

exist) to execute its decrees unless these orders were believed to be in harmony with the vital national interests of these great empires.

The elaboration of a particular American International Law we believe to be both Utopian and undesirable. The spiritual and material interests of North America are much more closely bound up with Europe than with South America, and this is likely to be even more the case in the future than in the past. The dream of an even partially isolated America is forever gone, and even if the Monroe Doctrine be extended (which will almost certainly be the case), this need not prevent a much closer interrelation between Europe and America than has hitherto existed.

In unduly emphasizing the rights and obligations of neutrality, we are convinced that Señor Alvarez and his associates are looking backward rather than forward. In a world of ever increasing international solidarity and interdependence, the obligations of non-intervention and neutrality must tend more and more to disappear. In a future world war the role of the neutral must needs be mainly confined to the weaker and smaller states who, by reason of their weakness or lack of vital interest in the conflict, may prefer to hold themselves aloof from the struggle as far as possible. As our former great champion of neutrality, President Wilson, remarked in an address at Cincinnati on October 26, 1916:

This is the last war of the kind or of any kind that involves the world that the United States can keep out of. I say this because I believe the business of neutrality is over; not because I want it to be over, but I mean this, that war now has such a scale that the position of neutrals sooner or later becomes intolerable.

AMOS S. HERSHEY.

THE ARMED OCCUPATION OF SANTO DOMINGO

The Dominican Republic has been "in a state of military occupation" by the armed forces of the United States since the twenty-ninth of November, 1916. The purpose of this military occupation was stated by Captain Knapp, of the U.S.S. *Olympia*, in his proclamation¹ of that date, as follows:

This military occupation is undertaken with no immediate or ulterior object of destroying the sovereignty of the Republic of Santo Domingo, but, on the contrary, is designed to give aid to that country in returning to a condition of internal order

¹ Printed in the Supplement to this JOURNAL, p. 94.

that will enable it to observe the terms of the treaty aforesaid (1907), and the obligations resting upon it as one of the family of nations.

The specific basis for this intervention is found in Article III of the treaty of 1907 between Santo Domingo and the United States.²

Until the Dominican Republic has paid the whole amount of the bonds of the debt, its public debt shall not be increased except by previous agreement between the Dominican Government and the United States. A like agreement shall be necessary to modify the import duties, it being an indispensable condition for the modification of such duties that the Dominican Executive demonstrate and that the President of the United States recognize that, on the basis of exportations and importations of the like amount and the like character during the two years preceding that in which it is desired to make such modification, the total net customs receipts would at such altered rates of duties have been for each of such two years in excess of the sum of \$2,000,000, United States gold.

The proclamation goes on to say that: "The Government of Santo Domingo has violated said Article III on more than one occasion; and . . . the government of Santo Domingo has from time to time explained such violations by the necessity of incurring expenses incident to the repression of revolution." The exact nature of these violations has not been officially disclosed, but it would not seem open to controversy that, in spite of the hopes of the negotiators of the 1907 Convention, the finances of Santo Domingo had long been badly administered. It has been asserted that eighty percent of the revenues of the Republic had been required for salaries alone. A situation which would admit of seven Presidents since 1911 would certainly appear to be one demanding drastic measures. It had become evident that the treaty of 1907 had not provided adequate safeguards for the rights of foreign creditors, and as a consequence, of the sovereign interests of Santo Domingo, menaced by the claims of these creditors.

The immediate occasion for American intervention was the revolution against President Jimenez in May, 1916. The operations of the rebels became such a menace to American and foreign interests that United States marines were landed on May 16th, and the capital of the Republic was occupied. The presence of British and French warships was an added complication. This was removed by the arrival of Admiral Caperton, who was of higher rank than the commanding officers of these warships. Admiral Caperton and Minister Russell endeavored to obtain free elections for the presidency, and a complete

² Printed in the Supplement to this JOURNAL for 1907 (Vol. 1), p. 231.

cessation of fighting. The rebels continued to fight on, and attacked the United States Marine Camp at Monte Cristo on June 6th. This condition of affairs became so intolerable that it finally became necessary to place the Republic under military occupation. Since November 29th of last year the ordinary administration of justice and the laws of the Republic has been carried on through duly authorized Dominican officials, "all under the oversight and control of the United States forces exercising military government."

It may be pertinent to ask what is the precise nature of this military government, and from whence are its powers derived. Captain Knapp declared in his proclamation that: "acting under the authority and direction of the Government of the United States . . . the Republic of Santo Domingo is hereby placed in a state of military occupation by the forces under my command, and is made subject to military government and to the exercise of military law applicable to such occupation." It is evident that this military government could not aim at the subversion of the sovereignty of Santo Domingo. The United States exercises an "oversight and control" and acts only in behalf of Dominican sovereignty. It is merely a trustee for the time being to meet an extraordinary emergency.

From the point of view of American law, or international procedure, however, it is not quite clear what is meant by "military law" or what is the source of the power exercised by this military government. Military law of course strictly denotes the law which governs the conduct of military persons. It does not apply to civilians. Martial law, on the other hand, has come to be regarded from the strictly American point of view as set forth in *Ex Parte Milligan* (4 Wall., p. 2) as applying only in times of special emergency within the territorial jurisdiction of the United States. In that case it was stated: "If, in foreign invasion or civil war, . . . on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society, and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course."

The "military law" applied in Santo Domingo is therefore the law of military occupation. It is not martial law in the strict interpretation of that term. It is the law of military government. This distinction has been clearly brought out by Magoon in his book *The Law of Civil Government under Military Occupation* (p. 12):

It will be seen that a military government takes the place of a suspended or destroyed sovereignty, while martial law or, more properly, martial rule, takes the place of certain governmental agencies which for the time being are unable to cope with existing conditions in a locality which remains subject to the sovereignty.

The next question that arises is: "Does this military government administer the law of war relating to military occupation?" Is it necessary, in other words, to have an actual or an implied state of war in order to warrant the institution of military government? In the case of Santo Domingo there has been no avowed hostile occupation. There have been clashes between individual Santo Dominicans and United States forces, but there has been no recognition of a state of war. Moreover, the American officials have scrupulously endeavored to respect the laws of the Republic. The "military occupation" has been restricted to "oversight and control."

We would seem to be in the presence of a most anomalous situation. It is possible to predicate an implied state of war in Santo Domingo, arising out of forceful opposition to the United States in its efforts to protect American and foreign interests in accordance with the treaty of 1907. The law of military occupation in accordance with the laws of war will then have full sway. It is also possible to predicate an armed intervention for a limited purpose, which expressly disavows any intent to impose the law of military occupation as prescribed by the laws of war. The latter hypothesis is in closer accord with the nature of American intervention in Santo Domingo. The armed occupation of that republic is not hostile. The laws of war do not apply. The purpose of the military government is friendly. The law it applies, therefore, is whatever the President of the United States as commander-in-chief of the army and navy may consider to be required by the emergency. That the President possesses such extraordinary powers would seem to have been fully proven in various decisions of the Supreme Court, notably that of *In re Neagle* (135 U.S., 1). The justification of the extraordinary use of such power as in the case of the armed occupation of Santo Domingo is an entirely different question.

The Department of State has not indicated as yet the future policy of the United States in Santo Domingo. In the meantime the military occupation will doubtless continue until the people of that country show their ability to establish a government able to fulfill its treaty engagements, and to observe "the obligations resting upon it as one of the family of nations," to quote the words of the proclamation.

As to the first condition, it should be apparent that a new treaty between Santo Domingo and the United States will be required to afford adequate guarantees for the protection of foreign creditors, as well as to safeguard the rights of the Dominican Republic. The natural model to follow will be the treaty between Haiti and the United States, of September 16, 1915.³ This convention provides, in addition to an American receivership of customs, for a financial advisor possessing very extensive powers to be nominated by the United States, and for a native constabulary under American officers. It also guards against the cession of territory by Haiti to any foreign government, or the impairment of its independence. It would seem likely that the United States will be compelled to insist on similar guarantees on the part of Santo Domingo before the armed occupation may safely be terminated.

In regard to the broad question of intervention, most of the writers on international law are agreed in laying down the positive duty of non-intervention by one nation in the affairs of another. It is clear that the claims of nations to independence, equality, and sovereignty preclude any intrusion in each other's domestic affairs. Nevertheless most of these publicists are compelled to concede that there may be justifiable causes for intervention in exceptional cases. This is particularly evident where there is a collective mandate by several Powers, or where a nation reserves by treaty the right of intervention under certain conditions, as in the case of the United States and Cuba. As a matter of fact it would seem clear that if there were no right of intervention, either gross wrongs would be committed by some nations subject to no restraints, or certain countries would relapse into barbarism. Under such conditions, in the absence of an international police, or a special mandate, a nation is bound to intervene in the affairs of another. Intervention, therefore, in the defence of specific rights or the general interests of international society thus becomes legally justifiable. Whether it be characterized as an abatement of an international nuisance, as a measure of self-defence, or as a service to mankind, intervention in many instances may properly be classified as a legal measure of self-redress. It is not merely a matter of policy, as some writers would hold.

The original intervention of the United States in Santo Domingo in 1907 to aid in the restoration of its finances and the defence of its very existence was justified as a logical extension of the Monroe Doctrine. It resulted in the protection of the rights of the foreign creditors and of

³ See editorial in this JOURNAL for October, 1916 (Vol. 10), p. 859.

the Dominican Republic as well. Apart from the Monroe Doctrine, this intervention was likewise dictated by the necessity of protecting purely American interests. The present armed occupation is justified technically by the duty of enforcing the terms of the convention of 1907. From every point of view, therefore, the action of the United States, in both Haiti and Santo Domingo, would seem to be in accord with its duties as a responsible member of the family of nations, and particularly with its obligations as an elder brother of these less fortunate republics. There is nothing illegal or reprehensible in intervention of this character in the defence of special rights and the general interests of international law and order.

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MEXICO AND THE UNITED STATES

On October 19, 1915, the United States Government recognized the *de facto* government in Mexico presided over by General Carranza. In a report to the President, rendered on February 12, 1916, upon the ability of that government to fulfill its promises and obligations to protect American rights and property undertaken before recognition was extended, Secretary of State Lansing expressed the opinion that "the lawless conditions which have long continued throughout a large part of the territory of Mexico are not easy to remedy and that a great number of bandits who have infested certain districts and devastated property in such territory cannot be suppressed immediately, but that their suppression will require some time for its accomplishment, pending which it may be expected that they will commit sporadic outrages upon lives and property."¹

Less than a month after this statement was made, namely, on March 9, 1916, the territory of the United States was invaded by a force under the command of Francisco Villa, which attacked the city of Columbus, New Mexico, killed a number of Americans, and set fire to many buildings. As soon as a sufficient force of American troops could be collected, they pursued Villa's band of raiders across the international boundary line and established themselves at certain points in northern Mexico.²

In a public announcement issued on March 25, 1916, President Wilson stated that "the expedition into Mexico was ordered under an agree-

¹ This JOURNAL, April, 1916 (Volume 10), p. 366.

² This JOURNAL for April, 1916 (Volume 10), p. 337.