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A COMMENTARY

ON

THE DECLARATION

OF

THE RIGHTS OF NATIONS

ADOPTED BY

THE AMERICAN INSTITUTE

OF

INTERNATIONAL LAW

BY

FRANCISCO JOSE URRUTIA

FORMER MINISTER OF FOREIGN AFFAIRS IN COLOMBIA

WASHINGTON; D. C.

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"The small States of the world have a right to enjoy the same respect for their sovereignty and for their territorial integrity that great and powerful nations expect and insist upon."

"The world has a right to be free from every disturbance of its peace that has its origin in agresion and disregard of the rights of peoples and nations."

President Wilson's declaration in his address before the League to Enforce Peace—May 27, 1916.

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CALIFORNIA

The American Institute of International Law, at its first session, held in Washington on January 6, of this year, under the auspices of the Second Pan-American Scientific Congress, unanimously adopted the five following Articles to be known as The Declaration of the Rights of Nations:

Declaration of the Rights of Nations

"Whereas, the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, to which the Declaration of Independence of the United States adds the right to the pursuit of happiness, the right to legal equality, the right to property and the right to the enjoyment of the aforesaid rights, creating a duty on the part of the citizens or subjects of each nation to observe them; and

"Whereas, these fundamental rights, thus universally recognized, are familiar to the peoples of all civilized countries, and

"Whereas, these fundamental rights can be stated in terms of international law and can be applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the states forming the Society of Nations; and

"Whereas, these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations, the right of equality in law and before the law; the right to territory within defined boundaries and to exclusive jurisdiction therein; and the right to the observance of those fundamental rights;

"Therefore, the American Institute of International Law unanimously adopts at its first session, held in the city of Washington, in the United States of America, on the sixth day of January, 1916, in connection with and under the auspices of the Second Pan-American Scientific Congress, the following five articles, together with the commentary thereon, to be known as the Declaration of the Rights of Nations."

1.—Every Nation has the right to exist, to protect and conserve its existence, but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States.

2.—Every Nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the just rights of other States.

3.—Every Nation is in law and before law the equal of every other State composing the society of Nations, and all States have the right to claim, and according to the Declaration of Independence of the United States, to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them.

4.—Every Nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over this territory and all persons, whether native or foreign, found therein.

5.—Every Nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other Nations; for right and duty are correlative, and the right of one is the duty of all to observe.

Although the above Declarations has not yet been officially ratified by the American Republics, there is no doubt that it embodies their views. The American Institute of International Law is composed of one hundred and five members, among whom

are the highest authorities on international law of both Americas. The Declaration adopted by the Institute must unquestionably be looked upon as an authorized, solemn, and timely recognition of certain fundamental principles in the existence of Nations, which by the common acceptance of all are to be considered as "international laws."

The Declaration of the Rights of Nations adopted by the American Institute of International Law differs, by the practical aims in view, from similar Declarations, of mere academic importance, such as those of the time of the French Revolution with their metaphysical conceptions of nations and of international life. Viewed from this standpoint of practical and positive results which it is sought to attain, the Declaration of the Institute is of great importance. The object is to restore confidence in political declarations at a time when such declarations have fallen into discredit; it is to remove them from the speculative field of the routine life of nations and to surround them with effective guarantees. This was the aim and object of those who, in the various American republics, have labored diligently to organize the Institute; and these same aims and objects were asserted by the members in the recent sessions when the declarations was adopted.

The spirit of justice and of practical international progress of which the initial work of the Institute was the fruit, will logically bring the Institute to the consideration of the following questions:

The Rights of Nations having been declared and accepted, what remedies does the Institute agree upon and declare in the case of their violation? In what manner must these remedies be enforced in order that the violated rights may be restored?

The common acceptance of principles, and to an even greater extent, the common adoption of international laws, constitute a great moral progress; but it will not be effective until such principles and laws receive sanctions which guarantee them, and until there is a practical method of enforcing them, of preventing their violation, and of meting out punishment to those who transgress them.

In general it is not a knowledge of the Rights of Nations that is lacking in international life;—what is lacking is respect for the Rights of Nations. Few will be found to dispute the Rights of Nations adopted by the Institute, but there will be many who will ask:

If the American Institute of International Law seeks an immediate and practical result the re-establishment of the absolute reign of international law between the American Nations, and there be one or more matters, in which, in violation of the Rights declared by the Institute, moral and material rights have been subject to gross attack in the international life of America, will not the re-establishment of law demand that there be undertaken a prior and in-

itial work, that of bringing about the re-establishment of the rights previously violated?

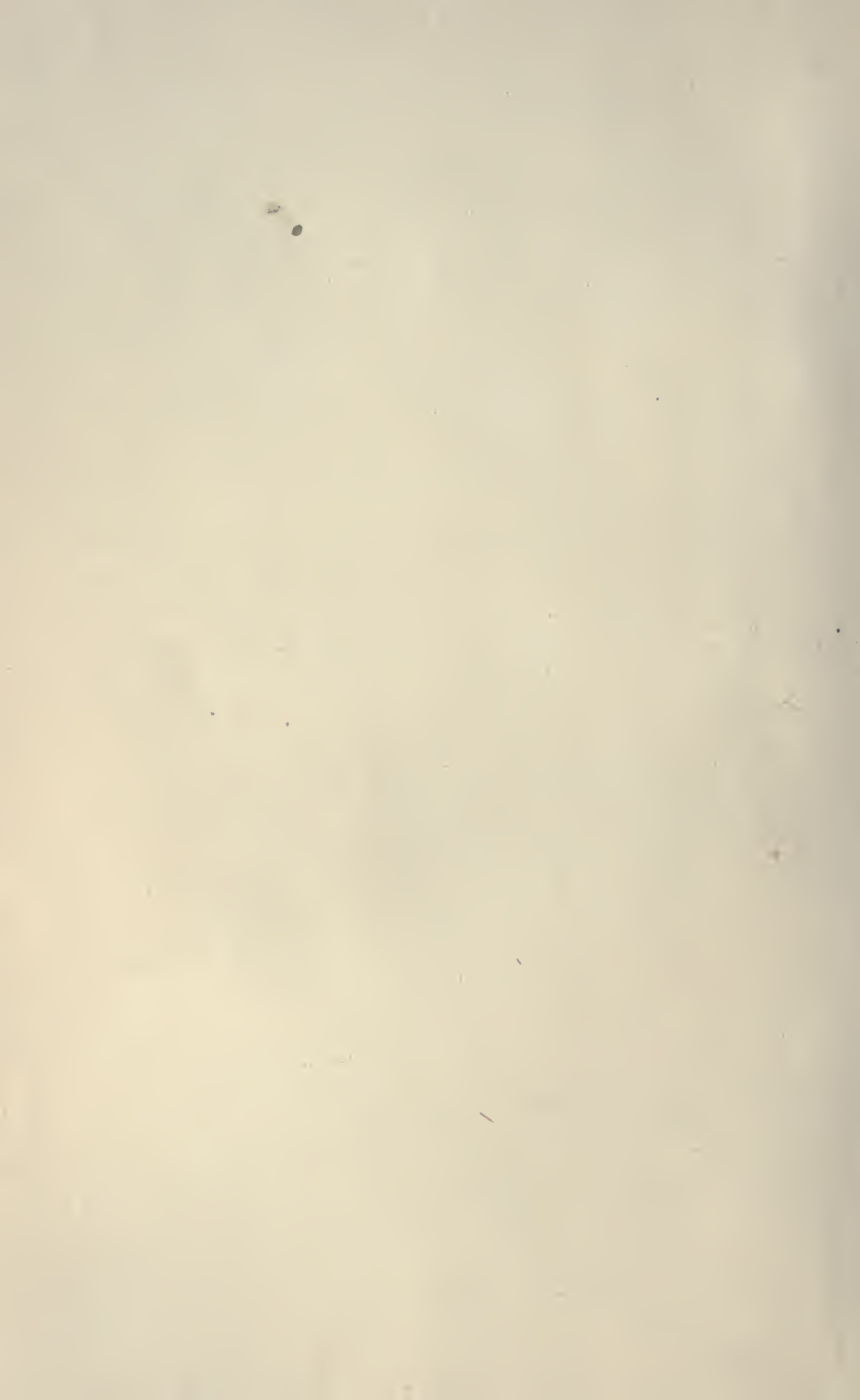
Is it possible to conceive that any one wishes to found the Empire of great principles of justice upon the moral bankruptcy of the same principles whose violation is not only sanctioned but obstinately maintained?

The moral law of nations is the same as that of individuals, and there cannot be varying standards of morals according to how circumstances appear to require them.

These considerations, which I now respectfully submit to the eminent men who compose the American Institute of International Law, were outlined by me in the New York World of January 26 of this year when I was asked, as one of the Colombian members of the Institute, for an expression of opinion on the declaration of the Rights of Nations. I explained that all of those rights had been violated and continued to be violated in the case of Colombia by the separation of Panama. Further I said that the faith of Colombians, as well as of many other Americans, in these Rights—so solemnly declared—would not be quickened until the violation of which we are the victims had been properly atoned for, until there was proof that really an era had dawned in America in which the supremacy of Law was an actual fact. Until then, when we hear harmonious utterances and admirable phrases such as adorned the sessions of the Second Pan-American Scientific Congress, we shall continue to say: "words, words, nothing but words!"

I shall endeavour here more fully to set forth what I so briefly touched upon in the New York World, referring, in my statement of the facts on which Colombia relies in her claims against the United States, to the official documents of the case and the very complete presentations already published, many of them by American citizens.

A STATEMENT OF FACTS



A STATEMENT OF FACTS

On November 3, 1903, a group of persons in the city of Panama, proclaimed the secession of the Colombian Department of that name, which had been an integral part of the Republic of Colombia ever since the latter, on freeing itself from Spain, had established itself as an independent and sovereign State.

This group which only represented a very small proportion of the inhabitants of the city of Panama, had secured in advance, by means assistance of the Washington, the co-operation and assistance of the military and naval forces of the United States, against any action by the Government of Colombia. This co-operation and assistance became effective both before and after the seditious outbreak of the 3rd. of November, as we shall see a little later.

A few hours after the proclamation of the independence of the alleged new State, and in violation of all international principles and practices, the Government of Washington recognized it, even before it was possible to know the wishes of the inhabitants of the remainder of the Department of Panamá. American warships, acting under orders despatched in advance, gathered in Colombian waters on the Atlantic and Pacific to prevent the exercise of Colombian sovereignty and the action of Colombian forces sent to repress the rebelion, which otherwise would have been crushed in a few hours. Following this the Gov-

ernment of the United States guaranteed to the rebel government of Panama the maintenance of its de-facto jurisdiction over that part of Colombian territory within the Department of Panama, and this guarantee was embodied in an agreement entered into with the rebels, made in form of a public Treaty, which has continued to be opposed to the exercise of Colombian sovereignty over the said territory. Thus, by the action of the Government of the United States of America, the Republic of Colombia was dismembered in violation, not only of the most elementary principles of international law, but further, of a public treaty—the Treaty of 1846—under the terms of which the United States itself guaranteed the territorial integrity of Colombia and the rights of sovereignty and property which Colombia had and possessed over this very territory, torn from it by the revolutionary outbreak of November 3, 1903.

We shall see below how the existence of this Treaty gives even greater gravity to the spoliation of which Colombia was victim.

The facts stated—to the consideration of which we shall return later—were of such gravity; the blow struck at the rights of Colombia was so great, its existence as a sovereign nation was so affected and the acts committed were so outrageous, even in the manner of their presentation to the world, that if Colombia had had sufficient material strength, it could not have done otherwise than declare war upon the United States, as any other nation would have done which did not find itself in such manifest conditions of military and naval inferiority. Such a war would have remained in the annals of contemporary international relations as the prototype of a perfectly legitimate war, justified alike by the magnitude of the wrong done and by its attending circumstances.

The material weakness of Colombia placed it in the very difficult position of being obliged to limit its action to protest which it was not able to back up by force.

In all the protests made to Washington since the seditious outbreak was known in 1903, and throughout the painful calvary which Colombia has borne for more than twelve years, my country has had the support of prominent men of the United States who have earned the enduring gratitude of Colombia. From the moment the deed was known in Washington, influential voices were lifted in loud condemnation of the spoliation. Protests were heard in Congress and in the press, from the platform and from the pulpit, and throughout the Universities.

These protests came from men of the standing of Senator Bacon of Georgia, a democrat, and even

from Republican Senators like Hoar of Massachussets and Cullom of Illinois, and all agreed that Colombia was entitled to reparation for the damage she had sustained.

From the speech of Senator Bacon in the Senate of the United States on January 29, 1904, as reported in the Congressional Record we take the following:

"I am content with anything which shall commit the Government of the United States in the face of the world, to the proposition that whatever there may be of difference between the United States and Colombia, the United States as a great overshadowing power which cannot be compelled by this feeble power to do anything, will voluntarily agree with it in the settlement of existing differences; and that if it cannot come to an agreement by peaceful negotiations it will not assert its great and resistless power, but that it will endeavour to have a determination of such differences and the claims growing out thereof by some impartial tribunal"

A short time before his death Senator Cullom published a solemn and deliberate statement of Senator Hoar's view upon the subject in such a way as to leave no reasonable doubt that they were also his own. In his "Fifty Years of Public Service", on Pages 212 and 213, Senator Cullom says.—

"Senator Hoar was disposed to be against the recognition of the Republic of Panama, and it has been intimated that he was of the opinion that the Roosevelt Administration had something to do with the bloodless revolution that resulted in the uniting with the United States of that part of Colombia

which now forms the Canal Zone... The President wanted the Senator to read a Message which he had already prepared, in reference to Colombia's action in rejecting the Treaty and the canal in general, which Message showed very clearly that the President had never contemplated the secession of Panama, and was considering different methods in order to obtain the right of way across the Itshmus from Colombia; fully expecting to deal only with the Colombian Government on the subject.

"The President was sitting around the table, first on one side of Senator Hoar and then on the other, talking in his usual vigorous fashion, trying to get the Senators's attention to the Message. Senator Hoar seemed adverse to reading it, but finally sat down and without seeming to pay any particular attention to what he was perusing he remained for a minute or two, then arose and said: "I hope I may never live to see the day when the interest of my country are placed above its honor·" He at once retired from the room without uttering another word, proceeding to the capitol. Later in the morning he came to me with a typewritten paper containing the conversation between the President and himself, and asked me to certify to its correctness. I took the paper and read it over, and as it seemed to be correct, as I remembered the conversation, I wrote my name at the pottom of it. I have never seen or heard of the paper since."

A substantial library could be formed from the newspapers, magazines, reviews, lectures, pamphlets, and books in which American writers, American publicists, American historians, American politicians and American professors have laid bare the facts I have stated, and have declared their conviction that Colombia is entitled to satisfaction and reparation. The truth has been slowly penetrating into the conscience of the people of the United States, and no one has been able to smother its appeals. Even in the text books used in teaching contemporary history to the youth of the country there is an authentic relation of the facts.

Furthermore all of the facts were minutely and scrupulously placed on record before the Committee on Foreign Affairs of the House of Representives which was considering the resolution of Congressman Rainey, the illustrious friend of Colombia, whose attitude on the floor of the House recalled the memorable ways when Henry Clay spoke there in defence of the Republics of South America. The verbatim account of the proceedings before the House Committee on Foreign Affairs is published as an official document under the title of "The Story of Panama. Hearings on the Rainey Resolution before the Committee on Foreign Affairs, House of Representatives, 1912." There has also recently been published a work "America and the Canal Title" by Joseph C. Treehoff in which a painstaking statement of all the facts may be found.

A discussion of the truthfulness of these facts is quite superflous since they have been publicly and solemnly admitted by the very man who was at the head of the American Administration in 1903, and who lent his aid to the secession of Panama.

Mr. Theodore Roosevelt himself, in a speech to the students of the University of California which he delivered at Berkeley, Cal. on March 23, 1911, made the following confession:—

"I am interested in the Panama Canal because I started it. If I had followed traditional conservative methods I should have submitted a dignified State paper of probably two hundred pages to Congress an the debate would have been going on yet. But I took the Canal Zone, and let Congress debate and while the debate goes on the Canal does also."

Mr. Albert B. Hart, Professor of the Science of Government at Harvard University, in his recently published work "The Monroe Doctrine—An Interpretation" thus refers to the taking of Panama:

"The dramatic turn by which Colombia was suddenly ousted from one of the most splendid points of

vantage in the world, startled both the people of the United States and of Latin America."

Hiram Bingham, Professor of Latin-American history at the University of Yale, who is well known throughout the New World, in his book "The Monroe Doctrine—An Obselete Shibboleth", also quite recently published, says:

"But one of the worst blows came in 1903 when we assisted in the establishment of the Republic of Panama and then took control of the Canal Zone. In other words, we went through the form of preventing a South American republic from subduing a revolution in one of her distant provinces and eventually took a strip of that province because we believed we owed it to the world to build the Panama Canal!"

We should never finish if we wished to reproduce all the recent testimony worth while from distinguished Americans, but we cannot forego, on account of its extreme importance the citation of the article written by one of the greatest Secretaries of State the United States ever had, the Hon. Richard Olney, who, wrote in the North American Review in January of this year on "Our American Policy" thus:

"Further the proceedings by which the United States has felt constrained to compel some of the smaller and less advanced American states to perform their international duties have unquestionably excited uneasiness in all. They feel those proceedings, however temporary or however beneficial in purpose and result, to be distinctly menacing and to indicate purposes and ambitions on our part quite inconsistent with their dignity and safety as independent

States. This feeling has been greatly intensified by the lawless violence which robbed Colombia of its territory for the purposes of the Panama Canal enterprise. It thus comes about that, in its relations to Latin-America and Europe respectively, the United States now figures as a self-appointed guarantor of the rights of the other, both the guarantee and the guardianship being submitted to rather than desired and neither gaining for the United States any special consideration or reward—while our glaring invasion of Colombia's sovereignty makes us "suspect" in the eyes of all Latin-America".

It would also be impossible to omit the speech delivered In the United States Senate on the 10th of May of this year by Senator Ransdell of Louisiana who said:

"It is unnecessary to go into detail as to the events which led up to the secession of Panama and our recognition of her sovereignty. Suffice it to say that the Colombian Senate refused to ratify a proposed Treaty with us in regard to the building of the Panama Canal. A mock revolution was brewing in Panama at the time, which, in the opinion of many persons in this country and of most of the South-American Nations, was fomented by the United States."

"On November 3, 1903, the revolutionists, representing less than one tenth of the population of the State of Panama, arose and took possession of the City of Panama, the total death roll being one chinaman. The report of the success of the revolution was received at Washington at 9.50 p. m., that day, and

at 11.18 the same evening orders were wired from Washington directing the commander of the United States Ship Nashville, which was conveniently in the harbor of Colon, to make every effort to prevent government troops at Colon from proceeding to Panama".

"Thus, Mr. President, while the solemn treaty, by which we guaranteed the sovereignty of Colombia over Panama was in full force and effect, the United States issued a military order preventing Colombia moving her own troops over her own railway to her own Panama to put down an opera bouffe revolution. The following day, November 4—1 day, 17 hours and 41 minutes after the issuing of the insurgent proclamation of independendence in the City of Panama—the United States recognized Panama as a sovereign and independent nation, and shortly thereafter practically threatened Colombia with war if she dared to invade Panama in an attempt to regain her lost sovereignty............. On November 18, fifteen days after the revolution broke out, we signed a treaty with the Republic of Panama giving us the Canal Zone and the right to build the canal. The deed was consummated."

Thus, as we have seen, there can be no discussion of the facts to which we refer, and we pass to a consideration of their meaning in connection with the Rights of Nations so solemnly declared by the American Institute of International Law.

Later on, we shall also have something to say, in closing, about the influence of these facts—so long as they continue unremedied—upon the development of

the Pan-American ideal, and upon the future peace and prosperity of this continent.

It way be added that this statement of facts is foreign to any attempt to drag political parties of the United States into the discussion. If names are mentioned it is merely because some names are unavoidably linked to certain events.

THE RIGHTS VIOLATED

THE RIGHTS VIOLATED

The first of the rights of nations proclaimed by the American Institute of International Law was this:

"Every nation has the right to exist and to protect and conserve its existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States."

This is the cardinal right of nations, and every other right really springs from it. In proclaiming it in these terms the Institute of International Law laid down the exact limits within which it can be exercised with due regard to the reciprocal rights of other nations.

The right of a nation to exist is correlative to its duty to respect the same right in other nations. Thus among nations, as among individuals, the primordial right is the right of existence; but neither individuals nor nations may carry that right—no matter how essential it be—further than the deadline of the right of others.

This right of existence was solemnly proclaimed as a philosophical principle in the days of the French revolution. In the Declaration of Independence by which the thirteen original States emancipat-

ed themselves from England, and in the similar acts whereby the remainder of this Continent freed itself from Spain, this principle was proclaimed by the new Nations as the very basis of their autonomous political existence. Not as philosophical principle but as a positive and fundamental public right; and as such it was incorporated in the Declarations of Independence and the Constitutions of the new-born Republics in North as well as in South America.

As a matter of fact all that the Institute of International Law did was merely to reiterate the endorsement by all American nations of the rightful meaning of the principle of nationality, for which principle every one of them fought and the triumph of which every one of them ultimately achieved.

As Mr. James Brown Scott said of the Declaration of the Rights of Nations:

> "This right is and is to be understood in the sense in which the right to life is understood in national law according to which it is unlawful for a human being to take human life unless it is necessary to do so in self-defense against an unlawful attack threatening the life of the party unlawfully attacked:
>
> In the Chinese Exclusion Case (reported in 130 United States Reports, pp. 581—606) decided by the Supreme Court of the United States it was said that:
>
> To preserve its independence, and give security against foreign agression and encroachment, is the highest duty of every

nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such agression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us. The Government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determinations, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers."

"The right of a State to exist and to protect and conserve its existence is to be understood in the sense in which the right of an individual to his life was defined, interpreted and applied in terms applicable alike to nations and to individuals in the well-known English case of Regina vs. Dudley (reported in 15 Cox's Criminal Cases, p. 624; 14 Queen's Bench Divsion, p. 273) decided by the Queens Bench Division of the High Court of Justice in 1884, to the effect that it was unlawful for shipwrecked sailors to take the life of one of their number in order to preserve their own lives, because it was unlawful to the common law of England for an English subject to take human life unless to defend himself against an unlawful attack of the assailant threatening the life of the party unlawfully attacked."

If we compare the official documents emanating from the first Government organizations which formed themselves in the various American countries in the early years of the XIX Century, or the principles subscribed to by the leaders of the revolutions in them against the mother countries, we shall see that this was the very right that was always invoked, and which had already received practical application from the Britsh Colonies in America.

It was the principle maintained by Bolivar before the Foreign Office in 1810 when he was sent to London after the Revolution of Caracas, and he made of it the oriflame which others after him carried from one end of Latin-America to the other, O'Higgins, San Martin, Puyrredon and all the other early administrators of the American nations emancipated from Spain pledged themselves absolutely to the same principle. On it they founded their demands for recognition of the independence of their various countries by the United States, which was finally granted.

Throughout the communications addressed by Señor Manuel Torres, the Agent of Colombia to the Government of Washington, and the first official representative of the South-American countries accredited to the United States, the principle of nationality—which had already been the basis of the American Declaration of Independence — was firmly maintained.

The first communication from Torres to the State Department in which he urges the recognition by the United States of the Independence of Colombia is

dated December 15, 1820. It was the first of its kind received by the American government.. The communication of the Agent of Colombia had a decisive influence of the attitude adopted by President Monroe and on the recognition accorded to the Latin-American States.

This right to existence, this principle of nationality, in its rightful meaning so forcefully urged by the Agent of Colombia in his communications to the Secretary of State not only as the spokesman of Colombia but of all the Latin-American countries, was recognized as far as they were concerned by President Monroe in his Message to Congress of March 8, 1822, on the entry into the family of nations of the new American States. John Quincy Adams, with unswerving purpose upheld the same rights and same principle in his communications to Don Joaquín de Anduaga, Minister of Spain in Washington, when the latter protested against the recognition. Henry Clay had already lent all the power of his eloquence to the same propositions, in his memorable speeches in Congress of May 1820 and February 1821. The Committee on Foreign Affairs of the House of Representatives, referring to the Message of President Monroe also espoused and corroborated the right of existence of the new-born republics.

We have referred to these historical precedents to show to what extent the right now solemnly proclaimed by the Institute of International Law is welded to the very origin of all American nations. It is the cardinal axiom ,as well of international law as of their international existence.

These precedents also show that when this fundamental right—this principle—has been ignored and violated, as it was ignored and violated in regard to Colombia in the matter of the secession of Panama, the violation has been really a violation of the sacred principles which all the nations of America won by sacrifice and sealed with their blood, and which for more than a century they all believed to be unassailable: the principle of nationality.

By a pityful irony of fate, it fell to Colombia—the Nation which with greatest energy and most constant purpose had defended this principle, and to whose initiative on her own behalf and on behalf of all her sister—nations we have already referred—it fell to Colombia to suffer the brutal blow which dismembered her, and at the same time struck at the very roots of international life on this continent.

A Nation's right to exist, is the right to maintain the moral and material integrity of its being as a nation. Therefore the right to maintain and protect the fulness of its sovereignty, and in consequence of its independence, the fullness of its sovereignty over a

given territory and of its jurisdiction over the inhabitants of that territory.

The dismemberment of Colombia was an attack against her very existence as a sovereing and independent nation. Her jurisdiction over the most valuable part of her territory was ignored and she was prevented from exercising it; the exercise of her sovereignty over her own territory was impeded; she was placed de facto outside of the equal station which by right belonged to her in her relations with other countries, and de facto the independence with which she was to exercise her sovereign righits was trampled upon. Not one right of Colombia, but every right of Colombia was violated, and thus her very existence as a Nation was attacked.

The Republic of Colombia was formed when with the territories which composed the Vice-Royalty of New Granada and the Captaincy General of Venezuela, it seceded from Spain. After 1830, by a common accord, Ecuador and Venezuela were established as independent States, and Nueva-Granada, now Colombia, remained with the territory of the Vice-Royalty of New Granada less those of the Presidencia of Quito and of the Captaincy General of Venezuela.

The Isthmus of Panama was a part of the Vice-Royalty of New Granada ever since the latter was established by Royal Letters-Patent of the King of Spain in 1739. When the Independence of the Vice-Royalty and therefore that of the Isthmus, by the effort of the Granadian forces, the Isthmus of Panama continued to belong to Colombia and it spontaneous-

ly declared its intention so to do. Only by disregard of historical truth can it be maintained that Panama at any time prior to 1903 was an independent State, or that it won its independence from Spain apart from Colombia or by its own efforts.

The Act of Independence subscribed to in the City of Panama, when it, along with the other cities of the Vice-Royalty of New Granada, declared its emancipation from the rule of Spain reads in part:

> "Panama spontaneously and in accordance-with the general desires of the people within its borders hereby declares itself free and independent from the Spanish Government; and the territory of the Provinces of the Isthmus belongs to the Republic of Colombia in whose Congress Panama will be represented by Deputies."

This document clearly shows that when Paname threw off the Spanish yoke its purpose in doing so was not to form a seperate State but to be incorporated into Colombia, that is to say, to continue to be after emancipation a portion of New Granada as it had been in the Colonial times inmmediately preceeding the emancipation.

The Declaration of Independence of Panama was communicated by Señor Torres, the Colombian agent, to Secretary of State, John Quincy Adams, in the following terms:

> Philadelphia,
> April 6, 1822.
>
> Your Excellency,
>
> In your despatch of the 18th of January last past, Your Excellency was pleased to

say to me that as soon as advices were received of the occupation of the Isthmus and Place of Panama by the troops of Colombia they should be communicated to this Department. Complying with the desires of Your Excellency, I have the honor to inform you, that the inhabitants of Panama spontaneously and of common accord declared their independence on November 28th of last year and by the same Act incorporated themselves in the Republic of Colombia whose troops then occupied and do now occupy the said important points.

I reiterate to Your Excellency the sentiments of esteem and deep respect with which I have the honor to remain

Your Excellency's

Most Obedient and faithful servant,

Manuel Torres.

To His Excellency

John Quincy Adams,

Secretary of State of the United States.

Thus the Isthmus of Panama was always up to 1903, an integral part of the territory of Colombia and anything that has been said to the contrary is without the slightest foundation. Panama never was a separate or independent entity, neither during the Spanish domination nor after our independence had been declared. Whatever revolutionary movements there were on the Isthmus prior to 1903 were in the

nature of internal political disorders, similar to those in other parts of the Republic.

Therefore the separation of the Isthmus of Panama from Colombia in the manner in which it was effected was simply a dismemberment of the territory with which Colombia had been constituted as a sovereign nation, which territory belonged to her under the general principle of law **Uti possidetis juris** of 1810, adopted by all American nations on their emancipation. Colombia was recognized as a sovereign State with the Isthmus as an integral part of her territory. To tear away this strip of land, as was done in 1903, was to attack Colombia in her very right to existence, in the essential element of her sovereignty as understood and accepted in the law and comity of Nations.

In the memorable message of President Monroe of March 8, 1822, referring to the manner in which the Spanish Colonies had won their independence, he said:

> "The provinces composing the Republic of Colombia, after having separately declared their independence, were united by a fundamental law of the 17th of December, 1819."

One of these provinces was Panama. Monroe recognized Panama as an integral part of Colombia. His historic Message tells better than any other document just how the Republic of Colombia was formed.

Colombia had the right, and will always have the right to have her territorial integrity respected, but in the case of the United States of America this right was of an especially solemn nature for in addition to its being founded in the general principles of international law, it was consecrated by a public Treaty by which the United States guaranteed to Colombia the rights of sovereignty and of property which it had and possessed over the Isthmus of Panama.

Let us examine the historical antecedents and the stipulations of this Treaty pertinent thereto. When the time arrived to develop the priceless yet remote American territory on the Pacific Coast it became necessary for the United States to appeal to Colombia, then New Granada, for a free passage through her territory to California, which otherwise could only be reached by a nine months voyage round the Horn, or by the even more dangerous wagon-trail across the Rocky Mountains and the Western Desert. The United States secured the all important advantages of a shorter route through "A Treaty of Peace, Amity, Navigation and Commerce" negotiated in 1846 in which it was proclaimed as follows:

> "The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of transportation which now exist, or may hereafter be constructed, shall be open and free to the Government and Citizens of the United States, and for the transportatoin of any articles of lawful

> commerce belonging to the citizens of the United States."

As compensation for that privilege—priceless at that time—the United States promised and covenanted "as an especial compensation for the said advantages" and for the favors it acquired by the 4th, 5th and 6th articles of the Treaty (which secured to the United States reciprocal privileges of importation and tonnage dues and equal customs duties) as follows:

> "The United States guarantee positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the beforementioned Isthmus, with the view that the free transit from one to the other sea may not be interrupted or embarrased in any future time while this treaty exists; and in consequence the United States also guarantee in the same manner the rights of sovereignty and property which New Granada has and possesses over the said territory."

In the Message in which President Polk submitted the Treaty to the Senate of the United States for its approval, he said in regard to the right of transit thus acquired:

> "The importance of this concession to the commercial and political interest of the United States cannot be over-rated."

Even more important in view of the events under consideration is President Polk's special Message

of February 10, 1847 in which referring to the initiation of the Treaty he said:

> "There does not appear any other effectual means of securing to all nations the advantages of this important passage but the guarantee of great commercial powers that the Isthmus shall be neutral territory... The guarantee of the sovereignty of New Granada is a natural consequence of this... New Granada would not yield this province that it might become a neutral State; and if she should it is not sufficiently populous or wealthy to establish or maintain an independent sovereignty."

Thus by the most solemn guarantee known to the family of nations the United States pledged itself by express contract to respect and uphold the sovereignty of New Granada over the Isthmus of Panama, a plain duty already due to New Granada under the general principles of international law.

In emergencies other than the disturbance of interoceanic transit, or peril to the persons and possessions of American citizens, there might be no intervention in the affairs of New Granada, re-established as the United States of Colombia in 1863. By the terms of the treaty and by the principles of international law Colombia, as the sucessor of New Granada, was the sovereign peer of the United States which, save for the purpose of protecting free transit, might no more land forces on Colombian soil, or even threaten such landing, than she might land such forces on the shores of France or England.

After a careful examination of the subject I can only find that during the 40 years that elapsed between the establishment of Colombia in 1863 and the Panama imbroglio in 1903, United States forces were employed on seven occasions and for a total of 164 days. In every case they were employed with the express approval of Colombia and in maintenance of her sovereignty. In no case was there any fighting, the mere precautionary measures being sufficient to keep open the transit.

Any violation of the territorial integrity of Colombia would have been an attack upon its right of existence under the common law of nations, but this violation on the part of the United States of America was not only a violation of the fundamental principles of international law, but also of a positive right stipulated by contract in a solemn treaty.

The very existence of Colombia was attacked by the very power which had guaranteed her sovereignty and property over the very territory taken. Now, the right of a nation to exist, and consequently to protect conserve and develop its existence, is limited,

as we have seen, by the reciprocal rights of other nations.

Therefore, as expressed by the Declaration of the Rights of Nations proclaimed by the American Institute of International Law, this right "neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States."

If a Nation may not injure the rights of another on the grounds of necessity to its own existence, how much less may it do so by virtue of an alleged mandate of the community of nations or by invoking in error the interests of the civilized world—which above all consist in the supremacy of law and of justice and are not subject to the arbitrary determination of any one power.

In order to despoil Colombia there was put forward a supposed interest of universal civilization in the Panama Canal, the overwhelming importance of the opening of which nobody denied and above all Colombia who had furthered it in every possible way. But in order to build the canal it was not necessary to despoil Colombia of the Isthmus, or of anything else.

It has been said that Colombia showed herself unyielding in the conditions which she placed upon the granting of the concession. But from the very initiation of the negotiations in Washington for the opening of the Canal, Colombia, in order to avoid the allegations which it has since been sought to bring

forward, proposed that the price of the concessions should be fixed by arbitration.

This statement is corroborated by the following important cable sent to the Consul General of Colombia in New York by Dr. José Vicente Concha who was Colombian Minister in Washington in 1901 and 1902 and is now the President of Colombia:

Bogota, August 10, 1916.

Francisco Escobar.—New York.

> By Article XXV of the Memorandum presented to the Department of State on April 18, 1902 the Colombian Legation proposed to fix by means of arbitration the ammount of the annuity to be paid to Colombia. On April 21, Secretary Hay accepted this proposal and promised to sign a covenant in accordance there with but on July 18, having changed his mind, proposed as an option $7,000,000 on final agreement and an annuity of $100,000, or $10,000,000 and an annuity of $10,000 instead of arbitration. The Memorandum was published with other State papers by said Department.
>
> **Concha.**

But even supposing that the conditions had really been onerous in the opinion of the Government of Washington; Could this opinion, in a matter in which it was an interested party, give it the right to despoil its weaker sister-republic?

Professor Albert Hart in his work "The Monroe Doctrine and its Interpretaion", commenting upon

that curious mandate of civilization which is urged in justification of the dismemberment of Colombia says among other things:

> "The situation its that of a real estate owner who needs a right of way and finds that his neighbor demands an exhorbitant figure. In private relations the wealthy purchaser must pay the price or go without. In contests between nations the stronger has often ousted the weaker out of an advantage which the agressor would not itself give up except as the penalty of an unsuccessful war."
>
> "The United States was rather hampered in her insistence on her own greater need as against the smaller advantage of a neighbor, for just at this time we refused to transfer a few posts on the Alaskan coast to Canada that would have been of great advantage to the Canadians and would have little interfered with our interests."

Another American writer, Mr. Scott, speaking of the same matter in his book "The Americans in Panama" says:

> "The rightful owner of the territory we desired for a canal was Colombia. The way we took it was to participate in a bogus revolution, engineered by a junta of wealthy Panamian business and professional men. It turned out that the part they played in making the revolution a success was farcical, while the part the United States marines played was vital."

> "If any American railroad should desire property for a right of way and instead of condemning it by due process of law, should connive with a neighbor to falsely claim possession of the property and then buy the property from the illegal owner, the action not only would not stand in law but it would outrage public opinion. That precisely is the course we pursued at Panama.

The second and third rights of nations proclaimed by the American Institute of International Law are the following:

> Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the just rights of other States.
>
> Every Nation is in law and before law the equal of every other State composing the society of nations, and all States have the right

to claim and, according to the Declaration of Independence of the United States, to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of natures God entitle them.

Mr. J. B. Scott, in his Comments on the Declaration of the Rights of Nations, says:

"The third Article, asserting the equality of nations is followed by these citations:

"The right to equality is to be understood in the sense in which it was defined in the following passage quoted from the decision of the great English Admiralty Judge, Sir William Scott, later Lord Stowell, in the case of the Louis (reported in 2 Dodson's Reports, pp. 212, 243-44) decided in 1817:

"Two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct States. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate.

"The second is that all nations being equal all have an equal right to the uninterupted use of the unappropriated parts of the ocean

for their navigation. In places where no local authority exists, where the subjects of all States meet upon a footing of entire equality and independence, no one State, or any of its subjects, has a right to assume or exercise authority over the subjects of another.'

"The right of equality is also to be understood in the sense in which it was stated and illustrated by John Marshall, Chief Justice of the Supreme Court of the United States who said in deciding the case of the Antelope in 1825 (reported in 10 Wheaton's Reports, pp. 66, 122.)

'In this commerce, thus sanctioned by universal assent, every nation has an equal right to engage. How is this right to be lost? Each may renounce it for its own people, but can this renunciation affect others?"

'No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. A right then which is vested in all, by the consent of all, can be divested only by consent, and this (slave) trade in which all have participated, must remain lawful to those who cannot be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations, and this traffic remains lawful to those whose governments have not forbidden it.'

The rights of independence and equality, which as we have pointed out are but a corollary of the right to exist and to conserve and protect its existence, which every nation has, are co-relative to the duty of the other nations not to interfere in its internal affairs or in its international relations, and to respect in their dealings with it the universally accepted principles of international law.

These two rights were plainly violated by the government of the United States in its dealings with the Government of Colombia when the secession of Panama was being prepared and carried out, in this wise:

Let us consider the pressure exerted upon the Government and Congress of Colombia in order to force the approval of the Treaty for the construction of the canal, signed in Washington in 1903, and known as the Herran-Hay Treaty.

The Memorandum of the 13th of June, 1903, handed by the Minister of the United States in Bogota, Mr. Beaupre, to the Minister of Foreign Affairs of Colombia was an insult to the sovereignty of Colombia and a virtual negation of her independence and equality. This Memorandum placed the Colombian Senate in a position where it could not do less than to reject absolutely the attempted dictation.

This is the text of the Memorandum:

> "I have received instructions from my Government by cable in the sense that the Government of Colombia to all appearances does not appreciate the gravtiy of the situation. The Panama Canal negotiations were

initiated by Colombia and were earnestly solicited of my Government for several years. Propositions presented by Colombia with slight alterations were finally accepted by us. By virtue of this agreement our Congress reconsidered its previous decision and decided in favor of the Panama route. If Colombia now rejects the Treaty or unduly delays its ratification the friendly relations between the two countries would be so seriously compromised that our Congress might next winter take steps that every friend of Colombia would regret with sorrow.

The refusal to recognize the constitutional right or the Colombian Senate to ratify or to reject a public treaty as the Senate of the United States, and in general of any country having a democratic and representative from of government, might do, was equivalent to a refusal to recognize the independence of Colombia and its equality with the United States and other nations.

It is most noteworthy that the very people who have most bitterly attacked Colombia for the rejection of the Hay-Herran Treaty and who have most freely criticized the Colombian Senate for its action are those who are showing the greatest activity to prevent the Senate of the United States from ratifying the Urrutia-Thompson treaty signed in Bogota on April 6, 1914.

Promoting the work of separation on the Isthmus, giving to it material and moral aid, and guaranteeing its results, was to do to Colombia what

Colombia could not have done in its relations with any other country without provoking in reprisal a state of war. It was reducing the equality of nations to a bitter irony.

Supporting the secession after its initial proclamation, with all the national power of the United States, and recognizing a new State which did not have any real existence, was to strike a blow at the fundamental principles of International Law and to introduce into the history of diplomacy new principles and practices which could not even have been hinted at, much less enunciated, between equal nations. Not only was Colombia not dealt with as a nation having equal rights with other nations, but a special proceeding was taken against her, she was dealt with in an exceptional manner, the very form of which was insulting.

Even supposing that there had been a real revolution and that the uprising had extended to the remainder of the Isthmus—which certainly was not the case—it would be difficult to deny that the premature recognition by the United States of the independence of the alleged new State would have been contrary not only to the best recognized principles and practices of international law, but contrary to the established precedents and inviolable rules followed by the United States itself in its dealings with other nations. In the case of Colombia, there was the further specific contract by which her rights of sovereignty and property over the Isthmus were guaranteed for all time by the United States itself.

The new States which were formed in the Spanish American colonies could not obtain recognition as such by the United States until more than two decades after the initiation of the revolution against the mother-country and only after the revolution had finally triumphed after a legendary and heroic struggle such as there had rarely been in the history of the world, in no wise to be compared even with the farcical secession of Panama.

From 1810 to 1822, various agents of the new nations which had been formed in the emancipated Spanish colonies went to Washington to endeavor to obtain the recognition of their independence by the United States; but the American government, despite the genuine sympathy with which it looked upon the cause of liberty represented by the independence movement in South America ,invariably abstained from receiving its agents officially. In 1818 Henry Clay endeavoured in his memorable speeches in the House of Representatives to accelerate the recognition of the new States, but President Monroe, his cabinet, and specially Secretary of State John Quincy Adams, remained inflexible in their strict regard for the sovereignty of Spain. In his celebrated letter of August 24, 1818, to President Monroe, referring to this matter Secretary of State Adams very clearly and forcefully expressed the true international doctrine bearing upon the recognition of a new State, the very crux of which is that recognition can only be lawfully accorded when without foreign intervention virtually every prob-

ability of the former sovereign being able to restore his authority has disappeared.

It was only in 1822 that President Monroe decided to recognize the independence of the new States and that in his Message of March 8, 1822, he stated the position of the United States as follows:

> "This contest has now reached such a stage and been attended with such decisive success on the part of the provinces that it merits the most profound consideration whether their right to the rank of independent nations with all the advantages incident to it in their intercourse with the United States is not complete. Buenos Ayres assumed that rank by a formal declaration in 1816 and has enjoyed it since 1810 free from invasion by the parent country. The provinces composing the Republic of Colombia after having separately declared their independence were united by a fundamental law of the 17th of December 1819. A strong Spanish force occupied at that time certain parts of the territory within their limits and waged a destructive war; that force has since been repeatedly defeated and the whole of it either made prisoners or destroyed or expelled from the country with the exception of an inconsiderable portion only which is blocaded in two fortresses. The provinces of the Pacific have likewise been very successful. Chile declared independence in 1818 and has since enjoyed it undisturbed, and of late by the assistance of Chile and Buenos Ayres

the revolution has extended to Peru. Of the movement in Mexico our information is less authentic but it is nevertheless distinctly understood that the new Government has declared its independence and that there is now no opposition to it there nor a force to make any. For the last there years the Government of Spain has not sent a single corps of troops to any part of that country, nor is there any reason to believe it will send any in the future. Thus it is manifest that all those provinces are not only in the full enjoyment of their independence but, considering the state of the war and other circumstances, that there is not the most remote prospect of their being deprived of it."

After the independence of the Spanish colonies had been recognized Secretary of State Adams, answering the protest of the Spanish Minister, said in his Note of April 6, 1822:

> "In every question relating to the independence of a nation two principles are involved: one of right and the other of fact; the former exclusively depending upon the determination of the nation itself, and the other resulting from the successful execution of that determination. This right has recently been exercised as well by the Spanish nation in Europe as by several of those countries in the Western Hemisphere which had for two or three centuries been connected as colonies with Spain. In the conflicts which have at-

tended these revolutions, the United States have carefuly abstained from taking any part respecting the right of the nations concerned in them to maintain or newly organize their own political constitutions and observing, wherever it was a contest by arms, the most impartial neutrality. But the civil war in which Spain was for some years involved with the inhabitants of her colonies in America has, in substance, ceased to exist. Treaties equivalent to an acknowledgment of independence have been concluded by the commanders and vice-roys of Spain with the Republic of Colombia, with Mexico and with Peru; while in the province of La Plata and in Chile no Spanish force has for several years existed to dispute the independence which the inhabitants of those countries had declared."

An examination of the many noteworthy cases in which the Government of Washington has maintained with inflexible determination laws, principles and practices in absolute contradiction to the acts it was guilty of in 1903 against the rights of Colombia and by which the United States ignored the independence and equal station of my country. But for their historical importance reference must be made to a few documents of great value.

In the course of the Civil War in the United States, Secretary of State Seward, anxious to prevent any foreign government from recognizing not only the independence but even the existence as belligerents of the States which had seceded from the

Union, instructed the diplomatic representatives of the United States abroad to oppose any such action. In his circular instructions he wrote:

> "To recognize the independence of a new State and so favor and possibly determine its admission into the family of nations is the highest possible exercise of sovereign power because it affects in any case the welfare of two nations and often the peace of the world. In the Europan system this power is now seldom attempted to be exercised without invoking a consultation or Congress of nations. That system has not been extended to this continent· But there is an even greater necessity for prudence in such cases in regard to American States than in regard to the nations of Europe. A revolutionary change of dynasty, or even a disorganization or recombination of one or many states, therefore do not long or deeply affect the general interest of society because the ways of trade and habits of society remain the same. But a radical change effected in the political combinations existing on the continent, followed as probably would be by moral convulsions of incalculable magnitude, would threaten the stability of society throughout the world.
>
> "Humanity has indeed little to hope for if it shall, in the age of high improvement, be decided without a trial that the principles of moral persons, bound so to act as to do each other the least injury and the most good is

merely an abstraction too refined to be reduced into practice by the englihtened nations of Western Europe. Seen in the light of this principle the several nations of the earth constitute one great Federal Republic. When one of them casts its suffrages for the admission of a new member into the Republic, it ought to act under a profound sense of moral obligation and be governed by considerations as pure, disinterested and elevated as the general interest of society and the advancement of human nature."

In his Message of December, 1875, President Grant sustained the same principles in his reference to the possible recognition of Cuba as an independent nation.

What would the United States have thought of the act of a friendly nation—a friendly and an allied nation—which in violation of the principles asserted in the foregoing documents would have recognized any of the States which seceded from the Union as an independent and sovereign nation.

The traditional principles of American diplomacy are fixed and lasting—they were only departed from on the day when it was desired to despoil Colombia, the friendly nation and sister Republic, which had been the first of the Latin American nations recognized by the United States and was bound by a solemn Treaty.

Colombia was thrust beyond the pale of international law. Nothing counted except the bolstering up of the fake secession, with the support before

the act of the naval forces of the United States, and so a few hours after the declaration of independence by a handful of men in the city of Panama, the Colombian Department of the Isthmus was raised in Washington to the status of a sovereign Nation; and a foreigner—who had held a position in the canal company—was invested with diplomatic dignity by cable and received by the Presdient of the United States as the Minister of the unfledged state.

The fourth and fifth Rights of Nations proclaimed by the American Institute of International Law were the following:

> 4. Every Nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over this territory and all persons whether native or foreign found therein.
>
> 5. Every nation entitled to a right by the law of nations is entitled to have that right respected by all other nations, for right and duty are corelative, and the right of one is the duty of all to observe.

The jurisdiction of the nation within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitations not imposed by itself. Any restriction upon it deriving validity from an external source, would imply a diminution of its sovereignty, to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which could impose such restriction. All exception, therefore, to the full and complete power of a nation, within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

Under the right of exclusive jurisdiction over all the inhabitants of its territory, the State has supreme authority to subdue and punish, by force of arms, any seditious movement occuring within its territory.

Under the right of territorial ownership, the State has supreme authority to maintain, by force of arms, its territorial integrity. Nevertheless, on November 2, 1903, the day before the so-called independence of Panama was "proclaimed", President Roosevelt ordered the commander of the U. S. S. Nashville to "prevent the landing of any armed force with hostile intent, either Government or insurgent, either at Colon, Porto Bello or other port..."

On the same day, November 2, 1903, the principle of international law above stated which forbids a State arbitrarily to intervene in the acts of sovereignty, sent her military forces to Panama for the purpose of crushing, by force of arms, the rumored

uprising which, as a matter of fact, did break out on the following day, November 3, 1903.

By the orders of President Roosevelt the regular naval forces of the United States prevented the forces of the Republic of Colombia from landing and acting within the legitimate territorial jurisdiction of Colombia. By so doing President Roosevelt intervened in the internal affairs of Colombia and violated her sovereignty. Such an act of armed intervention is an act of war, tantamout in every way to a declaration of war, under the accepted provisions of international law.

Judged by the principles of the Constitution of the United States,—a declaration of war being a political act the exercise of which is vested exclusively in Congress and not in the President (Article 1, Section 8 of the Constitution of the United States),—the act of President Roosevelt was an arbitary act without any lawful authority nor based on any legal reason, and a clear violation of the Constitution.

The last Right of Nations enunciated by the American Institute of International Law is self-explanatory, as there can be no rights without corresponding duties· Aplied to the case of Colombia it means that all of Colombia's rights as a sovereing nation imposed corresponding duties upon the other nations.

THE REPARATION DUE TO COLOMBIA

THE REPARATION DUE TO COLOMBIA

The violation of the rights of Colombia and the consequent dismemberment of her territory caused moral and material damages which are really incalculable.

The possession of the Isthmus of Panama gave to Colombia exceptional geographical, economic and political advantages. The standing of Colombia as a Nation is no longer the same since the loss of the Isthmus.

This privileged strip of land was considered the most valuable on the American continent and one of the most valuable in the world, ever since the Kings of Spain exercised sovereignty over it. The territory of the Audiencia of Panama was the most precious jewel if the dominions of Spain in America.

When the possible purchase of Lower California from Mexico has been considered in the United States the land has generally been valued at Two Hundred Million Dollars. The territory of the Colombian Department of Panama is worth a great deal more than Lower California on account of its exceptional situation.

The damages suffered by Colombia can be measured neither morally nor materially. For many excellent reasons, and in order to obviate the pos-

sibility of charges similar to those brought when the Hay-Herran treaty was negotiated, Colombia proposed, from the very moment of the secession of Panama, that the question of damages should be fixed by the Hague Tribunal or any other court of arbitration.

It was only because of the anxious persistency of the Government of the United States, and of the desire to do justice to Colombia which animated its present Chief Magistrate and Secretary of State Bryan ,that Colombia consented to suspend her efforts to obtain arbitration and entered into direct negotiations which culminated in the Treaty signed on April 6, 1914 in Bogota.

By this treaty an indemnity of Twenty Five Million Dollars was agreed upon, and it is a very small sum compared to the damage inflicted. It is true that the Committee on Foreign Relations of the United States Senate, in reporting out the Treaty, proposed to reduce the indemnity by Ten Millions. The Government and the people of Colombia only accepted the Twenty Five Millions from an honest desire to put an end to the vexatious and prejudicial controversy and to show its goodwill towards the Wilson administration. The Urrutia-Thompson Treaty was bitterly attacked in Colombia from the day it was signed. It is impossible to express the painful surprise which the action of the Committee on Foreign Relations must have caused among a people as proud as they are patriotic.

The claims of Colombia have been described as blackmail, but truly it is an usual case of blackmail when the party accused of this crime has continually begged, without however being able to obtain, that the issue be decided by arbitration·

In order that some idea may be formed of the material damages inflicted upon Colombia merely by the taking of the Panama Railroad, and the annuities due under its contract and under the canal contract we submit the following facts taken from the Memorandum which the United States Minister in Bogota, Mr. James T. DuBois, the eminent diplomatist sent by the Taft Administration to effect a settlement of the existing controversy, presented to the Government of Colombia in February, 1913. This Memorandum, in part referring to the Panama Railroad, reads as follows:

REVERSIONARY RIGHTS IN THE PANAMA RAILROAD

"Notwihstanding the fact that the United Sta-
" tes believes that these rights passed to Panama at
" the time of its secession, and notwithstanding the
" fact that the United States has already paid Pa-
" nama for these rights, nevertheless animated by a
" sincere desire to renew an old friendship, the alter-
" ation of which it deeply regrets, the United States
" is ready to submit to arbitration the controversy
" with Colombia referring to the legal claim wich
" she maintains she possesses to the reversionary
" rights in the Panama Railroad. Colombia has al-

" ways asked, with the greatest insistence, ever since
" the moment of the secession of Panama, that the
" whole matter be taken to the Hague Tribunal, but
" as the United States, in accordance with the line of
" conduct followed by all the Great Powers, positiv-
" ely refuses to submit any of its political acts to arbi-
" tration, for this reason it has been impossible to
" comply with Colombia's desires in this matter. The
" Government of the United States however, taking
" into acount the justiciable character of the differen-
" ces of opinion as to the material claims of Colom-
" bia is disposed to submit these claims to a tribunal
" of arbitration to be appointed for this purpose in
" accordance with a convention which will clearly
" specify the points to be passed upon. This decision
" will without doubt be received with favor by the
" Government and people of Colombia all the more
" so as it is generally believed that the claim refer-
" ring to the rights of Colombia in the Panama Rail-
" road is perfectly legal and just. Under the contract
" of 1867 Colombia ceded the transisthmian railroad
" to the Panama Railroad Company for a period of
" 99 years for an annual payment of $250.000. When
" these payments were stopped on account of the
" secession, the contract still had 64 years to run,
" that is to say, there were still pending 64 annuities
" of $250.000 the total value of which amounted to
" $16.000.000. This claim might be submitted, with
" the previous consent of both parties, to arbitration.
" As Senator Bristow reported officially in 1906 that
" the Panama Railroad was worth $16.446.000 the to-

" tal amount of the claim which might be submitted
" to arbitration would rise to $32.446·000. In addition
" to this sum there is the amount entailed by the Sal-
" gar-Wyse Concession which expires in 1984 and
" under it Colombia was to receive $250.000 a year
" counting from the date of the opening of the canal.
" If the canal be opened to service in the coming year
" we should have owing to Colombia seventy annui-
" ties, that is to say, $17.500.000. If the tribunal of
" arbitration considers this further claim the total
" sum would amount to $49.946.000."

Moreover, Minister Dubois suggested that the United States was disposed to offer ten millions " without insisting on the option for the opening of " the Atrato Canal but allowing the other proposals " to stand."

"All of which means the possibility for Colombia to obtain **Sixty Millions** as a compesation for the losses she suffered through the secession of Panama."

It is also well to point out that even under the Hay-Herran Treaty of January 1903 which was rejected by the Colombian Senate, Colombia retained her full rights of sovereignty and property over the Isthmus of Panama, and that for the sole right which the Treaty conferred to the United States to construct the canal and occupy the canal zone, Colombia was to receive a sum much in excess of Twenty Five Million Dollars."

"By Article XV of the Hay-Herran Treaty the Government of the United States bound itself to pay to Colombia the sum of $10,000,000 and an annual

payment during the life of the convention, which was fixed at 100 years, of $250,000 a year. This meant a cash payment of $10,000,000 and $25,000,000 more in annual payments. In all $35,000,000.

"Besides in Article XVII it was further stipulated that Colombia should have the right to transport over the canal its vessels, troops and munitions of war at all times without paying charges of any kind.

In his memorable speech in the United States Senate, March 1, 1912, the eminent Senator from Nebraska Mr. Hitchcock, appreciated the damages of Colombia as follows:

> "I have been told, and it has been suggested to me, that if arbitrated, probably the measure of Colombia damages would be so great that it would appal the American people; that damages would not be confined simply to the payment of $10,000.000 which we once offered, and the annuity of $250.000 a year in perpetuity, because that provided only for the Panama strip for the Canal, whereas, as a matter of fact, our act deprived Colombia not only of the Canal strip, but deprived her of all the Province. Perhaps if that it so, possibly the damages would not be limited to $10.000,000 or $15.000,000 or $50.000,000; they may go to

$100,000.000 or more; but because the damage is great and because a Court of Arbitration might award the people of Colombia such enormous damages is no reason for us to shrink from paying the penality of our act. I do no believe that the American people, who are a highly moral people, a highly just people, would shrink from paying to the last cent that penalty which a Court of Arbitration might award."—Congressional record. March 1, 1912.

Taking these facts into account it will be readily seen that the $25,000.000 agreed upon in the Urrutia-Thompson treaty is really a very inadequate indemnity in comparison to the great damages sustained by Colombia.

When the Alabama controversy between England and the United States was submitted to the Geneva Arbitration the indemnity that the former was ordered to pay merely for the depredations of the Albama amounted to $15,000.000· It is hardly conceivable that those damages should be comparable to those inflicted upon Colombia by the loss of the most valuable portion of her territory, carried out through the action of American warships, like the Nashville and the Dixie, and by the exercise of the power of the United States.

The truth is that on calm examination no explanation can be found for the reduction proposed by the Senate Committee on Foreign Relations. Indeed it is even more extraordinary in view of other circumstances such as the incalculable political, military and commercial value of the Panama canal to the

United States and also the overwhelming prosperity which this Republic enjoys and in the increase of which the Panama canal is an essential factor.

President Wilson's speech in Washington on April 13 contained the following important passage:

> "As I have listened to some of the speeches to-nigth the great feeling has come into my heart that we are better prepared than we ever were before to show how America can lead the way along the paths of light. Take the single matter of financial statistics, of which we have only recently become precisely informed; the mere increase in the resources of the national banks of the United States exceed the total resources of the Deutscher Reichbank, and the aggregate resources of the national banks of the United States exceed by three thousand millions the aggregate resources of the Bank of England, the Bank of France, the Bank of Russia, the Reichbank in Berlin, the Bank of the Netherlands, the Bank of Switzerland and the Bank of Japan. Under the provincial conceptions of the republican party this would have been impossible. Under the world conceptions of those of us who are proud to follow the traditions of Thomas Jefferson it has been realized in fact, and the question we have to put to ourselves it this, "How are we going to use this power?"

Referring again to the Alabama Case and to the treaty of May 8, 1871, between England and the United States, it will be seen that the latter has an important bearing upon another suggestion of the Senate Committee on Foreign Relations in connection with the Urrutia-Thompson treaty. The Committee did not favor the expression of regret contained therein towards a weak and defenceless Republic, but such an expression of regret was found possible and proper in the case of one of the great powers of the world and was written into one of the most important and best known treaties in the history of XIX Century dimplomacy.

Such an expression of regret was found also in many solemn documents of contemporary diplomatic history. The last we know is the note of the German Government offering reparation to the United States for the attack upon the steamboat Sussex. This note says as follows.

> "In view of these circumstances the German government frankly admits that the assurance given to the American government, in accordance with which passenger vessels were not to be attacked without warning, has not been adhered to in the present case. As was intimated by the undersigned in the note of the 4th inst. the German government does not hesitate to draw from this resultant consequences. It therfeore expresses to the American government its **sincere regret** regarding the deplorable incident and declares its read-

> iness to pay an adequate indemnity to the injured American citizens. It also disapproved of the conduct of the commander, who has been appropiately punished."

Much criticism has been launched against the Wilson administration for having agreed upon the mild and perfectly honorable expression of regret contained in the Urrutia-Thompson treaty, but it seems to be forgotten that the Taft Administration sent to Bogota a Minister who, as the initial step of his mission presented a solemn document to the Colombian Chancellery, in which he said:

> "The Government and the People of the United States sincerely regret the occurrence of events that in any manner may have changed the long and sincere friendship which existed for almost a century between Colombia and the United States has ardently desired the effacement of the unfriendly feeling created in Colombia by the secession of Panama.

COLOMBIA AND THE PANAMA CANAL

COLOMBIA AND THE PANAMA CANAL

The relations between Colombia and the United States, until 1903 were of the most friendly nature and the directness of Colombia was always recognized by the United States not only in negotiations about the Panama Canal but in all matters Let us remember these words of Abrahan Lincoln in his last anual message (December 6, 1864):

> "It would be doing injustice to an important South American State not to acknow ledge the directness, frankness, and cordia lity, with which the United States of Colombia have entered into intimate relations with this Government."

The statement that Colombia ever opposed obstacles to the opening of the Panama canal is a gross libel. On the contrary the entire dimplomatic history of Colombia, from the time of its emancipation from Spain, shows how great was her desire to see the canal built, although, as dictated by an elementary regard for her self preservation, she endeavoured to bring about a realization of her desire without any impairment of her own sovereignty.

The canal being now open, Colombia cannot ignore the fact that this great work is one of the chief factors in the future material development of the

world, but as long as the agreement giving a lawful title to the United States is not carried out, Colombia will also maintain that the work, great as it is stands as a monument to an even greater crime; and that Colombia and Colombia alone is the lawful owner of the Isthmus of Panama.

Should the formal opening of the canal unfortunately take place before a final settlement is arrived at, Colombia will be forced once more to protest to the other nations of the world, against the violation of her sovereignty.

In the eyes of the people of Colombia and of all America, the Panama Canal stands for the victory of might over right, the triumph of brute force over law, far more than for the splendid subjugation of tropical nature by the science and energy of the people of the United States. It is in the power of the United States to remove this feeling, to change this state of affairs and to ensure that the canal shall be, what it always would have been without the crime committed in 1903, and what the governments and statesmen of Colombia and the United States constantly worked for it to be: a great and powerful link uniting the two Republics.

Reference has been made to the danger which might accrue to the canal if it were attacked from Colombian territory and of the necessity of preventing an alliance between Colombia and any other nation. If any such danger or any such necessity exist, the best guarantee of the safety of the canal lies in an agreement with Colombia.

In a letter which I wrote to the Washington Post on this question I said:

"In one of the editorials of the Washington Post of Januray 24, I find the following paragraph:

"There is a possible source of war in the danger to which the Panama Canal would be exposed in case Colombia should make a bargain with an oversea power seeking territory in South or Central America. The canal could be attacked from the territory of Colombia and the ports of that Republic used advantageously by a naval enemy of the United States to forbid the making of an alliance between Colombia and any European or Asiatic power having for its object an assault upon the Panama canal, and the first errand of the American fleet would be to protect the canal.'

"Anyone reading the above statement without a knowledge of the geography of this hemisphere might possibly be led to believe that Colombia is a protectorate and not a sovereing and independent nation of six million inhabitants, with its own free institutions and enjoying the same rights as the United States and the other nations of the Pan-American Union."

"When once this rectification has been made, permit me to say that the fear that the Panama Canal might be attacked some day from Colombian territory may be averted in

due time by the United States, should such a danger really exist, not by means of a policy of aggression which the Colombian people, firmly and fully conscious of its rights, would always reject, but by means of a policy of fraternity, fellowship and justice which will unite the two countries in common ideals, common interests, and common sentiments. Such a policy calls for the restoration—by means of the reparation of past grievances—of the ancient and traditional goodwill and friendship between Colombia and the United States. In this connection let me remind you that Dr. José María Galviz, a delegate from the Republic of Chile to the Second Pan American Sciendific Congress, expressed in "The Boston Globe" his astonishment that reparation should still be delayed."

"The friendship between Colombia and the United States had as a firm basis the similarity of democratic institutions, and culminated in the Treaty of 1846, which became an exceptional agreement in the history of United States diplomacy, and which was unfortunately violated in 1903 when the dismemberment of Colombian territory through the separation of Panama was countenanced."

"Thanks to this genuine friendship, not only the political relations of the two countries improved, but their commercial intercourse grew by rapid strides· Has the fact that

Colombia opened her doors and allowed free passage through the Isthmus of Panama to everything needed for the development of California and the other western States been forgotten?"

"If the safeguarding of the Panama Canal enters into the scheme of the national defense of the United States, it is natural to suppose that that protection would be sought in an honest and loyal manner by cultivating the friendship of Colombia and by respecting her sovereignty; it can never be attained by returning to a policy already disapproved by the whole of the American continent.

"As Minister for Foreign Affairs of Colombia and in every other important position held by me, I have zealously labored to bring about a good understanding between Colombia and the United States, and it is my earnest hope that all those in this country who may desire to see the future relations of the two republics guided by a spirit of justice and confraternity will direct their efforts to the attainment of this same lofty purpose."

COLOMBIA'S CASE AND PAN-AMERICANISM

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Inmediately after coming into power the Wilson Administration sought to realize one of the parts of the democratic programe by doing justice to Colombia. For that purpose Mr. Thadeus A. Thompson, a diplomat of high attainments and just mind, was sent to Bogota with specific instructions to propose a Treaty. After extended negotiation in which he overcame Colombia's strong belief that the case could only be satisfactorily settled by arbitration, Mr. Thompson realized the object of his mission and on April 6, 1914, there was signed in the capital of Colombia the Treaty for the settlement of the differences that had arisen from the loss of Panama, which is now before the Senate of the United States.

The signature of that treaty was hailed with keen satisfaction throughout Latin-America. Without exception the leading newspapers of every American nation praised it, and this feeling was even conveyed by official acts of various governments. From that moment lost confidence began to revive, and a great impetus was given to the ideals of Pan-Americanism.

The success of the late Pan-American Scientific Congress which met this year in Washington was an earnest proof of this re-awakened confidence. Had it not been for the high aims and just spirit of the Wil-

son policies there could have been no such unanimous cordiality on this continent as was manifest on that occasion. Attention was solemnly called to this fact in Philadelphia by one of the delegates to the Congress.

The report of the Senate Committee on Foreign Relations on the Colombian Treaty, coming as it did a few days after the adjournment of the Congress, created a most unfavorable impression as being at variance with the spirit of cordiality and of constructive Pan-Americanism which had been so marked a feature of the Scientific Congress and of the meeting of the American Institute of International Law. Such Colombians as had taken part in the deliberations of these two bodies, were really able to believe that at last the time had come when the dark days of difficulties between Colombia and the United States were really at an end. We were most unhappily wrong, and we must admit at the very least that our confidence was misplaced.

Several of the delegates of other American republics who attended the sessions made no attempt to conceal their conviction that before the brotherhood of the Americas could be an accomplished fact the questions between Colombia and the United States would have to be settled. The truth is that these questions in the state in which they have been left by the report of the Committee on Foreign Relations of the United States Senate will continue to be an insurmountable obstacle to the development of Pan-American ideals and principles in which

all the nations of the new world are more or less deeply interested.

What is happening in respect to the Pan-American treaty recently suggested by the Government of the United States bears out what we say. President Wilson, whose noble desire to bring closer together, within the bounds of justice and equality, the peoples of the American continent will be one of the great glories of his administration, recently proposed to all the American nations a Treaty the principal clauses of which would be:

> "Article I.—The high contracting parties agree to join one another in a common and mutual guarantee of territorial integrity under Republican forms of Government.
>
> "Article II.—To give definite application to the guarantees set forth in Article I, the high contracting parties severally agree to endeavor forthwith to reach a settlement of all disputes as to boundaries or territory now pending between them by amicable agreement or by means of international arbitration.
>
> Article III.—The high contracting parties further agree that all questions of international character arising between any two or more of them which cannot be settled by the ordinary means of diplomatic correspondence shall before any declaration of war, or beginning of hostilities be first submitted to a permanent international commission for investigations, and if the dispute is not settled by

investigation to submit the same to arbitration, provided the question in dispute does not affect the honor, independence, or vital interests of the nations concerned or the interests of third parties.

Article IV.—To the end that domestic tranquillity may prevail within their territory, the high contracting parties furher agree not to permit the departure of any military or naval expedition hostile to the established government of any of the contracting parties and to prevent the exportation of arms and munitions of war destined to any person or persons in insurrection or revolt against the Government of any of the contracting parties.

As far as we many judge by reports which have appeared in the American press and especially an article in the New York Evening Post of April 1, 1916, on the negotiations in connection with the proposed Treaty, it has met with certain objections from several of the diplomats acredited to the Government of Washington by other American Republics. In no small measure these objections have borne upon the pending controversy with Colombia, the present state of which does not appear to be compatible with a treaty of the nature of the one proposed.

To bring this work to a close I cannot do better than to quote the words of Abraham Lincoln, in his last annual message, on the policy of Colombia towards the United States:

> "It would be doing injustice to an important South American State not to acknowledge the directness, frankness and cordiality with which the United States of Colombia have entered into intimate relations with this Government."

THE TREATY

TREATY

Between the United States of America and the Republic of Colombia, for the settlement of their differences arising out of the events which took place on the Isthmus of Panama in November 1903

The United States of America and the Republic of Colombia, being desirous to remove all the misunderstandings growing out of the political events in Panama in November 1903; to restore the cordial friendship that formerly characterized the relations between the two countries, and also to define and regulate their rights and interests in respect of the interoceanic canal which the Government of the United States is constructing across the Isthmus of Panama, have resolved for this purpose to conclude a Treaty and have accordingly appointed as their Plenipotentiaries:

His Excellency the President of the United States of America, Thaddeus Austin Thomson, Envoy Extraordinary and Minister Plenipotenciary of the United States de America to the Government of the Republic of Colombia; and

His Excellency the President of Colombia, Francisco José Urrutia, Minister for Foreign Affairs; Marco Fidel Suárez, First Designate to exercise the Executive Power; Nicolás Esguerra, ex-Minister of State; José María González Valencia, Senator; Rafael Uribe Uribe, Senator; and Antonio José Uribe, President of the House of Representatives;

Who, after communicating to each other their respective full powers, which were found to be in due and proper form, have agreed upon the following:

Article I

The Government of the United States of America, wishing to put at rest all controversies and differences with the Republic of Colombia arising out of the events from which the present situation on the Isthmus of Panama resulted, expresses, in its own name and in the name of the people of the United States, sincere regret that anything should have occurred to interrupt or to mar the relations of cordial friendship that had so long subsisted between the two nations.

The Government of the Republic of Colombia, in its own name and in the name of the Colombian people accepts this declaration in the full assurance that every obstacle to the restoration of complete harmony between the two countries will thus disappear.

Article II

The Republic of Colombia shall enjoy the following rights in respect to the interoceanic Canal and Panama Railway:

1. The Republic of Colombia shall be at liberty at all times to transport through the interoceanic Canal its troops, materials of war and ships of war, even in case of war between Colombia and another country, without paying any charges to the United States.

2. The products of the soil and industry of Colombia passing through the Canal, as well as the Colombian mails, shall be exempt from any charge or duty other than those to which the products and mails of the United States may be subject. The products of the soil and industry of Colombia, such as cattle, salt and provisions shall be admitted to entry in the Canal Zone, and likewise in the islands and main land occupied or which may be occupied by the United States as auxiliar y and accessory thereto, without paying other duties or charges than those payable by similar products of the United States.

3. Colombian citizens crossing the Canal Zone shall, upon production of proper proof of their nationality, be exempt from every toll, tax or duty to which citizens of the United States are not subject.

4. During the construction of the Interoceanic Canal and afterwards, whenever traffic by the Canal is interrupted or whenever it shall be necessary for any other reason to use the railway, the troops, materials of war, products and mails of the Republic of Colombia, as above mentioned, shall, even in case of war between Colombia and another country, be transported on the Railway between Ancon and Cristobal or on any other Railway substituted therefor,

paying only the same charges and duties as are imposed upon the troops, materials of war, products and mails of the United States. The officers, agents and employees of the Government of Colombia, shall, upon production of proper proof of their official character or their employment, also be entitled to passage on the said Railway on the same terms as officers, agents and employees of the Government of the United States. The provisions of this paragraph shall not, however, apply in case of war between Colombia and Panama.

5. Coal, petroleum and sea salt, being the products of Colombia, passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, and viceversa, shall be transported over the aforesaid Railway free of any charge except the actual cost of handling and transportation, which shall not in any case exceed one half the ordinary freight charges levied upon similar products of the United States passing over the Railway and in transit from one port to another of the United States.

Article III

The United States of America agrees to pay to the Republic of Colombia, within six months after the exchange of the ratifications of the present Treaty, the sum of twenty-five million dollars gold, United States money.

Article IV

The Republic of Colombia recognizes Panama as an independent nation and taking as a basis the Colombian law of june 9, 1855, agrees that the boundary

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shall be the following: From Cape Tiburón to the headwaters of the Río de La Miel and following the mountain chain by the ridge of Gandi to the Sierra de Chugargún and that of Mali going down by the ridges of Nigue to the heights of Aspave and from thence to a point on the Pacific half way between Cocalito and La Ardita.

In consideration of this recognition, the Government of the United States will, inmediately after the exchange of the ratifications of the present Treaty, take the necessary steps in order to obtain from the Government of Panama the despatch of a duly acredited agent to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship, with a view to bring about both the establishment of regular diplomatic relations between Colombia and Panama and the adjustment of all question of pecuniary liability as between the two countries, in accordance with recognized principles of law and precedents.

Article V.

The present Treaty shall be aproved and ratified by the High Contracting Parties in conformity with their respective laws, and the ratifications thereof shall be exchanged in the city of Bogotá, as soon as may be possible.

In faith whereof, the said plenipotentiaries have signed the present Treaty in duplicate and have hereunto affixed their respective seals.

Done at the city of Bogotá, the sixth day of April

in the year of Our Lord nineteen hundred and fourteen.

(L. S.) Signed, **Thaddeus Austin Thomson.**—(L. S.) Signed, **Francisco José Urrutia.**—(L. S.) Signed **Marco Fidel Suárez.**—(L. S.) Signed, **Nicolás Esguerra.**—(L. S.) Signed, **José M. González Valencia**—(L. S.) Signed, **Rafael Uribe Uribe.**—(L. S.) Signed, **Antonio José Uribe.**

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