THESIS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL
OF THE UNIVERSITY OF PENNSYLVANIA IN
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MENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

THE DOCTRINE OF INTERVENTION

BY

HENRY G. HODGES, A.M.

FORMER HARRISON FELLOW IN POLITICAL SCIENCE AT THE UNIVERSITY OF PENNSYLVANIA

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FOREWORD

There is probably no other department of international law in which the uncertainty of principles is as marked or the differences of opinion amongst commentators as great, as in the questions relating to the doctrine of intervention. The unsatisfactory condition of international law as regards this subject is a matter of more than theoretical importance—a fact which has been clearly illustrated in our recent foreign policy with reference to Mexico.

Mr. Hodges has done a real service in undertaking a careful historical analysis of the question, and in combining therewith a critical discussion of the legal principles involved. It is through such monographic studies that real advance is made in the development of a clearly defined, consistent body of principles for the guidance of nations in their international relations.

It is to be hoped that studies similar to that of the author of this monograph will be undertaken in other departments of international law.

L. S. Rowe
Professor of Political Science
University of Pennsylvania

Philadelphia, Pa.
March 11, 1915

PREFACE

A more than passing interest in the subject of the doctrine of intervention revealed the lack of a comprehensive treatment of that subject. The present book represents an effort to trace the development of the doctrine, as well as to interpret it in accordance with the best modern practice. Should the ideas here expressed stimulate further inquiry, the study will have served a useful purpose.

As pointed out in the text, the scope of justifiable interventions will undoubtedly be broadened with the rapid development of modern science. On the other hand, several causes for intervention, once justifiable, are gradually losing weight, and will cease to offer a recognized pretext as the forces of democracy advance. The subject is in a constant flux as regards certain of its provisions. It is to be hoped that several of the present ranking justifications will become untenable in future international relations.

One practice which cannot be urged too strongly is for interventions, otherwise justifiable, to be undertaken by several states acting in concert. Concerted action will tend to foster an international

public opinion, besides lessening, to a great extent, the ill-feeling and anxiety of the weaker states, and the mutual jealousies and suspicions of the more powerful ones. The first great practical stride towards international peace will depend upon some international agreement providing for a regulated system of concerted interventions of some nature, sanctioned by the majority of states and conducted, for the greater part, according to previously adopted rules.

The best acknowledgment of the authorities consulted is to be found in the various footnotes. I am particularly indebted to Dr. L. S. Rowe, of the University of Pennsylvania, for his many valuable suggestions, especially in connection with the treatment of the Mexican intervention. I have had, at all times, the encouragement and assistance of my friend and colleague, F. W. Breimeier.

H. G. HODGES

University of Pennsylvania
March 15, 1915

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CHAPTER I

GENERAL CONSIDERATIONS

Definition

In dealing with a subject connected with one of the sciences it is essential that a good definition provide, at the outset, not only a clear understanding of its limitations, but also a common starting point for its investigation.

INTERVENTION IS AN INTERFERENCE BY A STATE OR STATES IN THE EXTERNAL AFFAIRS OF ANOTHER STATE WITHOUT ITS CONSENT, OR IN ITS INTERNAL AFFAIRS WITH OR WITHOUT ITS CONSENT.

Although the definition must of necessity precede the argument for the sake of clearness, it is, as Lawrence says in formulating his definition of international law, "one of the last results to be reached." It is not until the nature and extent of any study are fully considered and clearly perceived that its proper limitations can be assigned. It is peculiarly true of this subject, that the definition is in most cases colored by personal observations and resulting conclusions. Two persons drawing their results from the same general body of subject-mat-

ter may differ considerably in their ideas as to the proper scope of intervention. Their idea of its scope appears both consciously and unconsciously in their interpretation.[1]

D. D. Field in his "International Code" gives the first clue of his opinions on intervention in his definition of sovereignty where he says, in part, that a state enjoying this right "is independent of all foreign interference," and further, that it should act in all cases "without opposition from any foreign power." Later, when he comes to consider intervention, we fully realize the strength of his opinion as well as his ideas of the causes and limitations of the subject. In article No. 961 he states, "No nation has a right to intervene between any other nations engaged in a war. To intervene is to become a party to the war." This merely represents one of the extreme points of view and serves to emphasize

[1] Lawrence, T. J., "Principles of International Law," p. 123: "But sometimes it happens that another state, or group of states, interfere with the proceedings of a state and endeavor to compel it to do something, which, if left to itself, it would not do, or refrain from doing something, which, if left to itself, it would do. Interference of this kind is called *intervention.*"

Hall, W. E., "International Law," p. 284: "Intervention takes place when a state interferes in the relations of two other states, without the consent of both or either of them, or when it interferes in the domestic affairs, irrespective of the will of the latter, for the purpose of either maintaining or altering the actual conditions of things within it."

the fact that many definitions of intervention are, after all, largely personal.

In his "Traité de Droit International," F. De Martens gives a peculiarly concise and simple definition, as follows:

"When two states are at variance with each other and a third mixes itself in their affairs without being invited, there is an intervention."[2]

He calls special attention to the *invitation* by further commenting that if on the other hand an invitation has been extended by the adversaries, for the purpose of settling the difference, intervention no longer exists; the new condition is what is known as mediation. He fails to call attention to the situation which often results when a state is at variance with itself.

Experience proves that the internal as well as the external affairs of a nation are subjected to the interference of another nation or nations. This distinction between the internal and external, although perfectly valid, is very often hard to determine and in some cases does not exist. Often the interference in the external affairs involves a similar interference in the internal affairs,

[2] De Martens, F., "Traité de Droit International," I, 394-395: "Quand deux Etats sont en désaccord, et qu'un troisième se mêle de leurs affaires sans en être prié, il y a intervention. Si au contraire il a été invité par les adversaires à trancher leur différend, ce n'est plus intervention, mais une médiation."

as is almost always the case when the United States intervenes in the domestic affairs of her wards to change the external policy in existence at that particular time. Our Monroe Doctrine, of which we shall have occasion to speak later, often leads us to participate, at least for a time, in the foreign affairs of one of the countries to the south of us. The successful completion of this external intervention often demands some regulations, on our part, of the internal affairs of that country. We can make another almost analogous distinction in point of merit by contending that intervention consists of two kinds: first, that which is the result of armed force, and secondly, that which is the result of pressure, either political or otherwise. This illustration will serve the point. We can divide the subject of intervention into many different aspects when considering the field as a whole. Unfortunately, it often happens that these distinctions are as true as they are useful.

Diplomatic intervention, for instance, is hardly worth considering as to its justification. This is a procedure which all nations reserve to themselves without restriction, each deciding for itself the justification of the cause presented for its consideration. We have many examples illustrating the tenacity with which nations adhere to this incontestable right. The varied attempts of some of the less progressive nations to limit intervention by provid-

ing for the non-exercise of this right, as well as their consequences, will be considered when we discuss the attempts to limit arbitration in its international applications.

Intervention is in the first instance a hostile act, because it constitutes an attack upon the independence of the state subjected to it. It is also equivocal in character, a fact which makes it one of the most interesting phases of international law. In the first place, it is regarded by the state intruded upon, if not previously agreed to, as an act of war in that its sovereignty is impaired. On the other hand it is regarded by the intruding state not as a means for redressing wrongs but as an act whose effect is actually meant to prevent war. Thus it often causes that which it aims to prevent. This equivocal character of the subject is very important and must be taken into consideration in the decisions that follow.[3]

Origin and Development

This particular principle of international law dates from the earliest times of which we have records of international relations. These first accounts are probably the old Jewish records. During antiquity

[3] Hershey, A. S., "Essentials of International Public Law," p. 148: "Nowhere else within the wide range of international relations, does there exist such an apparent conflict between political theory or fundamental principles on the one hand and actual practice on the other."

it was the rule rather than the exception. The Bible gives us many instances of this practice, and, in fact, the principle developed directly from the *rule of might.*

There may be distinctly traced in the earlier development of intervention three primary causes. The first and of course the most important was the so-called right of self-preservation. This theory was not only supported but demanded by all governments and creeds. The question was supported by its very nature. Often this right of self-preservation was the justification for war to both sides to the controversy. We have a very good example of this rule working both ways from the various accounts of Caesar's campaigns in Gaul. On the one hand the German viewpoint saw clearly that the stress of economic conditions at home demanded the occupation of some of the rich territory to the south. Thus they justified their invasions. On the other hand the Commentaries give us to understand that the German hordes were pressing in on the north, in direct violation of Roman territorial sovereignty, and moreover, their virtual occupation where they had obtained a foothold, together with the general southern direction of their march threatened the very heart and existence of the Empire. Therefore the subjugation and extermination of these people were not only to be vigorously pushed on Roman soil, but the violation of the

territorial sovereignty of the Germans (providing "barbarians" possessed such a thing) was fully justified on the grounds of self-preservation. Some of the economists would have us believe that the condition claimed by the old German tribes exists in Japan today. Pure pressure of numbers made the Japanese occupation of Korea inevitable. They warn us that even this acquisition cannot accommodate the over-crowded population of the eastern Island Empire, and it is this view of the future, judged from the experience of the past, that makes the "Yellow Peril" spasmodically feared on all the shores of the Pacific.

It was self-preservation that compelled and justified England in seizing the Danish fleet at the time Denmark decided to espouse the cause of Napoleon.[4] The Danish fleet being at the time unprepared for an attack from any quarter, was an easy prey for the British, who excused their actions on the grounds of the first principle of mankind, as well as that of intervention, namely—self-preservation. For the individual, self-preservation is the first law of nature. The principle applies equally in the case of a nation, which pleads as an individual before that international tribunal of public opinion which has given this enlarged individual certain rights and privileges embraced in the recognized laws of nations.

[4]See C. A. Fyffe, "History of Modern Europe," I, 342-345.

The second cause of early development was that of religious principles. The best examples of this tendency took place during the eleventh and twelfth centuries, when various portions of the European population invaded the Turkish Empire seven distinct times in the effort to keep open the road, that their countrymen might make pilgrimages to the shrines of the Holy Lands. These various interventions with their consequent slaughter and temporary conquests were justified, on the part of Europe, because of the religious principles involved.

The third early justification for the extension of intervention was based on the theory of "barbarity," as it was called. Every nation considered itself justified in invading, and, if possible, conquering and ruling any outside race or nation which it might consider as barbarous or unfit for self-government. The trouble with this theory was that most nations considered all peoples except themselves barbarians. This principle formed an added incentive and justification for the Crusades. The cruelties which their countrymen had suffered at the hands of the barbarous Turks not only justified but demanded revenge.

The "barbarity" theory has not, by any means, been wholly dispensed with. Many of England's numerous protectorates give silent and unconscious testimony to the right of the superior to guide the weaker brother. The end accomplished in some

cases, whatever the justification, has not been unworthy of the effort. The gradual steps of ascendency over Egypt taken by England, culminating in annexation in December, 1914, notwithstanding accusations of selfishness on the part of England, possess some laudable features. It is true that English rule is supported by the Egyptian minority, in point of numbers, but that native minority is the intelligent, Christian class. The Mohammedans, constituting about 90 per cent of the population desire self-government. The Christians of Egypt desire foreign rule, believing that only by such means can any degree of order be preserved in Egypt. Should the will of the incapable majority be allowed to exert itself over the enlightened minority in spite of the consequences? As a point of fact, that part of the Egyptian population desiring foreign rule, prefers English rule. In consideration of such facts it seems unreasonable to condemn, unqualifiedly, all interventions which trace their cause to the "barbarity" theory.

The history of the Roman Empire is a long series of interventions. In fact intervention became so general with this leader of the world that it lost its international character altogether and became the recognized legitimate privilege of Rome. As a concrete modern example of the feeling of the lack of the principle of intervention among the practices of ancient Rome is Phillipson's work,

entitled "International Law and Custom of Ancient Greece and Rome," published in 1911. Here we find no mention whatever of the subject. Although this fact itself cannot be held to be conclusive proof of our previous statement, nevertheless it does aid in the support of that theory.

The Middle Ages can scarcely be said to give examples of intervention in the modern sense, due to the non-development of the state systems and the lack of empires. In spite of this general conclusion we find numerous instances of popes, emperors and feudal lords interfering, even forcibly, in each other's affairs. The great religious wars furnished the pretexts during the sixteenth and part of the seventeenth centuries. Granting intervention in the Schleswig-Holstein affair we may attribute the beginning of the modern German Empire to this principle.

Most often, of the many causes, is intervention directly responsible for territorial acquirements. The United States intervened in Mexico in 1846 and the result was a large increase in the area of this country. The same principle has been relied upon by Russia with similar results. Often the first step seems innocent enough in itself, but the danger of future claims in the shape of territory is too strong to be resisted. Governments are sometimes guided by the same selfish motives that prompt most of the misdeeds of the individual. When a

nation is able to intervene in the internal affairs of a country for the good of the country whose affairs are being forcibly guided from the outside, and can afterwards withdraw from that country without collecting some fee for its service to mankind, that nation and that act will be noted by the civilized world. The United States approached such ideal service in respect to Cuba on two different occasions when she found cause to intervene. Compensation was exacted, however, in the form of a coaling station and certain other concessions afterwards granted to this country by the Cuban Constitution. The cause given to the world for the first intervention in Cuba was our duty to humanity, here represented by the oppressed Cubans. The cause of the second intervention was a technical one, in that it was based on a right granted to this Government by the Cuban Congress and People and adopted as a part of their constitution. These two interventions stand out in history as representing two of the most conspicuous examples of national unselfishness.

The Monroe Doctrine as interpreted in the past has been the cause of a number of interferences, on our part, with questionable activities in South America. This doctrine and its relation to intervention is the all-important question in our relations with Mexico.

In Europe, sixteenth century practice in regard

to the principles of international law was undoubtedly influenced by Machiavelli's "Prince," published in 1513. During this period the frequent practice of intervention recommends itself on the ground of "self-interest." Machiavelli advised his Prince against remaining a neutral in any contest. "It is always more advantageous to take part in the struggle." There was a time in later history, during the Napoleonic Wars, when this suggestion was literally true. With the coming of Grotius we notice an advance, from the standpoint of our modern idea of justice, in the acceptable causes for intervening. The main qualities that Grotius contended for were Justice and Equity. Applying these principles to intervention he developed in his "De Jure Belli ac Pacis," published in 1625, the theory of,—"Do nothing to harm the side with the just cause or strengthen the side with the unjust cause." Although Grotius may have held this to be ideal justice, it was in reality a dangerous justice, increasingly so with industrial world-development. The whole difficulty is to determine the side with the just cause. There will always be as many ideas as to the just cause as there are causes. Theoretically, there was some advance; practically, none. But the effort in this particular was not wasted for it prepared men's minds for the later developments. Present consideration of these milder phases of intervention prefers to

treat the subject under the caption, "unneutral service."

There was another theoretical advance made by the French in 1790 and 1792. Theoretical, because the declarations were merely expressions of ideals which were followed, as previously mentioned, by a reaction which found its expression in the "Acts of Napoleon" and the replying "Orders in Council" of Great Britain. In 1790 the French Assembly declared,—"The French nation renounces wars of conquest and will never use force against the liberties of any people." In 1792 the Assembly added,—"France will grant fraternity and aid to all people who wish to recover their liberty."[5] Future developments showed that France was clearly false to these principles.

European and American Practice

More recent practice in Europe has been for intervention to be accomplished by two or more nations acting in concert. The result of this tendency is witnessed by the unified action in certain foreign affairs, of the Holy Alliance, its successor the Triple Alliance, the Triple Entente, and, on very broad lines, by the Concert of Europe. The first three were more clearly defined and more tangible than the last, but not nearly so strong in the pressure

[5]Decree of the Convention of Nov. 19, 1792.

they were able to exert. It was the last mentioned loose confederation of states, that authorized the interventions in Naples, Piedmont and Spain.

The United States when intervening in the Western Hemisphere, to which she has to a large extent limited herself by the Monroe Doctrine, has hitherto claimed the right to intervene alone. From this tendency, on the part of the United States, has developed the general world recognition of the "Primacy of the United States" in American affairs, as contrasted with that of the "Concert of Europe" on the Continent. The most recent tendency is toward a "Concert of the Americas," in which the United States shall be only one, although undoubtedly the guiding factor. The development of this Concert has been actively fostered by the Pan-American Union and has applied to the policy the name, Pan-Americanism. Our Government is often able to accomplish much benefit to humanity and progress by the mere pressure that its position in this hemisphere makes possible. Thus, in 1850, the bloody and useless war between Santo Domingo and Hayti was brought to an end. Diplomatic pressure aided by small display of force opened to peaceful commerce the fruits of a rich tropical island. It later became necessary for this Government to take charge, through its agents, of the custom's receipts of the Republic of Santo Domingo, to prevent serious interference

on the part of several European creditors. This duty was undertaken in 1907. The fact that we controlled the principal source of income of the Government of the island made it possible to put down a revolution very recently within one month of its beginning, without any effort on our part other than diplomatic representations. The previous revolution in the island, in which the United States intervened, lasted eleven months. The pressure of the purse is shown by the comparatively short duration and little effect of the more recent uprising. The Government's representative in Santo Domingo simply made it plain to the revolutionary leader that although his plans might be successful and the present president overthrown, the United States would not recognize the new government organized under such conditions, nor would any part of the custom's receipts be turned over to that government. It was made clear that law and order must prevail and the provisions of the Constitution carried out in their present form until changed by the people in the regular way. The aspirant might become the guiding factor in the government of the country but only after he was elected by the people at one of the regularly provided for elections.[6]

[6] Commenting on this successful intervention, the New York *Commercial* observes, editorially: "If by withholding recognition the United States can make it impossible for Mexico

John Basset Moore says, in his "International Law Digest,"[7] "Much that is found on the subject of intervention in the books on International Law is especially applicable to the situation in Europe and can be applied only indirectly and by analogy to the situation in America and in other parts of the non-European world."

As an illustration of this observation of Professor Moore we can do nothing better than consider the difference in application of the two principles of self-preservation and right of succession. The former is universal in its application, both as to extent of time and territory. The latter, as a principle for the justification of intervention, is confined to Europe. This principle is unknown to American politics. Our institutions on this continent are of the republican type which finds no cause for interest in a "right of succession" for the simple reason that it is abhorrent to our sense of equality that any man should possess such a right.

or any other republic in Central America to borrow money abroad while a state of anarchy or civil war prevails, it will tend greatly to check speculations in revolutions by certain international banking houses and purveyors of munitions of war, who do business on both sides of the Atlantic. *This does not involve any interference with the rights and privileges of the people of such republic.* It is rather a defense of their rights and liberties, because all that the United States Government can or ever will ask of them is that they hold fair elections and abide by the result."

[7] VI, 2.

Importance of the Subject

The idea of the great importance of this subject is further impressed on us when we come to examine the material which has been written, treating of its various phases, by the prominent men of all the larger nations. The extent and volume of this material is noticeably large when compared with the written attention given to some of the other principles of international relations. For instance, there are preserved for our examination the opinions of such men as Washington, Adams, Jefferson and Monroe, all coming within a comparatively short period and from one of the younger nations. Later, in this country, the subject was discussed at length by Webster, Bayard and Frelinghuysen. We have all these and many more from America, besides those from the various nations of Europe, some of which we shall have occasion to use farther on. From the great volume of these American opinions one particularly attracts the attention. This attraction is not so much for its value, perhaps, as an interpretation of the right of intervention, but as illustrative of the feelings of the man who wrote it, and reflective of the feelings of his time. I refer to the following from Thomas Jefferson:

"I have ever deemed it fundamental for the United States never to take active part in the

quarrels of Europe. Their political interests are entirely distinct from ours. Their mutual jealousies, their balance of power, their complicated alliances, their forms and principles of government are all foreign to us. They are nations of eternal war. All their energies are expended in the destruction of the labor, property and lives of their people. On our part, never had a people so favorable a chance of trying the opposite system, of peace and fraternity with mankind and the direction of all our means and faculties to the purpose of improvement instead of destruction."[8]

How prophetic has this expression been proved by subsequent events!

This would seem to add another link to the, until recently, professed American doctrine of non-intervention. The stress of modern times, as shall be pointed out in some of the conclusions to be drawn, has made necessary the gradual abandonment of this policy of non-intervention on the part of the United States in all parts of the world, with the possible exception of Europe. But is Europe an exception? Did not the United States intervene to a certain extent when she made strong and remarkably successful efforts to enforce her policy of "financial hold-up" against Mexico?

[8] Ford, Paul Leicester, "The Writings of Thos. Jefferson," X, p. 257.

CHAPTER II

POLITICAL INTERVENTION

General Principles

Intervention is generally considered under the two headings of political and non-political.[1] The nature of the difference between these two divisions is shown most clearly by the following distinction:

Political intervention results more especially from disagreements between the sovereign powers as to acts or policies affecting the dignity or the security of the opposing state or the general body of states.

Non-political intervention results, in the first instance, from the protection of citizens in some manner.

In interventions of either a political or non-political character states are warned, under the penalty of public opinion, to observe two general principles, provided the intervention is otherwise sanctioned by the principles of international law.

1. There should be no intervention based entirely on the existence of a religious principle. Thus, according to the laws of Turkey "the penalty of

[1] John Basset Moore and others.

death is inflicted on a Mussulman embracing Christianity." Since this law can inflict no hardships on the citizens of foreign nations, it gives no valid pretext for intervention. It is a law of the country, passed by the properly constituted and generally recognized authorities, and is impartially applied. No nation could justify its interest in humanity or progress to such an extent as to interfere in the internal affairs of another nation, one of whose laws was of such remote interest and capable of inflicting very infrequent hardships. England could hardly justify her interest in Egypt on the grounds of protection for the million native Christians as against the ten million Mohammedans. An intervention of such character is looked upon with suspicion by the other nations. The cause assigned as the true one by the disinterested observer is very probably territorial aggrandisement.

2. When such barbarities exist as to justify intervention, the intervening state should observe two precautions.

A. It should not intervene at such a time as to determine the outcome of a struggle already in existence, which outcome is doubtful at the time of the intervention. Thus, had the slaughter existed to such an extent during our Civil War as to demand the attention of foreign powers, no nation would have been justified in intervening on the ground that the outcome of the contest was clear and further

struggle between the contending parties useless. At no time until within a few months of Lee's surrender was there a preponderating advantage on either side. The United States contended, and rightly so, that England could not possibly espouse the Confederate cause on these grounds. On the other hand, if anarchy and revolution persist in a certain country, regardless of the faction in power, and a considerable time has made evident the fact that neither faction can establish a government that is able to protect the life and property of its own citizens or those of foreign residents, then outside states would undoubtedly be justified in intervening in the name of humanity and social progress, provided the probability existed that that nation or body of nations was capable of carrying on a successful intervention. There is of course, no arbitrary standard declaring how long universal disorder shall be allowed to run its course. Two or three years' continuation of such a condition would seem sufficient to assure the support of public opinion to an otherwise legitimate intervention.

B. It should not use the intervention as a means to gain a foothold in the country whose affairs are being interfered with, looking to a future acquisition in that country, either of land or authority. This is one of the points in intervention where fact so often departs from theory. How many times have we noticed European countries intervening, in the

name of humanity, in some of the less civilized parts of the world? How many times have we noticed that the direct result of these interventions has been a Protectorate or Sphere of Influence? Perhaps the larger number of interferences are dictated by self-interest rather than humanitarian motives. It is also common knowledge that these Spheres of Influence and Protectorates almost inevitably develop into colonies for "the better protection of mankind." The temptation is too great. Thus we may account for the large majority of the English, German and French colonial empires. In this way we obtained our control over the foreign policy of Cuba, as expressed in the Platt Amendment and the Cuban Constitution. Our acquisition of the Philippines was part of the price paid by Spain as the losing party in the Spanish-American War.

When Justifiable

We now come to consider those instances in which political intervention is allowable. This subject naturally divides itself into two parts, namely, those interventions which are allowable from the standpoint of *policy* and those which base their justification on *legality*.

There are four distinct, justifiable causes from the standpoint of POLICY, applicable either in this country or Europe, or both, as the case may be.

These causes, which we shall consider separately are:

1. The right of self-preservation.
2. To uphold the balance of power.
3. To protect neutralized states.
4. To protect neutralized canals or other works of man affecting the world in general.

The first of these causes, as has been mentioned before, is not only the most important principle of intervention, but also the most important of the laws of mankind. Together with "protection of humanity" it forms the cause for the great majority of interventions. It is so important and so frequent because of the fact that it is so inclusive. Nations can point out a number of acts that will affect their self-preservation, their contentions in the different instances being more or less valid as the particular act is less or more remote in its effect. W. E. Hall remarks on this point:

"Interventions for the purpose of self-preservation naturally include all those which are grounded upon the danger to the institutions, to the good order or to the external safety of the intervening state."[2] Thus if the Mexicans were continually crossing our borders, or their artillery was in the habit of allowing shells to stray across the line, or if that Government was in the habit of having secret agents at our capital with the avowed purpose of

[2] "International Law," p. 285.

undermining in some way our institutions, political or otherwise, intervention on the ground of self-preservation would be allowable. The seizure of the Danish fleet, previously mentioned, is a case in point.

Drawing conclusions from the foregoing we may say that a state may intervene to regulate the internal affairs of another which, by reason of neglect or incapacity, has not controlled its citizens from doing damage or involving the internal security of the intervening state. This was the immediate cause of the Mexican War. Leaving out of account the true boundary line as the President of the United States conceived it, the fact that the Mexican Government allowed or ordered part of its military force to cross that boundary resulted in a skirmish between the armed forces of the two nations, and was a direct violation of territorial sovereignty from the American viewpoint, threatening the self-preservation of at least a portion of this country. Hence President Polk's fiery message to Congress, containing the words "War exists by the act of Mexico herself."[3]

It was the preservation of our people and our institutions that prompted Jackson's interventions in Florida. The Spanish authorities in that country were either unable or unwilling to prevent the semi-

[3] Richardson, James D., "Messages and Papers of the Presidents," IV, p. 442.

civilized Indians from crossing into the United States on maraudering expeditions, and then returning to Spanish territory where they felt safe from pursuit on the part of the American troops. Although it is very probable that intervention was justified in this instance, nevertheless a state cannot intervene forcibly where the central government is making decided efforts to put down the threatening conditions, but due to great difficulties is momentarily unsuccessful. Self-preservation in all these cases must be imminent and clear from the facts. It cannot be regarded as a just principle when its results are remote or indirect.

A very interesting and recent development of the temporary invasion of territory was concluded in April, 1913, when the German airship Zeppelin IV settled down on a French military parade-ground at Luneville. From the German viewpoint the invasion was involuntary. The French idea was that although the descent may have been involuntary, there was at least room for doubt as to the invasion, especially since the German airship carried several uniformed army officers. The London *Daily Mail* of April 23, 1913, thus reports the incident:

ZEPPELIN IV INVADES FRANCE

"While a brigade of cavalry was maneuvering at 1.30 p. m. on the Champ de Mars, the vast parade-ground at Luneville, a fortress, a great Zeppelin

airship descended from the clouds and hovered over their heads.

"French soldiers seized the rope thrown down to them and quickly secured it. The officer commanding the Luneville garrison telephoned and requested the occupants of the Zeppelin—four officers in uniform and seven mechanics—to explain their presence in French territory. The explanation said to have been given by the commander was that he had set out at 6.40 a. m. from the Zeppelin station at Freidrichshafen, Lake Constance, on a private trial trip. After cruising about for several hours they lost their course in the clouds. They were not aware that they had crossed the frontier.

"The French officer then informed the visitors that he would be obliged to *seize the airship and detain the occupants.*"

The next morning the Zeppelin was surrounded by three French airships belonging to the military force. One of the leading German newspapers, the *Taegliche Rundschau* explains as follows:

"The officers of this airship can be adequately dealt with only in the way France dealt with Marshal Bazine for the surrender of Metz,—court martial."[4]

Der Post (Berlin) says:

"It was the unquestionable duty of the senior officer of the Zeppelin IV to blow up the airship and all on board and so prevent its priceless secrets from falling into the hands of the French."[4]

[4] April 21, 1913.

The attitude of the French Government was clearly shown by its actions. The Zeppelin was not in the possession of the German Government at the time of the "private trial trip." Germany claimed this exemption but the presence of the officers in uniform weakened the case. The French Government, however, accepted the explanation and the affair was diplomatically dropped.

In Europe the self-preservation plea has been extended to justify interventions that were undertaken to uphold certain reigning families in the troubled states. This doctrine received its greatest impetus from Metternich, but died a natural death before its promotor. The development of this policy is briefly commented on by Mr. Chas. D. Hazen as follows:

"Metternich . . . developed the doctrine of the 'right of intervention,' a doctrine new in international law, yet one to which he succeeded in giving great vitality for many years."[5] The phrase "right of intervention," in this connection, is a quotation from Metternich himself and is a misnomer in the modern sense of the term. If this phrase is taken literally the quotation is false. The "right of intervention" seems to have meant the right to uphold monarchical powers even in spite of the ruler himself. This interpretation is justified by later data from Mr. Hazen on the same subject.[6] This policy

[5] "Europe Since 1815," pp. 58-59.

[6] "Europe Since 1815" p. 59.

is directly contrary to that principle, upheld by the United States in particular, that every people has a right to decide for itself how it shall be governed, meaning by the "people" the majority of the people.[7]

Another peculiarity of the European practice in regard to the self-preservation theory was that it was often given as the cause of an intervention when the real cause was to preserve the "Balance of Power." These two causes are distinct. The upholding of the balance of power to preserve the existence of the state is too remote for justification on the plea of the self-preservation theory. The consideration of this topic naturally leads us to the second of the justifiable causes of political intervention on the grounds of policy.

The theory that there must be a comparatively permanent balance of power between the combinations of the European states to preserve any great degree of peace as well as, perhaps, the existence of some of the states, was developed after the conquests of Napoleon. The object of the theory was primarily to prevent the repetition of such an event. The states mutually adopted the policy to ward off another such threatening of their existence. With this policy as a background it was gradually recog-

[7] Jefferson to Morris, November 7, 1792, "Jefferson's Works," III, pp. 488-489: "It accords with our principles to acknowledge any government to be rightful which is formed by the will of the nation, substantially declared."

nized as justifiable for several states to combine in an intervention to uphold the status quo—the balance of power. The Triple Alliance stood together whenever there was danger of any of the weaker powers being engulfed by the Dual Alliance, either collectively or individually. The Dual Alliance, France and Russia, was, on its part, bound together for the same purpose of protection against Germany, Austria and Italy, the members of the Triple Alliance. These two alliances were the new formations that followed the break up of the old Holy Alliance, of Russia, Prussia and Austria, caused by the withdrawal of Russia. With these two alliances begins the possibility of a more perfect balance of power. The Holy Alliance received its first great blow by the promulgation of the Monroe Doctrine in 1823. Its prestige was about terminated by the open defiance of England in espousing the cause of the Greeks against Turkey a few years later. This intervention led to the formation of the new state of Greece, a result directly contrary to the status quo theory of the Holy Alliance. What was more to the point, Russia, one of the members of the Alliance, had aided in this intervention in behalf of Greece.

A balance of power is now generally preserved by interventions resulting from decisions arrived at by conferences, at which the majority of the larger powers are represented. The Concert of Powers in its present aspect is a growth of the Quadruple Al-

liance formed by Russia, Austria, Prussia and England after the Congress of Vienna in 1815. Its original purpose, ostensibly, was to keep France down; its expressed purpose is well outlined by one of the clauses of the Treaty of Alliance, which declares the intention to renew their meetings "at fixed periods, under the immediate auspices of the sovereigns themselves, or by their respective ministers, for the purpose of consulting upon their interests, or for the consideration of the measures which, at each of these periods, shall be considered the most salutary for the repose and prosperity of nations and for the maintenance of the peace of Europe." Thus the alliance which had been formed to overthrow Napoleon was to continue its existence after its original purpose had been concluded. It was to act as the guardian of the peace of Europe. Its recent composition, as expressed by the term Concert of Europe, included all the larger and more civilized nations, not excepting France, the original cause of its existence. Just as its composition was larger under its new form, so also were its binding ties looser. These nations were held together by an intangible understanding and the looseness of these ties is aptly illustrated by the present European conflict. Their decisions, however, were able in most instances to mould public opinion in a way that the decisions of some of the more tightly bound alliances were unable to accomplish. Some of the

specific work of this Concert of Europe, as well as the phases of its more recent development in conflict with the United States, will be enlarged on later.

In the case of neutralized states we have one state put in a peculiar position as the result of an agreement on the part of a number of the larger and more powerful states to guarantee its independence and territorial integrity. The main condition imposed on a state for this guarantee has been a promise not to engage in wars of conquest. When it is permitted to have a standing army it is to be used for the sole purpose of repelling invasions. States are neutralized by the stronger powers not so much from a charitable spirit as for self-interest. The next best thing to not having a valuable weapon is to keep your strong neighbor from having that weapon. The same feeling holds good in the case of nations. That nation so peculiarly situated that it may at some time become an easy prey for any one of a number of larger nations is, by this method, erased from the eligible list of conquest, so to speak. Hence the neutralization of these states is purely a matter of policy on the part of the protectors. It is upon the basis of this fact that we defend the present analysis of a collective intervention which has for its object the neutralization of another state.

The guarantee of the independence of the neutralized state is dependent on certain conditions which it is bound to fulfill. Should it fail to fulfill

the prescribed conditions, to which it has consented at the time of the neutralization, the guaranteeing states, collectively or individually, have the right to intervene. This right to intervene is, in the last analysis, based on a legal right given to the Powers, parties to the neutralization.

It is sometimes contended that the act of neutralization is not an intervention, but merely a method of recognition. This view of the subject is successfully refuted by several eminent authorities. Sir W. Harcourt in his "Letters of Historicus," while examining the doctrine of recognition in great detail for the purpose of determining whether or not it would be proper for England to recognize the Confederate States, shows in several cases, including that of Belgium, that the neutralization was undertaken not primarily as a method of recognition, but that it was an intervention pure and simple, to adjust the status quo. It is true that at the time of the neutralization of Belgium that state had already set up an independent monarchy and elected its ruler, but this condition was by no means stable until the Conference of the Powers, held in London in 1830, had sanctioned the change and guaranteed the neutrality of the new kingdom. On this particular subject, Mr. Hazen in his "Europe Since 1815" gives us a significant sentence to show the spirit that prompts the neutralization of the weaker state. He writes, in speaking of the neutralization of Belgium: "The

Powers had the satisfaction of knowing that though the territorial arrangements of Vienna were altered, France, the arch-enemy had gained nothing."[8] To the Powers the neutralization meant more than this. It meant that France, the arch-enemy had small chance of *ever* gaining a foothold in Belgium.

It was the same idea that prompted the neutralization of Switzerland. Her central position, together with her weak condition in comparison with surrounding states, made her a possible future prey for any of her stronger neighbors. With this central State neutralized, the possibility of future aggrandizement on the part of any of her neighbors was dispelled. In addition to this, Switzerland, permanently and centrally located, would act as a buffer state. This fact would have at least a tendency to preserve the peace in Central Europe.

When these neutralized states fail to carry out their agreements or when some outside state, a party to the original agreement or not, interferes or attempts to interfere in any way with the affairs of the protected state, one or more of the protecting states has the power to interfere with the existing intervention. It is the same policy prompting this interference that prompted the original neutralization. It is the terms of the original agreement that justifies the second intervention.

[8] Page 105.

Intervention in the case of neutralized canals corresponds in several particulars to that of neutralized states. An international canal is neutralized because it is a benefit to humanity as a whole. It is to the advantage of those nations at peace at any time that the canal shall be free and open and not hindered in its peaceful operation by the activities of belligerents. The experience of the past (at least until 1914) shows that, at any one time, the majority of nations are at peace. Hence it is to the advantage of the majority to adopt the policy of neutralization in the case of such important works of man.

At the present time the Suez Canal is the only canal whose neutrality is guaranteed by any considerable number of the larger Powers. It forms the most conspicuous example of canal neutralization. The provisions of the convention protecting this canal, state that any interference with its operation shall be resisted by the Egyptian Government, aided if necessary by the Turkish Government, these two protecting nations to be in their turn aided by any or all of the guaranteeing nations should the occasion arise. Each nation, in making such an agreement, concludes that it will be at peace at least the greater part of the time and that the benefits to be derived from the canal during that time will more than balance the disadvantage of not being allowed to blockade it in time of war. Here again policy prompts

the neutralization, and policy likewise prompts the intervention with the operations of the power tending to impair the efficiency of the canal. A legal right for this second intervention is given in the stipulations of the provisions of guarantee.

The neutralization of the Proposed Panama Canal was guaranteed by the United States and Great Britain prior to the Hay-Pauncefote Treaty of 1901. That treaty relieved Great Britain from all obligation in the matter and the canal became purely an American affair, although it seems to be understood by a large number of the nations that this canal is held in trust for the world by the Government of the United States. Neutralization is guaranteed by the United States to all nations who shall agree to observe certain definite prescribed rules of operation. The question of the rights and duties of the United States in this particular instance is too much involved to receive serious consideration in this treatise.

Let us turn to the consideration of those conditions under which political intervention is justified from the standpoint of LEGALITY. An intervention undertaken upon a legal justification is more clearly determinable, less questionable, and does not present the necessity of judging entirely by the individual circumstances, whether or not the intervention is justifiable.

When based on legality, political intervention is allowable:

1. In pursuance of treaty agreements.
2. When acts are committed against the principles of international law.
3. To prevent or abolish another intervention.

When we speak of the sovereignty of a state we mean its supreme control over all affairs pertaining to itself. The question is whether this supreme authority of the state includes its ability to sign over to some other state a part of its sovereignty and still be independent in the strict sense of the term. The answer is "yes" or "no" depending on the nature of the surrender. On this point Hershey says that intervention is justifiable,

"In pursuance of a right to intervene granted by treaty, or to enforce treaties of guarantee, provided these do not stipulate for the maintenance of a particular dynasty or a particular form of government in the state to which the guarantee is applied."[9]

Then we may conclude that the state has retained its independence except in the case noted, and that therefore interventions are allowable to prohibit violations of the terms of the treaty. Of course if a state has, by treaty, surrendered its independence the assumption of authority by the new sovereign is understood and does not constitute an intervention.

It was on legal grounds that the United States

[9] "Essentials of International Public Law," p. 150.

intervened the second time in Cuba. By the terms of our treaty with Cuba this Government was given the right to intervene at any time that it was evident that the Cuban Government was not able to maintain internal order, the interference was to continue on our part until such time as Cuban affairs were once more in good working order. The stipulations of this agreement were faithfully carried out, and the United States withdrew its agents upon the return of normal conditions.

The question arises whether or not an interference in the external affairs of a sovereign state, based on treaty agreements, is an intervention. Is Germany's action in aiding Austria in the present European War, based on alliance, an intervention? In view of the fact that this interference in the external affairs of Austria was upon the solicitation of that Government, the only possible conclusion is that intervention does not exist so far as Austria is concerned. In so far as Germany's action was an interference in the external affairs of Servia, without her consent, an intervention took place.

All nations have the right to compel other nations to observe the universally accepted principles of international law. It is to the interest of each and everyone that these principles which have stood the test of time shall be preserved, or bettered, otherwise there is a retrogression in this particular field.[10] The

[10] Lawrence, T. J., "Principles of International Law," p. 126: "Morever it is possible that an arrogant state might

interference of the group of powers in China in 1900, as a consequence of the attack upon foreign envoys in Peking, represents one of the older principles of international law. The same would be true in the case of any of the more recently established principles. If, for instance, in time of war one of the belligerents should make a naval capture within the territorial waters of some neutral, that neutral has not only the right but is in duty bound, to intervene for compensation for the violation of her territorial sovereignty. The compensation in this case takes the form of restitution of the illegal capture to the nation whose sovereignty was intruded upon, and requires that the vessel be turned over by this nation to the original owner, to whom international law gives no right of intervention. Even those publicists, who recognize only a very limited right of intervention, acknowledge its justification when based on a violation of one of the universally accepted Laws of Nations.[11]

presume to set at naught some fundamental right given by international law to the society of nations, such as the inviolability of ambassadors and their residences. In such a case all states would be injured directly or constructively, and all would have a legal right to intervene, as did a group of powers in China in 1900 after murderous attacks upon foreign envoys in Peking."

[11] Hall, W. E., "International Law," p. 290: "It is unfortunate that publicists have not laid down broadly and unanimously that no intervention is legal except for the purpose of self-preservation, *unless a breach of the law as*

There is one practice illegitimate from the standpoint of every theory; a practise which every nation has the privilege of crushing. I refer to piracy. Piracy is aimed at the existence of all nations alike, and controverts every principle of international law. Every nation is accomplishing a service for humanity and itself at the same time when it drives from the seas a band of these individuals of a free society.

Concerning the right to interfere to put down a previous illegal intervention, there seems to be little or no dispute. "Interventions which have for their object to check illegal intervention by another state are based upon the principle that a state is at liberty to oppose the commission of any act, which in the eye of the law is wrong."[12] Probably the best known illustration of an intervention of this kind is furnished by the action of the United States in the behalf of Mexico in 1866, after that country had been taken possession of by Napoleon III for Archduke Maximilian. The French expedition had been sent in 1861 along with the English and Spanish forces to compel the payment, by the Mexican Government, of certain pecuniary

between states has taken place, or unless the whole body of civilized states have concurred in authorizing it." This theory would seem rather narrow were it not for the last clause which greatly extends the possibilities of the previous limitations.

[12] Hall, W. E., "International Law," p. 288.

claims, and to obtain redress for other grievances. Great Britain and Spain withdrew from the enterprise upon discovering that France was determined to interfere in the domestic affairs of Mexico. On their departure a French army established the Archduke Maximilian of Austria as Emperor of Mexico. Later, in 1866, after the Civil War was over in this country and more attention could be devoted to foreign affairs, the United States, by significant references to the possibilities of war, caused Napoleon III to withdraw his troops from the country. A few months after their withdrawal Maximilian lost both his throne and his life.[13]

The comments made by various jurists concerning the pressure brought to bear by the United States in this instance, together with their expressions as to the general principles involved, clearly warrant the assumption that an intervention undertaken to put down another intervention, the latter being conspicuously illegal and unjust, is upheld in fact and theory.

[13] Lawrence, T. J., "Principles of International Law," p. 127: Commenting on this intervention on the part of the United States Mr. Lawrence says: "Interventions by right are clearly lawful; but whether they are just also the circumstances of each case must determine. Certainly they do not violate any right of independence, because the states that suffer them have either conceded a liberty of interference beforehand by treaty, or accepted it as a part of the law of the society to which they belong."

When Disputed

There are several causes of intervention that are in dispute, at least on the part of some one of the more powerful states, or by a group of states. The governmental institutions peculiar to the Continent result in situations there which are unknown on this side of the Atlantic, or are experienced to such a small degree as to make their pressure for recognition of little moment. Take for example the right of succession. The examples of hereditary succession on this continent, since its settlement by Europeans are certainly not numerous. Brazil changed its rulers within one family but not for any great length of time. The people in that country soon succeeded to the government. This question which has been such a trying one to Europe every time a ruler dies leaving more than one claimant to the throne, is unknown to our institutions.

In some instances the earlier European publicists claimed that it was right for any country to intervene to establish or perpetuate the legitimate succession in any other foreign country. On the other hand we find such an early writer as Vattel declaring that the legitimate succession should not be determined by a foreign prince. In writing this he was thinking, of course, of the legitimacy of monarchs and not attempting to lay down a rule as to the

succession in a republican form of government. We take the liberty of inserting, *in extenso,* a very concise treatment of an important phase of "succession" by W. E. Hall.

"Unquestionably, in the abstract, if a provision is made by treaty for the union of one state with another upon the occurrence of certain contingencies, the state to which the right of succession belongs is justified in taking whatever measures may be necessary to protect its revisionary interests. A state may, of course, contract itself out of its common law rights. In agreeing to invest another state with rights over itself, whether contingent upon the extinction of its ruling family or on anything else, it must be held to have surrendered its rights of dealing with itself affecting the reversion which it has granted; and although the engagements into which it has entered may in time become extremely onerous, and it may be morally justified in trying to escape them, it has obviously no reason to expect the state with which it has contracted to consent upon such grounds to a recission of the agreement. But it must be remembered that the agreements of this nature which have been usually made were either family compacts between proprietary sovereigns, or have been designed to provide for the succession of a family rather than a state. In such cases the permission for an intervention can hardly be conceded. International law no longer recognizes a

patrimonial state. A country is not identified with its sovereign. He is merely its organ for certain purposes and it has no right to interfere for an object which is personal to him. The question as to the permissibility of intervention must in fact depend upon whether, at the time of the arrangement being made upon which the intervention is based, it was intended by both states that in the contingency contemplated a union should be effected irrespective of the form of government or of the persons composing the government of the state owning the succession. If this was not intended, the agreement, whether implied or expressed, is not one entered into by the states but by the individuals who from their position have the opportunity of giving to their personal agreements the form of a state act."[14]

As previously suggested, there is no question as to the justice of this practice on the American continent. All the writers are agreed on this point. It is one of the fundamental principles of the republican institutions which prevail in this part of the world, examples to the contrary notwithstanding, that the people have a free choice to elect under what form of government they shall live. Mexico has presented a shining example of the conflict between fact

[14] Hall, W. E., "International Law" (5th edition), pp. 287-288. For further information on the subject of the right of succession see "Halleck's Int. Law," I, p. 94, by Sir Sherston Baker.

and theory in governmental institutions, ever since the adoption of its republican constitution in 1857.

In discussing previously the permissibility of intervention on the grounds of maintaining the balance of power, we confined the limited discussion of the subject to earlier European practice, noting it as politically unimportant in America at the present time. There has already developed, however, in South America, especially among the more advanced powers of Argentine, Brazil and Chile a feeling that an addition of territory to one endangers the safety of the others. It is due to the development of this feeling more than any other one thing, that Uruguay owes its existence as a separate state.

Whether or not this principle has been altogether thrown aside in European diplomacy is not a question beyond all doubt even at the present time. We have found reason to class it as a cause justifiable from policy, and at the same time treat it as one of those justifications which is suffering from severe criticism. It is not at all unlikely that in the future the right of intervention based on the balance of power theory will be universally denied. For six months Italy has been allowed seriously to upset the balance in Europe by maintaining an armed neutrality. The neglect on the part of Germany and Austria to punish Italy for her failure to intervene in accordance with their understanding of the Treaty of Alliance, has been dictated, probably, by a nice

determination of policy. The much heralded accomplishments of the old school of European diplomats have demonstrated their own shallowness. To the present time, none of the active or moral supporters of the Allies have become obsessed by the "Balance" bogey. No one seems particularly alarmed because of the apparent unequal division of opponents. So far is fear on this account from being a reality that we are told that Italy, Roumania, and possibly other neutral states, are likely to throw their weight at any time, into the lower pan of the balance.

Phillimore would give us some idea of the sanction which age lends to this practice by calling our attention to the "reflection of Polybius upon the conduct of Hiero, King of Syracuse, who though an ally of Rome sent aid to Carthage during the War of the Auxiliaries."[15] We are further given to understand that this precedent "may claim a place even in a modern work upon international law."[16]

From the middle of the seventeenth century when the "Balance" theory reached its first development in Europe, its significance varied from time to time. It was customary to believe that a sort of international equilibrium of powers had been established. Should any state attempt to destroy its nice adjustments that state might be attacked by those whose

[15] See also "Halleck's International Law," I, p. 507.

[16] Phillimore Sir R., "International Law," I, p. 482. (1871.)

relative importance would be lessened by the accomplishment of the proposed plan. This was one of the diplomatic axioms in Europe for a long time. From the preamble of the old British Mutiny Act we learn that the preservation of this theory was one of the prime cares of the standing army.

"Whereas it is adjudged necessary by His Majesty and this present Parliament that a Body of Forces should be continued for the Safety of the United Kingdom, the Defense of the Possessions of His Majesty's Crown, and the Preservation of the Balance of Power in Europe."

The preservation of this balance so pressed on the powers of Europe that it was the cause of endless negotiations and incessant wars, and it was the history of some of these same wars that "furnishes a most complete condemnation of the theory that was invoked to justify them."[17]

If the upholders of the "Balance" theory had been able to have things their way they would have seated Archduke Charles of Austria on the throne of Spain as a result of the war of the Spanish Succession. This act, as later events proved, would have very seriously disturbed the balance in Europe which they were so anxious to preserve. While Philip V of Spain, who succeeded in spite of the Allies, never inherited the French throne, the throne of Austria unexpectedly fell to the lot of Charles in 1711. Had

[17] Lawrence, T. J., "Principles of International Law," p. 130.

the Allies made him King of Spain, as they desired, Spain and Austria would have been practically united by having the same ruler.

Wheaton points out in his "History of the Law of Nations" that had the Allies been content to wait for the anticipated peril to become real before they took up arms to avert it, they need not have gone to war at all.

A system, be it political or of any other nature, that tends to have the existing order stationary is evidently serving a false purpose in that it aims to stifle progress. Yet this is what was aimed at by the supporters of the Balance of Power theory. In spite of the great force brought to bear to have this order of things international remain fixed, there was a continual change going on. This change is clearly evidenced by the fact that at one time the order that everyone prayed for was that established at Westphalia in 1648. Later, after a number of unpreventable changes had taken place and the great nations in congress had once more outlined the existing order, the common cry was for the status quo promulgated by the Peace of Utrecht in 1713. At the end of another hundred years the plan had been completely changed once more, and it was necessary to define the new balance at the Peace of Vienna in 1815.

Although these changes were continually going on as if in mockery of the existing principle, the value

of the principle for certain purposes made its existence necessary for the schemes of some of the better known statesmen of that day. If one state desired to pick a quarrel with its neighbor, it was easy for the first state to allege some act on the part of its neighbor that threatened to disturb the equilibrium in Europe. It was under the cover of this theory that all kinds of demands could be made of the weaker state. Napoleon III put a special construction on the theory so that it would the better serve his particular purposes. He conceived that the theory pointed out the necessity for territorial compensation to France whenever any other state came into any considerable addition of territory. His interpretation of this theory was to preserve the territorial balance between France and the other country. Thus he obtained Savoy and Nice as the price of the unification of Piedmont with central Italy. A similar demand on Germany as the price of the unification of North Germany was fruitless.[18]

Prince Bismarck, in his reply to the request of Napoleon for territory for the reason just mentioned, struck the keynote of the fallacy of the theory when he explained that such a cession was impossible because of the intense patriotism of the inhabitants of all the territory in the new confederation. This theory, figuratively, drew arbitrary lines through the land taking no account whatever of

[18] "Cambridge Modern History," XI, pp. 386-388.

nationalities. Napoleon III saw no conflict between his interpretation of the Balance of Power and his other pet scheme of the development and fostering of nationalities. The two were, however, directly opposed to one another.

Napoleon III led Cavour to believe that he earnestly desired the unification of Italy, and certainly events subsequent to the interview at Plombières tend to prove the sincerity of Napoleon's purpose. But the cost was the provinces of Savoy and Nice. "Savoy was the cradle of the ruling house of Piedmont, the dominating State of the united Italy, and its abandonment was a great humiliation, but it was in Cavour's opinion inevitable. Because of it Garibaldi, a citizen of Nice, and the George Washington of Italy attacked Cavour in Parliament with remarkable vehemence. 'You have made me,' he said 'a stranger in the land of my birth!' "[19] This single incident is sufficient to point out one of the glaring defects of the Balance of Power theory.

There are a few instances recorded in which the "Balance" theory, in the hands of a combination of states, taking the form of diplomatic intervention, has accomplished its purpose of preventing some robber from absorbing a weaker state. In this way Louis XIV was forced to renounce for a time his designs upon the Spanish Netherlands. That this incident should be considered an application of that

[19] Hazen, C. D., "Europe Since 1815," p. 231.

principle is due to the flexibility of its application. The failure of the attempted steal was due to the inability of the various robbers to agree on the distribution of the spoils. A better understanding existed when Poland came up for consideration. Austria, Russia and Prussia were able to reach a satisfactory agreement, and the Three Partitions of Poland were the results for the robbers. For Poland the result was non-existence.

The theory has taken a new turn in its adaptation to imperialistic tendencies. In its new form it is more likely to long life. The recent idea is to prevent growth of arrogance on the part of any state, which may result from its increased strength in comparison with that of other members of the community.[20] Therefore when some particular state, because of the prominent position which it holds in the society of nations, attempts and consistently succeeds in imposing its will upon others and becomes an arrogant dictator, those who are constantly imposed on are rendering society a ser-

[20] Lawrence, T. J., "Principles of International Law," pp. 132-133: "As we have seen, the existence of International Law involves the existence of a society of nations. Membership of a society implies social duties, among them a foremost place is held by the duty of abstaining from conduct that endangers the vital interests of the society as a whole. When a member persistently violates this duty, another member or group of members may vindicate social well-being by active measures of restraint."

vice if they singly or together reduce the offender to his proper position. Such is the thought supporting the Allies in the present war. Underlying all proximate causes is the feeling that they are effectively checking the growing arrogance of Prussian materialism and militarism. If self-preservation is regarded as justifying intervention in an effort to ward off danger to national life, then surely the duty of preserving international society, which no one will deny, justifies an intervention which has for its aim the desire to bring to an end arrogance that imperils the healthful order of that society. A Balance of Power based on such principles deserves long life. In such interventions, as in many other types, the justification depends upon the merits of the case. There may be very good cause; there may be just questionable cause; and there may be no cause at all.

Even this idea of the theory offers its pitfalls. It should not be assumed that increased resources and military power necessarily imply arrogance. More than the mere existence of increased resources is needed to justify an intervention. It is only when that great power to do evil is accompanied by the desire to do evil that a just cause arises for intervention.

Opposed to the view that interference is unjust when conducted with the express purpose to restore the Balance of Power, we have the opinion of Op-

penheim. Although there is considerable sanction given to the justification for such interventions by Mr. Oppenheim's arguments, the chief weight of this opposition opinion would seem to come from its source. To him the conclusion seems quite evident.[21]

There is one premise of Mr. Oppenheim's that admits of further inquiry. He states that an "overpowerful State would tend to act according to discretion instead of International Law." It is difficult to determine when a state becomes "over-

[21] Oppenheim, L., "International Law," (1912) Vol. I., pp. 193-194. "As regards intervention in the interest of the balance of power, it is likewise obvious it must be excused. An equilibrium between the members of the Family of Nations is an indispensable condition of the very existence of International Law. If the states could not keep one another in check, all Law of Nations would soon disappear, as naturally, an overpowerful State would tend to act according to discretion instead of according to law. Since the Westphalian Peace of 1648 the principle of balance of power has played a preponderant part in the history of Europe. It found express recognition in 1713 in the Treaty of Peace of Utrecht, it was the guiding star at the Congress of Vienna in 1815, when the map of Europe was rearranged, at the Congress of Paris in 1856, the Conference of London in 1867, and the Congress of Berlin in 1878. The States themselves and the majority of writers agree upon the admissibility of intervention in the interest of the balance of power. Examples of this are supplied by collective interventions exercised by the Powers in 1886 for the purpose of preventing the outbreak of war between Greece and Turkey, and in 1897 during the war between Greece and Turkey with regard to the island of Crete."

powerful," or whether there are now, or ever have been any such states. But if we substitute for the undefined idea, "over-powerful," our nearest conception, "most-powerful," the contention does not hold good, according to the present tendency. From either ignorance or unwillingness, it is the smaller states that are offering most of the examples of their own discretion, while the most powerful are the ones that are following most minutely the principles of international law. It is also plainly noticeable that it is the most powerful which are always urging fairness and equality in international relations.

The number of examples of rearrangement in Europe in recognition of the principle of the Balance of Power is one of the main contentions for its usefulness.

In conclusion we observe that the Balance of Power as a justifiable cause for intervention is at present on the very edge of having outlived its justification. The present diversity of leading opinions only strengthens this conclusion.

Is a state ever allowed to intervene in the affairs of another state because of the existence of a condition of internal affairs inconsistent with national morality, and if so, when? It would seem to be permissible only when the acts in question could be declared so inconsistent with the acts of a moral being as to be a public scandal. One or more states reasonably capable of success, can then undertake

to right matters. The general feeling is that internal struggles in a country should be allowed to work themselves out so long as they do not descend to the state of mere savagery. If an oppressed people is carrying on a revolt there is a feeling against an intervention to restore order, although an intervention in the same case for the suppression of a cruel tyranny would be looked on with little disfavor. Technically they are identical. In spite of the general rule it is the fair judgment, flavored with conscience, that determines right in the exceptional cases.

When Inadmissible

It is generally agreed that intervention as the result of the requests of both the parties to a civil war is allowable. As to the condition when only one party to the war requests intervention the case is not so absolutely determinable although the majority of modern opinion is decidedly against granting the privilege. Phillimore considers that intervention upon the application of one party to a civil war can hardly be asserted to be at variance with any abstract principle of international law, while it must be admitted to have received considerable sanction from the practice of nations.

Halleck, on the other hand, contends for what appears as an evident truth to Hall, that an invitation

"from only one of the contestants can by itself confer no right whatever as against the other party."[22] Hall admits that Heffter and Bluntschli permit intervention at the request of one of the parties, at the same time stating that "it is hard to see by what reasoning these views can be supported."[23] Lawrence, Hershey, Moore and others agree with the second contention.

Hall supports his reasoning by three very definite examples. First, we will suppose that the intervention is directed in favor of the friendly faction. This precludes all serious thought of the rights of independence, if this intervention is justified on these grounds. Secondly, we will suppose the interference directed against the existing government. Independence is thwarted by preventing the regular organ of the state from managing its affairs in its own way. Thirdly, we will suppose it directed against the rebels. The fact that it has been necessary to call in foreign help is enough to make it evident that the outcome of the conflict would be uncertain without that help. Hall goes on to say that if the state intervenes in accordance with its decision as to the merits of the case, it burdens itself with the responsibility of passing judgment on a case which has nothing to do with the relations between states, and is hence supposed to be "beyond

[22] Baker, Sir Sherston "Halleck's Int. Law." I, p. 102.
[23] Hall, W. E., "International Law," I, p. 476.

the range of its vision." These arguments seem fairly conclusive and we may without doubt conclude that the prevalent opinion is that such an intervention is not justifiable.

When Machiavelli suggested to his Prince to do anything that suited his own interests there seemed to be little chance for the development of the theory of right and wrong as dictated by conscience. Grotius made a decided advance from this early attitude when he suggested constraint on all actions and the setting aside of personal interests for the sake of the common welfare. In the matter of intervention he advised helping the party that had the *just cause* and hindering the one with the unjust cause. This seemed the essence of honesty and fair-dealing, but it contained that erroneous idea that mortal man was capable of deciding, in the case of the tangles of Europe, as to which party had the just cause. This is hardly ever possible in these days of rapid transit and even more rapid communication; how much more so must it have been at the time when it was advised as the guiding principle. Here, at least, we have one principle that has occasioned very little controversy for several generations. It is universally held that an intervention based on the right of advancing the party with the just cause is not warranted by any of the principles of international law.

Turning now to the last of our considerations of intervention from a political standpoint we must determine whether or not *conquest* is ever sufficient reason for such an interference.[24] It is almost universally conceded by modern writers that an intervention which has for its only purpose, either immediate or remote, the conquest of the territory of the state interfered with is entirely unjustifiable, both in the sense of justice and in the right recognized in such cases by the more advanced nations. In this conclusion no account is taken of the distinction that Oppenheim makes between conquest on the one hand and subjugation on the other. The distinction is never recognized in ordinary conversation, is not included in Hall's definition, and is not developed by subsequent writers, although Hershey calls attention to the fact that Oppenheim does make such a distinction.

[24] Hall, W. E., "International Law," p. 566: "Conquest consists in the appropriation of the property in, and the sovereignty over, a part of the whole of the territory of a state, and when definitely accomplished vests the whole rights of property and sovereignty over such territory in the conquering state."

CHAPTER III

NON-POLITICAL INTERVENTION

When Allowable

It will be recalled that it was pointed out in Chapter II that intervention naturally divides itself into two phases, viz., political and non-political. We have considered in detail the various alleged grounds for political interventions. It is now the purpose to discuss the interventions which have their causes in non-political considerations; non-political meaning those interventions resulting in the first instance from the protection of citizens in some manner.[1]

The causes allowable in this instance will be discussed from the standpoint of—

1. Protection of Citizens.
2. Denial of Justice.
3. Protection of Missionaries.

The *protection of citizens* in a foreign country naturally involves the establishment and enforcement of some degree of law and order in that community. When order is neglected by, or is impossible for the foreign government, then the more ad-

[1] See page 19 *supra*.

vanced state has a right to intervene for the protection of the life and property of its citizens. When this cause of complaint is created by temporary neglect or inability, which means that it is spasmodic, the intervention generally takes the form of diplomatic protest. If the cause of complaint results from prolonged inability to render the proper protection, which means that it is chronic, then the intervention generally assumes the form of armed interference. Concerning the method in the first case there is no doubt. The government which does not exercise its rights in this particular is not worthy of the name. It forms one of the more important functions of the diplomatic representative. Is the violation of the territorial sovereignty of the offending state justified in the second case, and if so, on what authority?[2]

The proposition that those who resort to foreign countries are bound to submit to their laws as expounded by the judicial tribunals is not disputed. In such manner does Mr. Forsyth, formerly Secre-

[2] Concerning our intervention in Nicaragua in 1912 to restore order in that State with the idea of making it a safer place for our citizens to live in, the *Outlook* of October 19, 1912, comments as follows: "Intervention is not always aggression . . and our effort in Nicaragua will not have been in vain if it brings to the inhabitants of Central America some sense of the healthful, restraining influence which has operated towards the spread of whatever law and order now obtains in Cuba, Porto Rico and Santo Domingo."

tary of State, explain the rights of foreign citizens. But he further notes that there is an exception to this rule in that when a "palpable injustice" is committed by the local authority against a foreigner for some alleged infraction of local laws or treaty obligations, the home government has a clear right to demand satisfaction for its citizen from the country whose authority has committed the offense.[3] Furthermore he maintains that this right is not weakened by the fact that the judicial may be independent of the executive, or both, of the legislative power. Complaint is made, of course, to the executive department of the foreign government. This is the natural department for the receipt of such complaint, no matter what department may have been guilty of the offense.

A case in point is that of the *Morris,* which was a vessel of the United States bound for Gibraltar, laden with a cargo belonging principally to her citizens. When within sight of her destination she was captured by a Colombian privateer upon the pretext that she had on board a few articles "the property of the subjects of His Catholic Majesty." Their action was defended upon the ground of a certain article of the Colombian Constitution. Mr. Forsyth explains that "it requires no argument to expose the absurdity of attempting to apply the article of the Colombian Constitution in question to

[3] Moore, J. B., "International Law Digest," VI, p. 249.

such a case as this." The matter was purely a just cause for interference on the part of this Government for the protection of the interests of her citizens.

Inhabitants of the United States in particular, and those of other countries in general, are granted the right of public worship and burial according to their home custom, so long as those rights do not seriously interfere with peace and safety. Although the protection of these rights forms one of the less frequent causes of intervention, the rights are guaranteed to citizens of the United States by treaties with a number of foreign countries. Such rights are guaranteed in treaties with Colombia in 1824, with Brazil in 1828, with Mexico in 1831, with Chile in 1832 and in numerous others. Former Secretary of State Marcy, replying to an unofficial inquiry, points out an extreme instance of this policy. "Within a year or two past, also, pursuant to an appropriation by Congress, a lot of land for a cemetery has been purchased near the City of Mexico, to which the remains of those who were killed in battle or who died in that quarter during the late war, have been transferred and where in future all citizens of the United States who may die in the vicinity may be buried."[4]

The theory that the citizen resident in any foreign country may demand the same quality of protection

[4] Moore, J. B., "International Law Digest," VI, p. 250.

that is afforded the citizens of that foreign country has generally held good. In some cases the standard of protection demanded of the foreign country has been higher than the usual average of protection afforded its own citizens, especially in cases where that average is below the standard of the more advanced nations. Unfortunately, there have been several instances in our own country in which foreign citizens have been afforded very inadequate protection by the local authorities. Due to the peculiar structure of our government the central authorities are powerless, in most cases, to oppose directly these local transgressors. The lynching of Italians at New Orleans in 1891 was carried out in spite of police knowledge, if not with their connivance. The same is true of the anti-Chinese riots in Wyoming, Colorado and elsewhere. The United States, in these and similar cases, has not denied its obligations, but has contended that due to the fact that the central government cannot directly interfere in local matters, these obligations can be settled by a money indemnity. All indemnities are paid with the strict understanding that they shall not be considered as establishing a precedent for the settlement of similar outrages that may occur at some future time.[5] Justification for the payment of indemnities,

[5] See "The Responsibility of the Federal Government for Violations of the Rights of Aliens," *American Journal of International Law,* VIII, p. 73.

in these cases, is furnished by the attitude of this Government concerning the protection of our citizens resident in foreign countries. This attitude was definitely expressed by Mr. Bayard, former Secretary of State and Ambassador to the Court of St. James, when in the case pending with Peru in 1886, he instructed our minister in that country as follows:

"It cannot be admitted that in every case the rights of a foreigner in that country [Peru] may be measured by the extent of the protection to person and property which a citizen might obtain. In times of civil conflict . . . it not infrequently happens that citizens of a country are compelled to endure injuries which would afford ample basis for international intervention, if they were inflicted on a foreigner."[6]

These instructions were given in reply to the contention of the Peruvian Government that foreigners had no more rights in Peru than citizens, and that citizens would be compelled to have recourse to the general courts in a case similar to the one under consideration. They contended that in accordance with this principle the Peruvian Government could not entertain directly, through its department for foreign affairs, the case of the killing of Owen Young, a citizen of the United States, by a Peruvian soldier. After some representations on the part of our min-

[6] Moore, J. B., "International Law Digest," VI, p. 252.

ister the Peruvian Government altered its decision in the matter.

The protection given by the State Department to the interests of our citizens established in foreign countries has been almost constantly the subject of criticism, more unfavorable than favorable. Many believe that it is due to the protection of these interests, in cases where the facts are not all known, that we are so often in conflict with policies of some of the governments to the south of us. Whether or not this is true, and if so to what extent, does not primarily enter into the question at hand. That material governmental assistance is given investments in foreign countries is indisputable, and as a general principle, is highly desirable

Those who consider the recent Mexican policy of the Administration such a lamentable failure, attribute the proximate cause of the trouble to the undue interference, of this and the English Governments for the welfare of certain pet interests in that country. It is alleged that the contest for commercial supremacy in the oil business between the Cowdray (England) and Waters-Pierce (United States) interests was virtually taken up by their respective Governments. In other words, oil held a position in the Mexican dispute similar to that of sugar in the Cuban troubles at the close of the past century. It is certain that there was friction between the two Governments. The interests of citi-

zens established in a foreign country, should not be assisted by their governments to escape difficulties of their own making, caused by interference in the internal policies of the country in which they are located. Commercial interests in foreign countries should receive protection from the Home Government only when legitimately established, and only so long as they are legitimately operated.

In 1900 Mr. Hay, then Secretary of State, addressed a letter to the Secretary of the Navy, referring to a telegram from the American Minister at Caracas, indicating a probable attack by pillagers on the property of the New York & Bermudez Company, an American corporation at Bermudez Lake in Zenezuda. Mr. Hay expressed the opinion that the Minister's request for a naval vessel should be granted; that the gunboat should also protect all existing rights; and that it should maintain the status quo pending an investigation and decision as to an attempt, alleged to be in contemplation, to deprive the company of its rights and property by executive action.

Turning to the subject of the *denial of justice* as a justification for governmental intervention, we accept Secretary Bayard's interpretation of the conditions which are necessary to establish such a claim.

"If the government of a foreign country refuses to execute its own laws as interpreted by its courts,

and to give effect to the decisions of its own courts, in respect to a foreigner, it denies justice."[7]

"That the state to which a foreigner belongs may intervene for his protection when he has been denied ordinary justice in a foreign country, and also in the case of a plain violation of the substance of natural justice is a proposition universally recognized."[8]

"To render legitimate the use of reprisals, it is not at all necessary that the ruler against whom this remedy is to be employed, nor his subjects, should have used violence, nor made a seizure, nor used any other irregular attempt upon the property of the other nations or its subjects; *it is enough that he has denied justice.*"[9]

Again, if the tribunals of a foreign state "are *unable* or unwilling to entertain or adjudicate upon the grievance of a foreigner, the ground for interference is fairly laid."[10]

[7] Moore, J. B., "International Law Digest," VI, p. 266. At another time Mr. Bayard, quoting Sir Travers Twiss, an eminent writer on public law, agrees that—"International justice may be denied in several ways; 1. By the refusal of a nation either to entertain the complaint at all, or allow the right to be established before its tribunals. 2. By studied delay and impediment for which no good reason can be given, and which are, in effect, equivalent to a refusal. 3. By an evidently unjust and partial decision."

[8] Thomas F. Bayard to Mr. McLane, Minister to France (1886). Moore, J. B., "International Law Digest," VI, p. 266.

[9] Valin, "International Law."

[10] Phillimore, Sir R., "International Law," II, pp. 4-5.

It seems clearly evident from these authorities that this principle admits of no dispute. When the courts of a foreign country deny justice in any of the forms mentioned there is more cause for pressing representations than in the case where the local police have failed to protect the foreigner from mob violence. In the latter case there may have been some excuse due to the exigencies of the moment, but in the former there would seem to be clear malice, exercised and concurred in by that part of the people from which such actions are least excused.

To make this interposition on the part of his government valid, the foreigner should first attempt to obtain justice for himself, and exercise every effort that would likely influence the authorities concerned. This necessity of the case was explained on the part of the United States, at an early period in our history by Thomas Jefferson, at that time Secretary of State.[11]

A very clear case involving this principle is found in the "Diplomatic Correspondence" of the United States. The subject of the lengthy correspondence, in this instance, was due to a claim, on the part of the United States, of a denial of justice by the

[11] "A foreigner, before he applied for extraordinary interference should use his best endeavors to obtain the justice he claims from the ordinary tribunals of the country" ("Foreign Relations Series").

Haytian Government in the case of Mr. Frederick Mevs, an American merchant, residing and carrying on his business in that country. It appears that Mr. Mevs was seen by one of the natives to come from the direction of the harbor, about eight o'clock in the evening with a bundle under his arm. The Haytian commissioned himself to follow the suspect, and traced him to a store of another American citizen where he left his bundle, departing shortly afterwards. As the native conceived the idea that the bundle contained smuggled articles of some kind, he reported to the police. Mr. Mevs was arrested and put into prison without preliminary hearing of any kind and without warrant. It must be explained that the laws of Hayti on this subject are very similar to our own, from which they are in large measure copied.

After several days, the absence of the merchant being discovered by his friends, he was found in the local jail. No amount of effort on their part was able to elicit the charge on which their friend was being held, nor when his case was likely to come to trial. The orders "came from above." The American Minister was appealed to, and after very strong representation, was able to bring the case to trial after a total delay of twenty days, during which time Mr. Mevs remained in prison. At the trial it developed that on the night in question the merchant had found it necessary to work at his

office later than usual, and upon leaving, had taken a bundle containing soiled clothes to a friend's house where he was accustomed to have his laundry done. Counsel for the defense, a Haytian, scored the police and the courts in general for palpable denial of justice, as well as arrest on the sole evidence of a questionable character, without any preliminary investigation before committal. It was made plain that foreign states would not tolerate such actions against their citizens without interfering.

As a result of the trial and its findings, the American Minister, through advice from the State Department, presented a claim for damages. In accordance with the opinion of Mr. Mevs his business and reputation had suffered to the extent of one thousand dollars during each day of imprisonment, making a total claim of twenty thousand dollars. After long delay and much haggling on the part of the Haytian Government it was found necessary to dispatch a gunboat to those waters to convince the authorities there of the sincerity of the United States in the matter. Many visits and prolonged controversies were necessary before a compromise agreement was reached. To finish the account of this interesting transaction, a check was received by the American Minister in Hayti stipulating for the amount agreed upon in the much depreciated currency of that country. This check was immediately returned, and it was several more weeks before the

Haytian Government could be convinced that international payments were settled in gold unless otherwise specified.[12]

The case of Alexander McLeod, a British subject, although involving the same principle, was not of so elementary a nature as that just cited. This case was opened by the British Minister at Washington demanding from the United States "formally, in the name of the British Government, the immediate release," of the gentleman in question. McLeod had been arrested in the State of New York and indicted in a local court for the crime of murder, alleged to have been committed at the setting adrift of the steamer *Caroline* in the port of Schlosser, in that state. The release of the British subject was demanded on the grounds that the act, on account of which he had been arrested, was an act of public force on the part of the British authorities. The contention was, that in accordance with all just principles of international law, no individual concerned could be held personally answerable in the court of ordinary law as for a private offense. In that he was merely acting under the direction of the authorities, the crime, if there was one, was a subject for diplomatic intervention only, and as such should be dealt with by the State Department exclusively. Since the case was already pending in a

[12] For. Rel. No. 129, House Ex. Doc. 2nd. S. 53 Cong. I. 11-18-1892.

state court, it was not within the powers of the President of the United States to interfere with it in a direct manner. Nevertheless, the Attorney-General was directed to attend the trial, and to communicate to the State Court, on the part of the National Government, evidence of the demand made upon it by the British authorities.[13] Thus, although the Government was unable to do anything directly in the matter, it was able to bring great influence to bear on the disposition of the case. Here the opinion rested upon the fact that the case was not being submitted to the proper tribunal, and in so far as that was true there was an evident denial of justice.[14]

As Mr. Olney specifically stated when Secretary of State, "this government can properly intervene where an American citizen has been actually denied justice in the courts of a foreign country. The mere anticipation that an injustice may be done in judicial proceedings clearly does not afford ground for intervention." Furthermore, it is very difficult to forecast the action of any government in the event of an intervention upon this principle, unless all

[13] In a letter to the Attorney-General, containing his instructions, Mr. Webster said:—"If this indictment was pending in one of the courts of the United States, I am directed to say that the President, upon the receipt of Mr. Fox's last communication, would have immediately directed a nolle prosequi to be entered."

[14] See "Scott's Cases on International Law," pp. 319-320.

the particulars of the specific case are at hand. Thus it sometimes happens that the decision has depended more upon the particulars than upon the general principle involved, and seems at first sight, to be a contradiction of that general principle. Consideration of this fact accounts for the uncommitting reply of Mr. Gresham (Sec. of State) to an inquiry as to future protection that the United States might afford certain of its citizens who contemplated the expenditure of large sums in Honduras. These citizens were anxious to know whether or not a grant of valuable land given them by the existing government in Honduras, would be protected by the United States in the event of a revolution in that country, resulting in the overthrow of the government. As the inquirer put it—"Will these American citizens be protected by the United States Government in this grant which they have received from the Government [of Honduras], in case there is a change of administration in that country?" Mr. Gresham replied:

"The Department can only say in response to your inquiry that it has no reason to suppose that the interests of your clients in Honduras would be affected by a change in the administration of that country; nor can it anticipate the perils to which they might be exposed in the case of insurrection or revolution. It is, therefore, unable to give any specific assurances in relation to these matters. This

Department will at all times endeavor to secure to our citizens in foreign lands the right to which they may be entitled under international law and our treaties with other powers. The general ground of diplomatic intervention, however, in behalf of private persons is a denial of justice, and the question whether there has been, or is likely to be, such denial, is one that can be determined only on the circumstances of each particular case as it may arise."[15]

The tenacity with which most countries cling to the right of intervention, diplomatic at least, for the satisfaction of denials of justice, or for protection of citizens in other cases, is very marked. Our State Department has turned down several propositions made by foreign countries because they seemed to include, among other things, provisions whose aim was the discontinuance of this principle. In 1890 the Government of Ecuador proposed to the United States that they should mutually agree to renounce recourse to diplomatic remedies and claims until "exhausting all other means of redress, through the courts of justice, or proper authorities, including appeals against judges and courts." This country replied that so long as it were not intended "to exclude the employment of good offices, or the making of proper representations short of formal diplomatic

[15] Mr. Gresham to Mr. Sheehan, August 25, 1894 (Moore, J. B., "International Law Digest," VI, p. 272).

claims about cases still pending and not determined," the proposal would seem to be covered by "the generally accepted principle that a denial of justice, which constitutes the true grounds of formal diplomatic demands, does not exist until the remedies afforded by the laws of the country have been tried and found wanting." It was further pointed out that there would be great difficulty in bringing into "our conventional relations with a single state stipulations which, although not novel in design are yet so in form, and which for that reason would be open to misconstruction."[16]

The weight of these authorities makes a fairly complete case for the justification of intervention due to a denial of justice.

Respecting the *protection of missionaries,* the United States shows about the same consideration as she does in respect to other classes of citizens resident abroad. The missionary establishments are given that same protection as to their property rights as any other vested foreign interest of our citizens would receive. In many cases our State Department has even stretched a point in a friendly mediation for the establishment or extension of some particular religious work in a foreign country.

The United States does not go so far in these matters as do some of the European states which undertake to assume a limited protectorship over Christian

[16] Mr. Blaine to Mr. Caamano, May 19, 1890.

communities, especially in Turkey. One can scarcely believe the number and variety of problems that are presented to our State Department for their solution, in connection with these missionary endeavors. In view of our past conduct in such matters, many of the petitions request almost inconceivable actions on the part of our Government. European countries habitually give greater protection and encouragement to their religious workers than to most other classes of their citizens resident abroad. No doubt this example has been a great factor in influencing the American missionary to make requests, impossible for our Government to grant in consideration of its traditional usage.

In 1871 troublesome times in Turkey resulted in the persecution of a part of the natives who had been converted to the teachings of Christianity. The American missionaries, in the interests of their wards, made representations to the American Vice-consul-general in that particular region, asking what help they might expect from the United States for the protection of native Christians. The question was referred to the American Minister at Constantinople, who stated that although he was without instructions on the subject, he would say that however much the United States Government might be interested in the principle of religious liberty, the present situation presented so much delicacy as to prevent official interference.

Another example from Turkey, which is the scene of a large part of the troubles of the American missionaries, illustrates even better than the one just cited, the frequent unreasonableness of the missionaries. The contention was that this case involved a violation of the right of private worship in the Armenian district of Turkey, a right which had been granted by treaty to citizens of the United States. It appears from the voluminous correspondence on the subject that a private house in Turkey had been so fitted up inside that it could accommodate at least twenty-five people for the object of worship. This the missionary called private worship, and so long as the spreading of the Gospel necessitated no further additions of a public character there seems to have been no molestation on the part of the native population. It was later found advisable, however, to erect a bell tower and bell on the roof of this private house to call together the faithful. It was to this public demonstration of another religion in their midst to which the Mohammedans objected. Their objections finally took the form of physical force in silencing the bell and removing the tower. Vigorous complaint to the State Department in this case was unavailing. Previous to appealing to the Home Government, the missionaries had directed their request for help to the Turkish Government.

Mr. Frelinghuysen in discussing this subject with

the American Minister remarked that "the right of private worship in a dwelling house must be maintained, and that if it were infringed the remonstrances of the legation were to be immediate and energetic. To insure that the intervention of this Government in such a case was obtained in good faith and due as a right, it was very desirable that such discretion be observed by the American citizens of non-Mohammedan faith, who had taken up their abode in the Mohammedan regions of Turkey as not to overstep the bounds which separate private from public worship, or to give grounds for any plausible complaint from the Turkish authorities that the sensibilities of their people were wounded by any, to them, offensive demonstrations of a character usually connected with public ecclesiastical worship." He further intimated to Mr. Wallace, the American Minister, that "it might be well to inform the missionaries who sought his advice or intervention in such matters, that the United States Government was not willing to make the right to use church bells on private dwellings a diplomatic question with Turkey, and that the part of discretion for them to pursue would appear to be avoidance of opportunity of giving offense to the people among whom their lot was cast."[17] The principle involved in this case

[17] Mr. Frelinghuysen (Sec. State) to Mr. Wallace (Min. to Turkey) January 9, 1884. (Moore, J. B., "International Law Digest," VI, pp. 336-337).

includes a large number of untenable requests of the American missionary.

On the other hand, where there is an undoubted case of transgression of private rights, this country has been most emphatic in its demands for reparation. When, in 1893, it was learned that a Miss Felton, an inoffensive American woman engaged in missionary work in Koordistan, had been attacked by some of the native population, representations of such a character followed, on the part of this Government, that the result was the issuance of orders for the arrest of the assailants, the removal of a delinquent official and the adoption of more protective measures for those engaged in missionary work.[18]

After the Caroline and Pelew Islands had been transferred from the sovereignty of Germany to that of Spain, our State Department addressed a communication to the Spanish Minister in Washington, observing that it was presumed that the Spanish Crown would afford the same protection to the American missionaries in those islands that was accorded Germans and other foreigners living there. The Spanish Minister, in reply, forwarded

[18] In referring to this affair in his Annual Message of December 3, 1894, President Cleveland said;—"Three of the assailants of Miss Felton, an American teacher in Mosul, have been convicted by the Ottoman courts, and I am advised that an appeal against the acquittal of the remaining five has been taken by the Turkish prosecuting officer."

a note to Mr. Bayard, from his Government, declaring that it was opposed to their intentions to hamper, in any way, the progress of the American workers in those islands. Soon after assuming the government of the islands, the Spanish authorities closed, with one exception, the American schools; forbade one of the missionaries to preach; suppressed services at some of the churches; and seized lands granted to the missionaries by the native chiefs. Shortly after this hostilities broke out between the Spanish troops and the natives, resulting in the burning of the American missions by the Spanish soldiers, and, finally, in the departure of the missionaries from the islands. Complaints and claims were presented by the United States to the Spanish Government, and in 1893 the whole matter was pressed for settlement. The United States demanded:

First. The restoration of the missionaries to the scene of their labors.

Second. Compensation for the property destroyed or taken from them by the Spanish authorities.

Very shortly after these demands were made, the legation at Madrid reported the consent of the Spanish Government to the return of the missionaries and the payment of a $17,500.00 indemnity on acount of loss of property. Spain, however, qualified the first concession by retaining, "the right of fixing the moment" when the missionaries

might return, and disclaiming all responsibility in case they should return before such permission was granted.[19]

Every country generally demands an indemnity from a foreign government for the murder of one of its missionaries by natives of the foreign country. This principle was put to good advantage on at least one occasion in advancing national interest when Germany demanded from China two Treaty Ports in payment for the murder of two German missionaries. Payment in other than money indemnities had not been peculiar to Germany. Other of the European countries have used the intervention conducted on behalf of their missionaries as a lever for the acquisition of certain concessions in the weaker country, responsible for the injuries of the missionaries in question. European practice takes a wider range in this connection than the American.

When Conditional

There are several non-political causes of intervention, which while recognized as just in some parts of the world are either regarded as unjust in others, or are unknown in practice, due to peculiar local conditions. Still others are justified, internationally, only under certain conditions. Among these conditional causes for intervention are:

[19] Moore, J. B., "International Law Digest," VI, pp. 345-346.

1. The Collection of Contract Debts.
2. Protection of Humanity.
3. Intercession for persecuted Jews, etc.
4. Right of Asylum.

The first of these causes has been the grounds for many interventions of European states in South America, as well as the subject of much discussion at international conferences. It has caused repeated applications of the Monroe Doctrine on the part of the United States, and many embarrassing situations for our Executive Department. In the past, the cause of most interventions based on this principle has been the failure of the less advanced (politically) countries of South and Central America to meet the interest on loans floated by their governments in European countries. These contracts generally call for an excessive rate of interest, which is only fair in view of the risk connected with the investment. The European investors have little hesitation in assuming the risk, relying on their governments to collect the payments if they are allowed to lapse for any considerable length of time. The collection of these debts by European Governments often necessitated a blockade, or, in extreme cases, an occupation of some part of the offending country without its consent. Here European practice came into conflict with the theory of the Monroe Doctrine, resulting in embarrassment to all concerned. There was bound to be

an understanding sooner or later. This understanding was reached by the Second Hague Conference in 1907.[20]

The particular provision of the Second Hague Conference which related to the question of intervention for the collection of contract debts is known as the Porter Convention. It declares, in substance, that the use of force for the collection of contract debts is illegitimate, unless there has been a refusal to arbitrate on the part of the offending nation, an interference with the workings of the tribunal, or a refusal to submit to the award.

Previous to the passing of this Convention by the majority of the states represented at the Hague Conference, Mr. Root in a speech at Buenos Ayres on August 17, 1906, said in part: "We deem the use of force for the collection of ordinary contract debts to be an invitation to abuses in their necessary results far worse, far more baneful to humanity

[20] There is at present no settled understanding as to what is meant by the term "Contract Debts" as legislated on by the Hague Conference. Some maintain that it includes only those debts resulting from contracts entered into by a government, in its official capacity with foreign citizens. Some contend that the term covers governmental bond issues, etc., which are sold indiscriminately to all comers. Some hold that both cases involve the government interested in a "Contract Debt." The majority of opinion seems to restrict the application of the provisions of the Hague Conference to the first meaning.

than that the debts contracted by any nation should go unpaid."[21]

Subsequent to the passing of the Porter Convention, Mr. Hershey, discussing this subject said: "There is no good reason why the same principle should not be applied to all claims of a pecuniary nature."[22] It must be explained that as international law now stands this forcible intervention is prohibited only in the collection of contract debts. In the collection of any debts by forcible intervention on the American Continent, the European state must be very cautious that territory is not occupied with the idea of permanent retention. The State Department has not denied the right of occupying seaports temporarily for the collection of the customs, in satisfaction of just debts.

The United States has had practically no occasion to employ intervention for this purpose in Europe, and since the custom has been regulated and restricted by the Porter Convention, the solution of a portion of this vexing question seems possible. The South American countries will, as a rule, arbitrate. If they did not agree of their own free will, it is probable that pressure would be brought to bear by

[21] Mr. A. S. Hershey, in commenting on this section, says:—"It may be noted that Secretary Root speaks of the forcible collection of CONTRACT debts. The case [of intervention] for the forcible collection of ordinary debts would be still weaker."

[22] *"The Independent,"* April 6, 1911.

several of the stronger and more advanced countries in this hemisphere. The American and British statesmen are not in complete harmony on this subject, although the general policy of the two countries has been about the same. The British did, however, intervene in the cases of Mexico, Egypt, and Venezuela for the purpose of collecting contract debts. The United States intervened in Santo Domingo and Central America. The collection of the customs of Santo Domingo, sanctioned by the Powers, is almost exclusively in the interest of European investors. The English policy, as expressed by Lord Palmerston in 1848 and Premier Balfour in 1902, has been that such an intervention, although legally permissible is inexpedient. In other words, it is a question of policy and not one of law.[23]

[23] In speaking of the large debt owed by the Spanish Government to British subjects, Lord Palmerston concluded a speech by saying:—"But this is a question of expediency, and not a question of power; therefore let no foreign country who has done wrong to British subjects deceive itself by a false impression that the British nation or the British Parliament will forever remain patient under the wrong; or that, if called upon to enforce the rights of the people of England, the Government of England, will not have ample power and means at its commands to obtain justice for them."

Ex-president Roosevelt in a message to the Senate on this subject said:—"Except for arbitrary wrong, done or sanctioned by superior authority, to persons or to vested property rights, the United States Government, following its traditional usage

This whole principle, in its present form, traces its beginnings to the Calvo Doctrine, which was probably the first concrete expression bearing on the subject. The Calvo Doctrine, as well as the later Drago Doctrine, is but the beginning of the Porter Convention as it was considered by the Hague Conference. As Hershey explains the Calvo Doctrine, it was a declaration, owing its authority to Calvo, which "condemns intervention (diplomatic as well as armed) as a legitimate method of enforcing any or all private claims of a pecuniary nature, at least such as are based upon contracts or are the result of civil war, insurrection or mob violence." This is the beginning and is necessarily very broad. The development was a narrowing process to a certain extent. "The broader Calvo Doctrine should be distinguished from the narrower Drago Doctrine, which merely forbids the forcible collection of public debts—a doctrine equally sound in principle and wise as policy, but which its author, the eminent Argentine statesman, Señor Drago, supported by the erroneous and in part obsolete contention that

in such cases, aims to go no further than the mere use of its good offices, a measure which frequently proves ineffective. On the other hand, however, there are governments which do sometimes take energetic action for the protection of their subjects in the enforcement of merely contractual claims, and thereupon American concessionaires, supported by powerful influences, make loud appeal to the United States Government in similar cases for similar action."

'it is an inherent qualification of all sovereignty that no proceedings for the execution of a judgment may be instituted or carried out against it.' "[24]

It must be borne in mind that the Porter Convention does not authorize the use of force in any case.[25] This observation is based on the sentence in the Convention which states that—"The Contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due its nationals." The Convention further declares that "This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, renders a 'compromis' impossible, or, after the arbitration, fails to submit to the award." Thus although the use of force is not sanctioned in any case, nevertheless it is not forbidden in all cases. There remain still some unstopped loop-holes for the statesman who has a desire for pretext. The Porter Convention

[24] "Essentials of International Public Law," pp. 162-163 n. 6.

[25] Hershey, A. S., "Essentials of International Public Law," p. 331 n.: "It may be noted that the so-called Porter Convention is at once broader and narrower than the famous Drago Doctrine—broader, in that it includes public loans as well as ordinary contract debts, and narrower in that it does not absolutely forbid the use of force in the collection of contract debts. It is narrower than the Calvo Doctrine, which forbids even diplomatic intervention, except as a final resort."

has gone a long way towards solving the difficulty in respect to those nations (which form the large majority) finding it possible to subscribe to its provisions as presented to the Conference.

As regards an intervention undertaken in the *cause of humanity* there seems to be a divergence of opinion among the most prominent writers ranging from strict prohibition, to the choice of public opinion. Lawrence admits that in a few instances in the past, intervention on this principle has been justified, and cites as an example the intervention of the great Powers of Europe in 1860 to put a stop to the massacre of Christians in the district of Mount Lebanon. He agrees with the author whom he quotes that "their proceedings were worthy of commendation though they could not be brought within the strict letter of the law."[26]

The concensus of opinion seems to be that each case must be judged on its own merits. Although Lawrence admits that it has been justifiable in the past, he also contends, not without justice, that—"to say that this is no rule because it may laudably be ignored once or twice in a generation, is to overturn order in an attempt to exalt virtue." Historicus in "Letters on Some Questions of International Law," points out that an intervention to put a stop to a barbarous cruelty is "a high act of policy above and beyond the domain of law." It is generally

[26] "Cambridge Modern History," XI, p. 636.

agreed that should the offense be continued, and be of such a nature as to shock all national morality, then an intervention may be permissible if an occasion should arise that would make it possible for this intervention to accomplish positive good. On the subject of the necessity of success to justify an intervention, T. S. Woolsey, after recounting the unforeseen difficulties of the English intervention in South Africa, makes the following remarks on the Mexican situation:

"The job of Mexican intervention would be greater than this [England in South Africa] and our preparation for it less. We should not intervene because it is so doubtful if we could intervene successfully, whereas *intervention to be justified must be successful.*"[27]

If intervention in Nicaragua was justified on grounds of humanity, as many seem to think it was, why not intervene in Mexico on the same principle? The difference between the two cases was pointed

[27] Mr. Frederick R. Condert in the *Outlook* of February 22, 1913, comments:—"It would be the most vital step taken by our country since 1898. It would probably mean the raising of an army of occupation of 300,000 men and the occupation and policing of the whole vast extent of Mexico. It might mean, too, that we would be tied up in Mexico for ten years to come. Inevitably it would mean much bloodshed and loss of life. It should only be done in the last resort to save one third of the continent from a relapse into anarchy and the destruction of its civilization."

out in the *Literary Digest* of October 9, 1912.

1. In the Nicaraguan intervention the aid was solicited by the legitimate government.

2. The Mexican problem is larger and the end less clear than the one in Nicaragua.

That is, that although the American Marine could comfortably quell the Nicaraguan disturbance without further developments, nevertheless in Mexico, the general antipathy to everything American would, it is asserted by many, probably unite all factions against the "policeman" as nothing else could. Thus this intervention would, for a time at least, increase the disturbance and humanity would be benefited only at a great expense and after an indeterminable lapse of time.

The converse of the arguments offered in condemning intervention in Mexico is again offered to uphold the justice of the one in Nicaragua. The interference was solicited by the legitimate government and the end was comparatively clear. President Taft was severely censured for his course in this matter by several recognized authorities, but if the following extract from the hero of many Central and South American embroglios can be accepted, the intervention would appear to be justified on several humanitarian grounds. Mr. Lee Christmas, Commandant of Puerto Cortes, Honduras, says:

"Intervention of the United States in Nicaragua averted what might have proved the bloodiest gen-

eral revolt in the history of Central America. The use of American Marines prevented the Nicaraguan revolutionists from capturing the Government. If the Liberals had won in Nicaragua, the revolution would have spread to Honduras, Guatemala and possibly Salvador."[28]

All such cases must be judged only after a careful consideration of the details, as well as the possible magnitude of the dangers which would result from non-interference.

The early notion on the subject was one of the greatest freedom. This idea runs through all the early writers who find only praise for that nation which undertakes an intervention in the declared interest of humanity.[29] It can hardly be said that anything approaching this view is seriously offered by anyone at the present time. There are, however, more liberal views than that held by Lawrence. In fact there is almost every shade of opinion on the subject at the present time, excepting that very liberal one expressed by Vattel and Grotius. Oppenheim, in his treatment of the question comes to the conclusion that such an interference will

[28] *Literary Digest* XLV, pp. 657-8.

[29] Vattel's ideas were very pronounced on the advisability of such action, and in this he was following in the footsteps of his predecessor Grotius, who says:—"Any sovereign may justly take up arms to chastise nations which are guilty of enormous faults against the laws of nature."

probably be justified in the future if it takes the form of a "Collective intervention of the Powers."

Hershey goes a step further, contending that forcible intervention was justified in the past in the cases of Greece, Bulgaria, and Cuba, "where great evils existed, great crimes were being perpetrated, or where there was danger of race extermination." He agrees with Oppenheim, however, that in order that the interference might not be used as a mere pretext for hidden motives "there must be at least several participants, or if one nation intervenes it should act as the agent or mandatory of the others," as did the United States in Santo Domingo.

As the feeling of general interest in humanity increases, and with it a world-wide desire for something approaching justice and an international solidarity, interventions undertaken in the interests of humanity will also doubtless increase. Nations will probably have more and more reason to interfere in the cause of humanity as the progress of the sciences develops. We may therefore conclude that future public opinion, and finally international law will sanction an ever increasing number of causes for intervention for the sake of humanity, where that cause is made the object of collective action on the part of a number of the larger powers. We cannot believe that the more advanced nations would hesitate to intervene to suppress the spread of any contagious disease, for example, after their scientists

had discovered a method for fighting that scourge of humanity. Nor do we believe that anyone would say that such an interference was not justified. A broader application of this principle suggests itself in the feeling that the time may be not far distant when nations will make use of the power of intervention to prevent or terminate a war that is considered unjustifiable by insisting on the employment of arbitration to settle the dispute. Commercial reasons, as well as the great disasters of modern warfare, will serve to make their intervention justifiable.[30]

The case of an intervention *in the interest of persecuted Jews* presents several distinct peculiarities. In the first place, the race has no direct protecting governmental authority. In the second place, due to their scattered condition, they are unable to unite in sufficient numbers for their own adequate protection. These two facts are sufficient to explain the peculiarity of the present situation of the Jews in Roumania.

At the Berlin Conference of 1878, the Powers

[30] In referring to the intervention undertaken in Santo Domingo by Great Britain, Germany, and the United States in behalf of "suffering humanity," Sir Henry Bulwer says:— "When great and civilized nations interfere to regulate the affairs or quarrels of smaller or less civilized ones, their justification must be founded on the beneficient policy which directs and the strict impartiality which limits their line of conduct."

agreed to recognize the Balkan States on the condition that they should not impose any religious disabilities on their subjects. This was the spirit and letter of Article 44 of that Agreement. Recognition was granted with the understanding that this stipulation would be fulfilled. Hence it follows from the spirit of article 44 that should this article be violated, the Powers signing that Agreement had the right, and even more the duty, of intervention. Nevertheless, in accordance with the municipal law in Roumania, the Jews are, with a few exceptions, considered as foreigners so that they may not come under the provisions of the article just mentioned. On the other hand, the authorities argue that since these Jews are not subjects of any other state, Roumania may compel them to render military service. The authorities treat them, in respect to many other matters, as their discretion may direct. It would seem that the parties to this Berlin Conference are lax in the fulfillment of their obligations so long as they allow such actions to continue. For them, intervention for the correction of the present anomalous condition of the Roumanian Jew, is legally justifiable. For other states the cause is very weak. It must be admitted that the so-called rights of mankind are not absolutely assured.[31]

[31] In developing the question whether or not nations are justified in intervening in such cases, Oppenheim says:

If Oppenheim's history of the development of the mutual ascendency of the Christian religion and the principles of international law is a true one, it is hard to see upon what grounds an intervention for the suppression of such conditions as exist in Roumania in respect to the Jewish population can be denied.

The development of the "hands off" policy is nullifying sympathy in a similar case, where no agreement exists to justify an intervention.[32] The case of the Jews in Russia is known to the civilized world. The reports cannot all be false. The condition of these people arouses pity, but although

"The Law of Nations is a product of Christian civilization and represents a legal order which binds states, chiefly Christian, into a community. It is therefore no wonder that ethical ideas which are some of them the basis of, others a development from, Christian morals, have a tendency to require the help of international law for their realization. When the Powers stipulated at the Berlin Conference of 1878 that the Balkan States should be recognized only under the condition that they did not impose any religious disabilities on their subjects, they lent their arm to the realization of such an idea. Again, when the Powers after the beginning of the nineteenth century agreed to several international arrangements in the interest of the abolition of the slave trade, they fostered the realization of another of these ideas."

[32] Phillimore in his work on International Law states that one of the just causes of intervention is "to protect Persons, subjects of another state, from persecution on account of professing another Religion not recognized by that State, but identical with the Religion of the Intervening State." (I, p. 468.)

deplorable conditions exist there, they are not existing in violation of any international agreement. The Jews in Roumania have a much stronger case than the Jews in Russia, but the only legitimate authority for taking up their cause from a strictly legal standpoint has failed to act.

One of the strongest views in opposition to an intervention based on religious oppression is expressed by Hall, from whose writings Oppenheim says many of his opinions are formed. Evidently this opinion came from a different source. There are several writers who maintain that the Law of Nations guarantees to every individual, wherever he might be, the so-called rights of mankind, no matter what may be his status; that is, even though he may be stateless. Among these writers are Bluntschli, de Martens, Bonfils and others."[33]

We may conclude that although the opinions of the writers just mentioned can hardly be said to obtain at the present time, nevertheless there is a tendency to depart from that very strict construction given to the principle by Hall. As in the case of humanity it seems that the tendency of an ever increasing pressure of public opinion, combined with a more universal demand for justice, is to push the claim for legality of this cause ever nearer that

[33] For Hall's opinion on this question see his "International Law" p. 290.

point where it will be recognized by the majority. Religious toleration will be one of the accomplishments of an advanced international community, just as surely as it is of the more enlightened states of the present time.

The question of the admissibility of the *right of asylum* in various cases is a difficult one due to the fact that while it is sanctioned by the best writers as allowable in some countries, its use in others is almost universally prohibited at the present time. The right of asylum may be granted in three ways: first, by a country allowing the individual in question to come within its borders; secondly, by a foreign legation allowing the accused shelter; thirdly, by a public vessel of a foreign country receiving on board a fugitive.

The fact that every *state* exercises territorial supremacy over all persons within its borders allows that state, except in cases where treaty agreements provide for the contrary, to grant an asylum to every individual who crosses its frontier. It must be understood that this is a right on the part of the state, and is not a right that the individual, as such, possesses. The state incurs no corresponding responsibilities as far as the individual is concerned. The state may turn from its borders the person seeking admission. After receiving him the state may consider it necessary to keep him under surveillance, not only for the protection of its own

citizens, but also to prevent the endangering of the safety of another state,—a rule which every nation is called upon to observe. These precautions are being taken by the United States with respect to the Mexican refugees now within its borders.

Extradition treaties cover, at the present time, with fair thoroughness, all crimes that are not of a political nature. Such provision for mutual return of criminals, having its origin at the time of the French Revolution, has greatly lessened the international burdens of many states. Since extradition treaties have been concluded so generally, the main difficulty is to determine what crimes shall constitute those of a political nature. Decisions on this subject are offered by the Oxford Rules, adopted by the Institute of International Law as modified at Geneva in 1892. They declare, in Article 13. "Extradition is inadmissible for purely political crimes or offenses. Nor can it be admitted for unlawful acts of a mixed character or connected with political crimes or offenses, also called relative political offenses, unless in the case of crimes of great gravity from the point of view of morality and of the common law, such as murder, manslaughter, poisoning, mutilation, grave wounds, inflicted willfully with premeditation, attempts at crimes of that kind, outrages to property by arson, explosion or flooding, and grave robbery, especially when committed with arms and violence.

"So far as concerns acts committed in the course of an insurrection or of a civil war by one of the parties engaged in the struggle and in the interest of its cause, they cannot give occasion to extradition unless they are acts of odious barbarism or vandalism forbidden by the laws of war, and then only when the civil war is at an end."

A later Article states that acts directed against the bases of all social organization cannot be considered as acts of a political nature. These views as to what constitutes a political crime have received some severe criticism, but seem to outline the best opinion on the subject. Most European states recognize the enactment of Belgium of 1856, known as the ATTENTAT clause, which provides that a murder of the head of a state or a member of his family shall not be considered a political crime.[34] On this particular point, Oppenheim observes that the Belgian clause goes too far, in that it is an entirely possible case for the ruler of a state to be murdered from political motives, a case which would not warrant extradition. Hershey agrees with this opinion, further declaring that "mere anarchistic attempts should receive no quarter." Socialists represent a different type in that their idea is not to destroy all social organization, but to reorganize society

[34] For the account of the incident leading to this step on the part of Belgium, see Oppenheim's "International Law" (1905) I. 394.

on a more stable foundation. These generalizations give some idea, at least, of what constitutes a political crime. No very large body of thinkers agree as to the details.

The circumstances under which *foreign legations and consulates* may harbor refugees have suffered great curtailment in the last two hundred years. Two centuries ago, not only the house of the envoy, but the *quartier,* or residential quarters, which seems to have been rather indefinite in extent, was inviolable, except with the envoy's permission. Even at this time the extended right of asylum was not granted by Grotius to be a part of international law. At the present time no state grants such a privilege to the foreign envoy, nor does any jurist contend for the privilege. The envoy's residence is held to be inviolable but not to the extent of harboring criminals unless they are charged with political crimes; and even then this privilege, which is not admitted by all writers is granted only in the case of certain of the more unsettled countries of Central and South America and some sections of the East. In general, a minister must surrender, on demand from the proper authorities, those to whom he has granted asylum.[35]

[35] Hall says: "A minister must refuse to harbor applicants for refuge, or if he allows them to enter he must give them up on command. In Central and South America matters are different."

Answering Mr. Moore's contention that he had asserted "in terms too sweeping and absolute that the right to grant such an asylum has long ceased to be recognized in European countries," Mr. Hall says:

"I do not feel that after careful consideration of the matter by the light of Mr. Moore's able papers, that any modifications of the opinion that I have expressed are called for. The exceptional survival or recrudescence of the practice in Spain, and the isolated case in Greece in 1862, do not seem to me to be sufficient to impart vitality to the custom elsewhere."

There is, therefore, no obligation on the part of the receiving state to grant an envoy the right of affording an asylum to criminals or to other individuals not belonging to his suite.[36]

An interesting instance of intervention in the behalf of a political refugee is furnished in the case of Martin Koszta, who although residing in this country less than two years had declared his intention to become an American citizen. Koszta was an insurgent of the Hungarian Revolution of 1848. At the end of the rebellion he escaped to Turkey, whence he came to the United States. He returned to Turkey on a business trip and while at Smyrna he was arrested by the Austrian authorities and placed on the Austrian war vessel the *Hussar*.

[36] See Oppenheim "International Law," I, pp. 443-444.

Before the Austrian vessel could get away with Koszta an American vessel had arrived and threatened to sink the *Hussar* unless Koszta was given up at once. Due to injury that might be inflicted on neutral interests, no engagement took place. Koszta was given into the keeping of the French Consul until some agreement should be concluded between the Austrian and American Governments. Meanwhile the Porte promised Austria to hold Koszta for at least one year. After this time had expired, Koszta was allowed to come to the United States, Austria reserving the right to proceed against him should he return to Turkey.

This intervention was largely the result of a high public feeling on the question in this country. Sympathy with the Hungarians was very pronounced in the United States. Austria claimed that the United States had violated the sovereignty of the Porte, but the fact was clearly established that all actions of the American agents were allowed by the Sultan before they were attempted. There was grave doubt in the United States, as well as in several European countries, as to whether the Austrian Government had the privilege of up-holding the cause of Turkish sovereignty.

In 1870 the government of the United States suggested, without success, that the chief powers should combine in instructing their agents to refuse asylum for the future; but during the Chilean civil war of

1891 no less than eight refugees were received into the American Legation. A large number were given asylum by the ministers of several other states. The most recent example of the exercise of the privilege of asylum is that furnished in January 1915 by the Italian Consulate at Hodeida, Arabia. An English Consul at Hodeida, pursued by Turks, sought refuge in the Italian Consulate. Asylum was granted to the Englishman, but he was followed into the Consulate and removed. Italy at once demanded his release, an apology from the Turkish Government and a salute to the Italian flag. The usual Ottoman diplomacy made it necessary for Italy to dispatch two war vessels to Hodeida with sealed orders. The desired result was obtained and Turkey acceded to Italy's demands. It would seem that within the area to which the right of asylum has been restricted, it is still undeniably sacred when employed to legitimate ends.

As regards the right in the case of *public vessels,* the same conclusions would seem to apply as in the case of the envoy. Of course the public vessel in foreign waters has the right to receive anyone on board, and whatever grievance the local authorities might have must be dealt with through the regular diplomatic channels. Any country has the privilege of denying the hospitality of its territorial waters to an offending public vessel of a foreign country, but

further than that it cannot go. Governments, as a rule, instruct the officers of their vessels to offer only temporary refuge to criminals whose crime is other than political in nature. That is, a war vessel might protect a fleeing man from a pursuing mob and give him up, voluntarily, shortly afterwards to the local authorities. Political criminals are not harbored as a rule, although the exceptions are equally as numerous as in the case of asylum granted by a legation and generally in the same countries. If there is any difference in the number of cases it is in favor of the public vessels.[37]

The privilege of granting asylum has been generally denied to merchant vessels, although they have afforded refuge in exceptional cases, especially in South America. Replying to a request by a shipping company for instructions for their captains in respect to the privileges of granting asylum, our State Department refused to formulate any definite rules.

[37] Hershey says, discussing this question in his "Essentials of International Public Law," p. 271: "A different practice seems to obtain in the case of warships. It would appear that according to general usage, commanders of warships may, under circumstances of serious danger and at their discretion, grant asylum to political refugees from motives of humanity upon condition of observing a strict neutrality between both parties. But aslyum should never be offered nor should the refugees be permitted to maintain communication with the shore." He further notes that the same principle probably extends to fugitive slaves.

CHAPTER IV

SPECIAL FORMS OF INTERVENTION

Recognition of Belligerency

There are several principles known to international law, the existence of which, under certain specified conditions, amounts to intervention. The conditions represent all shades of plausibility from the "fairly likely" to the "most doubtful." A short examination of each of these special forms is pertinent.

The recognition of belligerency in accordance with the principles of the Law of Nations is permitted only when certain conditions have been fulfilled. The belligerent adversely affected by the premature recognition claims intervention on the part of the neutral who has granted that recognition before the specified conditions have been clearly manifested.

The right of a state to recognize the belligerent character of insurgent subjects of another state, must, for the purpose of international law, be based solely upon a possibility that its interests may be so affected by the existence of hostilities in which one party does not enjoy the privileges of a

belligerent as to make recognition a reasonable measure of self-protection.

In the case of an insurrection or a rebellion, any state has cause to complain of the acts of another state which has recognized a part of its subject population, as they conceive it. Herein lies the conflict of interests of the two independent states. The best known example of such a conflict of interests existed between the United States and Great Britain during our Civil War. The war broke out on the eleventh of April, 1861, with the bombardment of Fort Sumter. On the fourteenth of May of the same year, Great Britain acknowledged the belligerency of the Confederate States. On her part England claimed that all the conditions necessary for such a recognition were already in existence. Hall devotes considerable space to this subject in his book on "International Law," setting forth the case of his mother country in undoubted terms. He bases his conclusion on the existence of the armies in the field, the establishment of a regular government by the Confederacy, their plans for a navy, the blockade of Southern ports by the United States and the direct effect on English interests.

The United States claimed that intervention on the part of Great Britain was due to her sympathy with the Confederate cause, in that there could not have been a *necessity* on her part within so short a

time. This government admitted at the same time that "a nation is its own judge when to accord the rights of belligerency," claiming however, that recognition which "has not been justified on any ground either of necessity or moral rights" is "an act of wrongful intervention." The ground of necessity is the one most dwelt upon by Hall in his text as justifying a recognition of belligerency. In discussing the opinion of the State Department he passes the privilege of refuting the American claims on this score and dwells on the "moral rights" mentioned in the American contention.[1]

Although recognition may have been premature in this instance nevertheless it cannot be denied that England had the right to acknowledge the belligerency of the Confederacy at a later time during the war, if not a month after its beginning. If the recognition was somewhat untimely it was probably due as much to British sympathy as British interests. The latter would undoubtedly have made subsequent recognition justifiable.

A state may also give offense in this particular in

[1] Hall, W. E., "International Law," p. 39 n. "It is not altogether clear what is intended by the phrase 'moral rights.' Probably, however, it means moral right on the part of an oppressed community to be recognized. If so, it is an instance of an intrusion of sentimental, moral, or political consideration into the sphere of pure law, which was frequent in American argument during the British-American controversies which took place from 1861 to 1872."

its actions toward its revolting subjects. Thus when in 1861, New Granada was occupied with a civil war, the Government issued an order closing the ports of the territory held by the rebels. This order was evidently issued to avoid the necessity of a declaration of blockade which would involve an acknowledgment of a state of war. The English Government complained in very vigorous terms that her commerce was being unlawfully interfered with.[2] We must conclude, therefore, that in spite of the recognized elements incident to recognition, the judgment as to when these elements exist rests with the recognizing state.

Recognition of Independence

When a contest has reached such a condition that it seems likely that the mother country will not be able to subdue the revolted portion of the country, then other states are justified in recognizing that portion of the mother country as a separate state in international affairs. The underlying principles as to the time when such a condition has been fully

[2] Sir John Russel speaking on the subject said: "It was perfectly competent to a government of a country in a state of tranquillity to say what ports should be opened to trade, and which should be closed. But in the event of insurrection or civil war in that country, it was not competent for its government to close ports which were de facto in the hands of the insurgents and such a proceeding would be an invasion of the international law relating to blockade."

established are left, largely, to the recognizing state. Oppenheim expresses a very decided opinion on this point which must be taken relatively. He says, "It is frequently maintained that such untimely recognition contains an intervention. But this is not correct, since intervention is interference in the affairs of another state." On the other hand, Hershey contends that "recognition of the independence of a revolted community, if premature, may be a disguised intervention." The majority opinion is that the recognition of the independence of the United States by France, even though it followed closely after Saratoga, amounted to an intervention in itself. Subsequent action showed the attitude of the French nation in the case, and helps affirm the foregoing conclusion.

The justification for the recognition of independence, as in the case of a recognition of belligerency, must be judged by the recognizing state. The questions of fact leading to the action may he disputed, but the act itself is one of the privileges of sovereignty. That such is the case does not exclude that act from being an act of intervention. When a state recognizes the independence of a revolted community before the outcome of the conflict has been decided beyond all reasonable doubt it is interfering in the internal affairs of the mother country and is thereby committing an act of intervention.

Recognition of Insurgency

When, if ever, does the recognition of insurgency justify the appellation of an intervention? In the first place it would be well to have a clear understanding, if such be possible, as to what insurgency includes or when such a condition exists.

"A status of insurgency may be recognized when an insurrection with a political purpose has assumed the proportions of a war 'in a material sense,' and when it seriously interferes with the exercise of sovereignty or with normal foreign intercourse. Though it is held that such a contest does not amount to civil war 'in a legal case,' it has passed beyond the state of a mere mob outbreak or riot into that of an organized insurrection with responsible leaders, etc."[3]

Lawrence in discussing the case of the rebellion of the Brazilian fleet under Admiral de Mello and their continued resistance for seven months to the established authorities, notes that "this case, and others of a similar kind, point to the existence of a condition midway between belligerency and piracy, which it would be advisable to

[3] Hershey, A. S., "Essentials of International Law," p. 118. For the distinction between war in a "legal" and "material" sense, see the decision of Chief Justice Fuller in the case of "Three Friends," Scott's Cases, p. 758.

recognize as insurgency."[4] The status of insurgency was recognized by President Cleveland in a Proclamation in 1895, enjoining a strict observance of our Neutrality Laws during the progress of the Cuban insurrection of that year. The German Consul-General at Cape Town in 1899, issued a proclamation impliedly recognizing the insurgency of the Boers.

The mother state very often recognizes the right of insurgency on the part of the revolted community. The United States so recognized the Confederacy. This form of recognition on the part of the parent is often a help to the rebel cause but it also has its advantages for the grantor, for in this way it can disclaim all responsibility for the acts and debts of the insurgents in case of their failure. It promises to treat captured rebel prisoners according to the laws of war and expects the same from the insurgents. This obligation is also placed upon the insurgents in the case of recognition by any outside state. Insurgency, since it implies so little on the part of an outside state, is not the subject of dispute to anything like the extent of belligerency or independence. It is as often advantageous for the parent state to recognize it as for the neutral state. It hardly seems likely that its recognition would be considered an intervention in any case by the mother state.

[4] Lawrence, T. J., "The Principles of International Law," pp. 236-237.

Unneutral Service

With the rapid advancement of modern science there are numerous ways in which a government, seemingly neutral, can lend such assistance to one of the belligerents as may determine the outcome of the war. For example, we might consider the possibilities of an unscrupulous nation to lend valuable assistance by transmitting messages by wireless. The development of the modern system of credit likewise presents many possibilities. The United States wielded a strong weapon against the Huerta regimé in Mexico when she held up its European credit schemes. Rules may be passed by neutral countries, which, while equally applicable to both belligerents, are of direct benefit to one only. Numerous other instances are common knowledge.

Such acts on the part of the neutral are among those included in the term "unneutral service." In certain of its phases unneutral service is rapidly approaching the point where it amounts to an interference in the external affairs of a state without its consent. When the unneutral service is, with the assistance of modern conditions and improvements, able to accomplish such ends, it is intervention.

Good Offices and Mediation

Good offices and mediation although they do not mean the same thing are kindred terms and can be discussed together satisfactorily.

Good offices takes the form of suggestions by a third power or powers, offered to one or both of the states whose mutual relations are unfriendly or hostile, in an effort to get them to effect a settlement of their grievances.

Mediation takes the form of actual assistance of a diplomatic nature by the third power or powers in an effort to bring the mutually unfriendly or hostile states to an amicable agreement. In this case the actual negotiations are carried on by the friendly third power. The mutual friend does not act the part of an arbitrator, but on the other hand does offer suggestions and propose compromises to both sides. Political disputes are especially amenable to such treatment.

As the terminology used in the definitions indicates, mediation may be either single or collective in character, and may be used to terminate as well as prevent a war or other international disagreement. By the terms of the Hague Conferences the Powers are bound to have recourse to this method of settling their differences, "so far as circumstances allow." In spite of earnest effort on the part of the most

serious peace advocates, this clause was inserted in the convention, thereby making it practically nugatory.[5]

The Hague Conferences of 1899 and 1907, among many others adopted the following rules as regards good offices and mediation:

(Article 2.) "In the case of serious disagreement or dispute, before an appeal to arms, the contracting Powers agree to have recourse, so far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

"Independently of this recourse the Contracting Powers deem it expedient *and desirable* [1907] that one or more Powers, strangers to the dispute, should on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the states at variance.

"Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

(Article 3.) *"The exercise of this right can never be regarded by either of the parties at variance as an unfriendly act.*

(Article 4.) "The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the states at variance.

[5] See Hershey, A. S., "Essentials of International Public Law," Chapter XXI.

(Article 5.) "The duties of the mediator are at an end when once it is declared either by one of the contending parties or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

(Article 6.) "Good offices and mediation undertaken at the request of the contending parties or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force."

Thus the findings of the Hague Conferences, in the third Article of the Convention dealing with the subject, definitely answer the question of whether or not mediation or good offices can ever be considered as an intervention.

Consular Courts and International Courts

Consular courts and international courts have in the past not been immune from criticism as to the possibility of their being, in a modified form, an intervention in respect to the domestic sovereignty of the state wherein they are located. It is difficult to see how such a view can be entertained in view of the fact that these courts are without exception established as the result of treaty agreements. It may be possible that some display of force was used to help in the acquirement of these treaties. It can be clearly perceived that to the countries entering upon

these agreements, a full understanding for their cause was probably not evident, but they did understand their intent. If the majority in a country where these special courts exist were fully aware of the causes which lead to their presence, there would be little or no cause to demand them.

The international court established in Egypt by a number of the larger Powers was set into operation with the full consent of the Khedive.[6] International law does not declare void an agreement between two sovereign powers simply because there was some form of duress on the part of one of the parties to the agreement. If such a principle were in force most of the treaties between the two parties to a war would be void. The necessity of the case demands that one of the two parties to the struggle has been worsted and that the conqueror will demand some sort of compensation for his trouble; otherwise wars would be even longer than they are at present.

An international court was formed by Great Britain, Austria-Hungary, France, Germany and Italy to undertake jointly the commission of liquidation for the benefit of the creditors of the Khedive of Egypt. The subjects of these five powers held the greater part of this debt. The commission desired to negotiate for all the creditors upon the same basis, and

[6] See Holland, "European Concert in the Eastern Question," pp. 98-205.

with this object in view Sir Edward Thornton addressed our State Department. Although our Government at first could not find it convenient to agree in advance to abide by the decision of the Commission as outlined by the British agent, nevertheless upon being advised by the Khedive that it was essential to the success of the scheme, assent was given. Here we have an example of an international commission dealing with the credit of citizens of a nation not represented on that commission. The American creditors were not even directly represented. The Khedive's communications with the United States showed his entire willingness that the court should sit.[7] Surely none of the essentials of intervention are present in this case.

The provisions of the United States Statute of 1860 apply directly to consulates in China, Japan and Siam.[8] They also apply in large measure to Turkey. The list of countries submitting to the Consular Courts is altered from time to time, depending chiefly on the advance of civilization in

[7] Taken largely from the communication of Mr. Evarts, Secretary of State, to Mr. Drummond, July 30, 1880. "British and Foreign State Papers."

[8] "Wharton's Digest," I, 801. "Mr. J. C. B. Davis. Notes etc." "Another series of treaties grants to the Consuls of the United States in the territories of certain Oriental powers, exclusive jurisdiction over disputes between citizens of the United States, or over offenses committed by citizens of the United States, or both."

that country as recognized by the larger Powers. When Japan requested that all the countries remove their Consular Courts, the request was acceded to without exception, a courtesy which acknowledged the advance made by that country in the application of the generally recognized principles of law. Turkey recently attempted to free herself from the yoke imposed by the Capitulations under which she had surrendered certain judiciary attributes of sovereignty. Shortly after the outbreak of the European War, by taking advantage of the unsettled state of affairs among the leading Powers of Europe, the Porte issued an edict annulling the concessions granted the Family of Nations by the Capitulations. Whether or not this arbitrary action on the part of the Porte will receive international sanction must await for its decision the termination of the War. As previously mentioned, in those countries where consular courts are necessary their presence is based on treaty agreements with the sovereign power in that country. With this fact in mind the contention that the court represents an intervention in any way, must be answered negatively, the same as is the case with international courts.

CHAPTER V

NON-INTERVENTION

Policy of the United States

The majority of the publicists, in number if not authority, seem to favor the principle of non-intervention. Hershey has drawn up a list of the leading authorities on each side. He notes that the present "tendency" is toward non-intervention and casts his lot with the majority to some extent. If the average American student favors the doctrine of intervention the reason can be found in the list of jurists supporting that doctrine. Surely the second list given below is more familiar to most of us than the first.[1]

DeMartens says distinctly that it is not allowable to speak of the "right of intervention." (Il n'est donc pas permis de parler du "droit d'intervention.")[2]

[1] Several of the best known writers favoring non-intervention in principle are Bonfils, Despagnet, Halleck, Heffter, Holzendorff, DeMartens, Walker, Wheaton, Wilson and Woolsey. The greatest weight on the side of the legal right of intervention is represented by Hall, Lawrence, Phillimore, Westlake and Oppenheim.

[2] DeMartens, F., "Traité de Droit International," p. 395.

Lawrence probably expresses in most decided manner the opinion on the other side of the question. Coming from such an authority it demands serious consideration.[3]

Passing from the conclusions reached by publicists to the policies of the larger Powers, we find many interesting details as to our own actions in the matter. The early traditional attitude was given a great impetus as well as a clear meaning by Washington. That famous portion of his Farewell Address firmly fixed our first national policy.

"Europe has a set of primary interests which to us have none or a very remote relation. Hence,

[3] "Principles of International Law," pp. 137-138. "So prone are powerful states to interfere in the affairs of others, and so great are the evils of interference, that a doctrine of absolute non-intervention has been put forth as a protest against incessant meddling. If this doctrine means that a state should do nothing but mind its own concerns and never take an interest in the affairs of other states, it is fatal to the idea of a family of nations. If, on the other hand, it means that a state should take an interest in international affairs, and express approval or disapproval of the conduct of its neighbors, but never go beyond moral suasion in its interference, it is foolish. To scatter abroad protests and reproaches and yet to let it be understood that they will never be backed by force of arms, is the surest way to get them treated with angry contempt. Neither selfish isolation nor dignified remonstrance is the proper attitude for honorable and self-respecting states. They should intervene very sparingly and only on the clearest grounds of justice and necessity; but when they do intervene, they should make it clear to all concerned that their voice must be attended to and their wishes carried out."

she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships and enmities. Our detached and distant situation invites and enables us to pursue a different course."

In contrast with this formal presentation of our early policy is that appearing in John Adam's diary, under date of November 18, 1782. "Peace is made between Russia and the Porte, and the definitive treaty between England and Holland is expected to be soon signed. May the world continue at peace! But if it should not, I hope we shall have wisdom enough to keep ourselves out of any broil, as I am quite in sentiment with the Baron de Nolken, the Swedish ambassador at St. James's, who did me the honor to visit me, although I had not visited him. 'Sir,' said he, 'I take it for granted, that you all have sense enough to see us in Europe cut each others throats with a philosophical tranquillity.' " And so the expressions go on; all with the same hope and desire that the new country will stay at home. This policy was strictly followed for many years and through the most tempting circumstances.

Genet, when he came to this country with the high sounding but empty expressions of the French Assembly still ringing in his ears, came with the

avowed purpose of formulating "a national agreement." The enthusiasm of a sympathetic people were on his side and it was with great difficulty that the Administration was able to carry out its policy in the face of an aroused sentiment.

Again in the contest between Spain and her colonies in which the latter achieved their independence, the United States adhered to her strict policy of non-intervention.

Public sympathy was next aroused in favor of the Greeks, who were struggling for their independence. Private relief sent to aid the cause was generous. Nevertheless several bills introduced into Congress, whose purposes were Greek assistance, failed to pass. Our Government was able to uphold its traditional policy on several other noted occasions, among which is the Hungarian revolution. Koszuth's visit to America in the interest of this cause resulted in a popular demand for intervention, which was restrained only by the poise of President Fillmore and the convincing arguments of Clay.

In the Chilean-Peruvian War the possibility of our drifting the other way is noted for the first time. It may be said to be the beginning of the tendency which was to find its final expression in the phrase "Primacy of the United States in America." In this conflict our Government made it clear through diplomatic channels, that we would consider

it "as an intentional and unwarrantable offense" for Chile to change considerably the boundaries of Peru. These instructions were afterwards withdrawn, but they served their purpose. The feeling of the United States in the matter undoubtedly influenced the settlement made between the two countries at the conclusion of the war.

In the case of Cuba our policy, as well as interests were peculiarly vital. On several occasions (1825-1867) Colombian and Mexican attacks on Cuba were threatened. This Government did nothing further than to express its feeling in the matter and that not very forcibly. The proximity of the Island to our shores aroused a natural interest. Our early desires favored Spanish rule rather than that of any of the less stable nations on this continent. Later sentiment, culminating in the Ostend Manifesto, favored the acquisition of Cuba as the only safe remedy. In pursuance of this feeling American sympathy of the next decade favored intervention on the Island whenever any good pretext might present itself. The desire for intervention remained, but the cause for it gradually changed. The cruelties of the Spanish authorities in Cuba were revolting to her American neighbors. When intervention finally came, the expressed cause was more for the sake of a portion of humanity than for the satisfaction of our own grievances. This was the high water mark of our intervention in

affairs in this hemisphere in which an European country was involved.

Secretary Bayard, in discussing the Pelletier claim against Hayti, took occasion to express in the same sentence the ideas of the Primacy of the United States, and a portion of the Monroe Doctrine. He said, "The United States has proclaimed herself the protector of this western world, in which she is by far the stronger power, from the intrusion of European sovereignties."

Our sphere of protection was given very extensive boundaries in 1891 when Secretary Blaine, through Mr. Coolidge, our Minister to France, made strong representations to that Government in behalf of Liberia. French protectorates, resulting from treaties with certain chiefs of the Ivory Coast, were extending into Liberian territory. Mr. Blaine declared that our peculiar connection with the founding of Liberia, would not allow us to sanction the assumption by France of the announced protectorates, unless Liberia consented. After an interchange of views, France concluded a treaty with Liberia, compensating her in land and money for the disputed territory, and at the same time acknowledging her complete independence. Mr. Coolidge makes significant reference to the settlement in a dispatch to the State Department. "The energetic protest made by the Government of the United States on the 13th of July, as reported in

my dispatch of the 22nd July, has, I think, induced the French to make the present settlement."[4]

Mr. Henderson points out, in his "American Diplomatic Questions," that the feeling that American questions should be reserved for American settlement, was carried to such an extent by the United States that she refused to mediate jointly with Great Britain and France in the war between Chile and Peru.

There is at the present time a strong feeling as regards a large part of the population that strict non-intervention in the affairs to the south of us is the best policy that this Government can pursue. The advocates of this policy feel that the United States is not justified, for moral and financial reasons, in assuming the "big stick" attitude on the American Continent.

The non-intervention policy is being gradually abandoned by the United States. With the growth of international relations and the intensive development of international commerce it was found necessary, step by step, to abandon the old policy. In the first place, the fulfillment of our obligations resulting from the Monroe Doctrine made it advisable to adopt a paternalistic attitude in South and Central America. We took part in the intervention of the Powers following the Boxer uprising in China. In 1891 we further narrowed our non-intervention

[4] "British and Foreign State Papers." LXXXV, 638.

policy by espousing the cause of Liberia as against France. By this act another grand division was put on the eligible list. At the conference which discussed and regulated Congo affairs we were an official "listener." Europe alone remained uninvaded. With the development of our Mexican policy it became advisable for the Administration to use its influence with the Governments of several European countries for the purpose of cutting off Mexican credit in those countries. A French broker, for example, was about to conclude negotiations for a loan to the Huerta Government in Mexico when he was advised by his Government that the transaction contemplated would embarrass certain French foreign policies. Mexico was refused the loan, thanks to pressure from Washington, exerted through the French Government. Our effective enforcement of the money embargo against Mexico made necessary an interference in the internal affairs of France with her consent.

We are departing so rapidly from our early policy of non-intervention that there is scarcely any portion of the globe where we would not claim the right to intervene should the occasion demand. Nor does it seem that our change of policy in this respect is a retrogression. As the world comes more and more to have common interests, it seems incumbent on every member that it should bear its share of the responsibilities.

The Monroe Doctrine, since it stands for interference by the United States on this continent, is left for a brief discussion in the following paragraphs dealing with the European attitude toward non-intervention in the Americas.

Policy of Europe in the Americas

The very fact that our early policy of non-interference in the affairs of Europe was so emphatically outlined by our leading men naturally presupposes the reciprocal demand that the European states not interfere in affairs on this continent in which we are personally concerned and in which they have no direct interest. At the beginning of our national existence we had scarcely sufficient power or prestige to cause the declaration of our policies to be received with any visible agitation on the part of the European states. The consistency with which we upheld our part of the self-imposed bargain, in the face of great temptations was the main basis of its strength. After Mexico had thrown off the Spanish yoke it was clearly perceived that it was to the interest of this country that Spain should not regain her sovereignty in that large country on our southern border. The other Spanish colonies in Central and South America soon began a struggle for their independence. The very facts of the case, the similarity to our own struggle, enlisted

the sympathies of the American people from the beginning. Our Government, still following its traditional policy, took no action that could be considered as an intervention in favor of any of the South American interests. But after these states had achieved their independence, this country announced the Monroe Doctrine, which if not a guarantee, was at least a source of security for the future independence of these new republics, as far as European aggression was concerned.

There is considerable speculation as to the fact that this clearly defined policy of our Government found cause for its promulgation as such in this country. It seems from a careful examination of the case, that the suggestion which gave birth to the policy came to us from Great Britain. Canning, the British Minister of Foreign Affairs, proposed a coalition to the American representatives in London, which involved the question of the former Spanish colonies in America. England did not want the Spanish authority restored in Central and South America. She therefore proposed, through Mr. Canning, that the United States and England together announce the policy of their extreme displeasure with any power or powers (the Holy Alliance) which might attempt to alter the status quo in that part of the world.[5] The offer was tentatively

[5] Mr. Canning in a confidential letter to Mr. Rush, after enumerating the desires and feelings of England on the sub-

accepted on the part of the American Minister, Mr. Rush, with the provision that Great Britain immediately recognize the new republics which the United States had found convenient to recognize after "great considerations." England was not able to give immediate answer to this counter proposition and while the matter was under consideration by that country, President Monroe, in his Annual Message of December 2, 1823, announced the proposed policy with additions suitable to the independent action. Thus the United States acted alone on England's proposal for joint action. Of course the drafted form of the Doctrine differed in several particulars from the English proposition, but contained nevertheless the one essential feature—the status quo of the former Spanish colonies.

The promulgation of this doctrine in 1823 by President Monroe was in no sense the beginning of the American policy as expressed therein. It was merely given definiteness and a name. It was made applicable to the existing situation, and put in such form that it would be a future protection for this

ject of the new Spanish republics, puts the question frankly—"If these opinions and feelings are, as I firmly believe them to be, common to your Government with ours, why should we hesitate mutually to confide them to each other, and to declare them in the face of the world?" These "feelings" were identical so far as the republics were concerned. (Mr. Canning to Mr. Rush, "private and confidential," August 20, 1823. Massachusetts Historical Society, Jan. 1902. 415.)

continent from European colonization. As to the question whether this Doctrine implied any obligations on our part other than those expressed has become a question of much importance since its acceptance, in a tacit manner, by the Powers of Europe. It did reiterate our intention not to interfere in the affairs of Europe, and on the other hand made clear that European meddling in American affairs, or any attempts at further colonization on their part would be considered as an unfriendly act by this Government and the subject of grave concern.[6]

The particular part of the presidential message, dealing with the Monroe Doctrine, was introduced

[6] (From the President's Message of Dec. 2, 1823.) "In the wars of European Powers in matters relating to themselves we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparations for our defense. With the movements in this hemisphere we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers . . . With the existing colonies or dependencies of any European Power we have not interfered and shall not interfere. But with the governments who have declared their independence and have maintaind it, and whose independence we have, on great consideration and on just principles, acknowledged, we cannot view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition toward the United States." This is, in brief form, the policy enunciated in the Doctrine.

by a comment and explanation of the Russian proposal to adjust, by diplomatic means the disputed boundary between her American possessions and the United States.

A consideration of this nature was thought proper for introducing the assertion that "the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European powers." (Paragraph 7, Message of Dec. 2, 1823.) Examination will readily disclose the fact that the Doctrine contains four distinct phases:

1. That directed against Russia in particular, but meant for Europe in general, forbidding future colonization on the American Continent.

2. That directed against the Holy Alliance, forbidding interference with the independence of the new republics in America.

3. That which pointed out the radical difference between the political systems in Europe and America, and declared that we would "consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety."

4. That which reaffirmed the traditional policy of the United States to hold aloof from the internal affairs of European states.

It has already been pointed out that most of the

ideas expressed in this policy were as old as the country. Washington stated the main facts in his Farewell Address. The same attitude was held by all the statesmen who guided the nation's policy, from Washington to Monroe. Jefferson's opposition to European interference in cis-Atlantic affairs was very marked. He ventured to predict that a day would come when we might "formally require a meridian of partition through the ocean which separates the two hemispheres, on the hither side of which no European gun" should ever be heard to threaten the tranquillity which is so necessary for our prosperity.

Taking into consideration the fact that the Monroe Doctrine may be assumed to have been the basis of decisions affecting world movements, especially as it promoted or prevented interventions, we may trace briefly its rapid growth in the estimation of Europe. When this Doctrine was promulgated by the fifth President of the United States, it called forth many public remarks from the leading men of Europe. Ollivier, the French jurist, directed strong adverse criticism against the new doctrine, and found little justification for its "mingled qualities of astuteness and naïveté." Canning, in spite of the fact that he had previously entertained in his own mind an immense value to England of portions of the Doctrine, declared that it was "very extraordinary and England is prepared to combat it in the

most unequivocal manner." The explanation for this statement coming from Canning is found in the fact that he was referring to that portion of the Doctrine which protested against European colonization in America. When speaking of that other part of the Doctrine, embracing his scheme of opposition to the Holy Alliance, he made the remark since become famous, "I called the New World into existence to redress the balance of the Old." Years later Bismarck, in his decided manner, expressed the opinion that "it is a piece of international impertinence."

These expressions give a very good idea of the feeling with which the new ideals of the United States were received among the governing officials of Europe. With respect to the masses of the people, on the other hand, this feeling of opposition was by no means so pronounced. In England and France the masses were much pleased with the message from America. It was held by the French people to be another expression of their cherished ideals of liberty in that it was hurled by the great Republic at monarchical Europe. It seemed to them to mark another step in advance for the cause of republican institutions.

There has been a change of feeling among the higher officials of Europe as to the Monroe Doctrine. They not only desire its acceptance for selfish reasons, but they are also disposed to give

greater weight to its power and influence than they did in 1823. Those nations which do not formally admit its principles as inevitable, at least by tacit agreement attribute great respect to the American assumption. Nearly a century of existence has brought the practice to a point where it commands universal consideration.[7]

The Monroe Doctrine cannot be justified, as a principle, upon any of the foundations of the international code; but as the guiding star of American policy it is of the greatest political importance. The whole matter of the acceptance of the policy by the world in general, as it bears on the subject at hand, has to do with the justification of interventions undertaken in upholding its principles. It is true that it generally involves an intervention to put down another intervention, but the Doctrine cannot be treated under that heading due to the fact that it does not generally consider whether or not the first intervention was justified according to the law of nations. The question here is, does the first in-

[7] Referring to the present status of the Monroe Doctrine, Theodore Marburg, points out that—"Whether the Doctrine is a wise and just doctrine or not, the fact remains that it has come to be a settled policy of the United States, and must be dealt with as such even by those Americans who may find fault with it. For the present the situation at home is so delicate that no European country is likely to make war on the United States on account of the doctrine." (From the "Independent," June 20, 1912.)

tervention seem to involve an acquisition of territory, or does it involve acts of sovereignty which are likely to lead to later acquisitions of territory on this continent.

It was soon developed that the Doctrine possessed a positive and a negative side. The negative side was expressed in the Message. The positive side was understood as a correlary, being just only in view of the restrictions which the negative side imposed. The negative side forbade Europe to intervene on this continent. The positive side demanded that the United States adjust the differences between the European states and her wards. This phase of the policy developed later and has been gaining continually in recognition. The best example of the working of this principle is furnished by the present situation in Mexico, where the European countries demand satisfaction of some responsible party for their rights in the event of their being withheld from the protection of those rights.

There are a number of authoritative editorials representing the European attitude as to the positive side of our policy of intervention as expressed in the Monroe Doctrine, particularly as this policy is applied to the situation in Mexico.

The London *Daily Press* comments as follows:[8]

"Further delay means ruin for all legitimate enterprise in Mexico, and the large amount of British

[8] March, 1912.

capital invested in Mexico gives this country the right to urge action on the American Government with all the force of friendly suasion.

"The United States has assumed paternal responsibility for the whole of the Western Hemisphere, resenting any outside interference in the affairs of any part of the territory covered by the Monroe Doctrine. They must accept responsibility for the maintenance of civilization within the compass of their claim. There is no time for dalliance or sentiment. America has been in Mexico before this and must go there again at once, but nine thousand men will not do it and the sooner the extent and necessity is recognized the less chance there is of a very costly disaster for America."

On the same subject the *Pall Mall Gazette* remarks:[9]

"If it should be determined to send forward the troops now in Galveston, we do not see how the most strenuous supporter of the Monroe Doctrine could find legitimate ground for objection; certainly not those who hold that the Doctrine carries with it a corresponding obligation to maintain a decent standard of law and order in the states to which it applies."

The rights and duties of the United States to intervene in the Americas as a result of the promulgation of the Monroe Doctrine are admirably suggested in the form of four questions appearing recently in the *Outlook*.[10]

[9] March, 1912.

[10] May 17, 1913.

1. "Is the United States responsible for the maintenance of order in the Western Hemisphere anywhere beyond the United States' own border?

2. "If it is, at what point does its responsibility begin?

3. "If there is such a point, who is to decide that it has been reached—President or Congress?

4. "In order that such a responsibility should be met, what should be done?"

The last of these questions has reference particularly to the Mexican situation. The other three may be seriously considered in the future relations between the United States and any other state of this hemisphere, when the adjustment of the affairs of that other country is contemplated by our Government. In answering any of these questions from the standpoint of an internal adjustment, the support given to the Monroe Doctrine must, to a great extent, depend upon the demands of humanity and progress. When contemplating interference with the external affairs of a nation, the application of the Doctrine is influenced more by governmental policy. Answering the first three questions, the ones of general application, the writer of the article explains, in brief:

1. The United States *is* responsible beyond its own borders. Every nation is. The European nations were responsible when the Barbary pirates infested the Mediterranean. They were also re-

sponsible when the Turks massacred the Armenians. The nations of the world were responsible when the lives of foreigners were threatened by the Boxer uprising in China.

2. "The point at which intervention is justifiable is the point at which it becomes clear that no organized government capable of preserving order, exists in the disturbed region, or is likely to arise in time to prevent irrevocable disaster to civilization." As an illustration of this point we may justify the intervention of the United States on two recent occasions in Cuba.

3. In answer to the third question the writer states that the President is the one to decide when such an intervention shall take place. This decision is based on two reasons, the first theoretical and the second practical. The theoretical reason is that an act of intervention is executive and not judicial as is a declaration of war, which is the work of Congress. The practical reason is that it might often happen that before three or four hundred Congressmen could reach a decision, irrevocable damage may have been accomplished, and the proper time for an effective intervention passed. The power to render such a decision is purely a one-man power.[11]

[11] Relative to this same topic a recent issue of the *Independent* concludes that intervention by the United States in Mexico can be urged only on three grounds, viz.: 1. To prevent the destruction of American and foreign property.

The recent actions of the United States in Santo Domingo, where Mr. Sullivan is our representative, show to what extent the positive side of the Monroe Doctrine is tending.[12] Since the Powers of Europe feel that the negative side of the Doctrine has long since reached its full development, they naturally favor the continual extension of the positive side, involving the responsibility of the United States for the proper actions of those nations included within the scope of her favorite doctrine. As was predicted by Oppenheim in 1905,[13] there is already

2. To prevent the killing of American and foreign citizens. 3. To prevent Mexico from becoming an international plague spot. The article concludes that these conditions do not yet exist and that the "masterly inactivity" on the part of our President should continue. (*Independent,* January 12, 1914.)

[12] The election is to take place on the fifteenth, and the new Congress will revise the Constitution. It will also provide for the election of a President. The revolutionists are uneasy. It is said that they regret their acceptance of the terms and are ready to fight again. Shipments of arms and ammunition intended for their use have recently been found concealed on two steamships at New York and confiscated by customs officers. In support of Mr. Sullivan's promise, subordinate officers of the State Department and other representatives will be sent, it is understood, to Santo Domingo, where they will be stationed at various points to 'observe,' if not to supervise, the election." (*Independent,* Dec. 11, 1913, p. 486.)

[13] "This policy hampers indeed the South American States but with their growing strength it will gradually disappear. For, whenever some of these states become Great Powers themselves, they will no longer submit to the political hegemony of the United States, and the Monroe Doctrine will

manifest a strong feeling in speeches of representative Americans, that the Monroe Doctrine has outlived its usefulness in its present form; so far, at any rate, as any benefits to the United States are concerned.

The changing attitude of the United States as to the present and future benefit of the Monroe Doctrine in its original form becomes more noticeable every year. Professor Burgess, Exchange Professor of Columbia University at the University of Berlin, recently remarked in a lecture at the latter institution that there were two things which the American people believe have outlived their usefulness: one, the Doctrine of Protection, and the other, the Monroe Doctrine.

There is a growing opinion that in the future development of the positive side of the Doctrine the United States must act in conjunction with those states of this continent that have reached or may reach a sufficient degree of development as to be considered as ranking among the more advanced nations. It is suggested that the "A B C" of South America should be considered as having attained such a position. Others may be added from time to time as their actions and conditions may warrant. Having outgrown the ideas of the Fathers, the broader interpretation presents the only hope for

have played its part." (Oppenheim, L., "International Law," I, p. 191.)

the future existence of our great national policy. The increased support and confidence added by an agreement with the new members would inure to its acceptability among the smaller states of this hemisphere. It must not be overlooked that a great measure of its success is due to its acceptability by those whom it most intimately affects. These weaker nations at first welcomed the negative portion of the policy, and even now are not opposed to the restriction it places on Europe; but it is the acceptability of the positive portion that is at present desired by those in whose hands rests the responsibility of carrying into effect its provisions. It is this positive portion that causes all the agitation and ill-feeling in South America, and it is to the more successful development of this portion that the whole Doctrine will owe its existence. Since the existence of the negative side of the policy has in the past been so valuable to the progress of the world, and its future depends upon the readjustment of the positive side, this problem demands the most careful consideration of our statesmen. Concerning the Monroe Doctrine we may draw two general conclusions:

1. It claims an ever increasing acceptance and broader interpretation by those European countries on whose account it was adopted.

2. Representative men in the United States are now arguing against its further continuance in its present form, as tending to promote the isolation of

this country and a possible coalition between some of the South American and European States against the United States.

A *modified Doctrine* seems to be the only solution.

The second subject for consideration touching upon the non-intervention policy of the United States in regard to European actions on this continent, has to do with the collection of private and contract debts. The early attitude of this Government was one of non-interference with the European countries in their legitimate efforts to obtain satisfaction for just claims held on this side of the Atlantic. This policy was continued until the Hague Conference of 1907 definitely settled the questions of contract debts.[14] After that date no separate policy on the part of the United States was necessary, in so far as the mere intervention was concerned.

Late in the year 1901 the German Government presented to the State Department a promemoria to the effect that Germany had many and just claims against Venezuela which that country insultingly refused to satisfy; and, furthermore, if mild measures of coercion were unable to obtain satisfaction they "would have to consider the temporary occupation . . . of different Venezuelan harbor places and the levying of duties in those places."[15]

[14] See *supra* 81.

[15] Promemoria of the Imperial German Ambassy at Washington, December 11, 1901. ("Foreign Relations of the United States," 1901, p. 192.)

Mr. Hay, Secretary of State, in reply to this communication of the German Government referred to part of President Roosevelt's message of December 3, 1901, in which he used the following language: "The Monroe Doctrine is a declaration that there must be no territorial aggrandisement by any non-American power at the expense of any American power on American soil. It is in no wise intended as hostile to any nation in the Old World." The President further said that it was not intended that the policy should concern itself with the commercial relations of any American power, except to allow "each of them to form such as it desires." It is not the purpose to guarantee any state against punishment if it misconducts itself, provided that the punishment does not take the form of acquisition of territory by any non-American state.[16]

These declarations clearly set forth our traditional policy in such matters. We did not intend to interfere with any policy that the German Government might see fit to pursue in the collection of her debts in Venezuela, so long as that policy did not lead to acts which, in the opinion of those in authority, might result in present or future acquisition of Venezuelan territory on the part of Germany. Later developments, due to the proffered good offices of the United States, led to an agreement to arbitrate the claims in dispute, but the ques-

[16] "Messages of the Presidents," December 3, 1901.

tions that were finally submitted to the arbitrators were of such minor importance that Germany, acting with Great Britain who also had numerous claims pressing for settlement, declared a pacific blockade of Venezuelan ports in the winter of 1902-1903. In view of the declaration of the representative of the German Emperor that no territorial acquisitions were contemplated, the United States did not enter any objection to the intervention, as such. She did complain to the blockading powers of their too broad interpretation of a pacific blockade, an interpretation which allowed them to interfere with neutral shipping.[17] The pacific blockade was later changed to a war-like blockade.[18] This example, in that it is indicative of the general policy adopted in such cases, shows that the United States will not interfere with the establishment of a pacific blockade, or even a warlike blockade, by any European power for the collection of their just debts in America. Of course a reservation must be made in the case of contract debts, in accordance with the regulations of the Hague Conference.

By referring such an affair to the United States,

[17] Lawrence, T. J., "Principles of International Law," p. 342.

[18] See Hall, W. E., "International Law," p. 372. "The fact that in both these cases [mentioning that of Crete] it was found necessary by the blockading fleets to fire on the inhabitants of the blockaded territory makes 'pacific' a word of doubtful applicability."

Germany formally recognized the Primacy of the United States in American affairs, a fact that is naturally bound up in the exercise of the various developments of the Monroe Doctrine, and a subject which will receive attention in the discussion of the Results of Intervention.

When there is a dispute between a European country and a Republic of this hemisphere as to their boundary line, the fundamental principle involved in the Monroe Doctrine demands that we watch carefully to see that justice is carried out. Any serious complaint on the part of the American state would seem to demand intervention on our part to prevent the possible acquisition of territory by the European state. The very idea of a boundary question involves this assumption of the right of intervention in upholding the Doctrine. It is conceivable that territory could be gained in this way from a weak state where mere territorial acquisition in settlement of claims would be recognized as unjust by the majority of nations. After repeated unsuccessful attempts by Venezuela to come to a definite agreement as to the boundary between that country and the neighboring British colony, the United States was forced to intervene.

It was claimed, and there seemed to be strong proof supporting the assertion, that so long as this boundary was in dispute British forces were continually pushing their way beyond any previously

claimed boundary, and by so doing were accomplishing a gradual occupation of Venezuelan territory. The boundary had been in dispute for more than half a century, ever since the "Schomburgk Line" had been declared the true boundary by Sir Robert Schomburgk, a Prussian engineer employed by the British Government. England inherited the claims of Holland but there seemed to be no mutual understanding as to what that country had possessed. The English Government refused several Venezuelan offers to arbitrate, but later assented to arbitration in respect to a small part of the disputed territory. Finally in 1895 the United States declared that the Monroe Doctrine was involved and interested herself to such an extent that an arbitration treaty was concluded between Great Britain and Venezuela in 1897. As a result of this intervention on the part of the United States the case was argued before an international Arbitration Court and the line definitely drawn. The "Schomburgk Line" was allowed with a few exceptions which were made in favor of Venezuela. This case sets forth clearly the attitude of the United States in regard to American boundary disputes in which European countries are involved. That attitude insists on arbitration rather than on the superior force of the European country as the proper means for determining the true boundary line. President Harrison definitely expressed this policy

when discussing the boundary question in his Message of 1891.[19]

Policy of Europe at Home

A discussion of the policy of non-intervention as applied by European countries on their own continent is a very difficult task if it is to include any serious attempt to prove the existence of such a theory. European practise at home offers few examples of earnest efforts to withhold interference when a plausible pretext is presented. With a few exceptions, European countries give no evidence that they ever seriously considered this principle as a worthy governmental policy.

In treating the subject of non-intervention the majority of English writers on International Law give great attention to the prohibition by their Government, of private individuals interfering in the affairs of another state by enlisting in the

[19] "I should have been glad to announce some favorable disposition of the boundary dispute between Great Britain and Venezuela, touching the western frontier of British Guiana, but the friendly efforts of the United States in that direction have thus far been unavailing. This Government will continue to express its concern at any appearance of foreign encroachment on territories long under the administrative control of American states. *The determination of a disputed boundary is easily attainable by amicable arbitration, where the rights of the respective parties rest, as here, on historic facts, readily ascertainable.*" (President Harrison, December 9, 1891. "Foreign Relations of United States," 1891, IV.)

service of the opponents of that state. This naturally leads to a detailed discussion of the Foreign Enlistment Acts, which are passed for the purpose of withholding governmental sanction from any acts of intervention against a friendly state by any British subjects. Thus Phillimore develops the subject of non-intervention, comparing in a brief manner the differences in the American and English laws.[20] Kent, in treating of non-intervention, and referring to the American practice, comments on President Fillmore's denouncement of the Lopez expeditions to Cuba and the "vigorous language, and measures of President Taylor in putting down attempts at armed naval assistance by citizens of the United States to the Germans in the Schleswig-Holstein business of 1848."[21] Although these principles are fully examined and our laxness in certain respects admitted by the American writers, they are dealt with as principles of international law, while the governmental policies, enunciated from time to time, being distinctly nationalistic, are set forth as the proofs for our belief, as a nation, in the principle of non-intervention.

In England there has been some expression, on the part of her statesmen, that non-intervention should be the settled policy of that country. Whatever the relative consistency may be in regard to

[20] Phillimore, Sir. R., "International Law," I, pp. 464-467.
[21] Kent, "International Law." (J. T. Abdy) p. 101 n. 1.

practice in the United States and Great Britain, there has not been in the latter country that large majority opposed to the general principle of intervention which has always existed in this country. In the Parliamentary debates resulting from the agitation for English intervention to assist in the firm establishment of the Spanish Crown in 1853, Lord Palmerston made a statement to the effect that the permanent interests of Great Britain would be materially advanced by the accomplishment of the task referred to. He justified on these grounds English assistance for the Spanish Monarchy. Sir Robert Peel in replying to this argument outlined the past action of England in such affairs, as distinctly in opposition to Lord Palmerston's suggestions.[22]

European practice in general, to which England is not an exception, has led to numerous interventions on such varied and slight pretexts that it is hard to find, for any long period, a general feeling

[22] "The general rule on which England has hitherto acted is non-intervention, the only admissible exception to it being cases where the necessity is urgent and immediate, affecting, either on account of vicinage or special circumstances, the safety and vital interests of the State; to interfere on the vague grounds that British interests would be promoted by intervention, or the plea that it would be for our advantage to re-establish a particular form of government in a country circumstanced as Spain was, is to destroy altogether the general rule of non-intervention, and to place the independence of every weak power at the mercy of a formidable neighbor."

that intervention is, in principle, contrary to the essence of sovereignty.

French practice may be said to be at least more consistent than the English. National caprice influenced France to undertake more interventions than did sound reasoning or material interests. France's purpose in rendering aid to the struggling American Colonies was to humble England. There was a feeling among the French people antagonistic to the English as a nation. France was not afraid at the time of our Revolution, or at any subsequent time, that England would ever become so powerful and so willing as to threaten her national existence. Aid was given the Colonies more to satisfy French prejudice than to curtail English power. Non-intervention, as a principle, had no part in their code of realities. When the French began their internal struggle for liberty, that new organization could not understand the American refusal to participate. The expressions of "Liberty and Fraternity" that followed the establishment of the Republic were of their very essence, intervention. They promised aid to all people who might be struggling to obtain their liberty. This one cause was sufficient for the Assembly. Every time a portion of the people of a foreign country revolted to throw off oppression the French felt that their interests were affected and their consequent privileges operative. France, admitting the right of

intervention to put down another of an unjust character, went a step further and claimed the privilege to intervene to prevent a suspected intervention from another quarter. Thus we are assured of the justness of the French intervention in Italy in 1849.[23]

A careful study of the past history of the German Empire suggests intervention without cause other than personal interests. Non-intervention was unknown. The great difficulty was, many times, to find some pretext sufficiently elastic to be stretched into a *causus belli.* The future of the State and the unification of the German people were paramount to any considerations of principle. The peculiar conditions existing at the time and the great task to be accomplished are given as sufficient excuse for the policies of the German leaders.[24] Kent, in his commentary on international law, after describing in detail the events connected with the

[23] "French intervention in Rome was in accordance with the immemorial policy of France in Italy, at Ancona, and at Civita Vecchia; the liberal intervention of a French army having prevented the despotic intervention of an Austrian one." ("Annual Register," 1849, XCI, 299.)

[24] "The German Empire is the result of the policy of blood and iron as carried out by Prussia in three wars which were crowded into the brief period of six years, the war with Denmark in 1864, with Austria in 1866 and with France in 1870, the last two of which were largely the result of his [Bismarck] will and his diplomatic ingenuity and unscrupulousness, and the first of which he exploited consummately for the advantage of Prussia." ("Europe Since 1815." American Historical Series, p. 256.)

Schleswig-Holstein "business," brings out in decided terms its position in the development of the doctrine of non-intervention.

"Such is the narrative of the most remarkable events in the history of interference or intervention since the year 1818, laid before the reader for the purpose of enabling him to contrast with the declarations of statesmen and the opinions of legists the facts of history, and to obtain, if possible, some definite and rational rule."[25] In light of this information it would seem easier to draw conclusions as to the German action, than to obtain a "definite rule" consonant with facts and at the same time regardful of any fixed principle.

Russia, represented by her great international jurist DeMartens, is allied theoretically at least, to the cause of non-intervention. DeMartens distinctly points out that it is not permitted to speak of a "Right of Intervention." Admitting its justification in practice in a few exceptional circumstances, he nevertheless maintains that any right to undertake such interference, in the legal sense of that term, does not exist. Oppenheim, representing English theory, speaks very freely of the "right" of intervention. There is an evident conflict of opinion between these jurists as to the importance of the doctrine of non-intervention. "It is apparent," says Oppenheim, "that such interventions as take place

[25] Kent, "International Law," (J. T. Abdy), p. 87.

by right must be distinguished from others. Whenever there is no right to intervention, although it may be admissible and excused, an intervention violates either the external independence or the territorial or personal supremacy. But if an intervention takes place by right it never contains such a violation, because the right of intervention is always based on a legal restriction upon the independence or territorial or personal supremacy of the State concerned, and because the latter is in duty bound to submit to the intervention."[26]

It is not the purpose to point out that Russian action has been superior to that of the other states of Europe in this particular. The fact that stands clearly before us is that Russian theory, as announced by her greatest authority, goes beyond the generally accepted views of the subject, and seems to present impracticable ideals. In the case of Russia the intervention that presents itself most vividly to our attention is her interference with Japan in regard to the terms of the Treaty of Shimonoseki which that country concluded with China at the close of the war in 1895. Russia was the leader of the movement that resulted in the abandonment of the Liao-Tung Peninsula by Japan after that Peninsula had been ceded to her by China. The intervention was undertaken, as declared by Russia, in the purely humanitarian spirit of protecting the

[26] Oppenheim, L., "International Law," I, p. 183.

future territorial integrity of China. Subsequent events proved the shallowness and insincerity of her claim. Russia's share in the three partitions of Poland is, of course, a well known historical fact, and one that reflects little credit on her theoretical pretensions.

The numerous interventions in Europe as compared with those on this continent in the last hundred years are due, in part, to the higher state of development of the political systems on that side of the Atlantic. Then, too, they have marked differences of language, customs, etc., within a comparatively small area, when considering the vastness of our own country. The greatest cause of all, however, is that haunting spectre known as "The Balance of Power." Directly or indirectly the large majority of the interventions is attributable to this principle. It was hard for the principle of non-intervention to live, much less thrive in such an atmosphere. Kent struck the keynote of the policies influencing European interventions when, concluding a discussion of the Eastern Question of 1840, he says: "Yet read the story for what purpose one may, it is impossible not to be struck with the perplexing nature of a transaction that, while it led France to maintain two opposite interests, the integrity of Turkey and the integrity of Mehemet Ali, led England to insist upon restoring a rebellious province to the rule of the very power

from whom but a few years before it helped to tear away another rebellious province, and brought Russia into the field as the earnest upholder of the integrity of a state it was longing to crush within its iron grasp."[27]

The assignment of the development of its political systems as one of the causes for the large amount of friction in Europe in the last hundred years, naturally suggests the Alliances and Leagues that were the result of this development. These Alliances were as often a provocation for war as a preventive. The early form of league as illustrated by the Hanseatic League (1250-1450) was primarily a combination of states joined together by an agreement to protect, individually and collectively, the main trade routes against the pirates. This League was formed not in opposition to any particular combination, but against the social disturbers in general. It was also agreed to settle disputes among members of the League by arbitration. The purposes of the later leagues, of which we hear so much, were entirely different. The balance of power made them necessary. They were formed for protection against outsiders, not particularly social disturbers.

The later Alliances were formed for the purpose of defeating its enemies in time of war and intimidating them in time of peace. It did not pro-

[27] Kent, "International Law" (J. T. Abdy,), pp. 75-76.

vide for the settlement of friction that might arise between its members, and might be said to serve external purposes only.

The mutual jealousies of the various combinations of states in Europe produced and increased many otherwise controllable agitations.

CHAPTER VI

OBSERVATIONS AND CONCLUSIONS

Attempts to Limit Intervention

There have been many attempts in the past to limit, by one means or another, the right of a state to intervene for the protection of its citizens, either in particular instances or in general. These attempts have been made mostly by the smaller nations by means of contracts with foreign citizens, for the purpose of preventing, by mutual agreement of the parties to that contract, the government of the citizen to the contract from intervening in the protection of his interests should they be jeopardized. Venezuela has been particularly active in making such agreements with citizens of the United States and European countries to whom she granted concessions of various kinds.

This non-intervention clause in contracts has been discussed by mixed international commissions on several occasions, with such differences, however, that it is almost impossible to draw any satisfactory conclusions from their decisions. Thus in a case of one of our citizens against the Venezuelan Government, the mixed commission had presented for its

consideration a contract between our citizen and Venezuela which stated that any differences arising under the contract should be tried in the regular Venezuelan courts, and if satisfaction was not obtained there, the matter should be one for "private arbitration at Caracas," but in no case was it to be a cause for international claims. The claim was taken directly to the mixed commission. As this was a violation of the first part of the agreement, the commission unanimously dismissed the case.

In the case of the contract between the Government of Venezuela and the Intercontinental Telephone Company, a New Jersey Corporation, there was an article which provided that "any doubts or disputes that may arise by reason of this contract shall be decided by the courts of the Republic in conformity with its laws."[1] In an action brought under the provisions of this contract our State Department was asked for its ruling in regard to this particular clause. Mr. Bayard, Secretary of State, replied that "This Department does not concede that this clause constitutes the Venezuelan courts the final arbiters of questions arising under the contract between the corporators and the Government of Venezuela, because, in the event of a denial of justice by such courts, this Department may under the rules of international law properly intervene."[2]

[1] Moore, J. B., "International Law Digest," VI, p. 294.
[2] Moore, J. B., "International Law Digest," VI, p. 294.

A similar case was brought up by a citizen of the United States against the Government of Portugal, in 1889.[3] The American citizen, Mr. McMurdo, had obtained a concession from the Portuguese Government, six years before, for the construction of a railway in South Africa. Mr. McMurdo, with the help of an English company, completed the road as allowed in the concession. The concession contained the provision that in case of differences between the parties to the contract private arbitration should be resorted to, exclusively. When the railroad was completed the Portuguese Government annulled the concession and took possession of the property. The joint owners appealed to their respective governments both of which declared that they were prepared to go as far as might be necessary to obtain justice for their citizens. Portugal offered arbitration as provided for in the contract. This offer was declined, the United States declaring that it was "not within the power of one of the parties to an agreement, first to annul it, and then to hold the other party to the observance of the conditions as if it were a subsisting engagement." (Mr. Blaine, Secretary of State.) The case was submitted to international arbitration.

Examining the decisions of some of the European countries on this subject we find practically the same position held by Germany. The German Min-

[3] Moore, J. B., "International Law Digest," VI, p. 297.

ister to Venezuela, replying to an inquiry from our Secretary of State as to Germany's attitude in a case of this nature, said: "I have under instructions notified the Venezuelan Government that my Government will no longer consider itself bound by the clause in most contracts between foreigners and the Venezuelan Government, which states that all disputes, growing out of the contract must be settled in that country. Our position is that the German Government is not a party to these contracts and is not bound by them."[4]

Disputes of the same nature arose between Italy and Venezuela and were disposed of in the same manner. England, also, adds the weight of her decisions to the same side of the controversy.[5]

Besides endeavoring to protect themselves from foreign intervention in the case of contracts, some few countries, notably Mexico, Turkey, Venezuela, Salvador and Egypt have tried, by means of national or local laws, to take from a resident foreigner, under certain conditions, all rights he may have of appealing to his home country for protection in case of a complaint against the Government in whose country he is residing. Thus the Mexican Government passed a law which stated that any foreigner who had not matriculated as such in Mexico could not appeal to his home government in case of a

[4] Mr. Loomis, Min. to Venezuela, to Mr. Hay June 5, 1900.
[5] See Moore's "International Law Digest," VI. pp. 307-308.

complaint. There were a number of instances in which the Mexican Government attempted, without success, to apply this ruling to American citizens. Our Secretaries of State held to the same opinion in every case, claiming that one of our citizens could contract away such a right only by completely expatriating himself, and that no government could, on the other hand, deprive him of such a right by statute.

The Venezuelan laws contained a provision that any claimant who shall have manifestly exaggerated the amount of damages claimed shall forfeit any right that he may have and shall be subject to fine and imprisonment. In denying the application of this ruling to a case under consideration at the time, Mr. Fish, then Secretary of State, instructed the American Minister in Venezuela as follows:

"This Government cannot consent to the application to citizens of the United States of article eight [previously noted] of the second law to which you refer. A law making it a penal offense to overestimate a loss which may have been sustained, or to fail in establishing any loss, is believed to be unexampled in the history of legislation, at least in modern times."[6]

A law of the Turkish Government relating to the establishment of printing offices, provided in one of its articles: "Nevertheless, a foreigner shall not

[6] United States and Venezuela Claim Com. (1895) No. 451.

be permitted to set up a printing office, except he shall furnish a declaration, legalized by the embassy or legation of his country, whereby he shall never be able to take advantage, in his profession as a printer, of the privileges and immunities belonging to foreigners; that is to say, that he shall accept, the case arising, such proceedings in regard to himself and his printing offices as are followed in regard to Ottoman subjects." Mr. Bayard held this provision to be even more objectionable than most of those advanced by the Spanish-American States, in that it attempted to invest with a legal sanction, by the legation requirement, the renunciation by a citizen of a part of his rights. "Holding as we do," said Mr. Bayard, "that the individual act is necessarily invalid, per se, this government could certainly not intervene in any way to invest such an act with a show of validity."[7]

Cases similar to these are multiplied indefinitely in the foreign relations of the larger countries. It is unnecessary to go into further detail. The attempts to limit intervention by contractual renunciations and legislative limitations of inherent rights, have completely failed. They have rather added to international irritation than lessened it. The Institute of International Law touched partially on this question at its session in 1900, when, in considering the responsibility of states for

[7] Foreign Relations of the United States (1888), II. 1599.

damages suffered by resident aliens in riots, insurrections and civil wars, it passed a resolution advising against the adoption in treaties of clauses of "reciprocal irresponsibility."[8]

Feeling of the Smaller States

There is a feeling prevalent among the smaller states that when a large state interferes in any way in its affairs, the real reason, notwithstanding the public professions of unselfish motives on the part of the larger state, is personal aggrandisement. States, both large and small, like individuals, have personal interests which, either consciously or unconsciously, have a part in their dealings with other states. Hence it happens when certain of the larger states feel justified in frequent interventions in the affairs of weaker governments, self-interest seems to be the predominant motive. The impression created in the offended state is more likely to

[8] "The Institute of International Law recommends that states should refrain from inserting in treaties, clauses of reciprocal irresponsibility. It thinks that such clauses are wrong in excusing states from the performance of their duty to protect their nationals abroad, and their duty to protect foreigners within their own territory. It thinks that states, which, by reason of extraordinary circumstances, do not feel able to assure in a manner sufficiently efficacious the protection of foreigners on their territory, can escape the consequences of such a state of things only by temporarily denying to foreigners access to their territory." (Translation by Professor J. B. Moore.)

grow than to diminish with the lapse of time. The great body of citizens of the next generation knows only in a general way the real cause for the hostile feeling, and some distinctly friendly and beneficial act is necessary on the part of the offender to eliminate the old prejudice. Our policy of interfering in the domestic concerns of the states to the south of us, especially those forcible interventions undertaken for those of our citizens whose interests are largely the result of liberal concessions by a revolutionary government, has gradually changed that feeling of friendship for the United States, created by first impressions of the Monroe Doctrine, into one of deep distrust. A *gringo,* in the estimation of the average South and Central American, is a person whose whole ambition is centered in the advancement of his personal financial interests; one who is willing to resort to any means to attain the object of his ambition. The growth of this distrust of the *gringo* was fostered by the naturally suspicious disposition of the people of those countries. It is nevertheless justified to a large extent.

Our actions in Cuba during and after the two occupations were watched with interest by the other American states. Our unquestionable motives in this instance did much to regain some of their lost confidence. While we were progressing well on the upward curve in the estimation of our southern brothers, the events incident to the acquisition of the

Panama Canal territory once more reversed the process. We are forced to acknowledge that once again we find ourselves in a position where it behooves us to use every legitimate means to restore the confidence and secure the coöperation of the other American states. Our Mexican policy will have a determining influence. Most of the larger of the South American Powers are in a cautiously receptive mood.

In Europe, Turkey and the Balkan States occupy a position with respect to the larger Powers similar to that of the Central and South American states on this continent. It is true that Turkey is one of the Powers, but since her admission to the European Concert in 1856, there has been more theory than fact in her ability to assume the new dignity. Turkey and the Balkan States are very suspicious of "personally non-interested" interventions. This is particularly true when that intervention is undertaken by a single Power.

It is to the interest of all parties that these suspicions should be allayed. It would seem that a great step shall have been taken in the right direction when a general international agreement can be reached to the effect that interventions shall be undertaken only by the harmonious action of a number of Powers. This result may be accomplished by enlarging the "Concert" in Europe, whenever such a step may seem practicable; by in-

fusing more *concert* into its actions; and by enlarging the "Concert" in America.

Some of the Results of Intervention

The doctrine of intervention resulted in the establishment of the Concert of Europe on that continent and the promulgation of the Monroe Doctrine on this. Another policy attributable to this principle, being the natural outgrowth of the continued application of the Monroe Doctrine, is the Primacy of the United States in America. The Primacy of the United States in America, like the Concert in Europe, has no legal basis or permanent organization. They are both leaderships of a political nature, dealing with the specific questions as they may arise.[9]

The most notable examples of interventions undertaken to uphold essential American interests are, naturally, those attributable to the Monroe Doctrine. Well-known instances are the intervention in Mexico, in 1865, to overcome the unjust inter-

[9] "It is a Primacy essentially political in its nature, which has no legal basis whatsoever, but which rests upon certain maxims enunciated by the fathers of the Republic and applied by American statesmen. Based originally upon the principle of non-intervention in the affairs of Europe, the Monroe Doctrine is essentially a system or policy of intervention derived from our conception of primary or permanent American interests." (Hershey, A. S., "Principles of International Public Law," pp. 152-3.)

vention of Napoleon III, the interventions in Cuba in the interest of humanity and American civilization, and that series of interventions culminating in the premature recognition of Panama, in 1903, justified in the "interests of collective civilization."

It is entirely possible that the Primacy of the United States on this continent benefited civilization to a remarkable degree by making unnecessary a large number of possible European wars for the partition of South America. Our policy made wars for this purpose impossible so long as we had the necessary strength to enforce our decisions. When we consider the amount of bloodshed and suffering that was necessary in the partition of a country like Poland, we shudder at what might have happened in the richer and larger South America. It is very true that Europe has partitioned Africa for its own benefit (if there is any) without serious difficulty, but the conditions are altogether different. European countries are not likely to go to war for a few miles of African territory. The peaceable settlement was possible in this case because of the comparative undesirableness of the country.

In spite of these facts, or probably we may say with more correctness, because of these facts, European writers, as a rule, find nothing in connection with the policy of the Primacy of the United States but selfish interest. DeMartens discusses the Pri-

macy theory at great length, showing very clearly his lack of sympathy with it. He says, in substance, that the United States has claimed the right to direct the external affairs of all the American States. Commenting on the well-known motto, "America for the Americans," he concludes that the United States has changed this aphorism to read "America for the Yankees."[10]

Joint Action

The pretensions of the leading nations of the world to regulate affairs within their particular "spheres" is a fundamental cause of the dissatisfaction of the weaker states under their tutelage, as well as one of the most important causes for the existence of whatever jealousy and mutual sus-

[10] De Martens' attempt to show that this theory contradicts all principles, legal and political, may be translated as follows: The European International Law, the principles of which the United States have formally adopted, does not admit that a single nation may be exclusively the mistress of an entire continent. In particular the Government at Washington cannot exclude from America those European states which possess territory or colonies, and which, in consequence, ought to be considered in a certain measure as American states. The pretentions of the United States are still less admissible in point of view of the "International community." It is not granted that any American state should hold a privileged place in relation to the other American states. Finally, these pretentions cannot even be explained on the grounds of the Monroe Doctrine. (DeMartens' "Traité de Droit International" Léo., I, 399-400.)

picion there may be among the guardians themselves. The present tendency seems to be, in undertaking interventions, to the joint action of the more powerful nations. The greatest example of this tendency is illustrated by the joint action in the intervention in China in 1900. A feeling of justification among the nations of the world in regard to a particular intervention is increased in proportion to the number of states taking part in that intervention. It is in line with the idea of a growth of an international community of interests that the number of powers taking part in any future intervention will be steadily increased. The result will be a decrease in the number of unjust interventions, and a greater popular sanction for those that are undertaken. The reason for greater confidence, under a collective interference is plausible and the cause is simple. As Hall explains it, there must "always be a likelihood that powers, with divergent individual interests, acting in common, will prefer the general good to the selfish objects of a particular state." He further suggests that "it is not improbable that this good may be better secured by their action than by free scope being given to natural forces. . . . There is fair reason consequently for hoping that intervention by, or under the sanction of the body of states on grounds forbidden to single states, may be useful and even beneficial." He deplores the results of the Russian intervention,

with the sanction of the Powers, at the conclusion of the Chino-Japanese War, but intimates that a single adverse instance should not retard the progress of the principle.

Any discussion which has for its aim a limitation of the number of interventions naturally leads to considerations of universal peace and one is too easily drawn from the subject at hand by considerations of a theoretical virtue. There may be a possible approach to universal peace by means of a strict code of collective intervention, directed against economic forces, and regulated by some central committee of the Powers.[11]

Immanuel Kant seems to have been the first seriously to preach "Perpetual Peace," in his famous "Essay" on that subject in 1795. In his fifth prohibition he says: "No state shall interfere by force in the Constitution and Government of another state." The rule is definite and easily formulated. The whole "Essay" is theoretical. Perpetual Peace was to be attained rather than obtained. It was to be brought about by an internal change of feeling in society, resulting in the universal adoption of a republican form of government, and the final federation of these free states. The ideal seemed nearer

[11] A very interesting and suggestive booklet on this subject has been written by Samuel W. Long, in which he elaborates on the international boycott as "The Weapon of Peace." See bibliography.

of accomplishment to Kant than it does to most present enthusiasts.[12]

A recent proposal for the solution of the growing question of intervention comes from Mr. Marburg. He suggests that this problem, including the expansion of progressive races without recourse to war, may be solved by a commission of the "chancelleries" of all the enlightened powers, large and small, believing that "substantial justice would be done by it, just as substantial justice is done under the Federal Government of the United States to the individual communities embraced within the scope of its activities."

President James, of the University of Illinois, likens Mr. Marburg's plan to that involved in the principle of eminent domain, and finds the justification for its application to recalcitrant nations in the results obtained when applied to individuals within a civilized and developed community. It suggests a kind of forcible assistance for those less broadly developed ones, to be given by the more broadly developed among the nations, the assistance to re-

[12] At the end of his "Essay" (page 52), Kant says: "It is a practical task whose solution will be gradually worked out. The goal will be gradually approached, and let us hope because of the general progress of human society, that the day of its coming is drawing near." It is probably due to the fact that the progress of human society is not uniform that the problem is made so difficult.

ceive its justification through the assent of the majority.[13]

Mr. James explains that some of the affairs of "Backward Nations" have in the past been adjusted by force, which is oftentimes its own best argument against its use. Then, too, to adopt the universal principle of making smaller nations or communities neutralized would, in many cases, retard the progress of civilization in those regions, and in some instances make the higher civilization almost impossible. It is a significant fact that in the suggestions for the diminution of unjust interventions the plans generally call for an increased number of authorized interventions, unless a sufficiently strong international public opinion can be developed to render

[13] Mr. James commenting on this plan says: "In the article 'The Backward Nation' Mr. Marburg has finally begun to go to the very root of one of the most difficult questions connected with the whole peace movement. If, in an organized society we find an individual, who is absolutely opposed to progress, we find some way or other of getting around him. If he owns a piece of ground which the community needs in the outworking of its prosperity it will take the ground from him; it will dispossess him by force, though it give him not what he may consider the value of the property, but what a jury constituted according to law may decide that it is worth. We may tax him against his will for the support of institutions in which he does not believe.

"Now, nations or communities, large or small are unfortunately as stupid and blind sometimes to their own interests, sometimes to the interests of other nations and other communities as private individuals are." ("Independent," Nov. 7, 1912.)

effective the decisions of the international court. In spite of the odium attached to the word intervention we cannot help concluding that if its universal application, by some such method as that proposed, brings us in the direction of even a forced peace, the end certainly justifies the means.

The other side of Mr. Marburg's plan was presented in an elaborate editorial by Mr. White, formerly Ambassador to France.[14] He says: "I think his idea excellent in itself but I fear it would be very difficult if not impossible to carry out, because

1. "It would be difficult to get a considerable number of great Powers to agree upon a list of 'Backward Nations,' as some of the former, for reasons of their own, would object to so classing some particular very backward one; and

2. "It would be very hard upon such backward nations by so classing them, however desirable it might be for them to be in tutelage."

Another objection is registered to the plan by Mr. Farnam of Yale University, who points out that the one "great difficulty would be to agree upon the ideals of progress."

Of course there is an abundance of argument to be advanced for each side. There is always the danger that such a scheme will develop into a

[14] For full explanation of Mr. Marburg's plan, see the *Independent*, of June 20, 1912, and November 7, 1912.

world empire under the control of the most powerful member or group, and thus degenerate into an arbitrary dictatorship, the very result the plan was intended to prevent. Possibly, in the eager effort for some solution to the question, many would agree with Mr. Edwin Ginn, Donor of the World Peace Foundation, who thinks it would be "far better to have Mr. Marburg's plan carried out than to have none, for the advantages would be great."

CHAPTER VII

INTERVENTION IN MEXICO

Its Economic Antecedents

Our governmental policy with Mexico cannot be influenced by those same principles which guide our international relations with European countries. Nor can it find its justification in those principles which should form the basis of our attitude toward the other republics of Central and South America.

To arrive at an intelligent and sympathetic understanding of the present condition of this great Republic to the south of us, it is necessary to trace, briefly, its economic and political antecedents. Present relations must be conducted with a consideration, not only for present conditions, but also for past causes. The peculiar nature of these people, the result of a combination of racial instincts and economic and political environment, must have a prime and fundamental consideration in our efforts to mould their political destinies.

The Spaniards who came to Mexico during the colonial period were actuated by love of adventure and the possibility of early affluence. Unlike their

European rivals who settled farther north, they did not bring over with them their wives and families. The result was a constant intermarrying with the native population. When the Spaniard's desire for riches or adventure was satiated, and a return to Spain or removal to another part of the country became desirable, the family ties were little respected. Marriage vows, where such existed, were considered of no great importance. This condition naturally resulted in an instability of good order and a check to that industrial development for which the steadying influence of a wholesome home life is a fundamental prerequisite. Such a condition likewise had its effect on the disposition of the native population. The combination of the dominant attitudes of these two classes,—the reckless daring of the Spaniard on the one hand, and the consciousness of the native of an enforced inferiority on the other—offered an unattractive background for a conspicuous future.

When it came time to establish a government the Spanish influence was, of course, all-powerful. The early form of government and the appointment of officers to carry it into effect, clearly demonstrated that the chief utility of the native was his submission to an administration whose cause for existence seemed to be the self-interest of its component parts. This government was flavored with just enough law and order to enable it to accom-

plish, with greater security, its main purpose. The Spaniard was given all the lucrative positions at the disposal of the Crown. These positions generally included exemption from taxation. Thus the newcomers, the exploiters of the national resources, were also the exploiters of native industry. In return for their services the Spanish Government allowed the ruling class generous compensation, the administration of justice, and, in some cases, freedom from the necessity of contributing their share toward the national security. Such conditions had a powerful influence in moulding that disposition which later shows itself willing to follow any standard so long as the cause it represents favors *new* conditions. To a person who has all to gain and nothing to lose, destruction of property and devastation of resources is of little moment.

Another practice whose evil results began to be experienced in Mexico over a century ago is the holding of enormous tracts of land by a few individuals. These grants were originally given by the Crown of Spain in return for assurances of support to the Spanish supremacy in those regions. The surplus income of the inhabitants of these grants, which includes by far the larger portion of the country, is practically distributed between the Government and the landlord. This check on the rewards of industry has its natural effect in a marked absence of that virtue. Even after the continued oppression

of the Vice-royalties, combined with the examples of their South American neighbors, had resulted in opposition to, and final overthrow of, the Spanish supremacy, the old land titles were held intact, the ownership being retained by their holders or transferred to some hero of the new order. In fact, it seems that it was necessary to include even more of the national domain in these large holdings. The common people came to be considered a part of the land they occupied. Almost invariably they were in debt to the large land-owners. The law of the country made them necessarily a part of the estate so long as they were in this condition of financial servitude. Thus the absolute control of the few, and the lack of initiative on the part of the many.

A land aristocracy was built up, in close relationship to the central power. This interdependence of the aristocracy and the Government is essential to the existence of both. They are mutually supporting. If the one falls it drags down the other, and a new aristocracy, built on the favor of the new central power, results. The many completions of these cycles of events form an economic interpretation of the political unrest of the past century. An important consideration with respect to this wealthy class is the fact that a very large part of their income is spent in foreign countries, especially in France.

As a correlary to governmental favoritism of a privileged class, there is the practice of granting concessions to foreign interests. These concessions cover all conceivable fields of economic endeavor. The interests of the foreign concessionaires occasionally clash with those of the Mexican aristocracy. These clashes offer comparatively little difficulty due to the fact that the desires of the Mexican can almost always be profitably satisfied by the particular foreign interest concerned. On the other hand, the conflict of interests among the concessionaires themselves presents a serious problem, and forms the loop-hole through which crawls the octopus of foreign intervention. It is proverbial that a servant cannot serve two masters and please both; neither can the Mexican Government serve, to the satisfaction of all, numerous competitive foreign interests. The result is the throwing of influence into that bin which yields the largest return. Experience has shown that it is not unlikely that at least a part of the undivided profit, not to mention the influence, of the losing interests, is, for future considerations, at the disposal of any faction strong enough to undertake a formidable opposition to the existing order.

Economic conditions, whose roots go deep into the history of the country, make necessary, to a large extent, the employment of foreign capital in the development of internal resources. This in-

vasion of foreign interests, stimulating the dominance of the dominant class, adds to the already too pronounced divergence of the two classes. It arouses an increased discontent and suspicion in the peon class, and injects an unhealthy foreign element. Combined poverty, discontent and a remarkable ignorance on the part of the great majority contribute a large element of insecurity to the rule of the minority.

Its Political Antecedents

Mexico was in a condition of anarchy from 1810, the date of their Declaration of Independence, until the early eighties of the past century. From 1810 to 1825 there were two distinct movements in Mexico; one favored a monarchy, while the other desired a republic. The latter tendency had the upper hand during the greater part of this period. The desire for republican institutions was, however, not so strong in Mexico as in some of the South American countries. The result of this struggle was the establishment of the Empire in 1822 which was to live for the brief period of two years, under the rule of Emperor Iturbide.

The year 1824 witnessed the establishment of a Federal Republic. The influences that accomplished the adoption of this form of government in Mexico were quite different from those which were prevalent in this country at the time of the establish-

ment of our Republic. In Mexico there had been a change from monarchy to republic. This change meant that there was a majority sentiment antagonistic to strong centralization of authority. The reaction was pronounced, and the result was a disruption of nationalism and a movement which had for its aim the more or less independent working of the various sections. In the United States, the lesson of the two wars caused the feeling of nationalism to dominate. The popular desire was accomplished in Mexico, and the different factions were given a free hand to fight out their own plans. There followed a period which records all kinds of lawlessness toward citizens and foreigners.

Mexico sent a minister to the United States during the control of the Empire. Friendship demanded reciprocation of that honor, but it was very hard for the Monroe administration to find the proper individual. After the post had been offered to two others, during which time the Empire had been overthrown, Joel R. Poinsett finally accepted the honor and arrived in Vera Cruz on May 5, 1825.

The Poinsett mission to Mexico is very important, not only in being our first to that country but also because of the impression it created there, in this country, and in England. Poinsett deplored the fact that the English agent had reached Mexico sometime since, and had anticipated him in making

a treaty. Immediately there began a conflict between the British and American agents. Both had been instructed to secure as favorable a treaty as possible.[1] Minister Poinsett had many arguments to prove American friendship for Mexico. The cause for the early preference of English interests is explained by Mr. William R. Manning as follows: "American abstract recognition and philanthropic declarations had interested Mexico for a time and had elicited admiration and gratitude; but dilatoriness in opening communications had made American relations seem cold and platonic. If England's advances had been long delayed they had been pressed with ardor when once begun, and had elicited an enthusiastic response."[2]

Poinsett was very well received. He met the Secretary of State and the Secretary of the Treasury of the new Republic in a very informal way in a cock-pit at one of the religious festivals. However, it did not take him long to perceive that "it is manifest that the British have made good use of their time and opportunities." Mr. Ward, the British representative was decidedly in favor.

[1] C. C. Cambreling wrote Poinsett from New York, March 30, 1825, a friendly letter saying among other things, "Make a good commercial treaty for us and take care John Bull gets no advantage of you—if anything get the weather gauge of him." ("American Journal of International Law," VII, No. 4, 789.)

[2] "American Journal of International Law," VII, No. 4, 790.

A long struggle ensued between Poinsett and Ward, the former championing the American system of government as upheld by the United States, and the latter the European system as adhered to by England.[3] Should monarchical or republican institutions prevail in this new member of the family of nations? The Mexican Secretary of State was a director in an English mining company. The Secretary of the Treasury had secured English loans for his Government, thereby alleviating his official difficulties. Here we have at least two good reasons why the European system should have the preference.

About three months after Poinsett's reception a mild palace revolution succeeded in ousting the main British sympathizers and left our minister in high favor. There was strong belief that Poinsett had a hand in this change. In fact he practically claims the honor in a dispatch to Clay, alluding to the American party in the Mexican Congress. This American Party was resisting all tendencies toward centralization, the desire of the British agent. With a centralized government in control the English representative had a better chance of working out a British policy. Although apparently

[3] The bitterness of the rivalry is shown by the fact that Ward neglected to send Poinsett an invitation to a diplomatic dinner which he gave to the Secretary of State and foreign ministers.

in great favor our agent was ever suspicious of those with whom he had dealings.[4]

Poinsett's part in the establishment of Chapters of the Masons in Mexico, and finally in the installation of the Grand Lodge, was a well-known and undisputed fact. These societies afterwards brought much pressure in support of the American Party. Soon the influence, true and imagined, which the American representative enjoyed, began to scatter seeds of distrust which finally took the form of a request, by one of the Mexican states, to the Mexican President to have Mr. Poinsett recalled. Such a turn in affairs was in line with Poinsett's wishes,—in fact he had once solicited from the State Department an order to return home. On December 9, 1829, Poinsett's recall reached him, having been asked for by the Mexican President.

In the instructions to his successor Secretary of State Van Buren said in part: "With respect to your future official correspondence with the Government of Mexico, and your intercourse, public and private, with the people and their functionaries, the past strongly admonishes you to avoid giving any pretext for a repetition against yourself of the imputations which have been cast upon Mr. Poinsett, of having interfered in the domestic con-

[4] "The state of society here is scarcely to be credited. I hardly know a man however high his rank of office whose word can be relied on." (Poinsett to Clay, October 12, 1825.)

cerns or politics of the country; or even showing any partiality toward either of the parties which now appear to divide the Mexican people."[5]

When we consider the entertainment, willing ear, and even financial assistance that were offered representatives of the Mexican factions previous to the opening of our regular diplomatic relationship, the peculiar intimacy of these relations becomes apparent. The preliminary official intercourse which began in 1811, soon after their declaration of independence, was negotiated mainly by Monroe during his two terms as Secretary of State, and later as President. The actions and successes of these early Mexican agents, for the most part self-appointed, indicate a feeling in their own minds that a more than ordinary international relationship existed between this country and Mexico.[6]

The result of the continual disorders following the adoption of the constitution of the Federal Republic in 1824 led to the establishment of a unified republic by the Constitution of 1836. We can surmise from the account of the Poinsett mis-

[5] For a complete and excellent description of the Poinsett mission to Mexico see the account of Mr. William R. Manning in the American Journal of International Law, Volume VII, No. 4, October, 1913.

[6] For an extended account of some of these early machinations on the part of Mexican agents see an article by Mr. Isaac J. Cox, entitled "Monroe and the early Mexican Revolutionary Agents" in the annual report of the American Historical Society for 1911, pages 197 to 215.

sion that there was no lack of foreign assistance in bringing about this change. The new order upheld a principle more in accord with European ideals, and surely more adaptable to the needs of the country in which it was to be enforced. By this constitution the divergent parts of the country were brought under the direct domination of the central government. Local ambition was stifled and some degree of enforced order prevailed.

In 1857 the constitution was adopted under which Mexico is working at the present time. It represents a return toward ideals expressed in the Constitution of 1824, but in a much milder form. This change may be said to mark the final triumph of the American system, at least theoretically. The states' privileges, as expressed in the new constitution, are broader than those granted the states of the United States. The Constitution is, furthermore, far in advance of the capacities of the people; has not been enforced in respect to some of its provisions; and is unworkable in the Mexico of today. Continued political tutelage has made the average Mexican absolutely ignorant of either the theories or practices of a constitutional government. The rigid enforcement of the present constitution in spirit and letter, under present conditions, would produce nothing but chaos.

Sectionalism is one of the dominant characteristics of the country, and the present constitution fosters

the growth of this tendency. The sectional feeling has its background in the earliest history of the country. Sectionalism was a marked characteristic of old Spain, whence it was transplanted by the colonists. The Spanish colonists intermarried with the members of various native Indian tribes, whose mutual animosities were of a pronounced character. Thus the tendency was increased. Outside interference, demanding joint action by these early tribes, did not exist. The prevailing conditions all fostered a strong sectionalism which often took the form of actual conflict.

In reviewing the history of the country since the time of its independence, two forces stand out in strong opposition to each other; the one contending for numerous independencies, and the other for a strict subordination of the states to the national government. Subordination of the states means an all-powerful central government. The governors of the several states must be subordinate to the President in all matters of policy. Unless this centralization is accomplished there is the continual danger that a combination of governors will be a menace, not only to the strength of the Government, but to its very existence. That such a condition is necessary is to be regretted, but that it is necessary, historical precedent abundantly proves. In every case in which the President has allowed the states their constitutional rights, he has

paid for the mistake with his office and often with his life. The states must be subservient to national policies.

A brief inquiry into the comparatively long "reign" of Porfirio Diaz will give us an idea of one way in which order may be accomplished in Mexico. Diaz first assumed the presidency in 1879, enjoying an almost absolute power, with the exception of a four year interval, until 1910. At the beginning of this period the population was approximately 17,000,000, of which about 90 per cent were of mixed or Indian blood. The average illiteracy was over 90 per cent, ranging as high as 98 per cent in some of the country districts. Men who had ideas preferred to express them by the sword rather than by the ballot, and in short, affairs seemed to approach a condition which one might call with perfect fairness—chaotic.

Diaz saw that his first task was the unification and the complete subordination of all local leaders. He realized the inability of Mexico to thrive under a liberal constitution. He repressed ruthlessly and systematically all forms of agitation. Political discussion had no place in such a system. The future of Mexico depended on the development of her natural resources, and for this development order was of first and last importance. Since experience proved that the state authorities were unable to bring about this necessary condition, it was up to

the Federal Government to assume the responsibility. To carry these ideas into effect meant the practical suspension of the Constitution of 1857.

Although the spirit of the Constitution was disregarded, its letter was adhered to in most cases. Elections were held,—mere shams it is true, but nevertheless the form was preserved. The Governors became simply the tools of the President. When the time came for an election there was one candidate, nominated by the President. Opposition to this system often meant the mysterious disappearance of the opponent. No one would attempt a moral justification for this situation. Was it justified on political grounds?

Looking at the subject from a broad viewpoint we see Mexico of 1879 in as bad a state of affairs or worse than that of 1810. This deplorable condition meant a weak central government without resources for improvements, which were greatly needed in all departments. On the other hand it must be admitted that the absolute power, necessary for this development, was attended by a certain number of inevitable evils. In spite of this fact, the great aim—order, and respect for person and property—was accomplished. It is true that the national government itself respected nothing involved in political agitation. Property so implicated was ruthlessly confiscated. Certain forms of crime were not dealt with in the usual manner, but subjected summarily

to the extreme penalty by a method known as the "fugitive law." One of the crimes so dealt with was that of holding up and robbing trains.

The primary object was secured. Experience proved these methods to be the only means for accomplishing results among a people with so few practical ideas of self-government. England attained the present high respect of her subjects for personal property by the drastic laws of the past, for example the killing of sheep thieves. President Diaz opened his country to trade and commerce, and made personal safety possible for satisfied and law-abiding citizens and resident foreigners. Remarkable strides were made in national wealth and education in various parts of the Republic. This policy appears to have produced the best net results. Diaz had that ancient human weakness, desire for power, and when the time arrived that warranted a little loosening of the grip on the part of the man at the wheel, that loosening was not forthcoming, with results all too familiar.

The Present Dilemma

The opening scene of the present act was one in which the central figure was a dictator who had gained control by treachery and violence. The scene closed with the elimination of the leading character. Succeeding scenes, which are following

each other with remarkable rapidity, have thus far failed to advance the main plot. The whole miserable affair is becoming burdened with a despicable monotony.

The state of affairs in Mexico does not force itself on this country solely because of its unfortunate condition,—the fact that elicits the sympathy of the civilized world. We are more intimately interested. Our whole past history, economic and political, internal and external, has at different times been colored by our relations with our southern neighbors. Mere proximity itself is a vital argument in sustaining the contention of our peculiar interest. In times of trouble the face of Mexico has ever been turned toward the north. During her difficulties with France in the sixties she looked to the United States to lift from her shoulders the yoke of foreign rule.

The southern border of Mexico has presented no difficulty of any consequence for that country. The movement was always northward. There was nothing to be feared, as there was nothing to be gained, from the republics to the south. The possibilities that might be expected on the American side of the line were always well known to the discontented Mexicans, unfortunately a large class. In time of internal conflict, the Rio Grande marked the limit of insecurity; the further shore a safe asylum. The harboring of the 3000 Mexican ref-

ugees at Fort Bliss, although a larger number than usual, is, in point of fact, not a novel experience for this Government.

There have been numerous examples of the desire of a certain class of Mexicans to possess some of the fruits of American enterprise, principally in the form of cattle, which were driven across the border into Mexico. Nor has history been altogether free of Mexican complaints against us on the same charge. Such complaints became so numerous on both sides, but particularly on the part of our State Department, that the Mexican Government realized the necessity for a special agreement covering a situation made possible by a peculiar identity of interests. By an agreement, concluded June 4, 1896, the federal troops of the two countries were allowed to cross the international boundary in pursuit of certain Indian bands.[7] The permission to cross the line was subject to certain limitations, including notice to the authorities "if possible." Such agreements began in June 1890, sometimes applying to pursuit of particular tribes, at other times granting a general permission. These agreements presuppose a peculiarly intimate relationship, involving like interests of an uncommon nature. That two states should have found

[7] "Foreign Relations of the United States" for 1896, 438. Applied especially to pursuit of the tribes under the leadership of the Apache Kid.

it convenient to set aside one of the well established principles of international law in their mutual relationships, clearly indicates the peculiarity of that relationship.

The fact that Mexico is a border state has always developed situations calling for unusual procedure between the countries.[8] Claims have been on file at all times in the State Departments of the two countries for injuries received by citizens of the one at the hands of the other. A fair conclusion shows Mexico the greater offender in this particular. While one Claims Commission is adjusting past demands, new ones are being filed. As early as 1836 the volume of American claims had assumed such proportions as to make necessary strong representations for settlement. The result was the Claims Convention of 1839 which was unable to reach decisions in all cases, leaving a great mass of claims for the Commission of 1843 which progressed so slowly that it was scarcely able to get in motion when interrupted by the war. The past relationship between Texas and Mexico also serves to add to the individuality of our mutual interests.

Waves of popular sentiment on both sides of the border have displayed feelings of intense hatred as well as great friendship. Strong complaints were made to President Tyler in 1842 that the United

[8] Special attention may be called to the case of the "Mexican Shepherds," House Documents, Vol. 132, Part 2, pp. 787-790.

States was not observing the laws of neutrality in the conflict then in progress between Mexico and her rebelling state of Texas.[9] On their part, Americans have made many protests against the unjust discriminations of the people and authorities of Mexico. Our citizens were at one time singled out for adverse legislation in respect to the holding of real estate. Other specific charges were made.[10] In spite of such conditions, evidences of great friendship have marked our relations in the not distant past. In 1899 the people of Chicago, through a special committee sent to Mexico for the purpose, invited President Diaz to visit their city, assuring him of an escort, by Congressional permission, as soon as he crossed the boundary line.

[9] "The war between Texas and Mexico affected the relations between Mexico and the United States, and was the cause of frequent communications from the Executive to Congress, and of frequent discussions and reports in that body. At one time, in the early stage of the discussion, the Mexican minister withdrew himself from Washington, but relations were soon restored." (Davis' Notes, Treaty Volume, 1776-1887, 1354.)

[10] For example: "By a clause of the instrument [organizing the colony of the Island of Caire] citizens of the United States were expressly excluded from being members of that colony. . . This exclusion is regarded as invidious and as directly at variance with the third article of the Treaty of 1831, which stipulates for perfect equality between citizens of the United States and other foreigners who may visit or reside in Mexico." (Mr. Evarts, Secretary of State, to Mr. Foster, Minister to Mexico, March 26, 1879.)

The Mexican Congress granted their President twenty days leave of absence and $100,000.00 for the trip. The serious illness of the President's wife, however, made the trip impossible.[11] In 1895 when our minister, Mr. Gray, died in Mexico City, that Government paid such honor and tribute to his remains as to elicit a vote of thanks from both the Senate and the House of Representatives. Later, the Galveston disaster was the cause for a $30,000.00 appropriation by the Mexican Congress for the relief of the sufferers.

We may conclude, with a fair assurance that the assertion can withstand contradiction, that the United States, due to proximity, has an interest in Mexican affairs peculiar only to itself. The converse of this proposition was admitted by Mr. Seward, while Secretary of State, when, in discussing our Mexican relations and the Civil War, he said: "The performance by the United States of its duty to reason with the Government of Mexico was embarrassed by the occurrence of civil commotions in our own country, by which Mexico, in consequence of her proximity, is not unlikely to be affected."[12]

The fact that Mexico is rich and the Mexicans

[11] "Foreign Relations of the United States" for 1899, pp. 504-510.

[12] Mr. Seward, Secretary of State, to Mr. Corwin, Minister to Mexico, April 6, 1861. "Diplomatic Correspondence" for 1861, 49.

poor, both financially and technically, makes foreign aid necessary for internal development. Foreign financial aid has been the admitted cause of much friction. The assistance is frequently based on grants of special concessions which will be referred to later. Here it is the purpose to inquire into the nature and amount of the foreign investments, especially with reference to the amount of American capital as compared with that of other foreign countries. Statistics, which are of such a conflicting nature as to make strict accuracy impossible, show conclusively that by far the largest amount of capital investment in Mexico is foreign rather than native; also, the largest proportion of this foreign share is American. The most accurate figures indicate that the American investments approximate $1,000,000,000.00.

Foreign capital is interested principally in railroads, oil, mines and public utilities. In 1909, because of fear on the part of the Mexican Government of foreign control of the railroad situation, the principal railroads of the country were organized into a syndicate by American and foreign bankers, the Mexican Government purchasing 51 per cent of the stock. Although American investment in this industry is smaller than that of any of the other countries concerned, the casual traveler in Mexico would at once conclude otherwise, basing his judgement on the character of the rolling stock which is

distinctly American. The officers, and until lately most of the crews, were Americans. Even the colored porter holds his accustomed place on the Pullman cars.

In the oil fields there is keen competition between the American and British interests. American capital and ingenuity were the first to exploit the new fields, but soon had to compete with the enterprising Britisher, Lord Cowdray. The most reliable sources of information agree that the English interests are at present predominant, controlling between 55 per cent and 60 per cent of the output, while the Americans are a close second.

Turning to the investments in mining, Mexico's greatest industry, we find Americans controlling the field. Figures on this point, taken from the "Mexican Year Book," although they represent inflated valuation nevertheless serve as a basis of comparison. This source ranks the various interests as follows:

American	$500,000,000.00
English	$87,000,000.00
Mexican	$29,000,000.00

The figures are conclusive, and clearly indicate the extraordinary American interest in mining.

In the field of public utilities all the larger foreign countries have an interest. Different nationalities have developed different sections. Canadian capital

controls the largest electric power plant in the country, that supplying Mexico City and vicinity. In the various electric light and power plants and other utilities throughout the country as a whole, American capital holds a foremost rank.

Considering the simple and conclusive fact of resident foreigners in Mexico, still another basis exists for the special interest manifested in Mexican affairs by our Government. The foreign population of Mexico numbered, in 1911, slightly more than 100,000. Of the forty or more nationalities represented in this heterogeneous population, the leading appear in the following proportion:[13]

Americans	30,000
Spaniards	20,000
British	5,000
Germans	5,000

The peculiar interest of the United States in the present situation is justified upon the basis of three fundamental and irrefutable facts; first, that of *proximity,* secondly, the *predominance of American capital,* and thirdly, the *large proportion of resident Americans* as compared with other foreign nationalities.

As briefly alluded to in the discussion of the antecedent economic conditions of the present situation in Mexico, one of the causes which must be

[13] "Mexico" (A General Sketch) compiled by the Pan-American Union, Washington, D. C., June 1911.

given particular consideration is the power and influence of the concessionaires. Without them the problem would certainly be greatly simplified. It is the conflict of concessions that has greatly broadened the international aspect of the present situation. It is necessary that these interests be given adequate protection, meaning by that the protection afforded the interests of other citizens in Mexico. But if their eagerness leads certain concessionaires to contract for the impossible, they should not be allowed to look to their Government to enforce the contract, or secure a refund of the original investment. No great difference can be discerned in the relative merit of the operation of the capitalists of the various foreign countries in Mexico. Possibly the American corporations have possessed a superior advantage due to the experience gained in meddling in politics at home. Undue exertion on the part of the Government, in the interest of large holdings, experience has shown, should proceed very cautiously and with a full knowledge of the facts.

In pursuing our special right of interest in the present situation, the great popular suspicion is the possible acquisition of territory. President Wilson very emphatically expressed, in his Mobile Speech, the policy of this administration as opposed to any such desire. He was but reiterating the previously expressed feeling of this Government. Mr. Blaine,

in 1881, had no hesitancy in declaring that "at this late day it needs no disclaimer on our part of the existence of even the faintest desire in the United States for territorial expansion south of the Rio Grande."[14]

The present policy of this Government does not need to point to the Monroe Doctrine for its justification. The original and basic purpose of that Doctrine was protection for the United States. It is very evident that present actions are not based on the principles outlined by President Monroe in 1823, but rather on the grounds of humanity and the objection to forcible changes of administration in Mexico, as well as the protection of citizens. The fundamental principle of republican institutions is the choice of the governing class by an expression of the popular will. The present administration did not see fit to recognize the Huerta Government, established by violence, justifying its actions by a true regard for our future welfare. That Government fell, and others rose and fell in rapid succession, so that only the closest observer can tell who is President of Mexico from day to day. No Government so established will long remain.

The American ambassador who congratulated the

[14] Mr. Blaine, Secretary of State, to Mr. Morgan, Minister to Mexico, June 1, 1881. "Foreign Relations of the United States" for 1881, 761.

head of the Huerta Government was recalled. It is true that President Wilson, in refusing recognition to the Huerta regimé, did not follow the precedent offered for his guidance by President Pierce, who, in his Special Message of May 15, 1856, observed that "five successive revolutionary governments" had made their appearance in Mexico "in the course of a few months, and had been recognized successively each as the political power of that country by the United States."[15] Such a precedent is an excellent argument against its own adoption. If withholding recognition prevents the repetition of such a state of affairs in Mexico, with its consequent disorder and misery then it will have served a useful purpose. President Wilson was probably more influenced by the later precedent of Mr. Seward's instruction to Mr. Foster, when the latter was Minister to Mexico, in which he expressed the opinion that it would be best to "wait before recognizing General Diaz as President of Mexico until it shall be assured that his election is desired by the Mexican people, and that his administration is possessed of stability to endure and of disposition to comply with the rules of international comity and the obligations of treaties."[16]

[15] House Documents, Vol. 128, p. 146.

[16] Mr. Seward, Acting Secretary of State, to Mr. Foster, Minister to Mexico, May 16, 1877. "Foreign Relations of the United States" for 1877, page 404.

Our past diplomatic history is not without examples of a presidential warning to Americans to leave the disturbed country of Mexico.[17] Nor is the recall of an American representative from Mexico without an immediate appointment of his successor an act peculiar to this administration. In 1858, because of a continual shifting of the supreme authority, Mr. Forsyth, the American Minister, suspended diplomatic relations pending orders. President Buchanan approved the action taken by Mr. Forsyth and ordered that relations be completely severed. It may be noted, also, in this case that a "confidential" agent was sent by the President to report conditions in Mexico.[18] It appears that many periodical comments, enlarging upon what they term the unprecedented procedure followed in the present relations, must be considerably diluted to warrant assimilation.[19]

Even from such a brief account it can be partially realized how diversified has been our diplomatic career with Mexico. It is especially desirable to keep this intercourse friendly on account of the suspicious and impulsive nature of the inhabitants,

[17] For examples see Moore's "International Law Digest," Vol. I, pp 138-168.

[18] House Documents, Vol. 132, Part I, page 787.

[19] For example: "President Wilson has aligned himself against manifest destiny, Anglo-Saxon tendencies, the power of money and the precedents of diplomacy." (From the "Worlds Work" of January 1914, page 249.)

who otherwise greatly exaggerate in their own minds what are really insignificant causes of friction. Furthermore they are obsessed with the vision of the United States as the overhanging cliff, ready to fall on them at any time.

The intervention that finally took place at Vera Cruz was justified for several reasons. It would have been more fortunate had a different cause been assigned as the proximate official cause for the seizure of Mexico's leading port. The insult to the flag, through the temporary detention of American marines, was a serious offense, the gravity of which must be judged, to a certain extent, from the official standing and responsibility of those who caused the arrest.

It is doubtful, under such conditions as have prevailed in Mexico for the past two years, whether the truth about the details of acts which have led to foreign complaint, will ever be known. Was the arrest of the American marines based on orders from Mexico City, or was it the rash act of an impulsive subaltern who wished to curry favor with his superiors? The act was disavowed by the Mexican Government and the marines released. Further apologies in the form of a full salute to the flag were demanded by the American naval officer. Should we demand more from Mexico for such a breach of international law than we would from England for instance? Would we have de-

manded that the English Government officially salute the flag after she had offered an official apology and disavowed an act committed against our representatives by one of her subordinate officials in a part of her Empire torn by revolution as Mexico was? It seems that the apologies, in consideration of the disavowment of the act, were commensurate with the magnitude of the offense. If an American naval officer had made a mistake, it would have been far better to acknowledge that fact than to have carried the point to the extremes that were necessary. The salute has not been fired, but the Mexican people have received a demonstration of the penalty for refusing American demands. The demonstration was costly, as any other will be in that country of vast proportions.

There were, and still are, numerous just causes for intervention on the part of the United States. Would it not have been a better object lesson to Mexico, as well as the rest of the world, to have based the intervention on the many crimes against our citizens resident in Mexico? Justice was flagrantly denied American citizens by all the various factions in Mexico. Murders were committed with the connivance of, if not by direct order of, officials. Property was confiscated. The whole list of offenses that might be termed denials of justice was checked off several times over. Intervention on such grounds, besides having greater sanction,

would have tended to increase the respect with which American citizens are treated in foreign countries, and have caused a more wholesome, if more indirect, respect for the flag.

The United States has a duty on this continent, the same as every nation has. Intervention should not be undertaken again until such a prolonged reign of virtual anarchy has taken place as to threaten the very existence of civilization in that country. No sane minded person could agree to a permanent adoption of such a policy as appeared in the *Oregonian* (Portland) under date of September 15, 1912.

"The best we can do with that republic is to leave it to stew in its own juice, taking care not to allow any of its rebellious rabble to overflow our borders. It may become necessary to send an expedition for the rescue of those Americans who are exposed to risk of death or starvation in the land of many revolutions, and for the collection of indemnity for their losses. Having done this we should withdraw our troops from the plagued country and leave it to settle its own internal quarrels."

In one sentence the writer abhors anything like an invasion of our territory for purely humanitarian reasons, while in the next he not only sanctions but recommends, in certain instances, intervention on our part for the protection of our citizens or

their dollars. The whole thought is merely a crude but emphatic expression of the "hands off" policy which many believe should be our guiding star.

It is claimed that the standard set by President Wilson's policy for the Mexican Government is an impracticable one. Whether or not this be true, no one will deny that the standard of present practice is too low. Considering the interests of those most vitally concerned it would appear that the solution must be some individual, selected by popular choice if possible, with the will-power to hold in check the opposing factions in Mexico, yet with sufficient regard for the rules of international law to retain the respect and support of foreign governments.

Whether or not, within a reasonably short time, such a leader will be found who will bring a fair amount of order to that country, only time can tell. Progress so far has been slow, but no slower than has been the case in other countries in the past. Europe had a slower development from a similar condition than is being witnessed in Mexico. With this idea in mind it will be easier to make allowance for unusual conditions. Internal changes, almost equal to a second birth, cannot take place in an instant. The process if left to itself is always a slow and labored development. Moreover the issue in Mexico is not clear cut. If it cost this country four years of constant warfare to settle the question of negro slavery, we should allow

Mexico at least the same amount of time to settle her own larger slavery question.

Intervention is the means for forcing a swift development. It may be a peaceful development or it may be a very turbulent one, but it would be a premature one. As has already been brought out the United States has both special rights and special duties in regard to Mexico. We have a certain moral responsibility to uphold our neighbor in times of trouble, and we have peculiar rights in Mexico for the several reasons previously mentioned.

The right of intervention is not a privilege. It is a necessity forced on a country under certain circumstances. In consideration of the cost in men and dollars to the United States to bring about this premature development in Mexico, circumstances have not yet reached such a condition as to warrant the expenditure. When it shall appear that a continual reign of terror is threatening the civilization of Mexico, or that, after another year or so, the conflict has not progressed toward a solution, then it shall be time for the United States, together with other representative nations of this hemisphere, to intervene in the interest of humanity and civilization, and charge the expenses for that act of humanity to the profit and loss account. The exacting of territorial or other compensation from the "friend in need" would change the act of mercy from the most laudable to the most damnable.

CHAPTER VIII

INTERVENTIONS IN THE EUROPEAN WAR

In discussing the interventions that have taken place in the present European War it is unnecessary to trace the historical development of the conflict. Such examples as have been cited from the past history of Europe furnish sufficient background for a consideration of this particular phase of international relations. The profitable bases for the present inquiry are the actions of the various nations during the present war, and the treaty agreements in force at the beginning of the war. An inquiry into past actions would reveal, in every case, many detestable details which have no direct bearing on the present situation in so far as the justification for interventions is concerned. Germany's six years (1864-1870) of selfish and aggressive warfare are as indelible a stain as English and French pressure for colonial empire, or Belgium's cruel policy in the Congo.

Every nation has, of course, full liberty to decide when it shall engage in a regularly declared war. Interference in the affairs of another nation, with-

out a declaration of war, presents a subject for consideration quite apart from the question as to which side has the just cause in an armed conflict following such a declaration.

Whatever event or combination of events explains the underlying causes of the war, be it the Russian pan-Slavic propaganda, British commercial jealousy, French *revanche* for 1870, or Germany's decision that *Der Tag* had arrived, or a combination of all four, the proximate cause was undoubtedly consummated on June 28, 1914, when the heir apparent to the Austro-Hungarian throne, together with his wife, was assassinated at Sarajevo, on Austrian territory. The Austrian Government contended that its official investigation brought out irrefutable facts showing that the assassins were citizens of Servia who had acted with the assistance of Servian officials. This exhibition of the pan-Slavic program brought Servia to the front once more as the possible immediate cause of a general European war.

The past clearly demonstrated that Russia, with a special interest in the Balkans, would view with the gravest concern any danger to Servian integrity. As the German Ambassador at St. Petersburg telegraphed his Government, under date of July 29, 1914,[1] "It was impossible to dissuade Sasonow [Russian Foreign Secretary] from the idea that

[1] German White Book, p. 7.

Servia could not now be deserted by Russia." It was an almost foregone conclusion that the impending conflict could not be localized.

Austrian Intervention in Servia

The Austrian protectorate over Bosnia and Herzegovina was formally acceded to in 1878 by the concert of the Powers. The annexation of these provinces by Austria in 1908 received only tacit acquiescence. It is entirely likely that formal acquiescence would have been withheld by that concert which sanctioned the protectorate, and herein lay the germ for future contentions. Granting that Austrian rule has been beneficial to Bosnia and Herzegovina, should the price of that uplift be a forced and permanent allegiance?

"Russia soon after the events brought about by the Turkish revolution of 1908, endeavored to found a union of the Balcan states under Russian patronage and directed against the existence of Turkey. This union which succeeded in 1911 in driving out Turkey from a greater part of her European possessions, collapsed over the question of the distribution of the spoils. The Russian policies were not dismayed over this failure. According to the idea of the Russian statesmen a new Balcan union under Russian patronage should be called into existence, headed no longer against Turkey, now dislodged

from the Balcan, but against the existence of the Austro-Hungarian monarchy."

Thus Germany points out, in her White Book, the power behind the throne in the pan-Serb propaganda against Austria-Hungary. With such assurances was Servia enabled to carry out an annoying and threatening policy toward her mighty adversary. It seems reasonable, from the facts, to conclude that Servian citizens, individually and collectively, but without the official sanction of the Government, pursued a nagging policy against Austrian institutions; that they used illegitimate means to foster a contempt for Austrian sovereignty in her provinces of Bosnia and Herzegovina; and that they made systematic efforts to stimulate a racial hatred, on the part of the Servians, against Austria. Whether or not the theory of nationalities has gained sufficient credence to warrant aspirations on the part of Servia is foreign to the present discussion.

The periodic annoyances which irresponsible citizens of a small nation can inflict, with comparative impunity, on a powerful neighbor, are aptly illustrated in the present case. The punishment meted out to the culprit can seldom be adequate when compared with the results of the offense. The force of this truism is unfortunately pressed home in our recent relations with Mexico. Judging from our own experience we may be able to ap-

preciate to some extent the expense incurred by the Austrian Government in suiting its actions to the results of the pan-Serb program. But a real conception of the continual cost to Austria of this agitation can be formed only after a complete understanding of what is involved in the word "mobilize" in Europe, and how often it has been necessary for Austria to resort to partial mobilization against Servia during the past twenty years.

Austria-Hungary and Servia had conflicting causes, and neither was entirely untenable. Under such circumstances occurred the lamentable incident of June 28, 1914. A less grave happening might have produced the same result. An official investigation on the part of Austria brought out the following facts which were submitted to the Servian Government.[2]

1. "The plan to murder Arch-Duke Franz Ferdinand during his stay in Sarajevo was conceived in Belgrade by Gabrilo Princip, Nedljko, Gabrinowic, and a certain Milan Ciganowic and Trifko Grabez, with the aid of Major Voja Tankosic.

2. "The six bombs and four Browning pistols which were used by the criminals, were obtained by Milan Ciganowic and Major Tankosic, and presented to Princip Gabrinowic in Belgrade.

3. "The bombs are hand grenades, manufactured at the arsenal of the Servian Army in Kragujevac.

[2] German White Book, pp. 12-13.

4. "To insure the success of the assassination, Milan Ciganowic instructed Princip Gabrinowic in the use of the grenades and gave instructions in shooting with Browning pistols to Princip Grabez in a forest near the target practice field of Topshidor (outside Belgrade).

5. "In order to enable the crossing of the frontier of Bosnia and Herzegovina by Princip Gabrinowic and Grabez, and the smuggling of their arms, a secret system of transportation was organized by Ciganowic. The entry of the criminals with their arms into Bosnia and Herzegovina was effected by the frontier captains of Shabatz (Rade Popowic) and of Loznica, as well as by the custom house official Rudivoy Grbic of Loznica with the aid of several other persons."

In consequence of these findings the Austro-Hungarian Government deemed it necessary to demand, in the form of an ultimatum, that within forty-eight hours the Servian Government, after making a number of general public apologies, agree to undertake[3]—

1. "To suppress any publication which fosters hatred of, and contempt for, the Austro-Hungarian monarchy, and whose general tendency is directed against the latter's territorial integrity;

2. "to proceed at once with the dissolution of the society Narodna Odbrana, to confiscate their entire

[3] German White Book, pp. 11-12.

means of propaganda, and to proceed in the same manner against the other societies and associations in Servia which occupy themselves with the propaganda against Austria-Hungary. The Royal Government will take the necessary measures, so that the dissolved societies may not continue their activities under another name or in another form;

3. "without delay to eliminate from the public instruction in Servia, so far as the corps of instructors, as well as the means of instruction are concerned, that which serves, or may serve, to foster the propaganda against Austria-Hungary;

4. "to remove from military service and the administration in general all officers and officials who are guilty of propaganda against Austria-Hungary, and whose names, with a communication of the material which the Imperial and Royal Government possesses against them, the Imperial and Royal Government reserves the right to communicate to the Royal Government;

5. *"to consent that in Servia officials of the Imperial and Royal Government cooperate in the suppression of a movement directed against the territorial integrity of the monarchy;*

6. "to commence a judicial investigation against the participants of the conspiracy of June 28, who are on Servian territory. Officials, delegated by the Imperial and Royal Government will participate in the examinations;

7. "to proceed at once with all severity to arrest Major Voja Tankosic and a certain Milan Ciganowic, Servian State officials, who have been compromised through the result of the investigation;

8. "to prevent through effective measures the participation of the Servian authorities in the smuggling of arms and explosives across the frontier and to dismiss those officials of Shabatz and Loznica, who assisted the originators of the crime at Sarajevo in crossing the frontier;

9. "to give to the Imperial and Royal Government explanations in regard to the unjustifiable remarks of high Servian functionaries in Servia and abroad who have not hesitated, in spite of their official position, to express themselves in interviews in a hostile manner against Austria-Hungary after the outrage of June 28th.

10. "The Imperial and Royal Government expects a reply from the Royal Government at the latest until Saturday 25th inst., at 6 p. m."

To quote the text of the Servian reply is unnecessary. It is sufficient to state that it was unsatisfactory. The Servian Government refused to comply in several particulars with the Austro-Hungarian demands. Servia repeatedly disavowed the act, promised punishment for the culprits when proved guilty, and agreed to more strict boundary regulations for the future.

The ultimatum, in its numerous demands for

suppression of sovereignty, contemplated a distinct intervention in the internal affairs of Servia. Of this conclusion, a reading of those demands will leave no doubt. The acceptance of such stipulations by a nation which valued absolute independence would be impossible. It would be the first step in a path which, barring outside interference, would lead to political suicide. The Servian Government was evidently right in refusing several of the demands. The terms of the ultimatum were impossible for an independent state.

Was Austria justified in such an attempted intervention? The plea entered was "self-preservation." A plea of such broad application necessarily admits of many interpretations. As noted previously, nations can point out a number of acts which will affect their self-preservation, their contentions in the different instances being more or less valid as the particular act is less or more remote in its effect. The plea cannot be justified when based on contingent future results which are evidently beyond human calculation. It may be true, as the German White Book states, that "it was clear to Austria that it was not compatible with the dignity and the spirit of self-preservation of the monarchy to view idly any longer this agitation across the border." The upholding of the "dignity" of a monarchy hardly warranted the consequences. The very term "spirit of self-

preservation" would seem to indicate the remoteness of the anticipated loss of sovereignty. We have no further explanation from Austria than that conditions "impose upon the Imperial and Royal Government the duty to terminate intrigues which constitute a permanent menace for the peace of the monarchy."

Judged from the standpoint of the single act which brought matters to a focus, and in view of the attitude taken by the Servian Government, the gravamen of the Austro-Hungarian Government was unjustifiable. A knowledge of the complete diplomatic history of these two countries since 1908, and a comprehensive understanding of the power behind the pan-Serb movement, might tend to fix the relative insignificance of the assassination, and alter the opinion as to the justification of the Austrian demands.

Russia Supports Servia

Russia's peculiar interest in the Balkans, legitimate or not, foreshadowed Russian support for Servia. The fact that the peoples of the two countries are of one race has always aroused in Russian public opinion, when that opinion is sufficiently informed, a keen interest in Servian affairs. It could not look with unconcern on what seemed to be a case of the strong oppressing the weak. The Czar expressed this feeling in a communication

to the German Emperor, dated July 29, 1914, when he said, in part: "An ignominious war has been declared against a weak country, and in Russia the indignation which I fully share is tremendous. I fear that very soon I shall be unable to resist the pressure exercised upon me and that I shall be forced to take measures which will lead to war." Whether or not this public opinion was as strong as the aristocratic barometer would have us believe, is a question. Russian diplomacy has not been characterized by its unselfishness, and we are forced to the conclusion that the Government has at least a limited control over public opinion.

It is evident from pure motives of policy that Russia did not care to have the balance disturbed in the Balkans (provided a balance ever existed there) unless in her favor. Russian protection for the weak nations has not been based entirely on an aroused public opinion in Russia nor on the humanitarian motives of the Russian Government. Russian public opinion would be distinctly adverse to further annexations of Slav territory by Austria. Annexation of the same territory by Russia would seem to record the natural course of events.

There is some doubt in the minds of German sympathizers whether Russia is the natural protector of the equilibrium in the Balkans. That honor is claimed for Austria on the bases of

proximity and her possession of the Slav provinces of Bosnia and Herzegovina. The former reason is vital; the latter is more apt to arouse the ire of the states concerned than to convince them of the justness of the contention.

Russia, in view of her racial connections, had very good technical ground for intervening to put down what she conceived to be an unjust intervention on the part of Austria. In that the Austrian demands called for an interference with Servian sovereignty for an act which Servia disavowed, those demands amounted to an unjust intervention. With Austria eliminated, as the violator of Servian sovereignty, Russia was the logical power to intervene to put down this unjust intervention.

Germany Enters as Austria's Ally

As the World Conflict approached, it found Germany and Russia marking time, each prepared for any emergency. It was seemingly as unnecessary as it was inadvisable for Germany actively to support her ally so long as the dispute was limited to Austria and Servia. With the evident and avowed purposes of Russia made clear, Germany had but one course—to support her ally with all her strength.

Germany's course was all the more clear because of the close understanding and mutual agreements

between Vienna and Berlin throughout the preliminary negotiations. Austria took each step with the approval or by the advice of the German Government. Germany was unwilling to advise the Austrian Government to assume a yielding attitude, fearing the possibility that a weakened Austria would interfere with German interests.[4]

Professor Kuno Francke of Harvard University, in a pamphlet whose purpose was to foster a pro-German sympathy in the United States, explains: "For only if Austria is left free to exercise her natural protectorate over the Balkan states can the passage between Germany and the near Orient, one of the most important routes of German commerce, be kept open. Russia's unwillingness, then, to allow Austria a free hand in her dealings with

[4] "We could do this [advise Austria to asume a conciliatory attitude] all the less as our own interests were menaced throughout the continued Serb agitation. If the Serbs continued with the aid of Russia and France to menace the existence of Austria-Hungary, the gradual collapse of Austria and the subjugation of all the Slavs, under one Russian sceptre would be the consequence, thus making untenable the position of the Teutonic race in Central Europe. A morally weakened Austria under the pressure of Russian pan-Slavism would be no longer an ally on whom we could count and in whom we could have confidence, as we must be able to have, in view of the ever more menacing attitude of our easterly and westerly neighbors. We, therefore, permitted Austria a completely free hand in her action toward Servia but have not participated in her preparations." —(German White Book, p. 4.)

Servia was an open menace to Germany, a challenge which had to be accepted, unless Germany was prepared to abdicate all her influence in the near Orient and to allow Russia to override the legitimate claims and aspirations of her only firm and faithful ally."

Aside from selfish economic reasons Germany entered the war to uphold her sworn ally in a war which she was privileged to call either defensive or offensive as her own good judgment might dictate.

France an Ally of Russia

France's declaration actively to support Russia in her war may be dismissed with a very few words so far as the application of the principle of intervention is concerned. Whether or not the underlying motive influencing French action was revenge for 1870, the fact remains that France entered the war on the same technical grounds as did Germany, viz., to uphold the provisions of an alliance.

Germany Intervenes in Belgium

In Article VII of a treaty entered into by the Courts of Great Britain, Austria, France, Prussia and Russia, and signed at London, November 15, 1831, the contracting Powers, after fixing the boundaries of Belgium, agreed that—"Belgium,

within the limits specified in Articles I, II, and IV, shall form an independent and perpetually neutral State."

Again, in Article VII of a treaty between these same five Powers on the one hand and the Netherlands on the other, signed at London, April 19, 1839, was an identical provision guaranteeing the independence and perpetual neutrality of Belgium.

In 1870, due to the unusual conditions brought about by the Franco-German war, a treaty was signed by the same Powers, affecting in certain particulars the Treaty of 1839. But the Treaty of 1870 specifically provided for its own expiration, and further stated that after its expiration "The independence and neutrality of Belgium will, so far as the High Contracting Parties are concerned, continue to rest, as heretofore, on Article I of the Treaty of the 19th of April, 1839." The Treaty of 1870 expired in 1872.

Dr. Edmund von Mach, in an article entitled "That Belgium Treaty," appearing in "The Fatherland" of February 10, 1915, commenting on the article of the Treaty of 1870 just quoted, said:

"If no such clause had been attached to the 1870 treaty, the 1839 treaty would have been entirely superseded and nobody could have claimed that it remained in force. With such a clause, the final decision of the validity of the treaty was deferred."

The point that this observation was intended to bring out is not entirely clear, unless it means that had no treaty existed prohibiting the violation of Belgian territory at the time the German troops invaded that country, then no treaty would have been broken by Germany. Such attempts to wish out of existence a treaty which is unquestionably valid serve only to weaken the cause they are meant to strengthen.

From 1870 to August 3, 1914, there was no serious attempt to violate, or official dispute as to the validity of, Belgian neutrality.

The Hague Peace Conference of 1907, in Convention V, Chapter I, declared:

Art. I. The territory of neutral Powers is inviolable.

Art. II. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

Art. X. The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

Germany, by ratifying this Convention, agreed that the stipulations contained therein should be recognized principles of international law.

Among the numerous excuses offered for the German violation of Belgian neutrality the subject of the Belgian forts has been a conspicuous example. It is contended that in strengthening the forts fac-

ing Germany, Belgium was violating that portion of Article VII of the Treaty of 1839 which provides that Belgium should be bound to observe neutrality toward all other states.

The subject of forts is also regulated by a Convention which was never superseded or declared invalid. Article I of the Convention between Great Britain, Austria, Prussia and Russia, and Belgium, signed at London, December 14, 1831, stipulates:

Art. I. "In consequence of the changes which the independence and the neutrality of Belgium have effected in the military situation of that Country, as well as in its disposable means of defense, the High Contracting Parties agree to cause to be dismantled such of the Fortresses constructed, repaired, or enlarged in Belgium, since the Year 1815, either wholly or partly at the cost of the Courts of Great Britain, Austria, Prussia and Russia, of which the maintenance would henceforward only become a useless charge.

"In conformity with this principle all the fortified works of the Fortresses of Menin, Ath, Mons, Philippeville, and Marienbourg, shall be demolished."

Article IV of the same Convention provides:

"The Fortresses of Belgium which are not mentioned in Article I of the present Convention, as destined to be dismantled, shall be maintained:

His Majesty the King of the Belgians engages to keep them constantly in good order."

Charges based on the question of forts fail to name any forts constructed in violation of these specific provisions. It is evident that the intention of the High Contracting Powers to the quoted Convention was that Belgium should keep her forts in such condition as to be able to protect that neutrality which they had severally guaranteed. If, in conformity with this intention, Belgium saw fit to strengthen her fortifications facing toward Germany, fearing an attack from that quarter, certainly subsequent events justified her fear.

The secret documents found in Belgium by the invading Germans, and awaited so anxiously by the American public, were to establish the fact that England had made all arrangements to violate Belgian neutrality in case she was engaged in a war with Germany. The whole case of the "secret documents" seems to hinge on the sentence from Document No. I, which reads:

"The entry of the English into Belgium would take place only after the violation of our neutrality by Germany." An English entry, based on such a contingency, would be unavoidable in accordance with her obligations as expressed in the Treaty of 1839.

It is clear that German troops violated the neutrality of Belgium without any legal justification,

and in direct contradiction to the solemn word of their Government, given to Belgium and the other contracting Powers of the Treaties of 1831, 1839 and 1870. This violation was an unmistakable intervention.

Was the German intervention in Belgium justified, and if so, on what grounds?

The German Imperial Chancellor in a speech before the German Diet, on August 4, 1914, outlined, in phrases appreciated for their frankness, the official justification for Germany's intervention in Belgium.

"Gentlemen, we are now acting in self-defense. Necessity knows no law. Our troops have occupied Luxemburg and have possibly already entered on Belgian soil.

"Gentlemen, this is a breach of international law.

"The French Government has notified Brussels that it would respect Belgian neutrality as long as the adversary respected it. But we know that France stood ready for an invasion. France could wait, we could not. A French invasion in our flank on the lower Rhine might have been disastrous. Thus we were forced to ignore the rightful protests of the Governments of Luxemburg and Belgium. The injustice—I speak openly—the injustice we thereby commit we will try to make good as soon as our military aims have been attained. He who is menaced as we are and is

fighting for his All, can only consider the one and best way to strike."

Thus the Belgian cause is acknowledged as just and the German plea is entered as "self-preservation."

Self-preservation cannot be a justifiable ground for an intervention unless the danger is real and proximate, and not contingent on certain possibilities. Was the self-preservation of Germany so threatened, or has Germany been pledged to a policy of intervention, as Dr. Reinsch points out in his "World Politics in the Nineteenth Century" when he remarks:

"The Emperor's words in a speech of the 18th of January, 1896, are to the effect that the German Empire has become a world empire; and that wherever Germans abroad are injured or in danger, *formal constitutional and public law objections cannot hold against the right of intervention on the part of the German Empire.*"

Whether or not the existence of the German Empire was threatened, and could be safeguarded by a sudden invasion of Belgium, the German Empire has the prerogative to decide. It is unquestionable that a swift march across Belgium would have been a great assistance to German arms. It is even more unquestionable that Belgium was in duty bound to refuse any German offers concerning such

an action, and to resist by force of arms any attempted intervention.

England Intervenes in Belgium

If we claim that the moral obligation which England maintained she was fulfilling in consequence of treaty agreements in regard to Belgian neutrality was based on self-interest, we may go further and contend that the very neutralization itself was prompted by that same principle. The agreement was entered into because it was to the interest of all parties concerned. Even though the English Government may have suffered anxiety because of the fact that the Hamburg-American Line and the North German Lloyd were seriously interfering with the development of the Cunard and the White Star, such an anxiety does not lessen England's right and duty to uphold the Treaty of 1839.

The entrance of England into the war, and her sending of troops to Belgium has every legal justification, both in pursuance of a right granted by treaty, and the general right to intervene to put down another unjust intervention.

Japan as England's Ally

Japan, in accordance with her defensive alliance with England, interpreted events in the East to

be dangerous to English interests in that locality. England had entered the war for the avowed purpose of defending Belgian neutrality, to which she had pledged herself.

As affairs now stand the German feels that the action of Japan is the *et tu, Brute* of the war. Professor Francke remarks that had "any additional proof been needed to make clear that Germany, if she wanted to retain the slightest chance of extricating herself from this world-wide conspiracy against her, had to strike the first blow, even at the risk of offending against international good manners, this stab in the back by Japan would furnish such proof."

The justification for the entrance of Japan into the war is then, like that of Germany and France, dependent on a treaty of alliance.

Italy's Neutrality

The success with which Italy has been able to maintain an armed neutrality has nonplused both sides. She has steadfastly considered her defensive alliance with Germany and Austria-Hungary inoperative under present conditions.

Should Italy enter the war on the side of the Allies, as seems likely, the step will be taken solely because of an insistent public opinion which is guided by past history and an uncontrollable sentiment.

Position of the United States

The unusual condition of belligerency in which so many of the nations of the world find themselves, naturally makes the happy existence of neutrals impossible. Never before, perhaps, has such a large percentage of the world been at war.

Among the neutral nations the United States stands out as the leader. This leadership involves the most delicate considerations, not only as affecting ourselves, but as affecting neutrals generally. Our neutrality, in accordance with the generally accepted rules of international law, has been proclaimed by the President to the various nations at war.[5] Events which under different circumstances would be causes for most serious demands, must be viewed in a new perspective if we wish to retain our present enviable position.

Unjustifiable extensions of the field of war, use of neutral flags by belligerents, and numerous other violations of neutral rights are bound to provoke hostility as they have done in every war of half the magnitude of the present conflict. With a convincing firmness and a partial reliance on the automatic safety check, prompted by the desire of the belligerents to retain the good will and moral support of powerful neutrals, we may hope to escape

[5] For the text of the Neurality Proclamation see Appendix I.

serious infringements of our sovereignty without the necessity of resorting to force. The measure of an intelligent public opinion is the safe and unavoidable guide.

When the United States, as the leading neutral nation, considers that the infringements of the privileges of neutrals have developed to such an extent as to warrant formal declarations or warnings to the belligerents concerned, such declarations should be made in coöperation with other neutrals. It is obvious from many considerations, that when such contemplated declarations concern questions primarily American, they should be made in concert with other nations of this hemisphere. Such action can only add to the respect with which the declaration will be received by those to whom it is addressed, besides developing a more friendly spirit of coöperation among the nations of the American Continents.

It is inevitable that partisans of the various nations to the conflict, resident in neutral countries, will accuse the neutral Government, whose protection they are enjoying, of acts which assist the nations whom they wish to see defeated in the war. Such accusations, which have been a time honored accompaniment of every war, are not lacking at the present time. The United States, because of the fact that she has so many different nationalities within her borders, is peculiarly liable to such

accusations. The weight of these contentions is, of course, greatly lessened because of the unusual conditions prompting them.[6]

Since the present war is assuming in so many particulars a likeness to the Napoleonic Wars, especially in so far as the position of the United States is concerned, may we not once more follow the advice which Baron de Nolken, the Swedish Ambassador to England, gave to John Adams at that earlier time.

"Sir, I take it for granted that you all have sense enough to see us in Europe cut each other's throats with a philosophical tranquillity."

[6] For a list of the unneutral acts of which the United States has been accused, as well as the Government's reply thereto, see Appendix II.

APPENDICES

APPENDIX I

[NEUTRALITY—AUSTRIA-HUNGARY AND SERVIA, GERMANY AND RUSSIA, AND GERMANY AND FRANCE.][1]

By the President of the United States of America.

A PROCLAMATION

WHEREAS a state of war unhappily exists between Austria-Hungary and Servia and between Germany and Russia and between Germany and France; And Whereas the United States is on terms of friendship and amity with the contending powers, and with the persons inhabiting their several dominions;

And Whereas there are citizens of the United States residing within the territories or dominions of each of the said belligerents and carrying on commerce, trade, or other business or pursuits therein;

And Whereas there are subjects of each of the said belligerents residing within the territory or jurisdiction of the United States, and carrying on commerce, trade, or other business or pursuits therein;

And Whereas the laws and treaties of the United States, without interfering with the free expression of opinion and sympathy, or with the commercial manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an

[1] The wording of this Proclamation of Neutrality is identical with that of subsequent Proclamations, with the exception of the names of the nations involved and the dates.

impartial neutrality during the existence of the contest;

And Whereas it is the duty of a neutral government not to permit or suffer the making of its waters subservient to the purposes of war;

Now, Therefore, I, WOODROW WILSON, President of the United States of America, in order to preserve the neutrality of the United States and of its citizens and of persons within its territory and jurisdiction, and to enforce its laws and treaties, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf, and of the law of nations, may thus be prevented from any violation of the same, do hereby declare and proclaim that by certain provisions of the act approved on the 4th day of March, A. D. 1909, commonly known as the "Penal Code of the United States" the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to-wit:—

1. Accepting and exercising a commission to serve either of the said belligerents by land or by sea against the other belligerent.

2. Enlisting or entering into the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

3. Hiring or retaining another person to enlist or enter himself in the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

5. Hiring another person to go beyond the limits

of the United States with intent to be entered into service as aforesaid.

6. Retaining another person to go beyond the limits of the United States with intent to be enlisted as aforesaid.

7. Retaining another person to go beyond the limits of the United States with intent to be entered into service as aforesaid. (But the said act is not to be construed to extend to a citizen or subject of either belligerent who, being transiently within the United States, shall, on board of any vessel of war, which, at the time of its arrival within the United States, was fitted and equipped as such vessel of war, enlist or enter himself or hire or retain another subject or citizens of the same belligerent, who is transiently within the United States, to enlist or enter himself to serve such belligerent on board such vessels of war, if the United States shall then be at peace with such belligerent.)

8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of either of the said belligerents.

9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser, or armed vessel in the service of either of the said belligerents, or belonging to the subjects of either, by adding to the number of

guns of such vessels, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war.

11. Beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents.

And I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the armed vessels of a belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of a belligerent lying within or being about to enter the jurisdiction of the United States, must be regarded as unfriendly and offensive, and in violation of that neutrality which it is the determination of this government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the fifth day of August instant, and during the continuance of the present hostilities between Austria-Hungary and Servia, and Germany and Russia and Germany and France, no ship of war or privateer of any belligerent shall be permitted to make use of any port, harbor, roadstead, or waters subject to the jurisdiction of the United States from which a vessel of an opposing belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States. If any ship of war or privateer of a belligerent shall, after the time this notification takes effect, enter any port,

harbor, roadstead, or waters of the United States, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, harbor, roadstead, or waters, except in case of stress of weather or of her requiring provisions or things necessary for the subsistence of her crew, or for repairs; in any of which cases the authorities of the port or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been permitted to remain within the waters of the United States for the purpose of repair shall continue within such port, harbor, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed, unless within such twenty-four hours a vessel, whether a ship of war, privateer, or merchant ship of an opposing belligerent, shall have departed therefrom, in which case the time limited for the departure of such ship of war or privateer shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any ship of war, privateer, or merchant ship of an opposing belligerent which may have previously quit the same port, harbor, roadstead, or waters. No ship of war or privateer of a belligerent shall be detained in any port, harbor, roadstead, or waters of the United States more than twenty-four hours, by reason of the successive departures from such port, harbor, roadstead, or waters of more than one vessel of an opposing belligerent. But if there be several vessels of opposing belligerents in the same port, harbor, roadstead, or waters, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the

opposing belligerents, and to cause the least detention consistent with the objects of this proclamation. No ship of war or privateer of a belligerent shall be permitted, while in any port, harbor, roadstead, or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without any sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive, if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs.

And I do further declare and proclaim that the statutes and the treaties of the United States and the law of nations alike require that no person, within the territory and jurisdiction of the United States, shall take part, directly or indirectly, in the said wars, but shall remain at peace with all of the said belligerents, and shall maintain a strict and impartial neutrality.

And I do hereby enjoin all citizens of the United States, and all persons residing or being within the territory or jurisdiction of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes or treaties or in violation of the law of nations in that behalf.

And I do hereby warn all citizens of the United

States, and all persons residing or being within its territory or jurisdiction that, while the free and full expression of sympathies in public and private is not restricted by the laws of the United States, military forces in aid of a belligerent cannot lawfully be originated or organized within its jurisdiction; and that, while all persons may lawfully and without restriction by reason of the aforesaid state of war manufacture and sell within the United States arms and munitions of war, and other articles ordinarily known as "contraband of war", yet they cannot carry such articles upon the high seas for the use or service of a belligerent, nor can they transport soldiers and officers of a belligerent, or attempt to break any blockade which may be lawfully established and maintained during the said wars without incurring the risk of hostile capture and the penalties denounced by the law of nations in that behalf.

And I do hereby give notice that all citizens of the United States and others who may claim the protection of this government, who may misconduct themselves in the premises, will do so at their peril, and that they can in no wise obtain any protection from the government of the United States against the consequences of their misconduct.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of August in the year of our Lord one thousand nine hundred and fourteen and of the independence of the United States of America the one hundred and thirty-ninth.

[seal.]

WOODROW WILSON

By the President:

William Jennings Bryan
Secretary of State.

[No. 1271.]

APPENDIX II

63RD CONGRESS } SENATE { Document
3RD SESSION } { No. 716

NEUTRALITY

CORRESPONDENCE BETWEEN THE SECRETARY OF STATE AND CHAIRMAN COMMITTEE ON FOREIGN RELATIONS RELATING TO CERTAIN COMPLAINTS MADE THAT THE AMERICAN GOVERNMENT HAS SHOWN PARTIALITY TO CERTAIN BELLIGERENTS DURING THE PRESENT EUROPEAN WAR.

LETTER OF SENATOR STONE.

JANUARY 8, 1915.

DEAR MR. SECRETARY: As you are aware, frequent complaints or charges are made in one form or another through the press that this Government has shown partiality to Great Britain, France, and Russia as against Germany and Austria during the present war between those powers; in addition to which I have received numerous letters to the same effect from sympathizers with Germany and Austria. The various grounds of these complaints may be summarized and stated in the following form:

1. Freedom of communication by submarine cables, but censorship of wireless messages.
2. Submission to censorship of mails and in some cases to the repeated destruction of American letters found on neutral vessels.

3. The search of American vessels for German and Austrian subjects—
   (*a*) On the high seas.
   (*b*) In territorial waters of a belligerent.
4. Submission without protest to English violations of the rules regarding absolute and conditional contraband, as laid down—
   (*a*) In the Hague Conventions.
   (*b*) In international law.
   (*c*) In the Declaration of London.
5. Submission without protest to inclusion of copper in the list of absolute contraband.
6. Submission without protest to interference with American trade to neutral countries—
   (*a*) In conditional contraband.
   (*b*) In absolute contraband.
7. Submission without protest to interruption of trade in conditional contraband consigned to private persons in Germany and Austria, thereby supporting the policy of Great Britain to cut off all supplies from Germany and Austria.
8. Submission to British interruption of trade in petroleum, rubber, leather, wool, etc.
9. No interference with the sale to Great Britain and her allies of arms, ammunition, horses, uniforms, and other munitions of war, although such sales prolong the war.
10. No suppression of sale of dumdum bullets to Great Britain.
11. British warships are permitted to lie off American ports and intercept neutral vessels.
12. Submission without protest to disregard by Great Britain and her allies of—
   (*a*) American neutralization certificates.
   (*b*) American passports.
13. Change of policy in regard to loans to belligerents:

(*a*) General loans.
(*b*) Credit loans.

14. Submission to arrest of native-born Americans on neutral vessels and in British ports, and their imprisonment.
15. Indifference to confinement of noncombatants in detention camps in England and France.
16. Failure to prevent transshipment of British troops and war material across the territory of the United States.
17. Treatment and final internment of German steamship *Geier* and the collier *Locksun* at Honolulu.
18. Unfairness to Germany in rules relative to coaling of warships in Panama Canal Zone.
19. Failure to protest against the modifications of the Declaration of London by the British Government.
20. General unfriendly attitude of Government toward Germany and Austria.

If you deem it not incompatible with the public interest I would be obliged if you would furnish me with whatever information your department may have touching these various points of complaint, or request the counselor of the State Department to send me the information, with any suggestions you or he may deem advisable to make with respect to either the legal or political aspects of the subject. So far as informed I see no reason why all the matter I am requesting to be furnished should not be made public, to the end that the true situation may be known and misapprehensions quieted.

I have the honor to be,
Yours, sincerely,

WM. J. STONE.

Hon. WILLIAM JENNINGS BRYAN,
Secretary of State.

LETTER OF SECRETARY OF STATE

DEPARTMENT OF STATE,
Washington, January 20, 1915.

DEAR MR. STONE: I have received your letter of the 8th instant, referring to frequent complaints or charges made in one form or another through the press that this Government has shown partiality to Great Britain, France and Russia against Germany and Austria during the present war, and stating that you have received numerous letters to the same effect from sympathizers with the latter powers. You summarize the various grounds of these complaints and ask that you be furnished with whatever information the department may have touching these points of complaints, in order that you may be informed as to what the true situation is in regard to these matters.

In order that you may have such information as the department has on the subjects referred to in your letter, I will take them up seriatim.

(1) *Freedom of communication by submarine cables versus censored communication by wireless.*

The reason that wireless messages and cable messages require different treatment by a neutral Government is as follows:

Communications by wireless can not be interrupted by a belligerent. With a submarine cable it is otherwise. The possibility of cutting the cable exists, and if a belligerent possesses naval superiority the cable is cut, as was the German cable near the Azores by one of Germany's enemies and as was the British cable near Fanning Island by a German naval force. Since a cable is subject to hostile attack, the responsibility falls upon the belligerent and not upon the neutral to prevent cable communication.

A more important reason, however, at least from

the point of view of a neutral Government, is that messages sent out from a wireless station in neutral territory may be received by belligerent warships on high seas. If these messages, whether plain or in cipher, direct the movements of warships or convey to them information as to the location of an enemy's public or private vessels, the neutral territory becomes a base of naval operations, to permit which would be essentially unneutral.

As a wireless message can be received by all stations and vessels within a given radius, every message in cipher, whatever its intended destination, must be censored; otherwise military information may be sent to warships off the coast of a neutral. It is manifest that a submarine cable is incapable of becoming a means of direct communication with a warship on the high seas. Hence its use can not, as a rule, make neutral territory a base for the direction of naval operations.

(2) *Censorship of mails and in some cases repeated destruction of American letters on neutral vessels.*

As to the censorship of mails, Germany as well as Great Britain has pursued this course in regard to private letters falling into their hands. The unquestioned right to adopt a measure of this sort makes objection to it inadvisable.

It has been asserted that American mail on board of Dutch steamers has been repeatedly destroyed. No evidence to this effect has been filed with the Government, and therefore no representations have been made. Until such a case is presented in concrete form, this Government would not be justified in presenting the matter to the offending belligerent. Complaints have come to the department that mail on board neutral steamers has been opened and detained, ... but there seem to be but few cases where the mail from neutral countries has not been finally delivered.

When mail is sent to belligerent countries open and is of a neutral and private character it has not been molested, so far as the department is advised.

(3) *Searching of American vessels for German and Austrian subjects on the high seas and in territorial waters of a belligerent.*

So far as this Government has been informed, no American vessels on the high seas, with two exceptions, have been detained or searched by belligerent warships for German and Austrian subjects. One of the exceptions to which reference is made is now the subject of a rigid investigation, and vigorous representations have been made to the offending Government. The other exception, where certain German passengers were made to sign a promise not to take part in the war, has been brought to the attention of the offending Government with a declaration that such procedure, if true, is an unwarranted exercise of jurisdiction over American vessels in which this Government will not acquiesce.

An American private vessel entering voluntarily the territorial waters of a belligerent becomes subject to its municipal laws, as do the persons on board the vessel.

There have appeared in certain publications the assertion that failure to protest in these cases is an abandonment of the principle for which the United States went to war in 1812. If the failure to protest were true, which it is not, the principle involved is entirely different from the one appealed to against unjustifiable impressment of Americans in the British Navy in time of peace.

(4) *Submission without protest to British violations of the rules regarding absolute and conditional contraband as laid down in The Hague conventions, the declaration of London, and international law.*

There is no Hague convention which deals with

absolute or conditional contraband, and, as the declaration of London is not in force, the rules of international law only apply. As to the articles to be regarded as contraband, there is no general agreement between nations. It is the practice for a country, either in time of peace or after the outbreak of war, to declare the articles which it will consider as absolute or conditional contraband. It is true that a neutral Government is seriously affected by this declaration as the rights of its subjects or citizens may be impaired. But the rights and interests of belligerents and neutrals are opposed in respect to contraband articles and trade and there is no tribunal to which questions of difference may be readily submitted.

The record of the United States in the past is not free from criticism. When neutral this Government has stood for a restricted list of absolute and conditional contraband. As a belligerent, we have contended for a liberal list, according to our conception of the necessities of the case.

The United States has made earnest representations to Great Britain in regard to the seizure and detention by the British authorities of all American ships or cargoes bona fide destined to neutral ports, on the ground that such seizures and detentions were contrary to the existing rules of international law. It will be recalled, however, that American courts have established various rules bearing on these matters. The rule of "continuous voyage" has been not only asserted by American tribunals but extended by them. They have exercised the right to determine from the circumstances whether the ostensible was the real destination. They have held that the shipment of articles of contraband to a neutral port "to order," from which, as a matter of fact, cargoes had been transshipped to the enemy, is corroborative evidence that the cargo is really destined to the enemy instead of to the

neutral port of delivery. It is thus seen that some of the doctrines which appear to bear harshly upon neutrals at the present time are analogous to or outgrowths from policies adopted by the United States when it was a belligerent. The Government therefore can not consistently protest against the application of rules which it has followed in the past, unless they have not been practiced as heretofore.

(5) *Acquiescence without protest to the inclusion of copper and other articles in the British lists of absolute contraband.*

The United States has now under consideration the question of the right of a belligerent to include "copper unwrought" in its list of absolute contraband instead of in its list of conditional contraband. As the Government of the United States has in the past placed "all articles from which ammunition is manufactured" in its contraband list, and has declared copper to be among such materials, it necessarily finds some embarrassment in dealing with the subject.

Moreover, there is no instance of the United States acquiescing in Great Britain's seizure of copper shipments. In every case, in which it has been done, vigorous representations have been made to the British Government, and the representatives of the United States have pressed for the release of the shipments.

(6) *Submission without protest to interference with American trade to neutral countries in conditional and absolute contraband.*

The fact that the commerce of the United States is interrupted by Great Britain is consequent upon the superiority of her navy on the high seas. History shows that whenever a country has possessed that superiority our trade has been interrupted and that few articles essential to the prosecution of the war have been allowed to reach its enemy from this country. The department's recent note to the British

Government, which has been made public, in regard to detentions and seizures of American vessels and cargoes, is a complete answer to this complaint.

Certain other complaints appear aimed at the loss of profit in trade, which must include at least in part trade in contraband with Germany; while other complaints demand the prohibition of trade in contraband, which appear to refer to trade with the allies.

(7) *Submission without protest to interruption of trade in conditional contraband consigned to private persons in Germany and Austria, thereby supporting the policy of Great Britain to cut off all supplies from Germany and Austria.*

As no American vessel so far as known has attempted to carry conditional contraband to Germany or Austria-Hungary, no ground of complaint has arisen out of the seizure or condemnation by Great Britain of an American vessel with a belligerent destination. Until a case arises and the Government has taken action upon it criticism is premature and unwarranted. The United States in its note of December 28 to the British Government strongly contended for the principle of freedom of trade in articles of conditional contraband not destined to the belligerent's forces.

(8) *Submission to British interference with trade in petroleum, rubber, leather, wool, etc.*

Petrol and other petroleum products have been proclaimed by Great Britain as contraband of war. In view of the absolute necessity of such products to the use of submarines, aeroplanes, and motors, the United States Government has not yet reached the conclusion that they are improperly included in a list of contraband. Military operations to-day are largely a question of motive power through mechanical devices. It is therefore difficult to argue successfully

against the inclusion of petroleum among the articles of contraband. As to the detention of cargoes of petroleum going to neutral countries, this Government has, thus far successfully, obtained the release in every case of detention or seizure which has been brought to its attention.

Great Britain and France have placed rubber on the absolute contraband list and leather on the conditional contraband list. Rubber is extensively used in the manufacture and operation of motors and, like petrol, is regarded by some authorities as essential to motive power to-day. Leather is even more widely used in cavalry and infantry equipment. It is understood that both rubber and leather, together with wool, have been embargoed by most of the belligerent countries. It will be recalled that the United States has in the past exercised the right of embargo upon exports of any commodity which might aid the enemy's cause.

(9) *The United States has not interfered with the sale to Great Britain and her allies of arms, ammunition, horses, uniforms, and other munitions of war, although such sales prolong the conflict.*

There is no power in the Executive to prevent the sale of ammunition to the belligerents.

The duty of a neutral to restrict trade in munitions of war has never been imposed by international law or by municipal statute. It has never been the policy of this Government to prevent the shipment of arms or ammunition into belligerent territory, except in the case of neighboring American Republics, and then only when civil strife prevailed. Even to this extent the belligerents in the present conflict, when they were neutrals, have never, so far as the records disclose, limited the sale of munitions of war. It is only necessary to point to the enormous quantities of arms and ammunition furnished by manufacturers in Ger-

many to the belligerents in the Russo-Japanese war and in the recent Balkan wars to establish the general recognition of the propriety of the trade by a neutral nation.

It may be added that on the 15th of December last the German ambassador, by direction of his Government, presented a copy of a memorandum of the Imperial German Government which, among other things, set forth the attitude of that Government toward traffic in contraband of war by citizens of neutral countries. The Imperial Government stated that "under the general principles of international law, no exception can be taken to neutral states letting war material go to Germany's enemies from or through neutral territory," and that the adversaries of Germany in the present war are, in the opinion of the Imperial Government, authorized to "draw on the United States contraband of war and especially arms worth billions of marks." These principles, as the ambassador stated, have been accepted by the United States Government in the statement issued by the Department of State on October 15 last, entitled "Neutrality and trade in contraband." Acting in conformity with the propositions there set forth, the United States has itself taken no part in contraband traffic, and has, so far as possible, lent its influence toward equal treatment for all belligerents in the matter of purchasing arms and ammunition of private persons in the United States.

(10) *The United States has not suppressed the sale of dumdum bullets to Great Britain.*

On December 5 last the German ambassador addressed a note to the department, sating that the British Government had ordered from the Winchester Repeating Arms Co. 20,000 "riot guns," model 1897, and 50,000,000 "buckshot cartridges" for use in such guns. The department replied that it saw a published

statement of the Winchester Co., the correctness of which the company has confirmed to the department by telegraph. In this statement the company categorically denies that it has received an order for such guns and cartridges from or made any sales of such material to the British Government, or to any other Government engaged in the present war. The ambassador further called attention to "information, the accuracy of which is not to be doubted," that 8,000,000 cartridges fitted with "mushroom bullets" had been delivered since October of this year by the Union Metallic Cartridge Co. for the armament of the English army. In reply the department referred to the letter of December 10, 1914, of the Remington Arms-Union Metallic Cartridge Co., of New York, to the ambassador, called forth by certain newspaper reports of statements alleged to have been made by the ambassador in regard to the sales by that company of soft-nosed bullets.

From this letter, a copy of which was sent to the department by the company, it appears that instead of 8,000,000 cartridges having been sold, only a little over 117,000 were manufactured and 109,000 were sold. The letter further asserts that these cartridges were made to supply a demand for a better sporting cartridge with a soft-nosed bullet than had been manufactured theretofore, and that such cartridges [illegible] not be used in the military rifles of any foreign powers. The company adds that its statements can be substantiated and that it is ready to give the ambassador any evidence that he may require on these points. The department further stated that it was also in receipt from the company of a complete detailed list of the persons to whom these cartridges were sold, and that from this list it appeared that the cartridges were sold to firms in lots of 20 to 2,000 and one lot each of 3,000, 4,000, and 5,000. Of these only 960

cartridges went to British North America and 100 to British East Africa.

The department added that, if the ambassador could furnish evidence that this or any other company is manufacturing and selling for the use of the contending armies in Europe cartridges whose use would contravene The Hague conventions, the department would be glad to be furnished with this evidence, and that the President would, in case any American company is shown to be engaged in this traffic, use his influence to prevent so far as possible sales of such ammunition to the powers engaged in the European war, without regard to whether it is the duty of this Government, upon legal or conventional grounds, to take such action.

The substance of both the ambassador's note and the department's reply have appeared in the press.

The department has received no other complaints of alleged sales of dumdum bullets by American citizens to belligerent Governments.

(11) *British warships are permitted to lie off American ports and intercept neutral vessels.*

The complaint is unjustified from the fact that representations were made to the British Government that the presence of war vessels in the vicinity of New York Harbor was offensive to this Government and a similar complaint was made to the Japanese Government as to one of its cruisers in the vicinity of the port of Honolulu. In both cases the warships were withdrawn.

It will be recalled that in 1863 the department took the position that captures made by its vessels after hovering about neutral ports would not be regarded as valid. In the Franco-Prussian War President Grant issued a proclamation warning belligerent warships against hovering in the vicinity of American ports for purposes of observation or hostile acts. The same

policy has been maintained in the present war, and in all of the recent proclamations of neutrality the President states that such practice by belligerent warships is "unfriendly and offensive."

(12) *Great Britain and her allies are allowed without protest to disregard American citizenship papers and passports.*

American citizenship papers have been disregarded in a comparatively few instances by Great Britain, but the same is true of all the belligerents. Bearers of American passports have been arrested in all the countries at war. In every case of apparent illegal arrest the United States Government has entered vigorous protests with request for release. The department does not know of any cases, except one or two which are still under investigation, in which naturalized Germans have not been released upon representations by this Government. There have, however, come to the department's notice authentic cases in which American passports have been fraudulently obtained and used by certain German subjects.

The Department of Justice has recently apprehended at least four persons of German nationality who, it is alleged, obtained American passports under pretense of being American citizens and for the purpose of returning to Germany without molestation by her enemies during the voyage. There are indications that a systematic plan had been devised to obtain American passports through fraud for the purpose of securing safe passage for German officers and reservists desiring to return to Germany. Such fraudulent use of passports by Germans themselves can have no other effect than to cast suspicion upon American passports in general. New regulations, however, requiring among other things the attaching of a photograph of the bearer to his passport, under the seal of the Department of State, and the vigilance of the Department

of Justice, will doubtless prevent any further misuse of American passports.

(13) *Change of policy in regard to loans to belligerents.*

War loans in this country were disapproved because inconsistent with the spirit of neutrality. There is a clearly defined difference between a war loan and the purchase of arms and ammunition. *The policy of disapproving of war loans affects all governments alike, so that the disapproval is not an unneutral act.* The case is entirely different in the matter of arms and ammunition, because prohibition of export not only might not, but, in this case, would not, operate equally upon the nations at war. Then, too, the reasons given for the disapproval of war loans is supported by other considerations which are absent in the case presented by the sale of arms and ammunition. The taking of money out of the United States during such a war as this might seriously embarrass the Government in case it needed to borrow money and it might also seriously impair this Nation's ability to assist the neutral nations which, though not participants in the war, are compelled to bear a heavy burden on account of the war, and, again, a war loan, if offered for popular subscription in the United States, would be taken up chiefly by those who are in sympathy with the belligerent seeking the loan. The result would be that great numbers of the American people might become more earnest partisans, having material interest in the success of the belligerent, whose bonds they hold. These purchases would not be confined to a few, but would spread generally throughout the country, so that the people would be divided into groups of partisans, which would result in intense bitterness and might cause an undesirable, if not a serious situation. On the other hand, contracts for and sales of contraband are mere matters of trade.

The manufacturer, unless peculiarly sentimental, would sell to one belligerent as readily as he would to another. No general spirit of partisanship is aroused—no sympathies excited. The whole transaction is merely a matter of business.

This Government has not been advised that any general loans have been made by foreign governments in this country since the President expressed his wish that loans of this character should not be made.

(14) *Submission to arrest of native-born Americans on neutral vessels and in British ports and their imprisonment.*

The general charge as to the arrest of American-born citizens on board neutral vessels and in British ports, the ignoring of their passports, and their confinement in jails, requires evidence to support it. That there have been cases of injustice of this sort is unquestionably true, but Americans in Germany have suffered in this way as Americans have in Great Britain. This Government has considered that the majority of these cases resulted from overzealousness on the part of subordinate officials in both countries. Every case which has been brought to the attention of the Department of State has been promptly investigated and, if the facts warranted, a demand for release has been made.

(15) *Indifference to confinement of noncombatants in detention camps in England and France.*

As to the detention of noncombatants confined in concentration camps, all the belligerents, with perhaps the exception of Servia and Russia, have made similar complaints and those for whom this Government is acting have asked investigations, which representatives of this Government have made impartially. Their reports have shown that the treatment of prisoners is generally as good as possible under the con-

ditions in all countries, and that there is no more reason to say that they are mistreated in one country than in another country or that this Government has manifested an indifference in the matter. As this department's efforts at investigations seemed to develop bitterness between the countries, the department on November 20 sent a circular instruction to its representatives not to undertake further investigation of concentration camps.

But at the special request of the German Government that Mr. Jackson, former American minister at Bucharest, now attached to the American embassy at Berlin, make an investigation of the prison camps in England, in addition to the investigations already made, the department has consented to dispatch Mr. Jackson on this special mission.

(16) *Failure to prevent transshipment of British troops and war material across the territory of the United States.*

The department has had no specific case of the passage of convoys of troops across American territory brought to its notice. There have been rumors to this effect, but no actual facts have been presented. The transshipment of reservists of all belligerents who have requested the privilege has been permitted on condition that they travel as individuals and not as organized, uniformed, or armed bodies. The German Embassy has advised the department that it would not be likely to avail itself of the privilege, but Germany's ally, Austria-Hungary, did so.

Only one case raising the question of the transit of war material owned by a belligerent across United States territory has come to the department's notice. This was a request on the part of the Canadian Government for permission to ship equipment across Alaska to the sea. The request was refused.

(17) *Treatment and final internment of Germans*

steamship "Geier" and the collier "Locksun" at Honolulu.

The *Geier* entered Honolulu on October 15 in an unseaworthy condition. The commanding officer reported the necessity of extensive repairs which would require an indefinite period for completion. The vessel was allowed the generous period of three weeks to November 7 to make repairs and leave the port, or, failing to do so, to be interned. A longer period would have been contrary to international practice, which does not permit a vessel to remain for a long time in a neutral port for the purpose of repairing a generally run-down condition due to long sea service. Soon after the German cruiser arrived at Honolulu a Japanese cruiser appeared off the port and the commander of the *Geier* chose to intern the vessel rather than to depart from the harbor.

Shortly after the *Geier* entered the port of Honolulu the steamer *Locksun* arrived. It was found that this vessel had delivered coal to the *Geier* en route and had accompanied her toward Hawaii. As she had thus constituted herself a tender or collier to the *Geier* she was accorded the same treatment and interned on November 7.

(18) *Unfairness to Germany in rules relative to coaling of warships in Panama Canal Zone.*

By proclamation of November 13, 1914, certain special restrictions were placed on the coaling of warships or their tenders or colliers in the Canal Zone. These regulations were framed through the collaboration of the State, Navy, and War Departments and without the slightest reference to favoritism to the belligerents. Before these regulations were proclaimed, war vessels could procure coal of the Panama Railway in the zone ports, but no belligerent vessels are known to have done so. Under the proclamation fuel may be taken on by belligerent warships only

with the consent of the canal authorities and in such amounts as will enable them to reach the nearest accessible neutral port; and the amount so taken on shall be deducted from the amount procurable in United States ports within three months thereafter. Now, it is charged the United States has shown partiality because Great Britain and not Germany happens to have colonies in the near vicinity where British ships may coal, while Germany has no such coaling facilities. Thus, it is intimated the United States should balance the inequalities of geographical position by refusing to allow any warships of belligerents to coal in the canal until the war is over. As no German warship has sought to obtain coal in the Canal Zone the charge of discrimination rests upon a possibility which during several months of warfare has failed to materialize.

(19) *Failure to protest against the modifications of the Declaration of London by the British Government.*

The German Foreign Office presented to the diplomats in Berlin a memorandum dated October 10, calling attention to violations of and changes in the Declaration of London by the British Government and inquiring as to the attitude of the United States toward such action on the part of the allies. The substance of the memorandum was forthwith telegraphed to the department on October 22 and was replied to shortly thereafter to the effect that the United States had withdrawn its suggestion, made early in the war, that for the sake of uniformity the Declaration of London should be adopted as a temporary code of naval warfare during the present war, owing to the unwillingness of the belligerents to accept the declaration without changes and modifications, and that thenceforth the United States would insist that the rights of the United States and its

citizens in the war should be governed by the existing rules of international law.

As this Government is not now interested in the adoption of the Declaration of London by the belligerents, the modifications by the belligerents in that code of naval warfare are of no concern to it except as they adversely affect the rights of the United States and those of its citizens as defined by international law. In so far as those rights have been infringed the department has made every effort to obtain redress for the losses sustained.

(20) *General unfriendly attitude of Government toward Germany and Austria.*

If any American citizens, partisans of Germany and Austria-Hungary, feel that this administration is acting in a way injurious to the cause of those countries, this feeling results from the fact that on the high seas the German and Austro-Hungarian naval power is thus far inferior to the British. It is the business of a belligerent operating on the high seas, not the duty of a neutral, to prevent contraband from reaching an enemy. Those in this country who sympathize with Germany and Austria-Hungary appear to assume that some obligation rests upon this Government in the performance of its neutral duty to prevent all trade in contraband, and thus to equalize the difference due to the relative naval strength of the belligerents. No such obligation exists; it would be an unneutral act, an act of partiality on the part of this Government to adopt such a policy if the Executive had the power to do so. If Germany and Austria-Hungary can not import contraband from this country it is not, because of that fact, the duty of the United States to close its markets to the allies. The markets of this country are open upon equal terms to all the world, to every nation, belligerent or neutral.

The foregoing categorical replies to specific com-

plaints is sufficient answer to the charge of unfriendliness to Germany and Austria-Hungary.

I am, my dear Senator,
Very sincerely yours,

W. J. BRYAN.

HON. WILLIAM J. STONE,
Chairman Committee on Foreign Relations,
United States Senate, Washington, D. C.

APPENDIX III

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