and because it suggested the adoption of the following as principles of American International Law:

(1) Foreigners are entitled to enjoy all the civil rights of the natives; and they shall be accorded all the benefits of said procedure, and the legal remedies incident thereto, absolute in like manner as said natives;

(2) A nation has not, nor recognizes in favor of foreigners any other obligations or responsibilities than those which in favor of the natives are established in like cases by the Constitution and the Laws.²⁷

This recommendation was adopted by the majority of the republics with the exception, among others, of the United States; its delegation submitted a minority report voting for the negative with respect to the dispositive part of the recommendation.²⁸ The Conference can be credited with the great achievement that represented the repudiation of wars and if its resolutions were of a very general nature, nothing else could have been done then. At the time questions were still too complicated, and numerous

²⁶International American Conferences, 1889-1928. First Supplement. p. 41.

²⁷Op. cit., p. 45.

²⁸Ibid.

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- (1) Foreigners are entitled to enjoy all the civil rights of the native; and they shall be accorded all the benefits of said laws, customs, and the legal remedy thereof in every instance in which the same natives.
- (2) A nation has not, nor recognizes in favor of foreigners any other obligations or responsibilities than those which in favor of the natives are established in like cases by the Constitution and the laws.

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²⁶International American Conference, 1889-1925. First Supplement.

p. 41.

²⁷Op. cit., p. 42.

²⁸Ibid.

problems, particularly concerning boundaries, were awaiting solution. Therefore, the main purpose of the meeting could not have been other than to get the American nations together to develop a sentiment of trust in each other.

The Second International Conference met, as scheduled, in Mexico City from October 22, 1901, to January 22, 1902. Besides the formulation of a Protocol of Adhesion to the Convention for the Pacific Settlement of International Disputes of The Hague of 1899, a Treaty of Compulsory Arbitration was signed by ten delegations. Very important also was the signature of a Treaty for the Arbitration of Pecuniary Claims and a Convention Relative to the Rights of Aliens.²⁹ Again at this meeting, arbitration was the central note; Argentina submitted a complete review of its arbitration treaties and its position in the matter of arbitral justice and arbitrable jurisdiction. The Convention on aliens and the exchange of opinions that it generated among the delegates was likewise important. The first three articles of the Convention express:

"Art. 1. Aliens shall enjoy all civil rights pertaining to citizens, and make use thereof in the substance form and procedure, and in the recourses which result therefrom, under exactly the same terms as the said citizens, except as may be otherwise provided by the Constitution of each country.

Art. 2. The States do not owe to, nor recognize in favor of foreigners any obligations or responsibilities other than those established by their constitution and laws in favor of their citizens; therefore the States are not responsible for damages sustained by aliens through acts of rebels or individuals and in general, for damages originating

²⁹"Until the end of 1912, only three American states, El Salvador, Guatemala and Honduras were bound by the Convention on Pecuniary Claims." Podestá Costa, I, p. 440.

from fortuitous causes of any kind, considering as such the acts of war, whether national or civil; except in the case of failure on the part of the constituted authorities to comply with their duties.

Art. 3. Whenever an alien shall have claims or complaints of a civil, criminal, or administrative order against a State or its citizens, he shall present his claims to a competent court of the country and such claims shall not be made through diplomatic channels except in the cases where there shall have been on the part of the Court a manifest denial of justice or unusual delay or evident violation of the principles of International Law."³⁰

This Convention was signed by fifteen states on the same day it was completed, January 25, 1902. The United States did not sign it. The Treaty of Arbitration for Pecuniary Claims had more luck because it was signed by seventeen states including the United States and Argentina. It provides:

"The High Contracting Parties agree to submit to arbitration all claims for pecuniary loss or damage which may be presented by their respective citizens and which cannot be amicably adjusted through diplomatic channels, and when said claims are of a sufficient importance to warrant the expenses of arbitration."³¹

In appreciation of Calvo's works, the Conference passed a resolution to pay him tribute for the consecration of his strenuous life to repair an omission of the writers on international law who "left this vast American continent in the dark; although its power and influence are increasing from one day to another, and whose people in equality with those of Europe are advancing on the road of civilization and enlightenment."³² Regarding the proceedings that followed the Treaty on Compulsory Arbitration, it is

³⁰International American Conferences, 1889-1928, op. cit., p. 91.
Hereon referred to as I.A.C.

³¹Op. cit., p. 108.

³²Ibid.

from fortuitous causes of any kind, notwithstanding as such the
 acts of war, whether national or civil, except in the case
 of failure on the part of the constituted authorities to
 comply with their duties.

Art. 2. Whoever in time shall have claims or obligations
 of a civil, criminal, or administrative order against a
 State or its citizens, he shall present his claim to a
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 Treaty of Arbitration for Boundary Claims had been previously signed
 signed by seventeen states including the United States and Argentina. It

provided:

"The High Contracting Parties agree to submit to arbitration
 all claims for boundary lines or limits which may be
 asserted by their respective citizens and which cannot be
 finally settled through diplomatic channels, and which
 with claims of a civil or criminal nature do not require the
 expenses of arbitration."

In agreement with the Convention, the Government passed a resolution
 to pay the expense for the arbitration of his strenuous life to resign as
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³⁰ International American Conference, 1900-1902, pp. 211, 212.
 Heron referred to as I.A.C.

³¹ Id. pp. 211, 212.

³² Id.

interesting to remember that the failure to reach an agreement on the delicate matter of compulsory or voluntary arbitration decided the Conference to recommend the adherence of the delegations to the I The Hague Convention of 1899 that provided for voluntary arbitration. This circumstance led to the compulsory arbitration treaty independently signed by ten countries.³³

The Third Conference met in Rio de Janeiro from July until August of 1906. The most important resolution, perhaps, was that which pledged the adherence of the American nations to the principle of arbitration and recommended to the participant states to instruct their delegates to the II The Hague Conference, to endeavor in said Assembly to secure a General Arbitration Convention. The Rio meeting also produced a convention to deal with pecuniary claims. It reaffirmed also the Treaty signed at Mexico City in 1902, with the exception of the provisions contained in Article Three. The problem of public debts originated a resolution recommending the participating governments to invite the II Peace Conference at The Hague to examine the question of compulsory collection of public debts and the consideration of means tending to diminish conflicts of exclusively pecuniary origin between the nations. In other words, the conference failed to treat the Drago Doctrine, and in consequence it referred such subject to The Hague meeting. We have seen in Chapter II that this led to the Potter Amendment of the said doctrine.³⁴ The most important result of the Third Conference of Rio was the codification of principles of interest for the

³³Op. cit., pp. 103-04.

³⁴The fact that the majority of the nations participating at the Conference were debtors advised the sending of the suggestion to The Hague.

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 to treat the Drago Doctrine, and in consequence it referred such subject to
 The Hague meeting. We have seen in Chapter IV that this led to the Fourth
 Amendment of the said doctrine.³³ The most important result of the Third
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³²See, e.g., pp. 103-04.

³³The fact that the majority of the nations participating at the
 Conference were debtors advised the meeting of the suggestion to the
 Hague.

American republics to embody them in a Code of Private and Public International Law. The Conference agreed upon the establishment of an International Commission of Jurists which met for the first time in Rio in June 1912. The Fourth Conference met in Buenos Aires from August 12 to August 30, 1910. Besides passing resolutions of general and structural character, there was agreement on several recommendations in matters like educational exchange and other aspects of Pan-Americanism. However, no important resolution was produced concerning intervention. The subject, nevertheless, was brought forth by the Latin-American governments every time they made a proposition concerning pecuniary claims or rights of aliens. This conference produced a resolution on the former which received the ratification of eleven countries including the United States, but not that of Argentina. In this Convention which followed very closely the Treaty of Mexico of 1902, the American nations agreed to submit to arbitration all claims arising from damages or pecuniary losses suffered by their respective citizens and which could not be amicably adjusted through diplomatic channels, when said claims were of sufficient importance to warrant the expenses of arbitration. The High Contracting parties also agreed to submit to the decision of the Permanent Court of The Hague all the controversies which were the subject matter of the treaty, unless both parties to the conflict agreed to constitute a special jurisdiction.³⁵ In all cases decisions would be rendered in accordance with the recognized principles of the Law of Nations. The report of the Committee, however, made clear that this submission to arbitration did not mean that such a procedure should, in every case, take the place of the

³⁵Op. cit., p. 184.

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... national law. The Government agreed to ...
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laws and tribunals of each country, except in cases when the nature of the claims turns it into a matter of international character. It was also agreed that arbitration was applicable when the recurrence to diplomatic channels was justifiable; this was accorded to save the right of internal sovereignty that a state has to be ruled by its own laws and decide by its own courts the juridical acts performed within its territory.³⁶ However, this convention did not solve either the conceptual problem of defining what should be understood by the expression "denial of justice," and thus give way to diplomatic action. Therefore, though the convention did not intend to suppress the right of territorial jurisdiction it did not give the awaited solution to this problem of latu sensu definitions which in no other branch of law are less advisable than in the realm of international law, where a hasty interpretation could produce the most dangerous results.

The Fifth Conference of Santiago lasted from March 25 to May 3, 1923. Besides one treaty and three conventions, fifty-eight resolutions or recommendations were signed at Santiago. Point 10 of the Program recommended the consideration of the best means to give wider application to the principle of the judicial or arbitral settlement of disputes between the American Republics.³⁷ Among the final documents, Resolution XII suggested the reduction and limitation of military and naval expenditures on some just and practical basis. Resolution XIX dealt with the rights of aliens residing within the jurisdiction of any of the American republics

³⁶Alberto Guani, La Solidaridad Internacional en América (Montevideo: Caludio García y Cía. Ed., 1942), p. 115 and ff.

³⁷I.A.C., Op. cit., p. 282. See also the Code and Convention produced at the Sixth Conference of Havana in pp. 327, 376, and 415.

laws and tribunals of each country, except in cases where the nature of the dispute turns it into a matter of international law. It was also agreed that arbitration was obligatory when the parties were in dispute. This was justified, this was supposed to serve the kind of international community that a state has to be within its own laws and decisions. Its own courts the judicial acts were within the jurisdiction. However, this concept did not give effect to the essential character of defining what should be understood by the expression "tribunal of justice" and thus give way to diplomatic action. Therefore, though the commission did not intend to suggest the right of compulsory jurisdiction it did not give the awaited solution to this matter of legal dispute relations which in no other branch of law are less divisible than in the field of international law, where a heavy intervention could produce the most dangerous results.

The Fifth Conference of American States from March 22 to May 2, 1923. Besides one treaty and three conventions, fifty-eight resolutions or recommendations were signed at Santiago. Point 10 of the program recommended the consideration of the best ways to give effect to the principle of the judicial or arbitral settlement of disputes between the American Republics.³⁷ Among the final documents, Resolution XII suggested the reduction and limitation of military and naval expenditures on some just and practical basis. Resolution XIX dealt with the rights of aliens residing within the jurisdiction of any of the American republics.

³⁷ Alberto Gual, *La Conferencia Internacional en Santiago* (Montevideo: Editorial de la Universidad de la República, 1923), p. 118 and 119.

³⁸ I.A.C., Op. cit., p. 282. See also the Code and Convention proposed at the Sixth Conference of Havana in 1928, 1929, and 1930.

and Resolution XVI showed concern about the possible illegal encroachments of a non-American power on the rights of an American nation. The progressive condification of international law was recommended in another resolution which also reorganized the International Commission of Jurists. This Commission met in Rio in 1927 and prepared twelve projects of Public International Law and a Code of Private International Law which were to be submitted to the next conference of Havana. These projects were the cause of the first open debates on the abolition of intervention ever held at a Pan-American meeting, and also the most tempestuous ones. Regarding the slow process followed toward the universal recognition of the rights of aliens, the Fifth Conference produced a resolution, the first part of which expresses:

"1. To entrust to the Commission of Jurists, which is to meet at Rio, the determination in International Public Law of the civil rights and individual guarantees which aliens may enjoy within the territory of each state, exceptions that may be admissible and the recourses that may be had against the violation of such rights and guarantees."³⁸

The main achievement of the Conference was the so-called Gondra Pact; by this document the American nations pledged to avoid and prevent conflicts among themselves. It is formed by ten articles and an appendix dealing with procedure norms.³⁹ In Article I the nations agree to submit for investigation and report, to a Commission to be established, all controversies of any nature which may rise among them and which have not been settled through the arbitral procedures in accordance with certain treaties. The pact also pledges the nations that in case of disputes they

³⁸Op. cit., p. 284.

³⁹Op. cit., p. 285 and ff.

and Section III showed... of a non-American... progressive condition of... resolution which also... This Committee met in 1952 and... International law and... admitted to the past... of the first open debate on the... Pan-American meeting, and also... also process followed toward the... alias, the fifth Committee produced a... which expressed:

"1. To submit to the Committee of Ministers... must at first the determination to... of the civil rights and individual... may enjoy within the territory of... that any for individual and... against the violation of... The main achievement of the... by this document the... conflicts among themselves... dealing with... for investigation and... controversies of any... been settled through the... treaties. The first...

30th Nov. 1952
30th Nov. 1952

are not to begin mobilization or concentration of troops on the frontier of the other party, not to engage in any hostile act or preparation for hostilities, from the time the Commission is being convened until it has given its report or until the deadline has been reached without a pronouncement. The Gondra Pact included also the condemnation of armed peace which increases naval and military forces beyond the necessities of domestic security. Other principles set forth there developed later on as precedents to the Declaration of Solidarity of Lima, and also to the policy of granting the condition of nonbelligerent to American nations, in war with extracontinental powers.

The eventful Sixth Conference of American States met in Havana from January 20 to February 20, 1928. The year of 1928 was not propitious in the relations of the southern sister republics and their big sister of the North. Interventionism exercised in various forms awakened the "rising tide of Latin-American resentment against the United States,"⁴⁰ and this sentiment was to find striking expression at this conference. The Latin-American Republics therefore decided to end, once and for all, the real or imaginary dangers of the Colossus of the North. At the time of the gathering the Dominican Republic, Haiti, and Nicaragua were under intervention. It was then that the doctrine of nonintervention began to take definite shape despite the fact that during the debates at Havana most of the energy of the discussions was wasted around the casuistic distinction between intervention and transitory interposition. Secretary Huges, who defended the United States' position in the second distinction,

⁴⁰Arthur Whitaker, "A Half-Century of Inter-American Relations. 1889-1940," Inter-American Affairs--1941, An Annual Survey. No. 1 (New York: Columbia University Press, 1942), p. 13.

are not to begin negotiations on a basis of equality with the President of the United States, but to engage in any hostile act or preparation for hostilities, from the time the Commission is being convened until it has given its report or until the deadline has been reached without a response. The Commission had included also the prohibition of armed forces which increase naval and military forces beyond the necessities of domestic security. Other principles of foreign policy developed later on as precedents to the Declaration of Solidarity of Latin America, and also to the policy of granting the condition of nonalignment to American nations, in war with extracontinental powers.

The eventual Sixth Conference of American States met in Havana from January 20 to February 22, 1933. The year of 1933 was not propitious in the relations of the hemisphere since the revolution and their big sister of the North. Interventionism continued in various forms against the "rising tide of Latin-American sentiment against the United States," and this sentiment was to find striking expression at this conference. The Latin-American Republics therefore decided to act, once and for all, the real or imaginary dangers of the Colonies of the North. At the time of the gathering the Dominican Republic, Haiti, and Nicaragua were under intervention. It was then that the doctrine of nonintervention began to take definite shape during the first part of the debate at Havana most of the energy of the discussion was wasted around the committee distinction between intervention and necessary intervention. Secretary Hughes, who defended the United States' position in the second distinction,

Arthur W. Hays Sulzberger, *A Half-Century of Inter-American Relations, 1880-1930*, "Inter-American Affairs," *As Annual Survey*, No. 1 (New York: Columbia University Press, 1933), p. 12.

did his best to block any resolution on the subject. He wanted to assure the Latin-American republics that the United States had no aggressive intentions against them, and that ever since Monroe's declaration, the United States had recognized their independence. This assertion did not convince the Latin-Americans, and it was in Havana, as never before, where the existence of two blocs of nations was made evident. Immediately after the consideration of the Rio projects began, it was clear that the United States considered that, besides being "too Latin-American, they might seriously hamper the government in the protection of United States interests, particularly in certain Caribbean states," and "if there was any thought of becoming a formal party to the proposals, they should receive the most careful study and consideration."⁴¹ In fact, while the State Department found almost every project objectionable, to a certain extent, the Latin-Americans on the other hand had all the reasons to favor them. These unfortunate developments in the sessions were inevitable; the debate actually started before the Conference of Havana ever met, when the Commission of Jurists of Rio made a recommendation to the future conference to adopt under treaty form the twelve projects of codification comprising the codification of fundamental principles of international law: the states, the status of aliens, the diplomats, the obligations of states in the event of civil war, the peaceful solution of international conflicts, the rights and duties of states, and so on. It was inevitable that the sole reading of Article 3 of Project ^{two} Four was sufficient to raise a storm because it simply stated, "no state has a right to intervene in the

⁴¹Samuel Flagg Bemis, op. cit., p. 249.

did his best to block any resolution that would have been
the Latin-American republics that the United States had no intention
intention against them, and that even after Roosevelt's death, the
United States had recognized their independence. This resolution was
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States Government found almost every project objectionable, to a certain
extent, the Latin-American as the other hand had all the reasons to fear
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debate actually started before the Conference of American States, when the
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states, the status of aliens, the diplomatic, the obligation of states,
the event of civil war, the peaceful solution of international conflicts,
the rights and duties of states, and so on. It was inevitable that the
sole reading of Article 3 of President Wilson was sufficient to show
there because it clearly stated, "No state has a right to intervene in the

internal affairs of another,"⁴² and henceforth the determination of the Latin-American bloc to outlaw interventions in the most comprehensive sense of the word. Therefore it was not surprising to realize that while the United States objected to the unqualified proposition contained in the project the Latin-Americans were only concerned with demolishing the supposedly rightful actions of the United States under the operation of the Roosevelt Corollary to the Monroe Doctrine. Besides, while it was not necessarily true that the Latin-Americans only wished to reaffirm their rights in international law and were less ready to pledge their duties, as Bemis says,⁴³ it was certainly the case that what the United States was seeking "under the Republican Restoration was to maintain the full integrity of the Monroe Doctrine as defined by the United States, including the Roosevelt Corollary, to justify protective imperialism, to avoid being maneuvered into giving up diplomatic protection of citizens and their properties abroad, meanwhile to pledge itself against war or conquest, to the machinery for conciliation, to arbitration of justifiable questions." Those were the times when "as a result of its own rise to power and of the threat from Europe, the United States developed not only a policy of American internationalism as exemplified by the Pan-American movement, but also a new unilateral policy towards its Latin-American neighbors who were participating with it in the Pan-American movement."⁴⁴ The delegation of

⁴²The Argentine proposal to the International Commission of Jurists reads as follows: "No State can interfere in the domestic affairs of another State, nor can it interfere in its foreign affairs." I.A.C., p. 330.

⁴³Bemis, op. cit., p. 250.

⁴⁴Whitaker, "A Half-Century of . . .," p. 14.

internal affairs of another,"⁴² and because the determination of the Latin-American line to our intervention in the West Indies was a case of this sort. Therefore it was not surprising to realize that while the United States objected to the principle of intervention contained in the project the Latin-Americans were only concerned with demanding the supposedly rightful actions of the United States under the operation of the Roosevelt Corollary to the Monroe Doctrine. Indeed, while it was not necessarily true that the Latin-Americans only wished to maintain their rights in international law and were less ready to give their duties, as Rensis says,⁴³ it was certainly the case that the United States was seeking "under the Republican Revolution" to maintain the full integrity of the Monroe Doctrine as defined by the United States, including the Roosevelt Corollary, to justify protective intervention, to avoid being answered back giving up diplomatic protection of citizens and their properties abroad, unwilling to give their citizens any or no support, to the machinery for cooperation, to arbitration of justice questions, those were the times when "as a result of its own rise to power and of the threat from Europe, the United States developed not only a policy of American internationalism as exemplified by the Pan-American movement, but also a new unilateral policy towards the Latin-American neighbors who were participating with it in the Pan-American movement."⁴⁴ The relationship

⁴² The Argentine proposal to the International Commission of Jurists reads as follows: "The State can interfere in the domestic affairs of another State, not only in extreme cases, but in all cases." J.A.I.L., p. 330.

⁴³ Rensis, op. cit., p. 330.

⁴⁴ Rensis, op. cit., p. 330.

the United States to the Conference followed the suggestions contained in the Memorandum of the Attorney of the Department of State (October 5, 1912) where the Attorney made no distinction between the righteousness of the so-called political intervention which affects state sovereignties and that of nonpolitical intervention, that he chose to call interposition, to protect citizens against injustice. Hedges, following this Memorandum very closely, tried to take the defense of the Caribbean interventions and therefore it was not surprising for the delegations to listen to the Secretary of State state that--since independence, order and political stability were the basis of Pan-Americanism, together with good-will and cooperation--the interventions then in evidence were only for ensuring stability as a means of securing independence. "We have no desire to stay," he added. "We entered to meet an imperative but temporary emergency and we shall retire as soon as possible."⁴⁵

Hedges did his best to block the anti-interventionist efforts of the Latin-American republics and no resolution was taken besides the one that referred the treatment of the subject to the next Pan-American Conference, but the Havana Conference marked a dead-end for interventionism under any form and it also marked the last intent the United States ever made to defend policies such as those followed in the Caribbean region. Soon after the meeting was over the good-neighbor policy was inaugurated and the sine qua non condition for its growth in terms of prestige and trust for the United States made necessary a complete change in attitude. This was bound to be a long and painstaking task, because its success was

⁴⁵ Bemis, op. cit., p. 252. Hedges' Address at the Havana Chamber of Commerce, January 21, 1928.

dependent upon how much confidence it could gain and how much mistrust it could avert. But the time was not ripe at Havana for such an undertaking. Therefore the frame of mind of the parties and the "intensity of feeling displayed"⁴⁶ during the discussions led to postponement of the treatment of the subject until the forthcoming conference of Montevideo.

Despite the failure to consider the problem of nonintervention, and since it was evident to the delegations that said principle did not stand a chance of success, the Conference proceeded to consider other matters. It put in force the Code of Private International Law. In it will be found several articles dealing with the status and rights of aliens like Article I which establishes the equality of civil rights between citizens and aliens, and Article II that ensures to said foreigners, identical individual guarantees to those of citizens, except for the limitations determined by the Constitutions and the Laws. Other important articles like XXXI deal with the status of "juristic persons" and CLXVIII establishes that the concept and classification of obligations are subject to the territorial laws. The Code also contains important rules of Private International Law in matters of procedure, competence and jurisdiction.

Argentina's reservation to the Code contains a clause of nonacceptance of principles which could modify the law of domicile. It disapproves of any provisions affecting directly or indirectly the principles upheld by the civil and commercial legislation of the Republic to the effect that "juristic persons owe their existence, exclusively to the law of the state which authorizes them, and are therefore neither national nor foreign;

⁴⁶Carlos Dávila, We of the Americas (New York: Ziff, Davis Publishing Co., 1949), p. 167.

dependence upon law and order and the maintenance of the law. But the time was not ripe at Havana for such a treaty taking. Therefore the terms of the treaty and the "treaty of feeling" during the negotiations led to postponement of the treatment of the subject until the forthcoming conference of plenipotentiaries. Despite the failure to consider the problem of plenipotentiaries and since it was evident to the plenipotentiaries that such principles did not stand a chance of success, the plenipotentiaries proceeded to consider other matters. It put in force the Code of Private International Law. It will be found several articles dealing with the status and rights of aliens like Article I which establishes the equality of civil rights between citizens and aliens, and Article II that assures to civil foreigners identical individual guarantees to those of citizens, except for the limitations determined by the Constitution and the laws. Other important articles like XXXI deal with the status of "juridic persons" and CIVIL establishes that the concept and classification of obligations are subject to the territorial laws. The Code also contains important rules of Private International Law in matters of procedure, competence and jurisdiction. Argentina's reservation to the Code contains a clause of non-recognition of principles which could modify the law of domicile. It disapproves of any provisions affecting directly or indirectly the principles upheld by the civil and commercial legislation of the Republic to the effect that "juridic persons owe their existence, exclusively to the law of the state" which authorizes them, and are therefore neither national nor foreign.

their functions are determined by said law in accordance with the precepts derived from the domicile which that law acknowledges to such persons." It sustained the so-called Irigoyen Doctrine,⁴⁷ and reaffirmed the traditional Argentine position in matters of Private International Law, and also it served to put forth certain Argentine doctrines before the consideration of the American nations.⁴⁸

The Seventh International Conference of American States met at Montevideo from the third to the twenty-sixth of December 1933. Fortunately, Montevideo offered more propitious ground for positive law-making efforts and the Inter-American atmosphere had changed so much from the last Havana meeting that Secretary Cordell Hull felt safe to say "that under our support of the general principle of non-intervention, no government need fear any intervention on the part of the United States under the Roosevelt Corollary."⁴⁹ Because the circumstances favored its treatment, the question of the rights and duties of states and the responsibility of states with special reference to the case of denial of justice was very especially included in Chapter II of the Program. By means of Resolution XXXV the Conference passed the Project of Peace Code. Its Article I establishes:

"The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations and that the settlement of conflicts or disagreements of any sort which may arise among them, shall be effected in no other way than by the pacific means sanctioned by International Law."

⁴⁷I.A.C., 1889-1928, p. 376. See Chapter I with reference to juristic persons which according to this doctrine have no nationality.

⁴⁸For the complete text of the Code of Private International Law, see International American Conferences, 1889-1928, pp. 327-76.

⁴⁹Dávila, op. cit., p. 167.

their functions and responsibilities. It is also necessary to have a clear understanding of the role of the various departments and agencies in the government. This is particularly important in the case of the military, where the chain of command must be clearly defined. The government must also ensure that the military is properly equipped and trained to carry out its duties. This includes providing the necessary resources and support, as well as ensuring that the military is kept up-to-date on the latest developments in warfare. Finally, the government must ensure that the military is held accountable for its actions. This is essential for maintaining the trust of the public and ensuring that the military is used only for the purposes of defending the country.

The General International Conference of the Red Cross and Red Crescent Societies was held in Geneva, Switzerland, from 26 September to 2 October 1965. The conference was the first of its kind since the Second World War and was attended by representatives from 100 countries. The conference was convened by the International Committee of the Red Cross (ICRC) and was held in the spirit of the Geneva Convention of 1864, which established the Red Cross. The conference was a landmark event in the history of the Red Cross and Red Crescent Societies, as it resulted in the adoption of the Geneva Convention of 1965, which revised the 1864 Convention. The conference also resulted in the adoption of the Geneva Convention of 1965, which revised the 1906 Convention. The conference was a success and it is hoped that it will serve as a model for future conferences of the Red Cross and Red Crescent Societies.

The ICRC is the only international organization that is dedicated to the protection and promotion of international humanitarian law. It is the guardian of the Geneva Conventions and is responsible for ensuring that they are properly implemented. The ICRC also provides humanitarian assistance to victims of armed conflict and promotes the principles of the Red Cross and Red Crescent Societies. The ICRC is a neutral and impartial organization and it is committed to the protection of all victims of armed conflict, regardless of their nationality or political affiliation.

The ICRC is a member of the United Nations and is recognized by the United Nations as the authoritative body on international humanitarian law. The ICRC is also a member of the International Red Cross and Red Crescent Movement, which is a global network of national Red Cross and Red Crescent Societies. The ICRC is a unique organization and it is essential for the protection and promotion of international humanitarian law.

The ICRC is a non-profit organization and it is funded by contributions from governments, private organizations, and individuals. The ICRC is a global organization and it has a presence in over 100 countries. The ICRC is a vital organization and it is essential for the protection and promotion of international humanitarian law.

MINUTES
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Chapter II of the Code creates a Permanent Commission of Conciliation, and Chapter IV contains, in Article XXV, a pledge to submit to arbitration all differences of an international character which have arisen or should arise between them and which it has not been possible to adjust through diplomatic channels. By Resolution LXX it recommended the progressive codification of international law and by LXXIV that the study of the entire problem relating to the international responsibility of the state particularly regarding the responsibility for manifest or unmotivated delay of justice, be handed over to the agencies of codification instituted by the International Conferences of American States, and that their studies be coordinated with the work of codification being done under the auspices of the League of Nations. Notwithstanding the preceding resolution it reaffirmed once more, as a principle of international law, the civil equality of the foreigner with the citizen as the maximum limit of protection to which the former may aspire in the positive legislations of the states.⁵⁰ Most important of all, it reaffirms that diplomatic protection cannot be initiated in favor of foreigners unless they exhaust all legal measures established by the laws of the country before which the action is begun. In those cases where manifest denial or unreasonable delay of justice which shall always be interpreted restrictively, that is, in favor of the sovereignty of the state in which the difference may have arisen, and should no agreement on said difference be reached through diplomatic channels, within a reasonable period of time, the matter shall then be referred to arbitration.

⁵⁰With reference to this resolution, see Resolutions XXXVI and XXXVIII of the Eighth Conference, International American Conferences, (First Supplement 1933-1940), p. 256.

Chapter II of the Code creates a Permanent Commission of Conciliation, and Chapter IV contains, in Article XXV, a pledge to submit to arbitration all differences of an international character which have arisen or should arise between them and which it has not been possible to settle through diplomatic channels. By Resolution LXX it recommends the progressive codification of international law and by LXXIV that the study of the entire problem relating to the international responsibility of the state particularly regarding the responsibility for manifest or unmanifest delay of justice, be handed over to the agencies of conciliation instituted by the International Conference of American States, and that their studies be coordinated with the work of conciliation being done under the auspices of the League of Nations. Notwithstanding the preceding resolution it is verified once more, as a principle of international law, the equality of the foreigner with the citizen as the maximum limit of protection to which the former may aspire in the positive legislation of the states.⁵⁰ That important of all, it reaffirms that diplomatic protection cannot be initiated in favor of foreigners unless they exhaust all legal measures established by the laws of the country before which the action is begun. In those cases where manifest denial or unreasonable delay of justice which shall always be interpreted restrictively, that is, in favor of the sovereignty of the state in which the difference may have arisen, and should no agreement on said difference be reached through diplomatic channels, within a reasonable period of time, the matter shall then be referred to arbitration.

⁵⁰ With reference to this resolution, see Resolutions XXVI and XXVIII of the Fifth Conference, International American Conferences, (First Supplement 1933-1940), p. 285.

The highlight of the Conference, however, was the Convention on Rights and Duties of States which constituted the first systematic presentation of principles of American Public International Law.

"Art. I. The state as a person of International Law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states;

Art. II. The Federal State shall constitute a sole person in the eyes of International Law.

Art. III. The political existence of the State is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently, to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

Art. IV. States are juridically equal, enjoy the same rights and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise but upon the simple act of its existence as a person under International Law.

Art. V. The fundamental rights of states are not susceptible of being affected in any manner whatsoever.

.....

Art. VIII. No State has the right to intervene in the internal or external affairs of another.

Art. IX. The jurisdiction of states within the limits of national territory applies to all the inhabitants. Nationals and foreigners are under the same protection of the law and the national authorities and the foreigners may not claim rights other or more extensive than those of the nationals."⁵¹

The United States reservation to the convention expresses that in voting yes on the final vote in this committee recommendation and proposal, makes the same reservation to the eleven articles of the project or

⁵¹Hackworth, I, p. 98.

The following is a summary of the main points of the report. It is intended to provide a general overview of the findings and conclusions of the study. The report is divided into several sections, each dealing with a different aspect of the problem.

1. The first section deals with the general situation of the country. It describes the political, economic, and social conditions at the time of the study. It also discusses the main problems facing the country and the role of the government in addressing them.

2. The second section deals with the specific findings of the study. It presents the results of the various surveys and interviews conducted, and discusses the implications of these findings for the country's development.

3. The third section deals with the conclusions of the study. It summarizes the main findings and discusses the recommendations for future action. It also discusses the limitations of the study and the need for further research.

4. The fourth section deals with the implementation of the recommendations. It discusses the steps that need to be taken to put the recommendations into practice, and identifies the key actors and institutions involved in the process.

5. The fifth section deals with the monitoring and evaluation of the implementation process. It discusses the need for regular monitoring and evaluation, and identifies the indicators and methods that should be used.

6. The sixth section deals with the conclusion of the study. It summarizes the main findings and discusses the recommendations for future action. It also discusses the limitations of the study and the need for further research.

7. The seventh section deals with the implementation of the recommendations. It discusses the steps that need to be taken to put the recommendations into practice, and identifies the key actors and institutions involved in the process.

8. The eighth section deals with the monitoring and evaluation of the implementation process. It discusses the need for regular monitoring and evaluation, and identifies the indicators and methods that should be used.

9. The ninth section deals with the conclusion of the study. It summarizes the main findings and discusses the recommendations for future action. It also discusses the limitations of the study and the need for further research.

proposal, that the United States delegation made to the first ten articles during the final vote in the full commission, namely it contains a reference to Roosevelt's good-neighbor policy. "The policy of the United States government towards every important phase of international relationships in this hemisphere could scarcely be made more clear and definite than they have been made by both word and action especially since March 4th. . . . Every observing person must by this time thoroughly understand that under the Roosevelt administration, the United States government is as much opposed as any other government to the interference with the freedom, the sovereignty, or other internal affairs or processes of the governments of other nations."⁵² In the words of President Roosevelt, the new position of the United States was summarized as follows: "The definite policy of the United States from now on is one opposed to armed intervention." "It is only when the failure of orderly process affects the other nations of the continent that it becomes their concern; and the point to stress is that in such an event it becomes the joint concern of a whole continent in which we are all neighbors."⁵³

Another significant recommendation of the Conference was Resolution XLVIII which resolved in favor of a project for simplification and uniformity of powers of attorney and the juridical personality of foreign companies, if such uniformity is possible. Point IV of Chapter I of the Program referring to the Anti-War Pacts - Argentine Plan, was deleted from the

⁵²United States Department of State, Report of the United States Delegates to the Seventh International Conference of American States. Conference Series No. 19 (Washington: Government Printing Office, 1934), pp. 169-72, and I.A.C. Supplement 1933-1940, p. 124.

⁵³Speech at the Woodrow Wilson Foundation, December 28, 1933, cited in Dávila, op. cit., p. 167.

proposal, that the United States delegation made to the first two sessions during the final vote in the full committee, namely to accept a resolution to Roosevelt's good-neighbour policy. "The policy of the United States government towards every important phase of international relationships in this hemisphere could scarcely be made more clear and definite than they have been made by both word and action especially since 1901. . . . Every observing person must by this time thoroughly understand that under the Roosevelt administration, the United States government is as much opposed as any other government to the interference with the freedom, the sovereignty, or other internal affairs or processes of the governments of other nations."⁵² In the words of President Roosevelt, the new position of the United States was summarized as follows: "The definite policy of the United States from now on is one opposed to armed intervention." "It is only when the failure of orderly process affects the other nations of the continent that it becomes their concern; and the point to stress is that in such an event it becomes the joint concern of a whole continent in which we are all neighbors."⁵³

Another significant recommendation of the Conference was Resolution XVIII which resolved in favor of a project for simplification and uniformity of powers of attorney and the juridical personality of foreign companies, if such uniformity is possible. Point IV of Chapter I of the Program referring to the Anti-War Pact - Argentina Plan, was deleted from the

⁵²United States Department of State, Report of the United States Delegation to the Seventh International Conference on American Affairs, Conference Series No. 19 (Washington: Government Printing Office, 1921), pp. 169-72, and I.A.C. Supplement 1921-1940, p. 124.

⁵³Speech at the Woodrow Wilson Foundation, December 28, 1933, cited in Devlin, op. cit., p. 167.

agenda at the request of Dr. Saavedra Lamas, its author, who in the Second Session of the Committee pointed out that "inasmuch as six of the American republics had already signed the Pact of Rio, it has thus become a reality and was no longer a theory." Accordingly, the Pact was included as one of the Inter-American Peace Treaties in the resolution referred to below, calling upon all the American governments to adhere to the five peace treaties.⁵⁴

It is said that Pan-Americanism was juridically born at Buenos Aires, where the Inter-American Conference for the Maintenance of Peace met during the month of December 1936. From 1890 to 1936 the Pan-American movement had been called among other things, a "nebulous entity," a "jungle of interlocking resolutions"; however, the year of 1936 marked the first stage of great significance in the development and growth of the juridical regional organization, because it also marked "the completion of the process of remedying Latin-American grievances."⁵⁵ A demonstration that the process was over was given by the Declaration of Principles of Inter-American Solidarity and Cooperation. Article I of the convention determines:

"That the American Nations true to their republican institutions, proclaim their absolute juridical liberty, their unqualified respect for their respective sovereignties and the existence of a common democracy throughout America."

Article III very comprehensively states:

⁵⁴United States Department of State, Report of the Delegates to the Seventh International Conference, op. cit., p. 11.

⁵⁵Whitaker, The Western Hemisphere . . ., p. 149.

"That the following principles are accepted by the American Community of Nations: a) proscription of territorial conquest and that in consequence no acquisition made through violence shall be recognized; b) intervention by one State in the internal or external affairs of another State is condemned; c) forcible collection of pecuniary debts is illegal; d) any difference or dispute between the American nations, whatever its nature or origin, shall be settled by the method of conciliation or unrestricted arbitration, or through operation of international justice."⁵⁶

Resolution XXXV of the Conference deals with pecuniary claims.

Though the Commission on Juridical Problems studied the formulation of principles, it was not possible to secure such unanimity of opinion as might serve as the basis for a convention between the American republics. However, the Commission devoted a great deal of attention to the original project of the Argentine delegation that set forth in its first article:

"The High Contracting Parties pledge themselves without any reservations not to employ armed force or resort to diplomatic intervention for the collection of public or contractual debts or to support claims of an exclusively pecuniary origin."⁵⁷

The Commission prepared a modified article which reads as follows:

- "1. The High Contracting Parties pledge themselves, without any reservations not to use armed force, nor to resort to intervention nor to accept it for the collection of public or contractual debts, nor to support claims of exclusively pecuniary origin.
2. If after diplomatic negotiations have been exhausted, it has not been possible satisfactorily to settle the matter, the debtor may not refuse to submit the case to arbitration."⁵⁸

⁵⁶Hackworth, V, p. 463. Also in I.A.C. (First Supplement, 1933-1940), p. 160. Resolution XXVII Declaration of Principles of Inter-American Solidarity. Buenos Aires, December 1936.

⁵⁷Ibid., p. 165.

⁵⁸Ibid., p. 166.

Among the numerous conventions and resolutions approved at Buenos Aires, the first two articles of the Convention for the Maintenance, Preservation and Reestablishment of Peace, must be also mentioned here.

They state:

"Art. I. In the event that the peace of the American Republics is menaced and in order to coordinate efforts to prevent war any of the American governments signatories of the Treaty of Paris of 1928 or to the Treaty of Non-aggression and Conciliation of 1933, or to both, whether or not a member of other peace organisms, shall consult with the other governments of the American Republics which in such event, shall consult together for the purpose of finding and adopting methods of peaceful cooperation.

Art. II. In the event of war or virtual state of war among the American republics, the governments represented at this conference shall undertake without delay the necessary mutual consultation in order to seek peaceful collaboration and in case of outside war, which might menace the peace of the Americas, such consultation shall determine the time and manner of said cooperation."⁵⁹

The growing feeling of neighborliness was becoming a reality. It was the same kind of feeling that the American republics manifested at the time of the Montevideo gathering with the distinction, perhaps, that in Buenos Aires they gave final written proof of their juridical convictions in the text of the Additional Protocol Relative to Non-Intervention. In it they declared "inadmissible the intervention of one of them, directly or indirectly and for whatever reason, in the internal or external affairs of any other of the parties."⁶⁰ In this epoch-making document and the stipulation contained in its first article, which we have previously quoted, the United States finally gave unqualified adherence to the doctrine of

⁵⁹See Resolutions CVII and CIX of the 8th Conference and also the general resolutions of the Panama and Havana Consultative Meeting of Ministers of Foreign Affairs.

⁶⁰For the complete text of the Additional Protocol, see Appendix I.

Among the numerous communications and resolutions approved at Buenos

Aires, the first two articles of the Convention for the Maintenance of Peace and Goodwill of the Americas, were also mentioned here.

They state:

Art. I. In the event that the peace of the American Republics is menaced and in order to coordinate efforts to prevent war any of the American governments signatories of the Treaty of Paris of 1893 or to the Treaty of Montevideo of 1933, or to both, whether or not a member of other peace organizations, shall consult with the other governments of the American Republics which in such event, shall consult together for the purpose of finding and adopting methods of peaceful cooperation.

Art. II. In the event of war or virtual state of war among the American Republics, the governments represented at this conference shall undertake without delay the necessary mutual consultation in order to seek peaceful collaboration and in case of outside war, which might menace the peace of the Americas, such consultation shall determine the time and manner of said cooperation.

The growing feeling of neighborliness was becoming a reality. It

was the same kind of feeling that the American Republic manifested at the

time of the Montevideo gathering with the distinction, perhaps, that in

Buenos Aires they gave final written proof of their juridical convictions

in the text of the Additional Protocol Relative to Non-Intervention. In

it they declared "indefeasible the intervention of one of them, directly or

indirectly and for whatever reason, in the internal or external affairs of

any other of the parties." ⁶⁰ In this epoch-making document and the agree-

tion contained in its first article, which we have previously quoted, the

United States finally gave unqualified adherence to the doctrine of

⁶⁰See Resolutions XVII and XIX of the 3rd Conference and also the general resolutions of the Panama and Havana Consultative Meeting of Ministers of Foreign Affairs.

⁶¹For the complete text of the Additional Protocol, see Appendix I.

nonintervention. All nations signed it and no reservations were recorded. The final proof of the change operated in the Latin-American policy of the United States became effective with its commitment to this Additional Protocol, which it ratified soon after. But however extensive the principle set forth at Buenos Aires is, the Protocol in itself lacked a very important element of precision: it failed to define the concept of intervention, although the delegations tacitly agreed that what they had in mind was to overrule the legitimacy of the use of force. The Additional Protocol and the Declaration of Inter-American Solidarity and Cooperation made possible the fraternal efforts that characterized the foreign relations of the American Republics during the Second World War. Although it was going to take at least another decade before the principle of consultation could obtain universal acceptance, the Conference of Buenos Aires erased century-old fears and scornful sentiments among the nations.

After the doctrine of nonintervention was finally recognized, it was not difficult for the Eighth International Conference of American States to reaffirm the principles of solidarity. The meeting that took place in Lima, in the month of December 1938, produced the famous Declaration of Lima in which the American states declared that faithful to the traditional principles of American International Public Law and to their absolute sovereignty they reaffirmed their decision to maintain these principles, and to defend them against all foreign intervention or activity that may threaten them.⁶¹ The republics also declared that in case the peace, security, or territorial integrity of the American Nations should

⁶¹See Eighth Conference of American States. Lima 1938. Final Act, International American Conferences, op. cit., p. 249.

be threatened they pledged themselves to recourse to the procedure of consultation established by the conventions and by the declarations of the Inter-American conferences using the measures which in each case the circumstances may make advisable.⁶² In other words, in 1938 the American nations were forced to revise the principle of nonintervention on account of "the non-American implications in it contained, and make some contingent declarations, but not treaties."⁶³ Following the suggestions of Chapter II of the program, the conference passed very important resolutions concerning pecuniary claims, nationality and immunity of "juristic persons." Resolution XIX referred the problem of pecuniary claims to the various national committees and the Permanent Commission of Experts for further study and report. The report and the recommendations suggested included the Project of Convention introduced by the Argentine Delegation during the Seventh Conference. Among the score of resolutions approved, is to be mentioned the one bearing number XXVI:⁶⁴ it reiterated the nonrecognition of the acquisition of territory by force and recommended the desirability to coordinate and strengthen the declarations and statements contained in the Treaty of July 15, 1826, signed at the Congress of Panama,⁶⁵ and those adopted in Lima in 1847 and 1864; in the resolution of April 18, 1890, approved at the First International Conference of American States;⁶⁶ in the

⁶²See Panama and Havana Consultation Meetings of Ministers of Foreign Affairs, op. cit., pp. 313-41.

⁶³Bemis, op. cit., p. 273. "At Lima in December, 1938, three months after Munich, the republics were far more conscious of impending crisis in Europe than they had been at Buenos Aires in 1936." Op. Cit., p. 326.

⁶⁴I.A.C., op. cit., pp. 254-55.

⁶⁵See International American Conferences, 1889-1928, p. 24 and ff.

⁶⁶The so-called Recommendation on the Right of Conquest, op. cit., p. 44.

be threatened they pledged themselves to respond to the measures of consultation established by the conference and by the decisions of the Inter-American Commission on Human Rights which to such ends the circumstances may make advisable. In other words, in 1933 the American nations were forced to waive the principle of non-intervention in economic of the non-American nations in it contained, and this was a significant development, but not final. Following the adoption of Chapter II of the program, the conference passed very important resolutions concerning economic claims, nationality and immunity of juridical persons. Resolution XIX referred the problem of economic claims to the various national commissions and the Permanent Commission of Experts for further study and report. The report and the recommendations suggested limited the Project of Convention introduced by the Argentine Delegation during the Seventh Conference. Among the scope of resolutions approved, it is mentioned the one bearing number XXIV. It reiterated the recommendation of the acquisition of territory by force and recommended the desistment to coordinate and strengthen the legislation and statements contained in the Treaty of July 12, 1936, signed at the Congress of Panama, and those adopted in Lima in 1947 and 1955, in the resolution of April 14, 1950, approved at the First International Conference of American States, in the

⁶³ See Panama and Havana Declaration Meeting of Ministers of

Foreign Affairs, pp. 211-212.

⁶⁴ Lewis, op. cit., p. 273. "At Lima in December, 1933, three nations

after Munich, the resolution was far more cautious of impending crisis in Europe than they had been at Buenos Aires in 1933." Op. cit., p. 252.

⁶⁵ I.A.C., op. cit., pp. 252-253.

⁶⁶ See International American Conference, 1933-1934, p. 24 and 25.

⁶⁷ The so-called Recommendation on the Limit of Contract, op. cit.,

resolution of aggression adopted at the Sixth Conference of Havana, 1928;⁶⁷ in the one of December 1932 signed at Washington; in the Anti-War Treaty of October 1933; in the Convention of Rights and Duties signed at Montevideo in December 1933, at the Seventh Conference of 1928; and in the instruments approved at the International Conference for the Maintenance of Peace at Buenos Aires in 1936.⁶⁸ In view of all those precedents the Eighth Conference declared:

"That it reiterates as a fundamental principle of the Public Law of America, that the occupation or acquisition of territory or any other modification of territorial or boundary arrangements obtained through conquest, by force or by non-pacific means shall not be valid or have legal effect; that the pledge of non-recognition of situations arising from the foregoing conditions is an obligation which cannot be avoided either unilaterally or collectively."

Resolution CX embodied the famous Declaration of American Principles which we have reproduced in full in Appendix II and whose main purpose was to revive the fundamental principles of relations among nations in front of the quick deterioration of the world international conditions.

A series of Consultative Meetings were summoned during the lapse between 1939 and 1942. They did not deal with the principle of nonintervention in specific terms because their main purpose was to resolve the urgent problems of the hour and therefore they passed legislation basically on two topics: protection of the Western Hemisphere and economic solidarity.⁶⁹ The Rio Meeting of 1942 was perhaps the most important and

⁶⁷Op. cit., p. 441.

⁶⁸Op. cit., pp. 188-93,

⁶⁹The Consultation Meetings of Ministers of Foreign Affairs were approved by agreement at the Inter-American Conference of Buenos Aires (1936) and at the Eighth International American Conference of Lima (1938) for states of emergency. They met at Panama (1939), at Havana (1940), and at Rio (1942). They were resumed at Washington in 1951.

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of October 1931; in the Convention of Rights and Duties signed at Montevideo

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Eight Conference declared:

"That it reiterates as a fundamental principle of the public law of America, that the recognition or negotiation of territory or any other modification of territorial or boundary arrangements obtained through conquest, by force or by non-peaceful means shall not be valid or have legal effect; that the pledge of non-recognition of situations arising from the foregoing conditions is an obligation which cannot be avoided either unilaterally or collectively."

Resolution IX embodied the famous Declaration of American Principles

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produced a declaration of the American Republics by which they pledged themselves to consider any act of aggression by a non-American state against one of the sister republics as an act of aggression against them all. Resolution XVII of said meeting regulated subversive activities in the Americas and Resolution XXII declared the policy of the good neighbor as a principle of the international law of the American Continent.

Between 1942 and 1945 consultation among member states came to a complete stop in the American system, particularly on account of the change in the United States attitude, and its new stand in regard to the international organization that the Great Powers were about to organize. On the other hand the year of 1945 showed a decisive revival of the Pan-American idea on the part of the Latin-American countries as a counterpart to the ostensible waning in United States' enthusiasm. They triumphed in saving an effective Pan-American system within the organization of the United Nations that was being created at San Francisco. "The odd fact was that regional Pan-Americanism, which has been shelved at Dumbarton Oaks, was looked upon as a threat at San Francisco,"⁷⁰ and by the time the Chapultepec Conference met, "Dumbarton Oaks had become history and Pan Americanism was fighting for its life."⁷¹ However, the Latin-Americans largely accomplished their goal "by writing into the United Nations Charter provisions for security action by regional and other limited groups."⁷² But in so doing they had to agree that the Pan-American movement conceived as an absolute expression of regionalism was

⁷⁰Dávila, *op. cit.*, p. 182.

⁷¹Dávila, *op. cit.*, p. 183.

⁷²Whitaker, *The Western Hemisphere Idea . . .*, p. 172.

dead forever. Its new meaning was to result from its new status as a related organism, subordinated to the major international organization, and ready to stand in its place in case of failure to take the proper action on the part of the UNO under circumstances that could compromise the security of the American nations. Therefore, changes in the Pan-American system were bound to happen when the Conference of Problems of War and Peace met at Mexico City during the first months of 1945.

It was evident that the purpose of the meeting was mainly to consolidate hemispheric defense by the proclamation of principles of collective security under the pressure of the Axis' threats. However, the gravity of the situation increased their willingness to conclude a permanent treaty of mutual defense. The Conference has to be credited also for the restoration of American unity by means of the resolution that left open, to Argentina's adherence, the final act of the conference.⁷³

However, many authors sustain that this was a step taken only for appearances' sake because the so-called Argentine problem was actually solved when the conference met. In fact, at least two months before the meeting, several private negotiations were held to that effect, at Washington, between the two parties to the conflict, namely the United States and Argentina, and several Latin-American ambassadors.⁷⁴

⁷³United States Department of State, Report of the Delegates of the United States to the Inter American Conference on Problems of War and Peace. Conference Series No. 85 (Washington: Government Printing Office, 1946), pp. 133-34. See on Page 36 the communication addressed by the Argentine Government on October 27, 1944, proposing a meeting of Foreign Ministers to consider the existing situation between Argentina and the other American nations.

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The central resolution of the Conference of Chapultepec proclaims principles of collective security embodied in the Act of Chapultepec (Resolution VIII, Reciprocal Assistance and American Solidarity). It consecrated the rule of one for all, all for one in case of aggression. This resolution prepared the way to the Rio Treaty of 1947 when in its Second Part it stated that:

"For the purposes of meeting threats or acts of aggression against any American republic following the establishment of peace, the Governments of the American Republics consider the conclusion, in accordance with their constitutional processes of a treaty establishing procedures, whereby such threats or acts may be met."

A strong solidarity developed in words and deeds as a result of this eventful conference which produced a score of resolutions tending to the reorganization and consolidation of the Inter-American system. It represented the formulation of a definite pledge to accept the collective responsibility to protect the sovereignty and independence of the sister republics against any threat regardless of where it originates. The Declaration of Mexico, the document second in importance that the Conference produced, contains a systematic declaration of the essential governing principles in the relations among American States, and as a whole it summarizes the codification efforts which have been successfully carried out through a slow but sure process. It begins by declaring:

that Argentina had inherited the Fascist mantle from Nazis and was a potential threat to the peace and security of South America. On the other hand there were accusations that the United States which had adhered to the spirit and the letter of non-intervention during the 30's had interfered in Argentine affairs after 1942." Edward Geurrant, Roosevelt's Good Neighbor Policy (Albuquerque: The University of New Mexico Press, 1950), p. 16.

- "1. International Law is the rule of conduct for all states.
2. States are juridically equal.
3. Each state is free and sovereign, and no state may intervene in the internal or external affairs of another.
4. The territory of the American States is inviolable, and also immutable, except when changes are made by peaceful agreement.
5. The American States do not recognize the validity of territorial conquests.
6. The mission of the American States is the preservation of peace and the maintenance of the best possible relations with all states.
7. Conflicts between states are to be settled exclusively by peaceful means.
8. War of aggression in any of its forms is outlawed.
9. An aggression against an American State constitutes an aggression against all."

When the Conference of Quitandinha met on August 15, 1947, the American nations had already agreed upon the use of force to repel aggressions. Therefore the road to the uniqueness of the Conference of Rio had been already paved. In fact, the meeting was unusual "not only in the nature and extent of the previous consultations and preparations which were undertaken by the American republics on a multilateral basis,"⁷⁵ but also for its results in terms of obligations and reaffirmations of basic principles of international law. The Inter-American Treaty that was signed there went far beyond the Act of Chapultepec in the measures adopted because

⁷⁵ As it is very well known, the Conference of Rio was announced for October 20, 1945, after repeated postponements which resulted mainly from two circumstances: (1) the attitude assumed by the United States in the Conference of San Francisco, of opposition to regional agreements; and (2) differences between the United States and Argentina. The first obstacle was solved by the intervention of isolationist Senator Vandenberg and the second, as in the case of Chapultepec, by the joint action of the Latin-American Republics, resolved to bring back the Argentine nation to the Inter-American fellowship of nations.

See for details, United States Department of State, Report of the Delegates of the United States to the Inter American Conference for the Maintenance of Continental Peace and Security. Quitandinha 1947. Conference Series No. II, Publication 3016 (Washington: The Government Printing Office, 1948).

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When the Conference on Latin America met on August 15, 1945, the

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See for details, United States Department of State, Report of the Delegation of the United States to the Inter American Conference for the Maintenance of Continental Peace and Security, Washington, D.C., Government Printing Office, 1948.

consultation in case of aggression is replaced here by action in terms of aid to the attacked country. That is the reason why there are some authors who like to summarize the Rio Treaty by saying that it provided for the continental enforcement of the Monroe Doctrine, therefore sparing the Latin-American nations of the dangers that such an enforcement on a unilateral basis originated in the past. The truth is that the Rio Treaty represented a sweeping development that changed the very roots of the Pan-American movement and turned it into a regional military-defensive alliance under the most binding treaty ever signed by any group of nations. There were plenty of reasons, therefore, for the delegates to believe that they were in the presence of revolutionary changes in the relationship between the two continental blocs of nations. The times that preceded the Conference showed so much reluctance on the part of the United States to compromise that this circumstance, plus "the quarrel with Argentina,"⁷⁶ resulted in growing criticisms of what was rated as a "new movement for intervention by the Yankee Republic."⁷⁷ It was to the general relief of the sister republics that finally the United States did not adopt the attitude of a great power, but rather that of primus inter pares. As is well known, it was during the last months of 1945, and only when the Mexico City pledges were merely a month old, that the United States, having the Argentine situation in mind, decided to indulge again in a

⁷⁶"The United States used almost every means at its disposal except military action or severe economic sanctions to bring that nation into line with the rest of the Hemisphere without success, until the final days of the war." Guerrant, op. cit., p. 211.

⁷⁷Samuel Guy Inman, The Inter American Defense Treaty. An Appraisal (New York: Commission on the World Community. National Peace Conference, 1948), p. 6.

consultation in case of aggression is required here by action in terms of aid to the attacked country. That is the reason why there are some authors who like to summarize the Rio Treaty by saying that it provided for the continental enforcement of the Monroe Doctrine, therefore equating the Latin-American nations of the hemisphere that such an enforcement on a unilateral basis originated in the past. The truth is that the Rio Treaty represented a sweeping development that changed the very roots of the Pan-American movement and turned it into a regional military-defense alliance under the most binding treaty ever signed by any group of nations. There were plenty of reasons, therefore, for the hesitation to believe that they were in the presence of revolutionary changes in the relationship between the two continental blocs of nations. The times that preceded the Conference showed no such reluctance on the part of the United States to compromise that this circumstance, like the quarter with Argentina, resulted in growing criticism of what was noted as a "new movement for intervention by the Yankee Republic." It was to the general relief of the sister republics that finally the United States did not adopt the attitude of a great power, but rather that of equal inter pares. As is well known, it was during the last months of 1945, and only when the Mexico City plagues were nearly a month old, that the United States, having the Argentine situation in mind, decided to include therein in a

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⁷⁷General Guy Iversen, The Inter-American Relations Problem, pp. 12-13 (New York: Commission on the World Community, National Peace Conference, 1948), p. 6.

casuistic interpretation of the principle of nonintervention. Namely, it showed inclination to accept multilateral intervention by democratic nations for the preservation of peace and democracy. To that purpose the United States government endorsed the Larreta note⁷⁸ issued on November 22, 1945, by the Uruguayan Minister of Foreign Affairs. The United States was tempted once more to proceed to the unilateral enforcement of supposedly violated principles of American Public International Law. However, should it have done so, the action should have been enough to place that nation in the category of an aggressor. At least that was the sanction to be expected if all the previous Inter-American commitments were meant to be enforced.

The Rio Treaty with its provisions for joint action is still against unilateral intervention of any state for any reasons, but to a certain extent it materialized the legality of collective intervention in the event of an aggression or a threat of aggression. Such a development should have amounted to a backward step in the history of Inter-American relations, but there was a new element in the pattern of world politics that definitely changed the former Latin-American approach in the relationship of the bloc with the United States and vice versa: the Soviet threat. Keeping pace with times the Inter-American system had to achieve the necessary changes which no doubt were materialized in behalf of the war deficiencies shown by the United Nations Organization. The new trend, therefore, tried to rationalize the defensive machinery of the Western World after the definitive realization that no compromise was capable to

⁷⁸ See United States Department of State Bulletins corresponding to November 25 and December 22, 1945.

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The Rio Treaty with its provisions for joint action is still against unilateral intervention of any state for any reasons, but to a certain extent it materialized the futility of collective intervention in the event of an aggression or a threat of aggression. Such a development should have amounted to a backward step in the history of Inter-American relations, but there was a new element in the pattern of world politics that definitely changed the former Latin-American approach in the relationship of the bloc with the United States and vice versa: the Soviet threat. Keeping pace with times the Inter-American system had to achieve the necessary changes which no doubt were materialized in behalf of the war detentions shown by the United Nations Organization. The new trend, therefore, tried to rationalize the defensive machinery of the Western World after the definitive realization that no compromise was capable to

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bridge the distance between the two world blocs. The successes achieved by the Soviets in the subjugation of unprepared nations made clear that peace could not be obtained by weakness. Therefore the Inter-American organization, in spite of a stumbling path, of still not fully overcome rivalries and fears of imperialism and intervention between the United States and certain American republics, despite tensions of all kind, lived up to the expectation of some Pan-American circles. In fact, the American nations pledged once more to avoid causes of conflict among themselves and agreed upon the voluntary modification of national sovereignties in behalf of a common policy of defense. The three main achievements of the Rio Treaty can be summarized as follows:

- (1) Enactment of the legitimacy of collective self-defense;
- (2) Leaving behind the provisions of the Havana and Chapultepec Conferences, it did not just recommend, but declared obligatory, the common action against an aggressor. Article III plainly establishes that:

1. The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States, and consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations.

2. On the request of the State or States directly attacked and until the decision of the organ of consultation of the Inter American System, each one of the Contracting Parties may determine immediate measures which it may individually adopt in fulfillment of the obligations contained in the preceding paragraph and in accordance with the principle of continental solidarity. The organ of consultation shall meet without delay for the purpose of examining these measures and agreeing upon measures of a collective character that should be adopted.

3. The provisions of this article shall be applied in case of any armed attack which takes place within the region described in Article IV (defines the limits of American Continent more accurately than the Panama Conference of 1939 that created the security belt), or within the territory of an American state. When an attack takes place outside the said areas the provisions of Article VI (establishes the immediate

summoning of the organism of consultation in order to agree on the measures to be taken in defense of the victim of the aggression or for the common defense and the preservation of the peace), shall be applied.

4. The measures of self-defense provided under this article may be taken until the Security Council of the United Nations has taken measures necessary to maintain international peace and security.

(3) The third achievement of the Treaty is in Article XVII and pledges the signatories to agree upon the decisions of the organ of Consultation taken by a vote of two-thirds of the signatory states. This is in fact the epoch-making achievement of the conference. There was a general agreement in the final adoption of this article which surely "represents a middle ground between the unanimity rule favored by Argentina, and the majority rule proposed by Uruguay."⁷⁹ However, this rule admits only one exception, certainly very significant: Article XX reads:

"Decisions which require the application of the measures specified in Article 8 shall be binding upon all the signatory states which have ratified this Treaty, with the sole exception that no state shall be required to use armed forces without its consent."

Therefore, the binding effect of the decisions is still quite broad.

Argentina's main objections to the final draft of the Treaty concerned the rule of unanimity that we have hereabove mentioned, but particularly its delegation wanted to obtain a clear-cut definition of what constitutes an armed attack to the effect of distinguishing it from other kinds of positive acts of aggression. Argentina pleaded that since Article 51 of the Charter of the United Nations recognizes in cases of armed attack "the inherent right of individual or collective self-defense, this type of aggression should be segregated from the other acts of aggression for

⁷⁹ See Report of the United States Delegation, op. cit., p. 33.

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which the Charter does not authorize regional action without previous consultation."⁸⁰ Regarding the use of the distinction, threats of aggression, the Argentine Delegation did not approve it and considered inadvisable to maintain it "because its qualification as such would have to be based upon subjective factors, the judging of which may violate the principles of non-intervention."⁸¹ Another very important distinction the Argentine Delegation proposed was to differentiate between aggression by an American State and aggression by a non-American State in order to establish the method for the settlement of disputes. It proposed to govern the disputes among continental nations by the peaceful means of solution contained in the Inter-American System, on the grounds that to proceed otherwise would mean to depart completely from the Inter-American tradition that has abolished the use of force in the settlement of disputes. Forcible means applied to Inter-American conflicts "would mean a disruption of the existing solidarity and disregard of the peace-loving spirit which heretofore has made it possible to settle conflicts in the New World."⁸² Also Argentina stuck to the process of consultation in case of external aggression, but with its traditional a posteriori effect.

The Ninth International Conference of American States that took place in Bogotá in 1948, was summoned to give structural unity and a treaty basis to the Organization of American States and make it a regional agency within the United Nations Organization. When, in the name of their

⁸⁰ Op. cit., p. 84.

⁸¹ Op. cit., p. 86.

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⁸¹Op. cit., p. 86.

⁸²Op. cit., p. 86.

peoples, the governments represented at Bogotá declared that international law is the standard of conduct of the states in their reciprocal relations; that international order consists essentially of respect for the personality, sovereignty and independence of the states; that war of aggression against one American State is an act of aggression against all the others, a historical cycle was closed. The patient and painful efforts of many jurists and statesmen were completed with success, because it had become finally true that the fundamental rights of the state would not be impaired in any manner whatsoever (Article 8) and would be limited only by the exercise of same rights of other states in accordance with international law (Article 9). Therefore nothing could stop the prohibition of intervention in the strongest terms (Article 15):

"No State or group of states has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force, but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements."

To complement the disposition mentioned above, the use or encouragement of the use of coercive measures of an economic or political character in order to force the sovereign will of another state and obtain from it advantages of any kind, are forbidden (Article 16).⁸³

Since all American nations have pledged the pacific settlement of all disputes, and therefore outlawed forcible means, it was easy to enact the principle of collective security in the following terms:

⁸³Pan-American Union, "Charter of the Organization of American States," Washington, 1948, passim.

regimes, the governments represented at the League of Nations, the
law in the standard of conduct of the states in their relations
internally; that international order consists essentially of respect for
the personality, sovereignty and independence of the states; that any
aggression against one American State is an act of aggression against all
the others, a historical cycle was closed. The pattern and pattern of
force of many virtues and statesmen were combined with success, because
it had become finally true that the fundamental rights of the states would
not be impaired in any manner whatsoever (Article 9) and would be limited
only by the exercise of some rights of other states in accordance with
international law (Article 10). Therefore nations could share the
prohibition of intervention in the strongest form (Article 10).

"No State or group of States has the right to intervene
directly or indirectly, for whatever purpose, in the
internal or external affairs of any other State. The
foregoing principle prohibits not only armed forces but
also any other form of interference or attempted threat
against the personality of the State or against her political,
economic and cultural elements."

To complement the prohibition mentioned above, the use of economic
sanctions or the use of coercive measures of an economic or political character
in order to force the compliance with the rights and obligations of the
advantages of any kind, are forbidden (Article 11).
Since all American nations have pledged the peaceful settlement of
all disputes, and therefore outlawed forcible wars, it was easy to ensure
the principle of collective security in the following manner:

82 Pan-American Union, "Quarter of the Organization of American
States," Washington, 1948, paras. 1-4.

"Every act of aggression by a state against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States." (Article 24)

The inviolability of the State is assured also in Article 12:

"The jurisdiction of the State within the limits of its national territory is exercised equally over all the inhabitants, whether nationals or aliens."⁸⁴

In the original project of the Committee on the rights and duties of States, this article contained a broader provision stipulating that citizens and aliens are under the same protection and owe the same obedience to the laws and the authorities of the country of residence. The United States objected to this latu sensu provision. Its delegation explained that though its government has accepted the proposition as sound international law, that citizens and aliens are subject to the jurisdiction of the state in which they reside, "it has also, consistently not accepted as correct the principle that both are necessarily under the same protection. It maintained that if the treatment accorded the alien falls below generally recognized standards, the government of the state of which the alien is a national may properly bring the matter to the attention of the authorities of the other state."⁸⁴ The United States therefore remained firm in its reservation as it also did in the Convention of Montevideo of 1933, and the fact is that the problem to conciliate opinions on the subject, today still remain unsolved. If in the Convention of Montevideo of 1933 (Article 9) only reservations were made,

⁸⁴United States Department of State, Report of the Delegates of the United States to the Ninth International Conference of American States. International Organization and Conferences Series No. II. American Republics No. 3 (Washington: The Division of Publication of Foreign and Public Affairs, 1948), p. 37.

"Every act of aggression by a state against the territorial integrity or the independence of the territory or against the sovereignty or political independence of an American state shall be considered an act of aggression against the other American States." (Article 21)

The inviolability of the State is secured also in Article 18:

"The jurisdiction of the State within the limits of its national territory is exercised equally over all the inhabitants, whether nationals or aliens."

In the original project of the Committee on the Rights and Duties of States, this article contained a broader provision extending that citizens and aliens are under the same protection and owe the same obedience to the laws and the authorities of the country of residence. The United States objected to this latter provision. The delegation explained that though the Government had accepted the proposition as sound international law, that citizens and aliens are subject to the jurisdiction of the state in which they reside, "it has also, consistently not accepted as correct the principle that both are necessarily under the same protection. It maintained that if the treatment accorded the alien falls below generally recognized standards, the Government of the state of which the alien is a national may properly bring the matter to the attention of the authorities of the other state." The United States therefore reserved the right to the reservation as it also did in the Convention of Montevideo of 1933, and the fact is that the problem to constitute opinions on the subject, they still remain unresolved. It is in the Convention of Montevideo of 1933 (Article 9) only reservations were made

United States Department of State, Bureau of the Information of the United States to the United Nations, Division of American Republics, International Organization and Conference Series No. 11, American Republics No. 3 (Washington: The Division of Information of Foreign and Public Affairs, 1948), p. 36.

in Bogotá the last part of the article dealing with the subject was dropped. The proponents of the article insisted that "it represented nothing more than the established rule of the Constitutions of all or almost all of their countries."⁸⁵ However the real obstacle lay in the fact that the article not only was trying to enclose in the treaty "an article of substantive law"⁸⁶ but also led to a conflict with the rules of diplomatic protection. Argentina found no difficulty in accepting the article because it followed its Constitution, which provides for equality of treatment and protection for citizens and aliens. However, the absence of a definite concept that could establish with the necessary precision what is and what is not considered a case of denial of justice, and the lack of an internationally recognized standard of justice are the substantial reasons that have kept the problem unsolved.

As expected, the principle of nonintervention originated again considerable discussion. The article in the original draft of the Commission was adopted in the same form; it marked a departure from the traditional wording of the principle. It refers to action by a group of states, but also to that of an individual state; also, to solve the doctrinal discussion of the difference between intervention and interference it condemns not only actual intervention but interferences or threats of any kind.⁸⁷ Critics of the principle, who refuse to acknowledge

⁸⁵ Charles Fenwick, "The Ninth Conference of American States," A.J.I.L., 42 (1948), 560.

⁸⁶ Ibid.

⁸⁷ "This addition, it was pointed out by its proponents, had a universal significance and was a reaction to fears of types of indirect aggression such as those to which certain Eastern European countries have been subjected." Report of the United States Delegation, op. cit., p. 38.

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85. Convention on the Rights and Duties of American States, 1948, 11 A.S.T.S. 1163.

86. Id., 11 A.S.T.S. 1163.

87. Id.

88. This article, it was pointed out by the respondent, had a nat-
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cases in which certain States intervened in the internal affairs of
other States. Report of the United States Delegation, op. cit.

the progress achieved, have remarked that the broadness of the principle consecrated in Article 15 of the Charter of the Organization is completely neutralized by the exceptions contained in Article 19. According to the latter, "measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 15 and 17." Therefore, the recognition of collective action was enacted in order to put in the hands of a group or of the community of nations, the sanctions to a delinquent state. In the draft prepared by the Governing Board of the Pan-American Union, Article XI established very clearly that "the collective action envisaged in this Pact or in the Charter of the United Nations does not constitute intervention."

Cases of aggression for economic reasons were treated in Chapter IV of the Agreement of Bogotá mainly dedicated to the problem of private investments. Article XXII, over which no controversy arose, provides the necessary guarantees states have to make effective as regards foreign capitals, in recognition of their importance for the economic development of the American Republics. But Article XXIV, after a prolonged debate regarding its final form, declares in its dispositive part that in what refers to them (foreign capitals) "the States reaffirm their right to establish, within a system of equity and of effective legal and juridical guarantees:

- a) measures to prevent foreign investments from intervening in national politics or for prejudicing the security or fundamental interests of the receiving countries; . . . establishing standards regarding the extent, conditions, and terms upon which future foreign investments will be permitted."⁸⁸

⁸⁸ Report of the United States Delegation, op. cit., p. 208.

the progress achieved, have pointed out the importance of the principle
 contained in Article 15 of the Charter of the Organization for Economic
 Cooperation and Development (OECD). According to the
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 regarding the final form, declared in its dispositive part that in what
 refers to them (foreign capital) "the States retain their right to
 establish, within a system of equity and of effective legal and judicial
 guarantees:

- a) measures to prevent foreign investments from interfering
 in national policies or to guarantee the security or
 fundamental interests of the receiving countries;
 establishing standards regarding the extent, conditions,
 and terms upon which future foreign investments will be
 permitted."

Argentina's reservation to the Economic Agreement states that the approval given to the articles was primarily given in the understanding that the text does not in any way indicate that international treaties or agreements shall prevail over the Constitutions of the American Republics, nor that foreign capital investments shall be subject to any jurisdiction other than that of their own courts.⁸⁹

By the time the Tenth International Conference of American States of ~~La Jolla~~^{Caracas} in 1954 began, it was clear that the subject of communist penetration was going to be at the core of all discussions, and that other important subjects such as economics were to be left out. The central resolution of the Conference was political. Resolution XCIII, in fact, includes a Declaration of Solidarity for the Preservation of the Political Integrity of the American States Against the Intervention of International Communism. It expresses the determination of the American States to take the necessary measures to protect their political independence against the intervention of international communism, acting in the interests of an alien despotism.⁹⁰ The Resolution also declares that the domination or control of the political institutions of any American State by the international communist movement and therefore extending the

⁸⁹Report of the United States Delegation, op. cit., p. 215.

"There were also difficulties with respect to the question of whether foreign capital should be subject only to national laws, or whether other considerations such as international obligations should also be given weight in settling problems that might arise affecting such capital." Ibid.

⁹⁰United States Department of State, Report of the United States Delegation to the Tenth International Conference of American States. Caracas, Venezuela, 1954. Publication 5692. International Organization and Conferences Series II, American Republics 14 (Washington: The Government Printing Office, 1955), p. 157.

political system of an extracontinental power, would constitute a threat to the sovereignty and political independence of the American States endangering the peace of America. In the eventuality the American States would call for a meeting of consultation to conclude the adoption of appropriate action in accordance with existing treaties. To get this resolution approved was the principal objective of the United States delegation, and, in fact, it succeeded in obtaining agreement among the sister republics "upon a clearly-cut and unmistakeable policy against the intervention of international communism in the Western Hemisphere."⁹¹ This became evident in the contents of Part III of the Resolution where it was established that:

"This declaration of foreign policy made by the American Republics in relation to dangers originating outside this Hemisphere is designed to protect and not to impair the inalienable right of each American State freely to choose its own form of government and economic system and to live its own social and cultural life."⁹²

However, before even partial agreement on this final text was obtained, almost every delegation made important observations and objections to the general idea. As Secretary Dulles explained in his statement proposing the additional paragraph that became part of the article:

"The concern most often expressed is that our declaration might be interpreted as intervention, or justifying intervention, in the genuinely domestic affairs of an American State. This concern is, we believe, due to natural historical fears rather than to any language in the United States proposal."⁹³ In fact, the proposal had to abate those fears of

⁹¹Report of the United States Delegation, op. cit., p. 7.

⁹²2nd
Op. cit., p. 157.

⁹³Report of the United States Delegation, op. cit., p. 59.

political system of an individual... to the sovereignty and... enlarging the power of... would call for a meeting of... appropriate action in... resolution approved... delegation, and, in fact, it... sister-republic upon a... intervention of international... This became evident in the... it was established that

"This declaration of... Republic in... intervention... its own... the one... However, before... obtained, almost every... sections to the... went proposing the... "The concern most... interpreted as... domestic affairs of... to natural history...

States (proposed)
MILLERS FALLS
EZERAC
COTTON COUNTRY

the Latin-Americans who did resist it because they considered it a dangerous way to admit probable interventions by way of exceptions. In his efforts to convince them otherwise Secretary Dulles expressed that the admonitions were not addressed to any one of our republics or to the Western Hemisphere. In that sense, the proposed declaration was, as far as they were concerned, a simple statement of foreign policy. But, as he rightly put it before, apprehensions did not spring primarily from the proposed text but from historical fears.⁹⁴

The delegations of Argentina and Mexico showed particular emphasis in obtaining the approval of several verbal changes in the proposed resolution. Argentina in particular requested that the so-called Declaration of Caracas should contain a clause acknowledging the rights of the peoples to freely choose their own form of government. This the delegation suggested in order to discourage wrong conclusions in the sense that, under the pretext of protecting themselves from a future event, a deadly blow could be stricken to the recognized principle of self-determination of the American Nations; to admit otherwise would stand against the most cherished continental traditions. The Argentine delegation wanted also to extend the resolution to the protection of the continental patrimony, not only against the menace of communism but against all extra-continental intervention as well. Mexico proposed to include as one of the normative principles of the system the following:

"El régimen político y la organización económica y social de los pueblos pertenecen esencialmente a la jurisdicción interna del Estado por lo que no pueden ser objeto de intervención alguna, directa o indirecta, individual o

⁹⁴ Ibid.

the Latin-American who did resist it, though they considered it a dangerous way to admit hostile interventions by way of intervention. In his efforts to convince them of this, Secretary Dulles expressed that the resolutions were not intended to say one of our resolutions to the Western Hemisphere. In that sense, the proposed resolution was, as far as they were concerned, a simple statement of foreign policy. But, as he rightly put it before, resolutions do not spring spontaneously from the proposed text but from historical facts.

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colectiva, por parte de uno o mas países o por la Organización de los Estados Americanos."⁹⁵

The Argentine and Mexican delegations joined to include references to social and economic measures to improve general conditions in the American Republics in their fight against communist penetration, in the understanding that communism is able to take deep roots among needy and forgotten masses. However, the Conference was to produce only political declarations, mainly because of the influence of the United States and its determination to face Russia with a continental warning to keep off. Therefore the United States delegation objected to such inclusion as proposed, not because it did not comply with its stand on the matter but, rather, because that government wanted to give to the said declaration the strongest words that a warning message could contain. Dulles based his government's opposition in two reasons:

"In the first place it is, we believe, unfortunate to give the impression that we are interested in human rights, individual dignity and opportunity and economic welfare only because thereby we combat communism. It seems to us to degrade that which is most sacred and fundamental. In the second place it seems inappropriate to include a reference to our economic and social needs in a warning addressed to alien dictators. Surely we do not want to say to them in effect that their intervention would be acceptable in the case of an American state which did not achieve an ideal political, social or economic order."⁹⁶

This appeal, however convincing it might have appeared to be, fell short in abating the Latin-Americans' fears. Therefore Secretary Dulles had to add:

⁹⁵ Jorge Castañeda, México y el Orden Internacional (México: El Colegio de México, 1956), p. 192.

⁹⁶ Report of the United States Delegation, op. cit., p. 62.

collective, not party to the war, and a part in organizing
the Latin American movement.

The Argentine and Mexican delegations joined to indicate their interest in social
and economic measures to improve general conditions in the Americas and
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This appeal, however, convinced it might have appeared to be, fell

short in stating the Latin-American's fears. Therefore Secretary of State

had to add:

George Eastman, Mexican X of Latin International (Mexico, 1935)
Colégio de México, 1935, p. 132.

Report of the United States Delegation, pp. 211, 212.

"The United States believes that the principle of non-intervention is an absolute principle, and that we should avoid anything which could be interpreted to indicate that we would compromise it under any conditions."⁹⁷

If this statement was enough to assure others, it surely did not discourage Argentina's position: the delegation of that country kept demonstrating that its only preoccupation, despite the realization of the subtle danger of communist penetration, was the defense of the nonintervention principle. Therefore it was to the evident irritation of certain sectors of opinion that Argentina recommended abstention in the pronouncement on communism for considering it as a subject that primarily falls within the sphere of action of the United Nations. Article 52 of the Charter, in fact, rules the action of the regional organisms, and besides that, there exists the so-called United for Peace Resolution which provides a speedy mechanism to repel aggressions. In the second place, the Argentine delegation evidenced that such a measure as proposed at Bogotá, affects of necessity the principle of nonintervention regardless of how much diplomatic talk has been used to convince otherwise. In consequence it sustained the abstention on the same terms it did before considering that it already existed an organism in the international order--name the United Nations--that has competence to study and decide on cases of aggression such as the one under consideration, and because of the danger that always would exist that such a resolution interpreted latu sensu could degenerate in a simple case of intervention. The position of Argentina could be summarized as follows:

- (1) Integral defense of state sovereignties;

⁹⁷Ibid.

(2) Refusal to agree on the legitimacy of pressures of any kind to be exerted on governments or nations;

(3) Reliance on the operative force of the United Nations and its authority to decide on a problem that, like communism, has universal and not only regional transcendancy.

To offer a solution of compromise the Declaration of Caracas reiterates (Resolution XCIV):

"Recognition of the inalienable right of each American State to choose freely its own institutions in the effective exercise of representative democracy as a means of preserving its political sovereignty achieving its economic independence and living its own social and cultural life, without intervention on the part of any state or group of states, either directly or indirectly in its domestic or external affairs, and particularly without the intrusion of any form of totalitarianism."

However, to what extent this resolution could be made effective in a case of actual communist peril is still a matter of doubt or perhaps it should not be so after the Guatemalan experience of 1954. Nevertheless one thing remains certain: we are in front of a new Pan-American system, a system that sprang up from the Rio and Bogotá Pacts which in their turn were the immediate consequence of the San Francisco Conference; a system that operates, not against the effectiveness of the United Nations, but rather it works hand in hand with it, and stands for it in case of slowness or failure of the major organization to face an aggression. Against its detractors' opinion the system "came out the winner at San Francisco,"⁹⁸ and even was taken as a model for future regional organizations, namely the North Atlantic Treaty Organization, which the Western World was forced to organize in order to face the Russian threat. The

⁹⁸Dávila, op. cit., p. 187.

(5) In view of the fact that the Commission has not yet decided on the question of whether

to be exercised in the exercise of its powers

(6) In view of the fact that the Commission has not yet decided on the question of whether

the authority to decide on the question of whether

and not only national circumstances

to offer a solution of the problem

reference (see also 1971)

"Recognition of the fact that the Commission has not yet decided on the question of whether
State to provide itself with a solution of the problem
factive examples of the Commission's powers in the exercise of its powers
of presenting a solution of the problem
economic independence and the Commission's powers
cultural life, which is a solution of the problem
state or group of states
in the exercise of its powers
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However, to what extent this could be made of a solution

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should not be so after the Commission's powers

one thing remains certain: the Commission's powers

a system that operates on the basis of the Commission's powers

that were the immediate consequence of the Commission's powers

system that operates on the basis of the Commission's powers

but rather it would be a solution of the problem

allowance or failure of the Commission's powers

Against the Commission's powers and the Commission's powers

Translating, and even more so, the Commission's powers

action, namely the Commission's powers

which was forced to operate in the Commission's powers

1971, 1972, 1973

accomplishment was very revealing because, should the Pan-American movement have been absorbed by the world organization, "the right of self-defense of the American countries should have been transferred to the hands of the Security Council operated by the Big Powers, and, therefore, subject to their veto."⁹⁹ The Latin-American struggle at San Francisco saved the Pan American Defense Pact, and the Monroe Doctrine itself, all of which could have been rendered unworkable "by the right or caprice of a single non-American power seated at the Security Council." As regards the doctrine of nonintervention, the resolutions conceived to face communist aggression do not signify a step backward in the juridical relationship of the American republics with one another. Those resolutions do not concern their internal continental relations but their extracontinental relations. They cannot be made the instruments of individual foreign policies, but they are commitments of their common foreign policy of defense. They cannot be analyzed in the old terms of individual self-defense but in terms of the present system of collective self-defense, which means that a resolution in favor of one binds them all. Thus interpreted, no state right could be violated, no principle of nonintervention could be compromised.

⁹⁹Ibid.

CONCLUSIONS

The doctrine of nonintervention is the governing principle of the Inter-American System, and the first element of its operative force. It is also its most genuine accomplishment without which the continental movement could never have evolved effectively. The history of its evolution and final promulgation is not that of one man's or one country's effort, but rather of the aggregated efforts of governments, statesmen, and jurists from each and every one of the continental republics as shown in numerous declarations, doctrines, and pronouncements.

The main purpose of this work has been to investigate the significance that two of said doctrines, as originally stated by Calvo and Drago, had in the general process of advancing this principle of nonintervention.

A quick glance into Argentine history has revealed to us these and other contributions which, limited by historical circumstances though they were, served all the same to give expression to the nation's zeal and respect for the rights of sovereignty and self-determination of the states. The belief of its jurists in equality as the only workable formula for the preservation of peace, produced several doctrinal attempts some of which, like Calvo's, Drago's, Tejedor's, Irigoyen's, and others, particularly emphasized the defense of the personality of the state. This capacity of person of international law bestowed upon the state made feasible the doctrine of equality, and once equality was acknowledged, intervention did not stand a chance of survival. Therefore, Calvo's teachings outlawing indemnities due to foreign countries for damages produced during civil wars, and Drago's political appeal to prohibit the compulsory collection of public debts soon became the starting points of

The doctrine of nonintervention is the governing principle of the Inter-American System, and the first element of its structure. It is also the most genuine recognition of which the civilized movement could have wished. The history of the movement and final proclamation is not that of the rights of nonintervention, but rather of the recognized efforts of governments, states, and jurists from each and every one of the continental republics as shown in numerous declarations, doctrines, and pronouncements.

The main purpose of this work has been to give a brief, but complete, account of the doctrine, as originally stated by Gálvez and others, and in the general process of advancing the principle of nonintervention. A quick glance into Argentine history has revealed to us these and other contributions which, limited by historical circumstances though they were, served all the same to give expression to the nation's will and respect for the rights of sovereignty and self-determination of the states. The policy of the nation is especially in the only world's formula for the preservation of peace, proposed several hundred years ago, some of which, like Gálvez's, Góngora's, Vitorino's, and others, particularly emphasized the danger of the perpetuity of the state. This capacity of certain of international law has been upon the state made feasible the doctrine of equality, and more especially was acknowledged, intervention did not stand a chance of survival. Therefore, Gálvez's doctrine outlining independence due to foreign countries has been in-duced during civil wars, and Gálvez's political appeal to justify the necessary collection of public debts has been the starting point of

the movement that finally promulgated the doctrine of nonintervention as such. The great element of success in both attempts did not lie entirely in the outstanding perfection of their formulae, which for that purpose could be acknowledged to have been imperfect (and in most probability conceived with the eagerness of a momentary decision) but in the fact that they were spoken in the proper historical circumstances. They voiced the imperative needs of the time and represented its ideas and values; consequently they received the approval of the nations concerned with the dangers they tried to abate, and finally that were incorporated as living parts to the Public Law of the American continent.

The problem of nonintervention in the Inter-American System of today imbued of two facts unknown to former generations of jurists, namely, collective security and collective self-defense, does not seem to have the same pressing effect it exerted upon past generations. Individual self-defense in a two-bloc divided world has become obsolete, and, therefore, a new defensive system, largely based on collective efforts, has been devised. This circumstance has been waived by the old defenders of intervention to reject the validity of the doctrine of nonintervention on the grounds that, with the existing system, no actual abolition of the former has taken place, but rather a replacement of individual by collective intervention has been enacted. The true fact remains, however, that in today's power-politics both nonintervention and collective self-defense are correlative concepts that came to fill up the place left vacant by the old pattern of intervention and individual self-defense. But these new facts of international life which the post-war world had to face in order to survive have not affected the essence of

Pan-Americanism which still holds its capacity of regional defender, and the acquired extracontinental commitments cannot deteriorate at all the validity of the system. The compromises of a common defense will never constrain it to such an extent as to force it to leave behind long cherished doctrines which, like nonintervention, were conceived to be valid in absolute terms. Juridical Pan-Americanism has outgrown such a possibility and is able to face the challenge. This is so mainly because its strength is nourished by the new relationship among the American nations based on the doctrine of nonintervention. It finally has become true, what Calvo perhaps prematurely advanced in 1886: "America as well as Europe is inhabited today by free and independent nations whose sovereign existence has the right to the same respect, and whose internal public law does not admit of intervention of any sort on the part of foreign peoples, whoever they may be."¹

¹Calvo, op. cit., I, p. 530.

Pan-American which still holds the status of a national authority, and
 the accepted international character of a national authority is at all the
 validity of the system. The acceptance of a system of law will never
 constitute it to such an extent as to force it to become binding upon
 established doctrines which, like national law, are considered to be
 valid in absolute terms. United States law is not a mere code of
 possibility but is able to force the observance of it by every person
 its strength is maintained by the national authority which is the
 nation based on the doctrine of non-interference. It is likely that some
 true, that O'Neil perhaps previously advanced in 1936: "There is no will
 as Europe is inhabited today by free and independent nations whose
 sovereign existence has the right to the same respect, and these in-
 formal public law does not admit of interference of any sort on the part
 of foreign peoples, whoever they may be."

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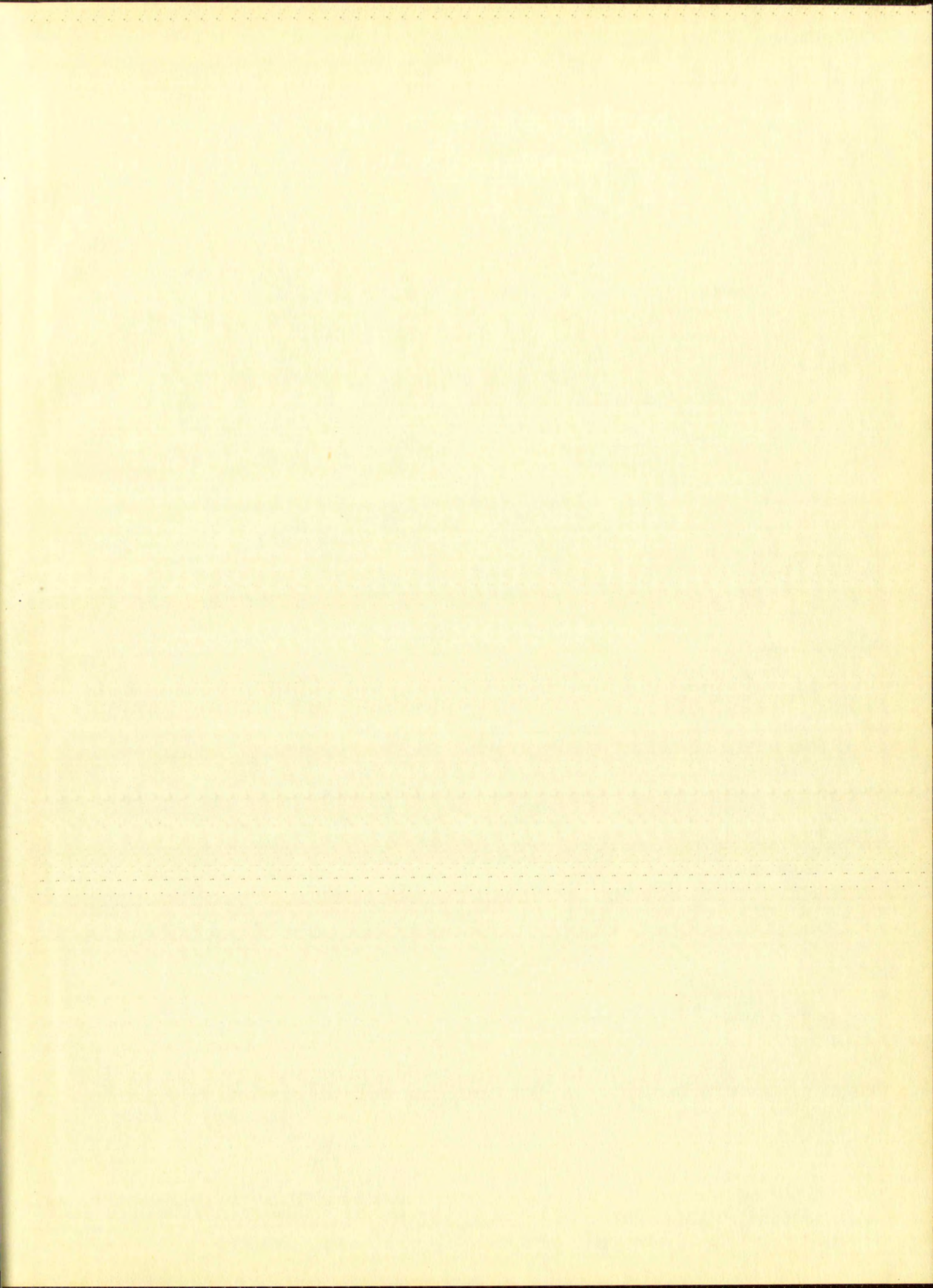
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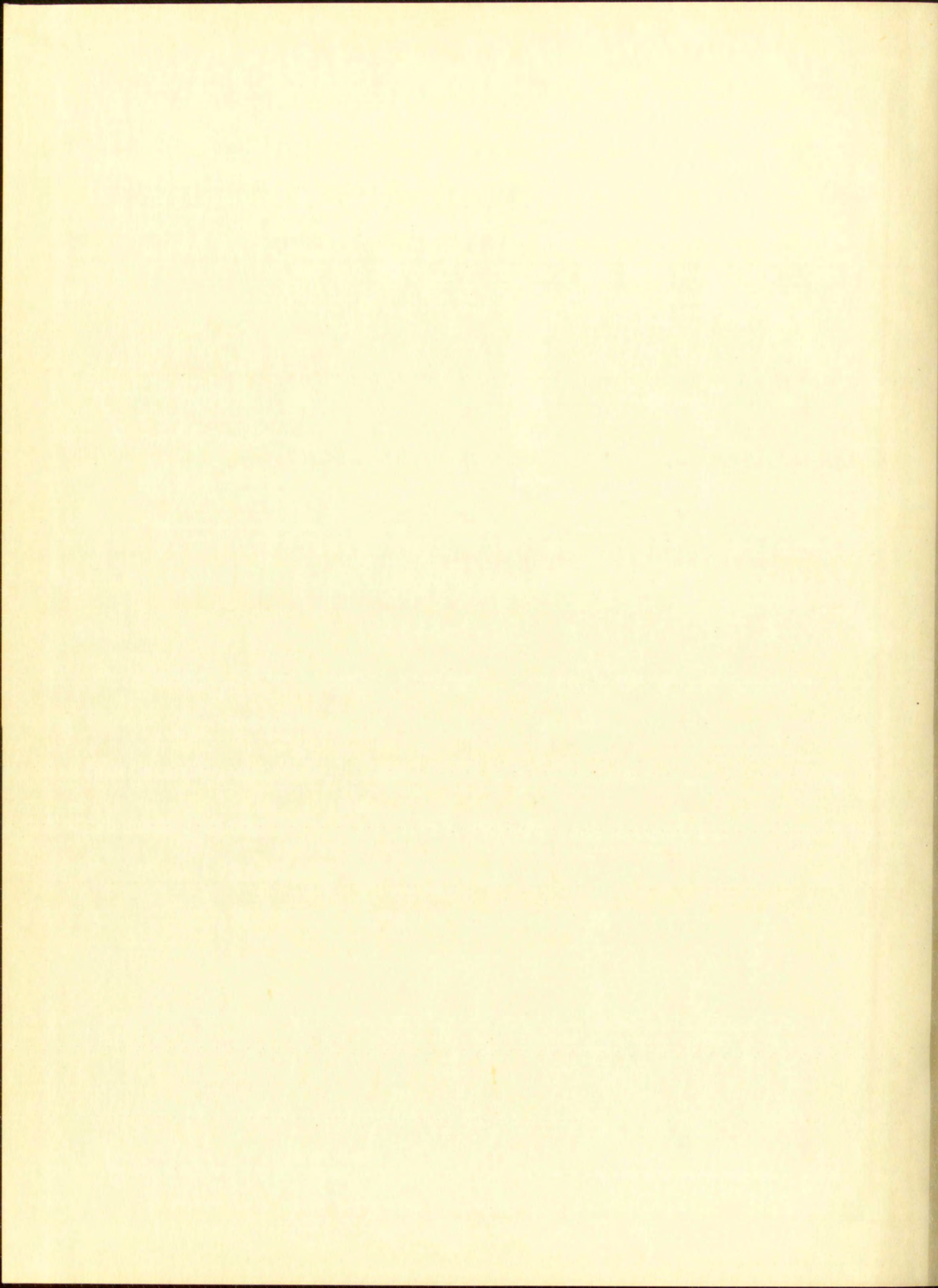
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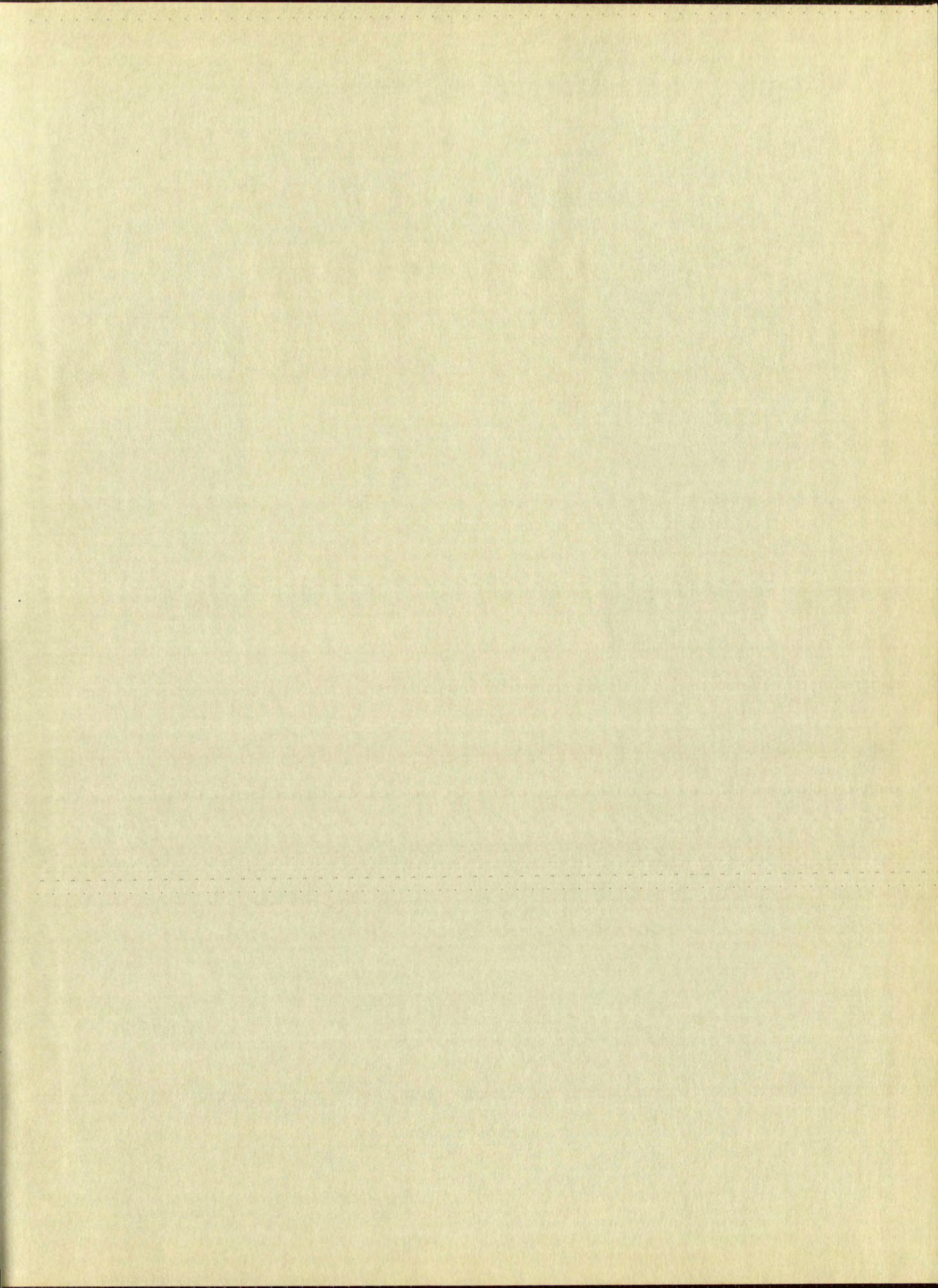
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