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The Theory of Recognition in American International Law

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Christiansen — The Theory of Recognition

THE THEORY OF RECOGNITION
IN AMERICAN INTERNATIONAL LAW

By

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INTRODUCTION

The problem of recognition has long troubled American jurists. Jurists have sought to detach the juridical elements of the problem from the political, and to formulate rules which might reduce to a minimum the field of arbitrary decision by individual governments. There has been, then, a conflict of national and international interests. This conflict arises between the interest of the individual state in maintaining intact its sovereign right to change at will its form of government and the interest of the other members of the international community in knowing whether a particular government holding itself out as the legal representative of the state is justly to be taken as such.

A study of the theory of recognition as it evolved in the western hemisphere was undertaken in this thesis. It was necessary to show two major areas of development: (1) a historical survey of the theory and practice of the United States and the theory and practice of the Latin American states; and (2) the conflict between these theories when they were brought before the Inter-American conferences in an attempt to create a doctrine of recognition in American International Law.

In light of the very tense world situation that existed at the time of writing, it was felt that closer

scrutiny of regional development and regional problems was necessary. The hemispheric policy of the United States was being neglected in favor of other world commitments which weakened the American System. The meager results of the Tenth International Conference of American States at Caracas in March of 1954, served to confirm this weakness, and to increase the need for a clearer picture of the problems that faced the American System. The thesis attempted to analyze and interpret statements and practices of governments as well as acts and resolutions of international conferences in an effort to show clearly the status of recognition as an American doctrine. There was no attempt to prescribe any solutions.

Sources consulted in the preparation of the thesis came from the University of New Mexico Library, and from material borrowed from the Library of Congress, Yale Law Library, and the University of Texas Library.

CHAPTER I

RECOGNITION IN PUBLIC INTERNATIONAL LAW

There was no one set definition for the term recognition in public international law. Recognition had a variety of functions and several theories as to its nature. It was necessary, therefore, to survey briefly these functions and simply to state the conflict in theory.

THEORY OF RECOGNITION IN INTERNATIONAL LAW

In the realm of international legal theory, two schools of thought conflicted as to the true nature of recognition. One doctrine claimed that recognition was constitutive in character and was essential to the legal existence of a state.[1] A state could not legally exist in relation to other states unless it had been recognized by one or more of them. The other doctrine insisted that recognition was declaratory in nature and had no legal basis. Assuming this theory, a community came into existence as a state in the

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[1] Edwin D. Dickinson, A Selection of Cases and Other Readings on the Law of Nations Chiefly as it is Interpreted and Applied by British and American Courts (First Edition; New York: McGraw-Hill Book Co., 1929), 91. See also: Pitman B. Potter, A Manual Digest of International Law (New York: Harper and Bros., 1932), 134; Hersh Lauterpacht, "Recognition of States in International Law," Yale Law Journal, LIII (June, 1944), 385-458.

sense of international law when it had the necessary characteristics of a state.[2] Recognition, then, was declaratory and had as its purpose the bringing about of normal relations between states. The question naturally arose as to the validity of these several theories. Hans Kelsen offered a solution by designating the two doctrines as separate and distinct acts or functions of international law, both called recognition. To aid in clarifying these functions, Kelsen labeled them legal recognition and political recognition.[3] Legal recognition ascertained the legal personality of a state in the sense of international law and arose from the historical idea of legitimacy.[4] Political recognition carried with it no legal ascertainment, but rather was an act designed to facilitate active relations between two states. By using

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2 John B. Moore, A Digest of International Law (Washington: Government Printing Office, 1906), I, 72. See also: William E. Hall, A Treatise on International Law (Oxford: The Clarendon Press, 1909), 82; Lassa L. Oppenheim, International Law; A Treatise (Fourth Edition; London: The Clarendon Press, 1928), I, 134-135; Charles Fenwick, International Law (Second Edition; New York: D. Appleton-Century Co., 1934), 107.

3 Hans Kelsen, Principles of International Law (New York: Rinehart and Co., 1952), 268.

4 For a historical sketch of legitimacy see, Julius Goebel, The Recognition Policy of the United States (Studies in History, Economics and Public Law, LXVI, New York: Columbia University Press, 1915), 19-43.

this differentiation it was possible to define the practical applications of recognition without becoming involved in conflict as to basic theory. The fact that recognition theory underwent a basic change in the western hemisphere minimized the conflict in the major portion of this discussion. However, in the following paragraphs surveying public international law in reference to recognition, the Kelsenian difference was noted by using his terms "political recognition" or "legal recognition."

RECOGNITION OF NEW STATES

The rise of the state system in western civilization brought about the need for modern international law to guide the relations between the states coming into existence. As more communities reached political maturity, recognition evolved as the method of bringing these new areas into formal relationship with established states. In modern international law, when a community reached the necessary degree of maturity or gained its independence from a sovereign state, by right, it should have entered into the family of nations. Recognition of a state was the act by which another state ascertained that the community recognized possessed the attributes of statehood. For this recognition to be effective it had to be mutual. Generally, the fact that a new community had attained statehood was acknowledged individually by the

various established states.[5] In some cases this ascertainment was collective, such as with Poland in 1919 when the Council of Ten determined that Poland was in fact a state and recognized it as such.[6] This procedure of determining statehood, whether collective or individual, was legal recognition. As a rule, the determination of legality carried with it the desire for international intercourse and therefore included political recognition. Should only political recognition be conferred, the act fell short of full recognition in that no cognizance was taken of the legality of the recognized state. Legal recognition, once granted, was absolute and irrevocable.[7] Once international personality had been attained by a state, it could only be lost by the extinction of that state.

RECOGNITION OF NEW GOVERNMENTS

The fact that a state once recognized as an international personality rarely lost that personality brought up

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[5] Antonio Sánchez de Bustamante, Derecho Internacional Público (Habana: Carasa Y Cia, 1933), I, 156.

[6] Herbert W. Briggs, The Law of Nations (Second Edition; New York: Appleton-Century Crofts, Inc., 1952), 104.

[7] Potter, op. cit., 135. See also, Fenwick, op. cit., 114.

the question of internal change within that state. When a state underwent a change in its basic governmental structure or administration due to a revolution or coup d'etat, it was necessary to initiate some procedure so that the new government would be able to carry on relations with other members of the international community. As in the recognition of new states, both legal or political recognition could be conferred upon a new government.[8] Legal recognition ascertained that an individual or body of individuals was the legitimate government of the state, while political recognition indicated a desire to carry on relations with the new government without formulating any judgment as to its legality.[9] The legal act of the recognition of a government could not be separated from the legal act of the recognition of a state.[10] Since a state must have had a government, and a community which had no government in the sense of international law was no state, the recognition of a community as a state implied that the community recognized had a government.[11] In

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8 Kelsen, op. cit., 279.

9 Hans Kelsen, "Recognition in International Law," American Journal of International Law, XXXV (October, 1941), 605-617.

10 Ibid., 615.

11 Loc. cit.

reference to recognition of governments it was pertinent to introduce two terms used in this connection. De facto recognition ascertained that a government or administration was in fact in control of the governmental machinery of the state. It was provisional in that it could be withdrawn. De jure recognition was legal recognition and inferred legitimacy of the government being recognized. It was assumed to be final. The de jure theory also denied the right of revolution and held that only legitimate, constitutional governments were entitled to recognition.[12] According to Bernard:

> A de jure government is one which, in the opinion of the person using the phrase, ought to possess the powers of sovereignty, though at the time it may be deprived of them. A de facto government is one which is really in possession of them, although the possession may be wrongful or precarious.[13]

RECOGNITION OF BELLIGERENCY

It was important to distinguish recognition of belligerency from that of new states and new governments. When a condition of rebellion or civil war within a state reached a point where the rebellious element had control of a given territory and had a de facto organization governing that

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[12] In Bustamante, op. cit., I, 157, de jure recognition is express and de facto recognition is implied.

[13] A. M. Luther vs. James Sagor & Co., quoted from Montague Bernard in Briggs, op. cit., 161.

territory and conducting military operations, the situation had to be recognized as public war subject to the international rules of war. In such a case the de facto organization conducting the rebellion could receive recognition as a belligerent from one or more members of the community of nations.[14] This recognition in no way ascertained statehood but merely that the military operations had international consequences and that international law was applicable to the conduct of those operations.

RECOGNITION OF INSURGENCY

Sometimes a state recognized the existence of an insurrection without recognizing belligerency. This situation arose when the insurgents did not fulfill the conditions under which recognition of belligerence was admissible. A recognition of insurgency did not confer upon the insurgents a legal status under international law, but it did raise them above the criminal or pirate level.[15]

CONDITIONAL RECOGNITION

In some cases de facto or political recognition was

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[14] Fenwick, op. cit., 112.

[15] Kelsen, Principles of International Law, 292.

conditional in that charges or restrictions were placed on a new state or government before that authority was recognized. Should these conditions be disregarded following recognition, the recognizing state could consider their recognition as not given.[16] In the case of legal recognition there could have been no condition, for this type of recognition was absolute and irrevocable. Only in the case of de facto or political recognition could conditions be imposed.[17]

PREMATURE RECOGNITION

The term premature recognition could have been applied in cases involving insurrections or wars of independence. For example, it has been possible for a de facto organization in rebellion and seeking independence to be recognized as a state in the sense of international law before its independence was a fact. In such a case, recognition was premature and constituted an act of intervention committed in favor of the insurgent organization and against the former sovereign state.[18] Consequently, recognition was not legitimate so long as substantial struggle was being maintained by the formerly sovereign state.

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16 Moore, op. cit., I, 73.

17 Kelsen, Principles of International Law, 275.

18 Moore, op. cit., I, 73; See also: Hall, op. cit., 83; Lauterpacht, op. cit., 391-392.

CHAPTER II

BACKGROUND: UNITED STATES RECOGNITION POLICY, 1792-1931

From the beginning of its history as a republican state, the United States evolved its own theory of recognition. Thomas Jefferson was the first to voice the theory of recognition that changed the public law concept. Until Jefferson's invention of the de facto principle, the idea of dynastic legitimacy dominated the thinking on theories of recognition.[1] Jefferson's own words most clearly indicated the simplicity of the de facto principle.

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[1] Historically, the concept of a de jure government stems from the idea of legitimacy. It was first used in connection with the doctrine of the "divine right of kings." By reason of his claim to be "the chosen of God," the king considered himself to be the only legitimate ruler, and from monarchic governments, legitimacy was transplanted to other forms of government. All existing and time sanctioned regimes claimed legitimacy. In that case, the term de jure was a very subjective one. It meant that the person or government using the phrase believed that the government so described ought to possess the powers of sovereignty, even though -- as in the case of governments in exile -- that government at the time might have been deprived of sovereignty. It was an attempt to cloak some governments with an authority which was denied to others. See: William L. Neumann, Recognition of Governments in the Americas (Washington: Foundation for Foreign Affairs, 1947), 2; Goebel, op. cit., 19-43.

> We certainly cannot deny to other nations that principle whereon our own government is founded, that every nation has the right to govern itself internally under what form it pleases and to change these forms at its own will and internally to transact business with other nations through whatever organ it chooses whether that be a King, Convention, Assembly, Committee, President, or whatever it be. The only thing essential is the will of the nation.[2]

The Jeffersonian principle was an outgrowth of the ideas of popular sovereignty and the right of revolution. The sanction of the American Revolution by France marked the first step in this change in the public law system. The United States recognition of the governments resulting from the French Revolution was another example of the changing concept. It was, however, the doctrines of American statesmen that furnished the theoretical justification of de facto recognition.[3]

Jefferson conceived of recognition as an independent act depending not upon the whim of the recognizing state, but conditioned solely by the governmental stability of the new organization. By doing so he laid down the doctrine of de facto recognition in its purest form.

This revision of public law thinking could have been explained by the changing ideas of sovereignty. The de facto

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[2] Henry A. Washington, ed., The Writings of Thomas Jefferson (Washington: Taylor and Maury, 1853-54), III, 500.

[3] Goebel, op. cit., 101.

principle was as essential to the idea of democracy and republican government as was the idea of legitimacy to the existence of a monarchy. European practice of recognition, a complicated legal device for political purposes, was not acceptable in America. The United States, itself of revolutionary origin, could not accept a theory which would deny it the right of sovereignty in favor of a European monarch. The theory evolved by Jefferson, therefore, made no differentiation between de jure and de facto states or governments.[4] The opportunity to use this new doctrine came with the wars of independence in Latin America.

The basis of United States recognition of the new states that emerged in the hemisphere was that of de facto control. Recognition was also influenced by a sympathetic attitude of the American people toward an independence movement and a desire to prevent the extension of the European system to the American continents.[5] The question of legitimate right appeared to have been disregarded during the discussions in the United States concerning the independence of Latin America, while this idea was still the keynote of European diplomacy on this subject.[6]

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4 Neumann, op. cit., 3.

5 Fenwick, op. cit., 112-113.

6 Goebel, op. cit., 141.

When the seriousness of the Latin American revolts became evident, the United States sent agents to the rebel governments. At first these representatives were called "agents for seamen and commerce," but they acted as political observers. In 1811, consuls who had been appointed by the President and duly confirmed by the Senate, were being employed. These agents accepted formal exequatur from the de facto governments.[7] Representatives of Venezuela, Buenos Aires,[8] and Mexico were given friendly, though informal, welcome in Washington by the President. These acts came very near to de jure recognition of a new state.[9] Due to negotiations with Spain for the annexation of Florida in 1815, the United States was forced to declare neutrality and postpone recognition of the Latin American states. The use of consuls was discontinued and "agents for seamen and commerce" were again employed.

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[7] Samuel F. Bemis, The Latin American Policy of the United States (New York: Harcourt Brace Co., 1943), 32.

[8] Prior to 1816, what is now known as Argentina was primarily the area of Buenos Aires and was called by that name. Following the Congress of Tucumán in 1816, when some of the interior provinces associated with the city, the area was commonly called The Provinces of La Plata, and following the constitution of 1819, the area was known as the United Provinces of La Plata. Mary W. Williams, The People and Politics of Latin America (Revised Edition; Boston: Ginn and Co., 1945), 704-707.

[9] Bemis, op. cit., 32.

During the years 1816-1820, Henry Clay was the spokesman for the element pressing for immediate de facto recognition of the Latin American states.[10] He voiced the de facto principle as set down by Jefferson. The Spanish negotiations prevented the adoption of Clay's policies. After ratification of the Adams-Onis Treaty with Spain in 1820, and the annexation of the Floridas,[11] Clay pushed a resolution through the House of Representatives which stated, "that it will give its constitutional support to the president of the United States, whenever he may deem it expedient to recognize the sovereignty and independence of any of the said provinces."[12]

1821 brought victories for the Latin American patriots which weakened the Spanish hold on the continent. Independence seemed less doubtful, though the Spanish still held some territory in Peru and Colombia. John Quincy Adams, Secretary of State, consistently maintained that recognition flowed not

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[10] Arthur P. Whitaker, The United States and the Independence of Latin America 1800-1830 (Baltimore: Johns Hopkins Press, 1941), 190.

[11] The Adams-Onis Treaty was signed on February 22, 1819, but exchange of ratifications occurred late in 1820. Thomas A. Bailey, A Diplomatic History of the American People (New York: F. S. Crofts and Co., 1946), 173-175.

[12] Annals of Congress, 16th Cong., 2nd Sess., 1820-1821, Colls. 1081-1092. The resolution was passed on February 10, 1821. See James B. Swain, ed., Life and Speeches of Henry Clay (New York: Greely and McElrath, 1843), I, 112-117.

from the right to independence, but from the fact of independence, and that fact had become apparent.[13] On March 8, 1822, President Monroe sent a message to Congress declaring that Chile, the United Provinces of the Plata, Peru, Colombia and Mexico were all in full enjoyment of their independence, and that there was not the "remotest prospect of their being deprived of it."[14] Recognition of established independence, he asserted, could not be considered by Spain as any hostile act, and the neutrality of the United States would continue unaltered.[15]

On June 19, 1822, the Republic of Colombia was formally recognized by the United States,[16] and one by one the other states received recognition, either by the reception of their diplomatic representatives, or by the appointment

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[13] Worthington C. Ford, ed., Writings of John Quincy Adams (New York: The Macmillan Co., 1917), VII, 217-218.

[14] James D. Richardson, A Compilation of the Messages and Papers of the Presidents, 1789-1897 (Washington: Government Printing Office, 1896), II, 137-139.

[15] Ibid.

[16] "At one o'clock," wrote Adams, "I presented Mr. Manuel Torres as Charge d'affaires for the Republic of Colombia to the President." This incident was chiefly interesting as being the first formal act of recognition of an independent South American government. Goebel, op. cit., 138.

of regular diplomatic officers to them.[17] The Spanish protested this recognition, claimed it to be premature, and that, therefore, it constituted intervention in Spain's internal affairs. She did not, however, break off relations with the United States. According to Charles Fenwick, there was little doubt that United States recognition was founded upon a fair basis of fact.[18]

The action of recognizing the governments in Latin America firmly rooted the de facto principle in United States policy and theory. The Jeffersonian principle was re-stated by many subsequent Secretaries of State. Secretary Van Buren said in 1829, "so far as we are concerned, that which is the government de facto is equally de jure."[19] Buchanan, Polk's Secretary of State, in 1848, said:

> In its intercourse with foreign nations the government of the United States has, from its origin, always recognized the right of all nations to create and reform their political institutions according to their own will and pleasure. We do not go behind the existing government to involve ourselves in the question of legitimacy. It is sufficient for us to know that a

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17 The Empire of Mexico, December 12, 1822; Chile, January 27, 1823; The Empire of Brazil, May 26, 1824; Central America, August 24, 1824; and Peru, 1826.

18 Fenwick, op. cit., 112-113.

19 Moore, op. cit., I, 137-139.

government exists capable of maintaining itself; and then its recognition on our part inevitably follows.[20]

In 1852, in a note to Mr. Rives, United States Minister to France, Daniel Webster reiterated the de facto principle. He used terms similar to Jefferson's when he said, "that every nation possesses a right to govern itself according to its own will, to change its institutions at discretion, and to transact its business through whatever agents it may think proper to employ." He went on to say that the United States, in the past, had recognized the many forms of political power that had been successfully adopted.[21]

During the period 1792-1860, the United States had successfully developed and adhered to a theory and policy of recognition unique in a world of changing ideas. It was unique because it was imposed by a relatively weak nation experimenting in governmental institutions that were revolutionary according to European standards.

The American Civil War and the resulting international complications brought about a revision in the thinking on recognition in the United States. There was no retreat from the traditional de facto principle, but rather an added

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[20] Moore, op. cit., I, 137-139.

[21] Senate Executive Documents, 32nd Cong., 1st Sess., 1851-1852, 19.

qualification. This re-evaluation was due to the possibility of foreign recognition of the belligerence or insurgency of the Confederate States. Seward, Secretary of State, said in substance, that a revolutionary government in a republican state, defiant of an existing constitution, and also gaining control by sheer force of arms, ought not to be recognized until it was assured that the change was adopted by the people rather than imposed upon them against their will. Thus, the will of the nation was deemed to be inseparable from or identical with, that of the people.[22] Jefferson did not make this association when he said: "The only thing essential is the will of the nation." For Jefferson, the decisive test was the fact of control rather than any other circumstances.[23]

Seward had opportunity to express this new policy in the question of General Canseco in Peru. The Prado government in Peru had been overthrown by the previously deposed General Canseco. The General claimed to have continued as de jure sovereign, and held that the recognition given him two years before still remained. Seward, on May 7, 1868,

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[22] Charles C. Hyde, International Law Chiefly as Interpreted and Applied by the United States (Second Revised Edition; Boston: Brown and Co., 1947), I, 162-163.

[23] Ibid., 161.

said in reference to this:

> What we wait for in this case is the legal evidence that the existing administration had been deliberately accepted by the people of Peru. When a Republican form of government is constitutionally established, we hasten to recognize the administration and to extend to it a cordial friendship. We do this because every state which constitutes itself a republic becomes by the force of that very circumstance a bulwark of our own republic. We do not deny or question the right of any nation to change it by force, although we think that the exercise of force can be justified in rare instances. What we do require, and all that we do require, is when a change of administration has been made, not by peaceful constitutional process, but by force, that then the new administration shall be sanctioned by the formal acquiescence and acceptance of the people.
>
> We insist upon this because the adoption of a different principle in regard to foreign states would necessarily tend to impair the constitutional vigor of our own government, and thus favor disorganization, disintegration, and anarchy throughout the American continent. In our own late political convulsions, we protested to all the world against any recognition of the insurgents as a political power by foreign nations, and we denied the right of any such nation to recognize a government here independent of our constitutional republic until such new government should be not only successful in arms, but should also be accepted and proclaimed by the people of the United States.[24]

The Seward revision, expressed in the above statement, was followed in several instances until the time of

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[24] Goebel, op. cit., 202.

the Wilson Administration.[25]

From the 1880's to 1920, the one requirement deemed most important in United States recognition was that of the capacity of the government to be recognized to fulfill its international obligations.[26] This evidenced a further step in tempering and qualifying the earlier aggressiveness in United States recognition policy. By the late 1890's this policy was firmly established.

The application of this policy had several conse-

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[25] On October 5, 1910, the monarchy of Portugal was overthrown by a coup d'etat. The United States recognized the ensuing government when it was officially proclaimed by a constituent assembly. We awaited the due election of a president in Paraguay in 1912 before granting recognition to the new government. Following the abdication of the Manchu rulers of China on February 12, 1912, and the organization of a provisional republican government, we stated in an instruction to the American Minister to China dated September 20, 1912, that it would be more in accord with established precedents to defer recognition "until a permanent constitution shall have been definitely adopted." Green H. Hackworth, "The Policy of the United States in Recognizing New Governments During the Past Twenty-five Years," Proceedings: The American Society of International Law (April, 1931), 120-133.

[26] President Hayes, in 1877, stated this prerequisite for the first time, in delaying recognition of the Díaz government in Mexico for over a year because of unsettled controversies with that government over the Rio Grande boundaries. Moore, op. cit., I, 148. In 1903, the Acting Secretary of State said to the American Minister to Honduras, the test of recognition is complete control of affairs by a de facto government capable of fulfilling international obligations. See, Mr. Loomis to Combs, April 24, 1903 in Department of State, Papers Relating to the Foreign Relations of the United States (Washington: Government Printing Office, 1910), 579, hereafter cited as Foreign Relations with appropriate date.

quences that proved embarrassing to the United States. By the later part of the nineteenth century, European states had finally divorced themselves from the theory of legitimacy. They then adopted in its entirety the theory of recognition which the United States had developed earlier in the century. It then became the regular practice of European states to grant recognition as soon as the de facto government gave evidence of possessing a preponderant stability over the previous de jure power. The United States, in requiring evidence of capacity to fulfill international obligations, was slow to recognize, sometimes following European recognition by several months. As a result, the United States fell from the position of a radical innovator and was finally regarded as one of the more conservative elements among nations.[27]

Another serious effect of the new policy was felt in United States relations with the Latin American states, particularly in the Caribbean. The main problem of Caribbean relations was financial instability. The United States, applying the policy requiring capacity to fulfill international obligations, was reluctant to recognize new governments in the Caribbean without guarantees that

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[27] Goebel, op. cit., 208.

financial obligations would be met. This type of qualified or conditional recognition influenced to a great extent the development of United States interventionist policies.[28] In other words, a recognized state in Latin America not able to maintain its international debt payments, faced direct United States intervention. This situation developed Latin American distrust of the United States.

By 1920, recognition had undergone considerable change since the time of Jefferson. The generalization that the United States had steadfastly followed a de facto principle of recognition was not wholly true. During a century of foreign relations the United States had begun to develop its own idea of legitimacy. True, it had consistently voiced the de facto principle, but gradually new qualifications were added to the requirements for recognition.[29]

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[28] Neumann, op. cit., 7-12.

[29] Foreign Relations, 1913, 100. In a statement of policy in regard to the recognition of the de facto Chinese government, Assistant Secretary of State Adee said: "Ever since the American Revolution entrance upon diplomatic intercourse with foreign states has been de facto, dependant upon the existence of three conditions of fact; the control of the administrative machinery of the state; the general acquiescence of its people; and the ability and willingness of their government to discharge international and conventional obligations; in other words, the de jure element of legitimacy of title has been left aside."

Seward introduced the idea that the will of the people must be expressed which qualified Jefferson's will of the nation. Later in the century, the criteria of capacity to fulfill international obligations came into use. In both of these ideas, the United States was looking beyond the de facto government for a de jure or legitimate basis for its reason to recognize. By 1920, United States policy was ready for the step taken by Woodrow Wilson: the distinction between de facto and de jure governments based upon constitutional legitimacy.

On March 11, 1913, President Wilson made public a "Declaration of Policy in Regard to Latin America." It added a new principle to the recognition policy of the United States within the western hemisphere; opposition to governments established by force in violation of constitutional procedure. By doing so, Wilson laid aside the de facto principle, and gave the United States its first true legitimist theory of recognition. Wilson said:

> Cooperation is possible only when supported at every turn by the orderly processes of just government based upon law, not upon arbitrary or irregular force. We hold, as I am sure all thoughtful leaders of republican government everywhere hold, that just government rests always upon the consent of the governed, and that there can be no freedom without order based upon law and upon the public conscience and approval. We shall look to make these principles the basis of mutual intercourse,

respect and helpfulness between our sister republics and ourselves.[30]

In Wilson's constitutional prerequisite, legitimacy was determined by the constitutional line of succession rather than by the royal line of succession as was the case with the dynastic legitimacy theory.[31] Non-recognition, because of failure to meet the requisite of constitutional process, evolved into the realm of intervention. Tobar called it indirect intervention; later is was called diplomatic intervention.

Almost immediately, November 24, 1913, the State Department affirmed Wilson's position. In regard to the Huerta coup d'etat in Mexico, the Department said that "no such interruption of civil order shall be tolerated in so far as it [the United States] is concerned."[32] This attitude was a far cry from the Jeffersonian criteria of control of administrative machinery.

Following the election of President Harding, the

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30 American Journal of International Law, VII (July, 1913), 331. See also: Edgar E. Robinson and Victor J. West, The Foreign Policy of Woodrow Wilson, 1913-1917 (New York: The Macmillan Co., 1917), 179-180.

31 Neumann, op. cit., 13.

32 Foreign Relations, 1914, 443-444.

constitutional prerequisite was temporarily dropped. It appeared again when the United States expressed its accord with the Central American Treaty signed in 1923.[33]

There was no evidence that constitutional legitimacy had any but ill effects on United States foreign relations. The application of it only served to hasten the growing hostility of the Latin American states toward the United States. Isidoro Ruíz Moreno said in summarizing Wilson's doctrine, that it was:

> ... simply a unilateral declaration which was legally binding only on the states which accept it. It is the Tobar doctrine which attempts ... to ignore facts and to erase entire pages of history which advance the principle that each country has the right to government which it wants. It is also a republishing, although with different intentions, of the thesis maintained by the Holy Alliance at Troppau in 1820 by which the affiliated powers agreed to refuse recognition to changes of government achieved by illegal means.[34]

During the years 1923-1931, the United States policy of recognition toward Latin America waivered between the Wilson policy and the policy stated by Assistant Secretary Adee in 1913, which emphasized the capacity to fulfill international obligations.[35] In 1931, Secretary of State

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33 Infra, pp. 32-33.

34 Isidoro Ruíz Moreno, Lecciones de Derecho Internacional Público (Buenos Aires: El Ateneo, 1935), I, 111-112.

35 Supra, p. 23 n.

Stimson completely set aside the doctrine of constitutional legitimacy when he said:

> The present administration has refused to follow the policy of Mr. Wilson and has followed consistently the former practice of this government since the days of Jefferson. As soon as it was reported to us--that the new governments in Bolivia, Peru, Argentina, Brazil and Panama were in control of the administrative machinery of the state, with the apparent general acquiescence of their people, and that they were willing and apparently able to discharge their international and conventional obligations, they were recognized by our government.[36]

The exception to this statement of policy was in regard to the Central American states. The General Treaty of 1923, which included a treaty of Peace and Amity that stated the non-recognition policy in reference to revolutionary governments, was still in force. The United States, according to Stimson, would continue to adhere to that policy when dealing with the signatory states.[37]

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[36] Department of State, Latin American Series, No. 4 (Washington: Government Printing Office, 1931), 6-10. Mr. Stimson was in error when he stated that the United States was returning to Jeffersonian principles. Mr. Stimson actually stated the recognition policy standardized by the United States in the late 1890's. This policy was also stated by Assistant Secretary Adee in 1913. Jeffersonian de facto policy did not state, per se, the acquiescence of the people or the capacity to fulfill international obligations. His sole criterion was control of the administrative machinery of the state.

[37] Ibid. The General Treaty of Peace and Amity, which included the anti-revolution provisions came to an end in 1934 after Costa Rica and El Salvador gave due notice of withdrawal. Bemis, op. cit., 208 n.

CHAPTER III

BACKGROUND: LATIN AMERICAN RECOGNITION POLICY, INDEPENDENCE TO 1930

Like the United States, the Latin American states gained their independence and sovereignty through the revolutionary process. Hence, for the same reasons, these states readily accepted the de facto principle of recognition as voiced by Jefferson. However, the Latin American states took a different direction from that of the United States. Revolutionary overthrow of established governments and coup d'etats were common during the middle and later nineteenth century. Changes of administration were as often by bullets as by ballots, and change by violence was accepted procedure.[1] As a result, new administrations took the attitude that they had the right to be recognized as de facto governments by other states without any consideration as to how they attained power. Other factors that influenced Latin American acceptance of the de facto principle were the rise of nationalism, and with it the idea of juridical equality of states in international law. The great spokesmen

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[1] Charles E. Hughes, Our Relations to the Nations of the Western Hemisphere (Princeton: Princeton University Press, 1928), 46.

for this idea after 1900 were Luis María Drago, Carlos Calvo and Lázaro Cárdenas.[2] Their demands for complete equality of states inferred non-intervention and hence a policy of de facto recognition.

Luis A. Podesta Costa of Argentina argued that if there was a difference between de facto and de jure recognition, it had no meaning in international law. In relations of a state with other states, governments could come and go without affecting the external status of a state beyond temporarily suspending formal relations. A foreign government, therefore, had no choice but the maintenance of relations with other states through their existing governments regardless of their origin.[3] Luis Anderson of Costa Rica

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[2] Salvador Mendoza, La Doctrina Cárdenas (México: Ediciones Botas, 1939), 19 et seq. See also: Thomas H. Reynolds, ed., As Our Neighbors See Us (Nashville: Cullom and Ghertner Co., 1940), 71-73. Luis María Drago said "That the public debt cannot occasion armed intervention nor even the actual occupation of the territory of American nations." (Quoted in Bemis, op. cit., 147). Calvo's work rested on the principle of the absolute equality of sovereign states. Admitting that his principle imposed the same duties as well as the same rights on all states, this famous publicist maintained that the complete independence of the legislative and judiciary of every state must be recognized. (Ibid., 230). Lázaro Cárdenas combined the Drago doctrine with that of Calvo and expanded them to give legal basis for the Mexican expropriation of foreign owned oil properties in Mexico. (Ibid., 347-348).

[3] Neumann, op. cit., 20.

held a similar position. He maintained that the constitutionality of a regime was a question of domestic law and that foreign governments could recognize or not recognize a new government, but non-recognition was a political act, which had no support in international law. He said further, that the with-holding of recognition or its indefinite delay was a form of intervention which violated the national sovereignty of the state so treated.[4]

Thus, from independence to the beginning of the twentieth century, Latin America defended the pure de facto principle. In contrast to the United States, Latin America did not become conservative with maturity, but rather became more entrenched in the theory of de facto recognition.

Dr. Carlos Tobar of Ecuador was responsible for the first major break in Latin American theory. Tobar was interested in curbing the numerous revolutions that were a threat

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4 Neumann, op. cit., 20. See also, Ellery Stowell, "The Doctrine of Constitutional Legitimacy," American Journal of International Law, XXV (April, 1931), 302-306. This author says, concerning non-recognition: "To make post irregularity of process a permanent or absolute ground for denying recognition would be equivalent to denying the right of another nation to ratify the legitimacy of whatever government it may choose to set over itself. Such a policy would, furthermore, often make it necessary to pass judgment upon fine points of constitutional (foreign) law, and would prove a prolific source of unnecessary and unwarranted interference in the internal affairs of neighboring states."

to the stability of Latin American republican government. His idea was to use collective intervention in the form of non-recognition of revolutionary governments. Said Tobar:

> The American Republics for their own credit and renown, if not for other considerations, ought to intervene in an indirect way in the internal dissensions of the republics of the continent. Such intervention might consist at least in the non-recognition of de facto governments sprung from revolutions against the constitution.[5]

Tobar thought that collective intervention through agreement was not intervention, since it had the force of treaty and international law.[6]

This doctrine was a theory of constitutional legitimacy similar to Woodrow Wilson's. The main difference between the Tobar Doctrine and Wilsonian constitutional legitimacy seemed to have been that Tobar wanted international agreements to implement his program of non-recognition, while Wilson's policy was unilateral.

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[5] Letter from Tobar to the Bolivian consul at Brussels, March 16, 1907, quoted in Bemis, op. cit., 412 n. See also: Carlos Arangua Rives, La Intervención de Monroe, Drago y Tobar (Santiago: Imp. "La Sud América, 1924), 225-226; Alberto Ostria Gutiérrez, La Doctrina del No-reconocimiento de la Conquista en América (Río de Janeiro: Borsoi and Co., 1938), 85-86.

[6] A collective intervention emanating from a treaty would be legitimate and would not constitute intervention in international law. See:Rives, op. cit., 225-226; Teodoro Alvarado Garaicoa, Principios Normativos del Derecho Internacional Público (Quayaquil: Imp. de la Universidad, 1946), 96.

The year that Tobar voiced his ideas, the Central American states met in conference at Washington. The conference came as a result of Mexican and United States offers to mediate the imminent threat of war that faced the area due to constant revolutions. The Tobar Doctrine was incorporated into the General Treaty of Peace and Amity signed in 1906.[7] Article I of this treaty stated:

> The Governments of the High Contracting Parties shall not recognize any other government which may come into power in any of the five republics as a consequence of a coup d'etat, or of a revolution against the recognized government, so long as the freely elected representatives of the people thereof, have not constitutionally reorganized the country.[8]

Non-recognition was applied to revolutionary governments as set forth in the treaty several times in the following years.

The Central American republics met again in Washington in 1923 and re-affirmed and strengthened the policy adopted in 1906. Article II of the General Treaty of Peace and Amity signed February 7, 1923,[9] set forth the Tobar

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[7] Costa Rica, Honduras, Nicaragua, Panama and El Salvador signed the treaty, which was one of eight treaties which was agreed upon. Mexico and the United States sent delegates to the Conference, but were not signatories.

[8] Green H. Hackworth, Digest of International Law (Washington: Government Printing Office, 1940), I, 186. See also, Hughes, op. cit., 46; Reynolds, op. cit., 72-73.

[9] Hackworth, op. cit., I, 188.

Doctrine plus certain requirements concerning persons who were to fall under the non-recognition rule. The United States promptly lent its support to the rules embodied in this treaty though not a signatory state.[10] The treaty remained in force until 1934, when Costa Rica and El Salvador withdrew. Following this, the Tobar Doctrine was gradually dropped as a procedure of recognition in Central America.

Charles Evans Hughes, in referring to the United States position on the Central American treaties, said:

> The United States has had the option either of encouraging this effort on the part of the Central American republics to promote constitutional government or of discouraging or nullifying it. It is said by some critics that we have brought upon ourselves no little trouble by the consideration of the constitutional questions and the particular exceptions for which the treaty provides. But it is not clear that we should not have brought upon ourselves even greater trouble if we had disregarded the provisions of the treaty and thus have taken the side of revolutions as against constitutional governments.[11]

Denunciation of the treaty by Costa Rica and El Salvador ended attempts to apply the Tobar Doctrine to Latin America. The application of the doctrine did not alleviate the evils of revolution as it was intended. Instability was often prolonged by the pressures of non-recognition on

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[10] Garaicoa, op. cit., 95.

[11] Hughes, op. cit., 49.

strong but unconstitutional governments, while the so-called constitutional governments were not necessarily strong nor respectful of the constitution once they were in power.[12] The Tobar Doctrine was strongly criticized by international statesmen of the hemisphere. Ricardo Montamer Bello said that the Tobar Doctrine:

> ... favored despotic governments, establishing in their favor a sort of Holy Alliance of other governments, and assumed a level of political development to which the Hispanic-American peoples still have not advanced.[13]

Dr. Yepes attacked the doctrine on the grounds that it annulled the right of peoples to freely choose their own governments and turned this power over to the hands of foreigners.[14]

The Tobar Doctrine had little effect on most states in the Latin Americas with the exception of Central America. In most cases, Latin American states maintained the de facto principle.

On September 27, 1930, Genaro Estrada, the Mexican Foreign Minister, set forth a new doctrine of recognition.[15]

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[12] Neumann, op. cit., 24-25.

[13] Quoted in Rives, op. cit., 288.

[14] Jesús M. Yepes, La Codificación del Derecho Internacional Americano (Bogotá: Imp. Nacional, 1927), 168.

[15] The doctrine was stated in instructions sent to all Mexican Ministers in foreign lands.

It was one of the most radical innovations in recognition theory since Jefferson, and was to be an important factor in shaping future development in American international law. According to the doctrine, which was to bear Estrada's name, diplomatic agents were accredited to the state and not to a particular government.[16] Business was to be carried on with new governments without raising any questions as to their legality or status, and thus this doctrine took an attitude of complete neutrality in regard to internal political affairs of foreign states.[17] The Estrada Doctrine further stated that any attempt of a state to pass judgment upon the legal qualifications of another government was an offence against the sovereignty of that state. The doctrine also implied that it was in accord with the principle of the continuity of states, and that it admitted the reality that governments de facto were necessarily

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16 Phillip C. Jessup, "The Estrada Doctrine," American Journal of International Law, XXV (October, 1931), 719-723.

17 Gustavo Gomez Tagle, "Los Sistemas de Reconocimiento y la Doctrina Estrada," quoted in Instituto Americano de Derecho y Legislación Comparada, La Opinión Universal sobre la Doctrina Estrada (México: Publicaciones del Instituto Americano de Derecho y Legislación Comparada, 1931), 206-207.

de jure.[18]

In some respects the Estrada Doctrine followed the Jeffersonian thesis. It did not, however, stop where Jefferson had. Estrada carried the de facto principle one step further, a step that threatened to abolish the practice of recognition with reference to new governments. If a state of facts existed within a state, why was it necessary to formally recognize those facts? For one state to ascertain what was fact within another state, according to Estrada, was a violation of sovereignty. It was a question of national and not international law. Since recognition of a state was absolute and irrevocable, recognition of a new government (political recognition) was meaningless. Estrada's conclusion was to do away with political recognition entirely. This conclusion was logical according to, and perhaps implied by, the Jeffersonian idea. In applying this doctrine, conflict arose when two competing bodies claimed sovereignty, but in Latin America this situation was seldom of long

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[18] Jessup, op. cit., 719-723. Herbert Briggs said in reference to this distinction: "Granting the political or diplomatic advantage of a distinction between de facto and de jure recognition, it appears, nevertheless, that the legal consequences of de facto and de jure recognition are essentially the same. The distinction is thus properly a political rather than a juridical distinction and is so regarded by contemporary doctrine." Herbert W. Briggs, "De Facto and De Jure Recognition; The Arantyazu Mendi," American Journal of International Law, XXXIII (October, 1939), 689-699.

duration.

The Estrada Doctrine was well received by the Latin American states, for it was founded in the basic ideas of juridical equality of states and non-intervention, both of which were close to the hearts of the Latin American republics.[19] As the Inter-American System evolved into a true regional system, the Estrada Doctrine was introduced into the International Conferences of American States and became a model for later declarations in favor of continuity of diplomatic relations.

United States policy was not affected to any great extent by the Estrada Doctrine, certainly not to the extent that the Tobar Doctrine influenced United States policy. In 1931, a year after the statement by Estrada, Secretary Stimson said that the United States would follow the policy of qualified de facto recognition established in the 1890's.[20] Mexico, on the other hand, maintained the Estrada Doctrine as its basic theory of recognition.[21] Many of the other Latin American states accepted the doctrine in principle, however,

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19 Instituto Americano de Derecho y Legislación Comparada, op. cit., passim.

20 Supra, p. 21.

21 Garaicoa, op. cit., 97.

in practice they have retained the de facto principle.

In 1930, there were three basic principles influencing the thinking on recognition theory in Latin America: the inviolable sovereignty of states, non-intervention, and juridical equality of states. These principles served to bring about extreme expression of the de facto principle of recognition. The exception was the Tobar Doctrine which found little support among Latin American statesmen, and, though applied to the Central American republics, did not serve the hemisphere well. The Estrada Doctrine was a logical and natural development of the de facto theory in Latin America. It expressed not only a theory of recognition, but also gave emphasis to the principles which were the foundation of Latin American international legal theory.

CHAPTER IV

THE INTERNATIONAL SCENE

The discussion of recognition as a theory of American international law required a historical survey of the different ideas that prevailed in both Latin America and the United States. Conflicting ideas made difficult a common ground upon which to determine a hemispheric policy or a theory that would carry with it the sanction of international law. To appreciate fully the basic differences in recognition concepts within the western hemisphere, it was necessary to analyze discussions on the subject within Inter-American conferences and meetings.

The International Commission of Jurists, which met at Rio de Janeiro in 1927, seemed the logical point of departure. Certainly the question of recognition had been considered at previous American gatherings. The particular circumstances that existed in 1927, however, made the Rio Commission a vital point in the question of conflict in recognition theory in the Americas. Inter-American relations during the 1920's were in turmoil. This was the era of United States intervention, both direct and indirect, in the affairs of Latin American states. American marines occupied states in the Caribbean, and by treaty the United

States maintained the right of intervention in Cuba and some Central American countries. Because of this practice, the United States found itself in a difficult position to maintain or develop any semblance of hemispheric cooperation. The Latin American states were becoming articulate in their demands that steps be taken to establish principles of international law which would curb abuses of sovereignty. Among these demands were a doctrine of non-intervention, a principle voicing complete juridical equality of states, and an inter-American doctrine relevant to recognition. These ideas, among others, were to form topics for discussion by the Rio Commission of Jurists.

Of the twenty-one American republics, all but Guatemala, Honduras, Nicaragua, and El Salvador were represented on the Commission.[1] The Commission was a body of experts in international law, public and private, not a conference of diplomats vested with political powers. Their task was not to make law by legislation, but to state, in the form of articles, principles of international law and the conflict of laws, and to recommend them to the favorable consideration of the Sixth Conference of the American States which

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[1] Foreign Relations, 1927, I, 371. Jesse S. Reeves and James Brown Scott were appointed as delegates to the Commission. See Bemis, op. cit., 244.

was to meet in Habana, January 16, 1928.[2]

The question of recognition was considered by the jurists in their discussion of Project II: States; Existence, Equality, Recognition. This project embodied four important principles of international law: (1) the legal equality of states; (2) the duty of non-intervention; (3) the doctrine of unconditional recognition of new states; and (4) the elimination of the distinction between de jure and de facto governments fully in possession and exercising the will of the state.[3]

The article on recognition was prepared by a sub-commission headed by Dr. Epitacio Pessôa of Brazil.[4] Disagreement came on an original draft proposal which said that all de jure governments had a right to recognition, but that de facto governments could be recognized if they had fulfilled certain conditions. This raised the question of legitimacy and made a distinction between de jure and de facto governments. Most of the delegates opposed this distinction for

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[2] Foreign Relations, 1927, I, 379.

[3] Ibid., 383.

[4] International Commission of Jurists, Public International Law, Projects to be Submitted for the Consideration of the Sixth International Conference of American States (Washington: Government Printing Office, 1927), II, 35, 114-115, 136-150.

it left the way open for judgment by a foreign government as to the constitutionality of a regime.[5] The United States delegation attempted to defend this position, but finally agreed to drop any reference to de facto and de jure governments in the resolution. The draft submitted to the Sixth International Conference of American States read:

> A Government is to be recognized whenever it fulfills the following conditions:
>
> 1. Effective authority with probability of stability and consolidation, the orders of which, particularly as regards taxes and military services, are accepted by the inhabitants.
>
> 2. Capacity to discharge preexisting international obligations, to contract others, and to respect the principles established by international law.[6]

The Solicitor General of the United States Department of State, after having reviewed the article, stressed the necessity of willingness, as well as capacity, to discharge pre-existing international obligations as a criterion for the recognition of governments.[7] This, of course, was consistent with the policy of recognition then adhered to by the United States. How this willingness was to be

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5 Neumann, op. cit., 2.

6 American Journal of International Law, XXII, (Special Supplement, 1928), 240-241.

7 Neumann, op. cit., 27. See also, Bemis, op. cit., 249.

objectively determined by a foreign state he did not say, but in practice this suggestion would have been to use recognition as a bargaining weapon.

Article five of Project II stated the declaratory position in reference to recognition theory.[8]

> The political existence of the state is independent of its recognition by 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 adopt whatever organization it considers proper to legislate concerning its own interests, to administer its own services, and to determine the jurisdiction and competency of its tribunals.[9]

Article eight, in reference to new states, stated that "Recognition is unconditional and irrevocable." This was in accord with public international law doctrine, yet it was questioned by the Solicitor for the Department of State on the basis of its rigidity.[10]

Perhaps the most significant aspect of the Commission's work was that it did more than simply attempt codification of international law. It attempted legislation. This was perhaps partly due to the fact that much of the

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[8] Supra, pp. 3-4.

[9] American Journal of International Law, XXII (Special Supplement, 1928), 240-241.

[10] Ibid., 240-241.

preparatory work was done by James Brown Scott, Alejandro Alvarez, Luis Anderson, Elihu Root, and Antonio Sánchez de Bustamante, all of whom were interested in American international law in opposition to old world public international law.[11] Dr. Jesse Reeves, on the other hand, was the more conservative element of the United States delegation, and perhaps had a greater influence on later decisions concerning the recommendations of the Commission than did Scott. Reeves wrote, prior to the meeting of the Commission:

> Codification is clear, systematic, and authorative statement of existing law. It is not expected, therefore, that the delegates of the United States on the Commission should favor the drafting of international legislation embodying material changes in the existing legal rights and duties of nations of the western hemisphere.[12]

Dr. Reeves statement was incorporated in the Department of State instructions to delegates to the Commission. These instructions substantially weakened chances for the Commission to formulate any typically American International Law.[13]

Twelve projects were agreed upon by the Rio Commission for submittal to the Sixth International Conference of

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[11] Bemis, op. cit., 245.

[12] Foreign Relations, 1927, I, 365-366.

[13] Ibid.

American States.[14] Contrary to United States policy, several of them contained articles that were of a controversial nature.[15]

Ex-Secretary of State Charles Evans Hughes was appointed to head the United States delegation to the Sixth Conference that opened at Habana on January 16, 1928.[16] Before leaving for the Conference, Hughes reviewed the Solicitor's memorandum on the Rio Projects. He realized the force of the objections and their significance for the Latin American policy of the United States. As a result,

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[14] Bemis, op. cit., 248n. The twelve projects were: (1) Fundamental basis of international law; (2) States: Their existence, equality and recognition; (3) Status of foreigners; (4) Treaties; (5) Exchange of publications; (6) Exchange of professors and scholars; (7) Diplomats; (8) Consuls; (9) Maritime neutrality; (10) Asylum; (11) Obligations of states in the event of civil war; (12) Peaceful solution of international conflicts.

[15] Foreign Relations, 1928, I, 534. The instructions of the delegates to the Sixth Conference included this statement as to past conferences: "The programs of the various conferences, which dealt primarily with political commercial and social matters included subjects concerning which an element of controversy was notably absent. Only those topics were inserted about which the American States held similar opinions and where a complete accord might be looked for through a friendly and frank exchange of views." The United States had managed to impose this policy on the rest of the hemisphere since 1889.

[16] Ibid., I, 534. The rest of the United States Delegation was: Noble Brandon Judah, Henry P. Fletcher, Oscar W. Underwood, Dwight W. Morrow, Morgan J. O'Brien, James Brown Scott, Ray Lyman Wilbur, and Leo S. Rowe.

he determined to oppose the two most important conventions on codification of American international law, the one on "Fundamental Basis of International Law," and that on "States: Existence, Equality, and Recognition."[17] The instructions issued by the Secretary of State also stated opposition to items that were controversial in the light of United States policy and theory. The instructions said in part:

> It is believed that in this conference the most fruitful results will be obtained if discussion is confined to those aspects of the various topics which are of interest to all the Republics. In this connection, you will bear in mind that the present conference has not been called to sit in judgment on the conduct of any nation, or to attempt to redress alleged wrongs.[18]

The weight of the United States objection to proposed changes in international law as submitted by the Rio jurists was enough to prevent action and to enforce the postponement of a decision on the code until the next conference.

In the years immediately following the Habana Conference, the United States had begun to abandon the imperialistic policies that had characterized its relations with the Latin American states since the Spanish-American War. The State Department was less inclined to champion the cause

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17 Bemis, op. cit., 251; Neumann, op. cit., 27.

18 Foreign Relations, 1928, I, 534.

of citizens with grievances against Latin American countries. There was also a gradual relaxation of political control over the Caribbean republics. President Wilson's innovation, which refused to recognize Latin American governments that had come into power by revolutionary means, was abandoned in favor of the policy established by the United States just before the turn of the century.[19] The Reuben Clark memorandum, published by the State Department as policy in 1930, divorced the Monroe Doctrine from the Roosevelt corollary of preventive intervention.[20] What was begun in the Hoover Administration was continued and speeded up with the pronouncement by President Roosevelt of the Good Neighbor Policy.[21] Much remained to be done, however, when the Seventh International Conference of American States opened at Montevideo in 1933. The United States still denied the right of revolution to the five Central American republics

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19 Moore, op. cit., I, 148. This was the policy of recognition based upon capacity of a new government to fulfill its international obligations.

20 J. Reuben Clark, The Monroe Doctrine (Department of State Publication No. 37. Washington: Government Printing Office, 1930), passim.

21 Franklin D. Roosevelt, first inaugural address, March 4, 1933, in Congressional Record, 77.1, 73rd Cong., Spec. Sess., 1933 (Washington: Government Printing Office, 1933), 5.

by non-recognition of revolutionary governments.[22] The United States maintained financial protectorates over Haiti, the Dominican Republic, and Nicaragua, and the Platt Amendment still restricted the complete political independence of Cuba. Enough had already been done, however, to give some substance to the promises implied by the Good Neighbor Policy. The result was that there was more real harmony at Montevideo than at any conference since 1890.[23]

The most important and controversial aspect of recognition, that of recognition of de facto governments, was dropped by the Seventh Conference. It had been included in

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[22] Foreign Relations, 1933, IV, 133. In 1931, the Central American Treaty of 1923 was applied to the Martínez regime in El Salvador. "... the Martínez regime came into power in El Salvador as the result of a revolution and that there can be no reasonable doubt that General Martínez is barred from recognition under the terms of the 1923 treaty." See also, Bemis, op. cit., 282-283. The recognition of the Salvadorean government in January, 1934, marked the abandonment of this policy (Wilsonian constitutional legitimacy and the Tobar Doctrine). Although the United States abandoned President Wilson's constitutional legitimacy, a vestige of this policy remained incorporated in the Inter-American Treaty of 1928 on the Duties and Rights of States in the Event of Civil Strife. Article 1, paragraph 4, obliges the parties "to forbid the traffic in arms and war material, except when intended for the government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied."

[23] John P. Humphrey, The Inter-American System; a Canadian View (Toronto: The Macmillan Co. of Canada, 1942), 117.

the convention on the Duties and Rights of states submitted by the Inter-American Jurists.[24] The text of this convention followed very closely the convention on "States; Existence, Equality, and Recognition," that had been submitted to the Habana Conference in 1928. One exception was that the non-intervention article was omitted. In the discussions and decisions of the Seventh Conference, the resolution concerning recognition of new governments was dropped entirely and re-placed by a non-intervention article.[25] The 1927 recognition draft was never re-considered. The question of the doctrine of non-intervention completely overshadowed that of recognition, though acceptance of non-intervention as a principle of American international law had a profound influence on recognition theory. The doctrine of non-intervention was expressed in two different documents signed by the Seventh Conference. One was the Argentine Anti-War Pact,[26] the other the convention on Duties and Rights of States.[27] Adherence to the doctrine had the effect of doing

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[24] Neumann, op. cit., 27.

[25] Foreign Relations, 1933, IV, 214-218.

[26] For text see, Department of State, Anti-War, Non-Aggression and Conciliation (Treaty Series No. 906. Washington: Government Printing Office, 1936), passim.

[27] For text see, Carnegie Endowment for International Peace, The International Conferences of American States (First Supplement, 1933-1940. Washington: Carnegie Endowment), 121-123.

away with the legitimist-monarchial interventionism of the Holy Alliance and the legitimist-democratic interventionism of the Tobar Doctrine.[28] Hence, indirectly, recognition doctrine that used recognition as a method of intervening in the internal or external affairs of a foreign state was contrary to a doctrine of non-intervention.

Other articles referring to recognition, included in the Convention on the Duties and Rights of States, were almost identical with those submitted to the Sixth Conference. They included: a statement of the declaratory position of recognition in opposition to the constitutive position in respect to new states (article 3); that recognition of new states is unconditional and irrevocable (article 6); and that recognition could be either express or tacit (article 7).[29] None of these stated any new idea nor could they be considered as typically American in nature or origin. What was accomplished was a clear statement of international law in articles of a convention signed by the participating states. Only three nations included reservations to the Convention on Duties and Rights of States.

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[28] Second Annual Report of the Emergency Committee for Political Defense (Montevideo: Committee for Political Defense, 1944), 88-89.

[29] Foreign Relations, 1933, IV, 214-218.

None of the reservations were in reference to the recognition articles.[30]

It was not until 1936-1937 that an important problem of recognition again developed in Inter-American relations. This arose in connection with the mediation of the Chaco dispute between Paraguay and Bolivia.[31] As a result of the mediation, two protocols were signed preparing the way for peaceful settlement. Shortly thereafter, revolutions broke out in both countries bringing new governments to power. Neither of the new governments was favorably inclined to adhere to the protocols signed by the previous governments. At this point, the mediating powers took collective action. They informed the new heads of state in Paraguay and Bolivia that recognition would be collectively withheld until assurances were given that the protocols would be honored. Under this pressure, both governments in question accepted the protocols and were recognized.[32]

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[30] The United States reservation was made in reference to non-intervention (Article 8). Reservations made by Brazil and Peru were in reference to Article 11, which dealt with non-recognition of territorial acquisition made by force. For texts of reservations, see, Foreign Relations, 1933, IV, 217-218.

[31] The mediating powers were Argentina, Brazil, Chile, Peru, Uruguay and the United States.

[32] The Bolivian junta of Colonel Toro was jointly recognized May 30, 1936, and the Colonel Franco government of Paraguay March 14, 1936. See, Neumann, op. cit., 33n.

In 1937, revolutions again brought new governments to power in Paraguay and Bolivia. The same action was taken by the mediating states with the same results.[33] The importance of these actions was that a precedent was established for taking collective action and ignoring the usual prerequisites in the recognition of new governments. The action was also in violation of the non-intervention article approved by the 1933 American Conference.

The growing tension in world affairs in 1936 prompted President Roosevelt to call a special conference of American States. World War II was in the making, and both the United States and the Latin American states wanted to stay out of the coming struggle. The special Inter-American Conferences for the Maintenance of Peace met in Buenos Aires in 1936. Though recognition did not come up directly, the Additional Protocol on Non-intervention strengthened the doctrine of non-intervention, which indirectly affected recognition in the hemisphere.[34] The protocol of 1936 was accepted by the

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33 Neumann, op. cit., 33. The Colonel Busch government in Bolivia was recognized on July 17, 1937, and the Paiva regime in Paraguay on August 27, 1937. For brief discussions of historical events in Bolivia relevant to these revolutions, see, Williams, op. cit., 597-598; in respect to the changes in Paraguay, 681-682.

34 For text of the protocol, see, Carnegie Endowment for International Peace, op. cit., 191-192.

United States without reservation, which thus made non-intervention a doctrine of continental law and at the same time, by implication, prohibited a non-recognition policy for an American state.

The Conference, in deliberating upon the consequences of a war in Europe on the American republics, drafted plans for meetings of consultation by the Foreign Ministers of American states in the event of emergency.[35] Consultation, which was to play such an important part in hemispheric defense during World War II, also was to play a role in recognition policy. The consultation formula was re-stated and strengthened at the Lima Conference in 1938 in Article 4 of the Declaration of Lima.[36]

In 1943, recognition by consultation was made a formal procedure in Inter-American relations. The new recognition program, based on an ideological prerequisite, was sponsored by the Emergency Consultative Committee for

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[35] The Convention for the Maintenance, Preservation and Reestablishment of Peace, Article II, set up this consultation process. For text of this convention, see, Carnegie Endowment for International Peace, op. cit., 188-190.

[36] For text of the Declaration of Lima, see, Ibid., 308-309.

Political Defense.[37] The action taken by the Committee in respect to recognition resulted from a revolution in Bolivia. The new president, Major Gualberto Villarroel, was supported by the army and a nationalistic party, the Movimiento Nacionalista Revolucionario (MNR). Among the supporters of this party and of the revolution were Nazi sympathizers.[38] On December 24, 1943, the Committee issued a resolution on recognition policy for the Americas, recommending:

> ... to the American Governments which have declared war on the Axis powers or have broken relations with them, that for the duration of the present world conflict they do not proceed to the recognition of a new government instituted by force before consulting among themselves for the purpose of determining whether this government complies with the inter-American undertakings for the defense of the continent, nor before carrying out an exchange of information as to the circumstances which have determined the establishment of said government.[39]

Eleven of the nineteen republics, including the United States, accepted the consultation principle without written qualifications.[40] Some states saw a danger in such a program,

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[37] Laurence Duggan, The Americas (New York: Holt and Co., 1949), 93-94. This Committee, established by the Third Consultative Meeting of Foreign Ministers at Rio de Janeiro, 1942, was organized to combat subversive activities in the Americas by non-American nationals.

[38] Neumann, op. cit., 34.

[39] Department of State, Bulletin X (January 1, 1944), 20-21.

[40] Second Annual Report of the Emergency Committee on Political Defense, op. cit., 80-90. Unqualified acceptances were issued by Costa Rica, Cuba, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela.

pointing out that it was a form of intervention which violated the non-intervention doctrine established by earlier American conferences.[41] However, those in sympathy with the proposal, carried out the plan. During January, 1944, ten governments announced that they would not recognize the new Bolivian government.[42] A non-recognition policy such as this was not in line with general Latin American legal concepts, and only by pressure from the United States was such a plan agreed upon. Sumner Welles, Assistant Secretary of State, suggested this in an article in the Washington Post. He inferred that the program was largely United States sponsored and organized, rather than a multilateral development among the American republics.[43] In 1944, the United States changed its position in regard to Bolivia due to what it deemed to be friendly actions on the part of the Villarroel government. A United States investigator determined that Bolivia was not pro-Axis, and on the recommendation of the United States, the American republics recognized Villarroel

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41 Second Annual Report of the Emergency Committee on Political Defense, op. cit., 88-89. This position was taken by Uruguay in its written qualification to the Committee proposal.

42 Department of State, Bulletin X (January 1, 1934), 132.

43 Washington Post, July 31, 1946.

in June, 1944.[44] The following month, Bolivian elections brought a sweeping victory for the MNR party with the result that the pro-Axis leaders were returned to the cabinet. Like past experiments, a policy of non-recognition failed. The failure in the case of Bolivia did not end the attempt to keep governments friendly to the Allied cause in power. Consultative non-recognition was applied to Argentina during the last years of the War. New Argentine governments were refused recognition until such time as they would join the rest of the American states in action against the Axis.[45] There was little evidence that non-recognition accomplished this end. Neither experiment in collective non-intervention had the full cooperation of the American republics and neither succeeded in changing the ideological setting of the governments against which the program had been directed.

In 1946, Secretary of State Byrnes announced that the United States would return to its traditional recognition policy, but that such action was not to be interpreted as implying approval of the politics of the governments being recognized.[46] This ended another attempt on the part of the

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44 Neumann, op. cit., 37.

45 Williams, op. cit., 749-750.

46 Ibid., 41.

United States to implement a non-recognition or legitimist recognition policy in the western hemisphere.

When the special Conference on Problems of War and Peace met at Mexico City in 1945, it was faced with two distinct theories. On the one hand there were those who believed that the Montevideo Resolution (recognition by consultation) could be made the basis of a broader policy looking to the denial of recognition to anti-democratic governments in general. This was to be based on the ground that such governments, by the fact that they denied to their people the fundamental rights of man, constituted a menace to the peace of the community. In this spirit the delegation of Guatemala introduced a project recommending to the American governments that they refrain from granting recognition to

> ... anti-democratic regimes which, in the future, may establish themselves in any of the countries of the continent; and in particular those regimes which may result from a coup d'etat against legitimately established governments of a democratic character.

The project further recommended, as a rule for characterizing such regimes, determination of the extent to which the popular will in the particular country may have contributed to their establishment.[47]

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47 Pan American Union, Handbook for Delegates to the Ninth International Conference of American States (Washington: Pan American Union, 1948), 89.

On the other hand, the states that had issued written qualifications to the consultation resolution in 1943, again made it clear that the principle of non-intervention was an issue and that any encroachment upon it had to be resisted in the name of national sovereignty and independence. This point of view was expressed in a resolution introduced to the Conference by the delegation of Ecuador, which reverted to the Estrada Doctrine.[48] The Ecuadorian proposal asserted in its preamble that the right to change governments was a domestic problem, and that any effort on the part of foreign states to exercise moral coercion in such cases was a violation of the principle of non-intervention. The statement proposed the complete abolition of the recognition procedure in regard to de facto governments. It further advocated that the establishment of a de facto government was not to affect the normality or the continuity of pre-existing diplomatic relations between the state in which the change occurred and other states.[49]

Both projects were referred by the Conference to the Inter-American Juridical Committee for study and report.[50]

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[48] Neumann, op. cit., 30.

[49] For text of the project, see Pan American Union, op. cit., 87.

[50] See Articles XXXVIII and XXXIX of the Conference on Problems of War and Peace.

The committee, after examining the Quatemalan project, concluded that it would be impossible for the American governments, either individually or collectively, to attempt to determine what was or was not an anti-democratic regime without violating the principle of non-intervention.[51] Divergent opinions were expressed by members of the Juridical Committee with respect to the Ecuadorean project. They brought out that the project proposed abolition of the practice of recognizing de facto governments, but no alternative procedure was suggested.

The Commission, in regard to continuity of diplomatic relations, agreed that no indication was given as to the basis upon which a decision was to be reached whether a particular government was or was not a de facto government. Also, the question was raised as to which of two competing governments was to be the one with which the continuity of relations was to be maintained. A majority of the Committee agreed that it was not possible to abolish the procedure of recognition, for recognition was found to be a practical necessity of international relations. When, however, the Committee undertook to formulate a constructive rule for inclusion in the proposed "Declaration of the

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[51] Organization of American States, Anuario Jurídico Interamericano, 1948 (Washington: Pan American Union, 1949), 31.

Rights and Duties of States," no agreement could be reached. The final division of opinion was between two formulas, one basing recognition upon the fact that the new government was exercising effective authority over the territory of the state, and the other basing recognition upon the will of the people, freely expressed.[52] The failure of the Juridical Committee to submit a report on the Ecuadorean resolution left the project for the Conference at Bogotá to solve.

During the period between the Mexico City Conference and the Conference at Bogotá, there were several attempts to invoke a policy of collective non-recognition in the hemisphere. This was generally accomplished by consultation by means of correspondence among the American states. In November, 1945, the Foreign Minister of Uruguay issued a note proposing that the American republics adopt a principle of collective intervention against nations guilty of violation of international obligations, and of violating "the elementary rights of man and of citizens."[53] Although the United States immediately approved the proposal, it received little support from the other American states. A

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[52] Pan American Union, Acts of the Inter-American Commission of Jurists (Washington: Pan American Union, 1946).

[53] Arthur P. Whitaker, "Inter-American Intervention," Current History, X (March, 1946), 206-211.

similar proposal was advanced again by Uruguay in March, 1947, in reference to revolutions in Paraguay. Again the proposal was dropped for lack of support.[54] In May, 1947, a non-recognition movement was initiated against a new regime in Nicaragua. Only three Latin American states refused recognition to the new government, Guatemala, Panama, and Chile. The United States Department of State announced that the United States would not enter into relations with Nicaragua, pending further developments.[55]

As in the past, non-recognition by collective action had little success in solving political problems in the hemisphere. In most cases, the process of collective non-recognition, like unilateral non-recognition, created more evils than it corrected.

The chartering of the United Nations Organization at San Francisco in 1945 had a profound effect on the American Regional System. The Latin American states, reversing their position from their stand on the League of Nations,[56] wanted

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54 Neumann, op. cit., 42.

55 Ibid., 43.

56 Sixteen of the Latin American states had been members of the League. Generally, they had favored League action to action by the regional system, caused perhaps by the interventionist policies of the United States.

an inter-American peace system so effective that there would be no need for the proposed world organization to take a hand in political disputes of the hemisphere. In order that such a system could be achieved, the Latin American states insisted, at San Francisco, that cognizance be taken of regional agreements by the world organization. They succeeded in having the theory of self-defense extended to regional systems. This was stated in Article 51 of the United Nations Charter.[57] Following the San Francisco Conference, a move was started in the western hemisphere for the creation of a truly regional organization, formally constituted.

Constructive work was done in this direction at the Inter-American Conference for the Maintenance of Continental Peace and Security, Rio de Janeiro, August, 1947. The Conference produced the Inter-American Treaty of Reciprocal Assistance, providing for collective self-defense on the part of American states in event of an armed attack against any one of them.[58] This was the first such agreement under Article 51 of the United Nations Charter.

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57 James W. Gantenbein, The Evolution of Our Latin-American Policy: A Documentary Record (New York: Columbia University Press, 1950), 830.

58 For text of the treaty, see ibid., 822-828.

Recognition played a minor role at the Conference. The Ecuadorean proposal on continuity of relations and abolition of de facto recognition of new governments was referred to the Juridical Committee for further study. In the Treaty of Reciprocal Assistance, withdrawal of diplomatic representatives, a form of non-recognition, was authorized as a sanction against a state that threatened the peace and security of the hemisphere.[59]

The special Conference at Mexico City in 1945 had consolidated defensive measures of the American states and had made plans in anticipation of the San Francisco Conference that established the United Nations Organization. At Rio de Janeiro in 1947, the collective security provisions adopted at Mexico City were given permanent form in the Treaty of Reciprocal Assistance. Both conferences declined to act upon the question of recognition, preferring to let the Inter-American Jurists work out a plan. The conferences at Mexico City and Rio had proclaimed new principles of continental security, but it was still necessary to give structural unity to the whole Inter-American system and to supplement the treaty of collective security with agreements

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[59] Gantenbein, op. cit., 825. See Article VIII of the Treaty of Reciprocal Assistance.

looking to the pacific settlement of disputes and to the development of economic and social cooperation.[60] This was to be the task of the Ninth Inter-American Conference.

All of the twenty-one American republics were represented at the Ninth International Conference of American States that convened at Bogotá, March 30, 1948. A question had arisen as to whether the government of Nicaragua should be invited, in view of the fact that it had not been recognized by a number of American states.[61] It was the decision of the governing board of the Pan American Union that Colombia, as the host nation, should "convoke" the conference, rather than issue invitations. This allowed Nicaragua to attend regardless of its non-recognition. The importance of the conference was indicated by the presence of ten Foreign Ministers, including the Secretary of State of the United States. At the same time, eight members of the governing board of the Pan American Union were among the delegations of their respective countries.

The failure of the Juridical Committee to submit a report on the Ecuadorean project, left it to the Conference

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60 Charles Fenwick, "The Ninth International Conference of American States," American Journal of International Law, XLII (July, 1948), 553-567.

61 Supra, p. 61.

of Bogotá to find a solution to the problem of recognition of de facto governments. The project at Bogotá was assigned to a sub-committee on public international law for study and recommendations. The same conflicting points of view appeared in the sub-committee which had prevented an agreement among the members of the Juridical Committee at Rio. There were those who favored the elimination of the procedure of recognition, whether as expressed in the Estrada Doctrine or in the Ecuadorean project. On the other hand, there were others who favored attaching more explicit provisions to the procedure of recognition.[62] The delegation of Uruguay urged that in the event of grave violations of fundamental human rights by an American government, the other governments should consult in order to decide whether recognition ought to be withheld from such a government.[63] As between these extreme positions the United States favored a general statement consisting of two parts: (1) that continuity of diplomatic relations among the American republics

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[62] Informe sobre los Resultados de la Conferencia (Presentado al Consejo de la Organización de la Estados Americanos por el Secretario General en la Sesión del 3 de Noviembre de 1948: Serie sobre Congresos y Conferencias, LV: Pan American Union, 1948), 81.

[63] Diario, Ninth International Conference of American States (Bogotá: Pan American Union, 1948), 769.

was desirable, and (2) that the establishment or maintenance of diplomatic relations with a given government did not involve any judgment upon the internal policies of that government.[64]

When it became clear that it was impossible to reconcile the opposing points of view, amendments were made to the United States proposal. One, presented by the Mexican delegation, was directed against conditions attached to the procedure by which the recognizing state might seek to obtain advantages not justified by international law. This amendment was accepted. Thus, a three point declaration was adopted by the conference as resolution XXXV, which stated:

> 1. That continuity of diplomatic relations among the American States is to be desired;
>
> 2. That the right of maintaining, suspending, or renewing diplomatic relations with another government shall not be exercised as a means of individually obtaining unjustified advantages under international law;
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> 3. That the establishment or maintenance of diplomatic relations with a government does not imply an opinion on the domestic policy of that government.[65]

The Mexican amendment, which was included as Point Two of the resolution, was looked upon as a distinct

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[64] Diario, Ninth International Conference, 769.

[65] Department of State Press Release, May 21, 1948 (No. 400), final act of Bogotá, 40.

clarification of the existing law.[66] The matter of recognition of de facto governments was referred to the new Inter-American Council of Jurists.[67]

The Guatemalan proposal that had been presented to the Mexico City conference was again submitted at Bogotá.[68] Before the conference could act upon the matter, the city of Bogotá experienced a series of riots which led to the introduction of a resolution directed against the activities of international Communism. This resolution replaced the Guatemalan proposal on recognition.[69]

The Charter for the Organization of American States adopted by the Bogotá conference formulated measures relative to the recognition of new states. Article 9 of Chapter III; "Fundamental Rights and Duties of States," stated the declaratory position in recognition of new states. It was the same statement that had been included in previous conventions approved by earlier conferences.[70]

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66 Organization of American States, op. cit., 34.

67 Department of State Press Release, May 21, 1948 (No. 400), final act of Bogotá, 40.

68 Supra, p. 57.

69 For text, see Resolution XXXII of the final act, Department of State Press Release, May 21, 1948 (No. 400).

70 Supra, p. 43.

The Bogotá Conference accomplished more in the way of concrete proposals on recognition than had any previous meeting. Still, no convention had established any rules that were to have the force of international law. What was done in the case of recognition of de facto governments (Resolution XXXV) was in the form of a declaration and expressed a desire, rather than a principle of American law. Following the Bogotá Conference, recognition again became a problem for the Inter-American Jurists. Since 1945 they had been charged with formulating a draft proposal on the recognition of de facto governments. Due to conflicting ideas, they were unable to produce such a draft for the Bogotá Conference. It was now the task of the Council of Jurists to produce such a project for consideration by the Tenth Conference, which was to meet at Caracas in 1954. On September 27, 1949, a report was submitted to the Council by a special committee, surveying the background of the problem and the issues involved. The report was accompanied by a draft convention on "Recognition of De Facto Governments."[71]

Uruguay, Chile, Ecuador, Cuba and Argentina had also

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[71] Organization of American States, Anuario Jurídico Interamericano, 1950-1951 (Washington: Pan American Union, 1953), 92. For text see, Pan American Union, Report and Draft Convention on Recognition of De Facto Governments (Washington: Pan American Union, 1950), passim.

submitted drafts on recognition of de facto governments to the Council. The general similarity of these drafts appeared to indicate that an agreement might be reached substantially in line with the draft of the Juridical Committee. However, the more the subject was debated, the more it appeared that the differences between the delegations exceeded the points upon which they were in agreement.[72]

The Juridical Committee, in its report, took the position that a de facto government had a right to be recognized, giving rise to an obligation on the part of other governments to recognize it. In opposition was the theory that recognition was a purely optional procedure dependent upon the separate judgment of each individual state.[73] The United States delegation took the position that the rules governing recognition were not juridical in nature. Other delegations asserted, with equal insistence, the juridical nature of the rules governing recognition, although conceding that each state had the right to decide for itself whether the conditions under which recognition should be given had been met in the particular case.

Conflicts also arose on the question of what were

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72 Organization of American States, Anuario Jurídico Interamericano, 1950-1951, 93.

73 Loc. cit.

the conditions of recognition in regard to de facto governments. It was agreed that effective authority over the national territory was one of these conditions, but no agreement could be reached as to the manner and circumstances under which that authority should be exercised. Some of the delegates believed that the acquiescence of the people should be manifested in an adequate manner; others held that any attempt to decide this question would involve a violation of the principle of non-intervention. The delegates who were opposed to any attempt to regulate the procedure of recognition voted consistently against any and all proposals to secure agreement upon the conditions under which recognition should be granted. Those who favored regulation of the procedure were divided in respect to the form in which the conditions should be stated.[74]

In view of the divergent and conflicting opinions expressed, it was finally proposed that the Committee should admit their inability to prepare a satisfactory project and should refer it to the next meeting of the Council of Jurists.[75]

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[74] Organization of American States, Anuario Jurídico Interamericano, 1950-1951, 94.

[75] Organization of American States, Final Act of the First Meeting of the Inter-American Council of Jurists (Washington: Pan American Union, 1950), 23.

The second meeting of the Council of Jurists also failed to reach an agreement. At the session in 1953, the same opposing opinions that had plagued the first meeting were in evidence. The Council expressed an almost unanimous opinion to the effect that it was premature to conclude a convention on the recognition of foreign governments.[76] Their recommendations to the Tenth International Conference of American States were as follows:

> 1. To reaffirm its adherence to the principles proclaimed in Resolution of XXXV of the Ninth International Conference of American States regarding the exercise of the right of legation.
>
> 2. To transmit to the Tenth Inter-American conference, by way of illustration and information, the drafts and documents regarding this subject which were considered at the first meeting of the Inter-American Council of Jurists, together with a statement of the antecedents, describing the discussions that took place both at that meeting and the present one.[77]

In short, it was to be left up to the Tenth Inter-American Conference to decide upon a formula for the recognition of *de facto* governments without the aid of a draft convention

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[76] Organization of American States, *Final Act of the Second Meeting of the Inter-American Council of Jurists*. (Washington: Pan American Union, 1953), 10. See also: Charles Fenwick, "The Second Meeting of the Inter-American Council of Jurists," *American Journal of International Law*, LXII (October, 1953), 698-701.

[77] Organization of American States, *Second Meeting of the Council of Jurists*, 10.

on the subject. This same situation occurred at Bogotá in 1948.

When the Tenth Inter-American Conference opened at Caracas on March 1, 1954, there was no definite proposal for action on the question of de facto recognition of governments. As the Conference progressed, other items of regional importance relegated the matter of recognition into the background. Finally, it was postponed altogether, and the problem was again placed in the hands of the Council of Jurists. At the time of writing, there had been no further discussion of the topic.

CONCLUSIONS

The survey of official statements and documents in this study evidenced several important trends. The United States, though voicing the Jeffersonian principle, developed a much more conservative policy of recognition. The United States' policy approached a legitimist idea, for it looked beyond the de facto control for a reason to recognize a new state or a new government.[1] In many cases, relative to Latin American relations, the United States policy was based upon political expediency rather than upon any legal or set theory. This fact aided in fostering distrust of the United States intentions among the Latin American states. Latin America, on the other hand, retained a strong belief

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[1] An example of this may be found in the cases of United States refusal to recognize the Russian government in 1917, and the Communist government in China following World War II. In either case, the application of Jeffersonian de facto principles would probably have resulted in recognition. Non-recognition in these cases was based upon political reasoning. In both cases, the United States determined that the legitimate government was other than the one who held de facto control. Non-recognition was political in that refusal to recognize was based upon the new form of government and the new government's position in regard to United States institutions. This was not illegal according to world public international law, as the act of recognition was a matter for each individual state to determine. However, the Jeffersonian principle was not being employed by the United States, though administrations involved claimed that the United States was practicing these principles.

in the principles of inviolable sovereignty, non-intervention, and juridical equality of states. All of these principles were violated by any legitimist theory of recognition, or by any unilateral or collective action that made recognition dependent upon constitutional or ideological prerequisites.

The most difficult problem that faced the American states in formulating a hemispheric doctrine was in respect to the recognition of de facto governments. Other types of recognition caused little trouble for the American jurists. When the question of recognition of de facto governments became an important issue and was brought before the Inter-American conferences, two theories came into conflict. On the one hand, there was the United States policy that looked for set conditions that would determine what was or was not a de facto government. On the other side, there was the insistence that any condition imposed upon recognition was in opposition to the doctrine of non-intervention. As was evidenced in the main body of this thesis, these two fundamental theories had not been resolved at the close of the Tenth Inter-American Conference in 1954.

There were several trends, however, that seemed to indicate that the problem was not a hopeless one. An element had been injected into the American Regional System

during World War II that could indirectly aid in leading to the formulation of a hemispheric doctrine of recognition of de facto governments. That element was a slowly growing regional consciousness. Such a feeling, though abstract and unstable, implied that at times restrictions would have to be placed on sovereignty for the good of the regional system. Restrictions on sovereignty necessarily meant some type of collective intervention. The fact that some Latin American states proposed plans for collective action, and that in some cases collective intervention was actually employed, was evidence of this feeling. The years following World War II saw a lessening of the consciousness. This was due to United States commitments in Europe and Asia, and the consequent neglect of the Latin American area. What the future would hold for a strong feeling of regional unity was not discernable from the evidence at hand.

Another important step in the formulation of regional international law, which would include the problem of recognition, was the creation of the Organization of American States and the permanent organs established by its charter. In reference to juridical matters, the Inter-American Council of Jurists was established as a body of experts to study and codify American international law. Necessarily, the jurists could only recommend their

findings for approval by the political conferences. The fact that it was a forum of experts, dealing with legal problems with a minimum of political influences, made the Council of Jurists an important sounding board for hemispheric opinions on international law. One of the major problems faced by the jurists was the separation of juridical elements from the political elements of recognition. It also was the most difficult to solve, for final decisions on a doctrine would have to be made by a political conference made up of diplomats rather than juridical experts.

One major point, not specifically in reference to recognition, but more generally to the development of the regional system as a whole, was emphasized. Progress was made by the American states in the formation of a regional system when the United States gave genuine cooperation in multilateral programs as a partner without attempting to impose policy. When the United States left hemispheric problems to the initiative and final decision by the smaller nations of the region, the greatest period of cooperation, friendship and accomplishment resulted.

At the time of writing, the recognition policy in the Americas remained fluid. The United States as well as the Latin American states moved under the influence of two conflicting forces. On the one side were the many commit-

ments to non-intervention and the respect for the integrity of national sovereignty. On the other side was the slowly growing regional consciousness that would restrict sovereignty in behalf of what the majority of states viewed as the general welfare of all.

ESSAY ON SOURCES

Two Bibliographical Guides were particularly valuable for this study. The Monthly Catalog of United States Government Publications listed State Department publications and also many of the Publications of the Pan American Union. Of equal importance, and specifically in reference to the documents of the Inter-American conferences, was Bibliografía de las Conferencias Interamericanas. This publication was a compilation listing the documents of the Conferences of American States since the first meeting in 1889. The lack of sources specifically on recognition limited the use of guides except in the case of background material and public international law theory.

In respect to documentary sources, several were outstanding. United States policy, prior to 1936, was available in Papers Relating to the Foreign Relations of the United States. This publication of the State Department also contained many of the documents of the Inter-American conferences, as well as pre-conference correspondence and post-conference developments. In addition, the Department of State published a number of pamphlets and books that dealt with the various Inter-American conferences. These, along with similar publications of the Pan American Union

and the Organization of American States, were the main source for developments within the hemisphere since 1928. Several good document collections were available. James W. Gantenbein, The Evolution of Our Latin American Policy, traced United States-Latin American relations from Latin American Independence to 1950. Its content is documentary or document excerpts; there is no synthesis. Of greater importance were two publications by the Carnegie Endowment for International Peace: The International Conferences of American States, 1889-1928, and the First Supplement to the same publication covering the period 1933-1940. Both these contained the final acts of the International Conferences of American States, and the final acts of the Special Conferences.

A vast number of books dealt with the Inter-American System, or with relations between the United States and Latin American states. Relatively few, however, were concerned with recognition policy or theory in the Americas. Only three discussed the topic at some length. Julius Goebel, The Recognition Policy of the United States, surveyed United States policy from Independence to 1915, and gave an excellent presentation of dynastic legitimacy theory. William Neumann, Recognition of Governments in the Americas, was the only work found that dealt specifically with the problem in the Americas. It was published in 1947, just prior to the Ninth

International Conference of American States. The yearbooks of the Inter-American Council of Jurists, Anuario Jurídico Interamericano, 1948, 1949, and 1950-1951, showed the latest ideas of American jurists in reference to recognition theory, and the status of the conflicts in theory in the Americas. The only synthesis found concerning the 1927 meeting of the Inter-American Commission of Jurists was in Samuel F. Bemis, The Latin-American Policy of the United States. This publication, along with John Humphrey, The Inter-American System, was valuable as a source for political events which were current with the various conferences up to 1942.

Very little has been published in English concerning the Tobar and Estrada Doctrines. Three Latin American publications were useful in this respect. La Opinión Universal Sobre la Doctrina Estrada, published in Mexico by the Instituto Americano de Derecho y Legislación Comparada, was by far the most important source for the Estrada Doctrine and its reception by the Latin American states. It was a collection of statements by American diplomats and newspaper comments from all parts of Latin America. The Tobar Doctrine was discussed in Carlos Arangua Rives, La Intervención: Doctrina de Monroe, Drago y Tobar. Isidoro

Ruíz Moreno, Lecciónes de Derecho Internacional Público, discussed both of these doctrines in reference to American international law.

A great deal of periodic literature was available on recognition theory. For the most part it dealt with public international law concepts, but some was devoted solely to American international law. The American Journal of International Law contained the most material. Besides articles, the Journal contained many documents relative to American international legal development. Several Law School publications, such as the Yale Law Journal and the Harvard Law Review, devoted some space to the recognition problem. However, for the most part, these dealt with domestic law.

Probably the most prolific writer on the question of recognition in the Americas was Charles G. Fenwick. He contributed to The American Journal of International Law, the Anuario Jurídico Interamericano, and had several books on international law.

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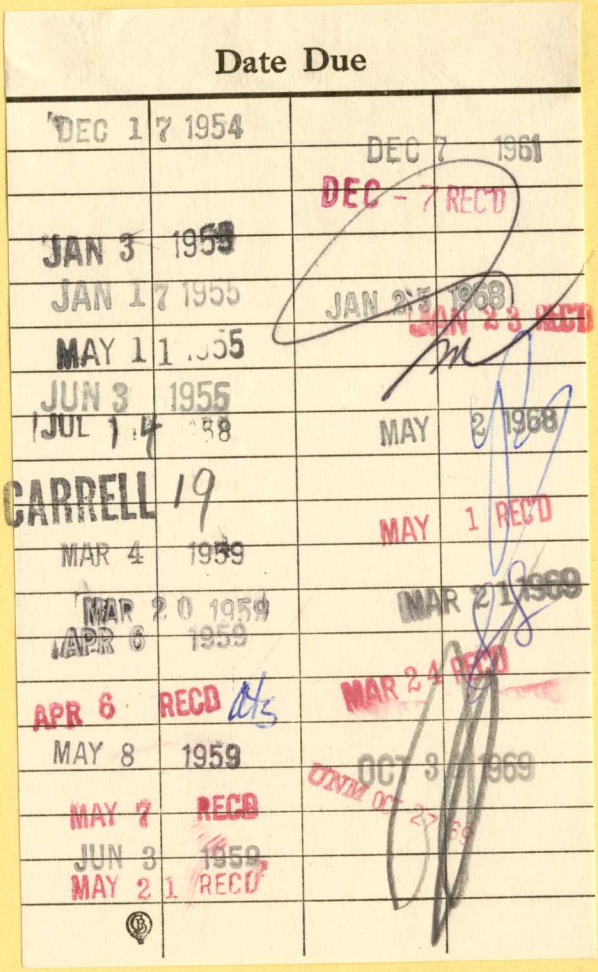

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