# THE DRAGO DOCTRINE IN INTERNATIONAL LAW AND POLITICS

Legal principles like any others, are more clearly understood when one is acquainted with the circumstances, events, or conditions out of which they arise. This is especially true of the Drago Doctrine, the significance of which can be well understood only in the light of the conditions giving rise to it.

It is generally known that the country of Venezuela experienced during the closing years of the nineteenth and early part of the twentieth century, many revolts, civil wars, revolutions, and instances of mob violence, in which natives and foreigners alike suffered many hardships. Various Venezuelan governments repudiated the acts of previous administrations whenever it was possible and served their interests to do so. Finally in 1902, the government established by General Castro refused to settle any claims held against Venezuela or its people by England, Germany, or Italy. It not only refused to adjust the claims of these nations but became rather defiant toward their diplomatic communications and representatives.[1] When these powers proposed arbitration in the summer of 1902, Venezuela agreed to such a plan *only* on condition that a commission composed exclusively of Venezuelans be set up to settle the claims.[2] This scheme, of course, was rejected by the claimant powers. The controversy finally came to a head in December, 1902, when Great Britain and Germany, diplomatically supported by Italy, established a warlike blockade of the principal ports of Venezuela.[3] These measures of coercion quickly brought Venezuela to terms, and plans for the settlement of most of the claims by arbitration were arranged by the end of December, 1902.

[1] President's Messages, and Foreign Relations, House Documents, I. 58th Congress, 2nd Session, p. 430.

[2] *Ibid.*, p. 429.

[3] *Ibid.*, p. 422.

It was on December 29, 1902, when it was already evident that Venezuela must bow to force, that Luis M. Drago, then secretary of foreign relations of the Argentine Republic, issued the famous note which was the basis of the Drago Doctrine.[4] This note will be quoted and analyzed elsewhere in this study.

From a developmental point of view there were three outstanding steps in the evolution and international consideration of the so-called Drago Doctrine. First, there was the pronouncement itself of December 29, 1902; secondly, there was the rather formal preliminary international consideration of the question at the Pan-American Conference at Rio de Janeiro in 1906; and in the third place, and perhaps the climax, this doctrine was a high point of discussion at the Second Hague Conference in 1907. Doubtless even most thinking South Americans were considerably alarmed at the blockade of Venezuela. It seemed to many of them a first significant step in an effort by Europeans to scrap the Monroe Doctrine and perhaps colonize, or at least dominate South America. Drago himself contended that such fears were not based on pure imagination,[5] asserted that the act against Venezuela was the beginning of this aggression, and insisted that the public debt controversy was a mere pretext for intervention.[6] On the other hand, at the Second (1907) Hague Conference the Drago Doctrine

[4] *Ibid.*, pp. 1-5.

[5] Drago refers to definite expressions of this purport in articles in *The Atlantic Monthly, Fortnightly Review, The Pilot, The Morning Post, London Times,* etc., in support of his contention. Drago's contention in this matter at least possessed as much basis in fact as the recent assertions of Secretary of State Kellogg to the effect that there existed a definite Soviet plot to control Central America. *New York Times,* January 29, 1928, p. 26.

[6] "There was [1900-1902] rife in political and diplomatic circles a constant agitation which was dominated and disseminated by the great newspapers . . . accredited reviews, and books . . . which pointed out these [South American] countries as the best fields for colonial expansion of the great powers".—Drago, American Journal of International Law, I. 706.

caused a sensation because it was believed (by Europeans) that the Latin-American States sought by this means to evade the payment of their financial obligations.[7]

In respect of the specific events or conditions which occasioned the original Drago pronouncement, it may be a matter of doubt as to whether the intervention was primarily, or even considerably, due to claims based on the public debt of Venezuela. Some writers hold that the claims of bondholders were only brought into the list of grievances for intervention long after the blockade was invoked, and only as an insignificant part of the whole claim.[8] The British Cabinet, during the blockade, stated through its spokesman in Parliament that it was not the claims of the bondholders that bulked largest in the opinion of the government, but the defense from Venezuelan attacks of the lives, liberty, and property of British subjects.[9] Germany's final claim on behalf of its bondholders seems to have been merely for those individuals who held a valid claim from the breach of an earlier contract, which claim had been later ostensibly settled by Venezuela with public bonds, which bonds in turn proved worthless.[10] The German official documents originally contained no reference to a breach of contract on the public debt of Venezuela.[11] The treaties, however, which closed this Venezuelan affair contained definite stipulations satisfying "the claims of bondholders".

Even though it may be granted or proved that Drago exaggerated or was mistaken in the general circumstances which gave rise to his manifesto, still that need not greatly impair the validity of his doctrine as such.

Although this particular Venezuelan question was disposed of in 1903, nevertheless the general problem of the

[7] Alejandro Alvarez, *Ibid.*, III. (1909), 334.

[8] Crammond Kennedy, in *Proceedings*, Amer. Soc. of International Law, April (1907), p. 134.

[9] J. H. Latane, *Ibid.*, p. 134.

[10] Pres. Messages and For. Rel., House Doc., I. 58th Congress, p. 419.

[11] Pres. Messages, etc., p. 429.

forcible collection of contract debts and public debts was kept alive—especially in South America—and became an outstanding part of the program of the Pan-American Conference at Rio de Janeiro in 1906.

Delegates from the United States took a prominent part in this conference, and were instrumental in having the general subject of contract debts, public loan debts, and intervention on such grounds referred to the Second Hague Conference. Secretary Root's suggestion that definite formal action on these questions be deferred until both creditors and debtors were assembled at The Hague, was followed.[12] In August, 1906, the Rio Conference adopted the following resolution:

> That the second peace conference at The Hague be invited to examine the question of compulsory collection of public debts, and the best means tending to diminish among nations conflicts of purely pecuniary origin.[13]

This resolution obviously merely endorses the *consideration* of the Drago Doctrine.

At the Second Hague Conference, Mr. Choate, representing the United States, on July 19, 1907, reserved the right to present the question,

> of reaching an agreement for the limitation of the employment of force in the recovery of ordinary public debts, having their origin in contract.[14]

Whether this seeming vagueness was purposed or not, is not clear, but from the attitude, later in the conference, of General Porter, the chief representative of the United States, that seems to have been the intent of this move. Porter subsequently made the full proposal and the main speech on behalf of the United States, and he declined, upon definite

[12] *American Journal of International Law*, I. 40.
[13] A. S. Hershey, in *Amer. Jour. of Intern. Law*, I. 26.
[14] J. B. Scott, Hague Conferences, I. p. 400.

request, to define the term "contract debt".[15] The convention or agreement[16] on contract debts signed at the 1907 Hague Conference represents the last of the chief steps in the international investigation and discussion of the Drago Doctrine. Hence we now turn from narration to analysis.

Stripped of its superfluous words, phrases, and paragraphs, the original Drago letter or manifesto was as follows:[17]

Buenos Aires, December 29, 1902.

Mr. Minister:

I have received your telegram . . . concerning the events that have taken place between . . . Venezuela and Great Britain and Germany. . . . The origin of the disagreement is, in part, the damages suffered by the subjects of the claimant nations during the revolutions . . . in Venezuela, and in part, also, the fact that certain payments on the external debt of that nation have not been met at the proper time.

Leaving out of consideration the first class of claims . . . this government [Argentine] . . . transmits some considerations with reference to the forcible collection of the public debt. . . .

At the outset it is to be noted in this connection that the capitalist who lends his money to a foreign state always takes into account the resources of the country, and the probability . . . that the obligations contracted will be fulfilled.

All governments thus enjoy different credit according to their conduct in business transactions; and these conditions are weighed and measured before making any loan. . . .

In the first place the lender knows that he is entering into a contract with a sovereign entity, and 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, since this manner of collection would compromise its very existence.

. . . . . .

The acknowledgment of the debt, the payment of it, can and must be made by the nation without diminution of its rights as a sovereign

[15] *Ibid.*, p. 415.

[16] See below, pp. 220-221.

[17] Pres. Messages, House Documents, I. 58th Congress, pp. 1-5.

entity but the summary and immediate collection at a given moment, by means of force, would occasion nothing less than the ruin of the weakest nations . . . by the mighty of the earth.

. . . The eleventh amendment to its (the United States) constitution provided . . . that the judicial power of the nation should not be extended to any suit in law or equity prosecuted against one of the United States by the citizens of another state, or by the subjects of any foreign state. The Argentine government has made its provinces indictable, and even . . . that the nation itself may be brought to trial before the Supreme Court on contracts . . . with individuals.

What has not been established . . . is that, once the amount for which it [the state] may be indebted has been determined by legal judgment, it should be deprived of the right to choose the manner and time of payment.

This is in no wise a defense of bad faith, disorder, and deliberate and voluntary insolvency.

The fact that collection cannot be accomplished by means of violence does not . . . render valueless the acknowledgment of the public debt, the definite obligation of paying it.

. . . . . .

. . . It [Argentina] has felt alarmed at the knowledge that the failure of Venezuela to meet the payments of the public is given as one of the determining causes of the . . . blockade along its shores.

The collection of loans by military means implies territorial occupation . . . and such occupation signifies the suppression or subordination of the . . . countries on which it is imposed.

Such a situation seems obviously at variance . . . with the Monroe Doctrine. . . .

. . . In very recent times . . .various expressions of European opinion . . . call attention to these [South American] countries as suitable fields for future territorial expansion. . . . The simplest way to . . . easy ejectment of the right authorities by European powers is just this way of financial intervention. . . .

The principle which it [Argentina] would like to see recognized is: *That the public debt cannot occasion armed intervention nor even the actual occupation of the territory of American nations by a European power.*

> The loss of credit and prestige experienced by states which fail to satisfy the rightful claims of their lawful creditors . . . renders it unnecessary for foreign intervention to aggravate with its oppression the temporary misfortunes of insolvency.
>
> Please accept, etc.
>
> LUIS M. DRAGO.

This note contains the most important arguments and conclusions of Drago on this significant question, but to get a fuller conception of his ideas on the subject it is well to supplement the original note with his added thoughts after the host of critics had had time to digest it and formulate their opinions on this early pronouncement. A lengthy article which he wrote for a French publication shortly after the preliminary flood of criticism, was translated for the *American Journal of International Law* (1907).[18] Furthermore, his utterances on this question at the Second Hague Conference throw still further light on his views. Taken together these three discussions by Drago himself afford us a fairly well rounded exposition of his thesis or doctrine.

There are two, perhaps three, fundamental themes of international law which run through Drago's pronouncements; namely, contracts (and suability on contracts), and intervention. It seems convenient then, at the outset, to take a broad general view of the subject of contracts in their bearing on this question. The usual non-technical discussion of contracts in their international aspects reduces them to three classes or types. First, there are those between individuals who are citizens of different countries; second, those between individuals and a foreign country or government; and third, there is the rather broad and perhaps vague idea of contract involved in the obligation of a state to pay its public loans or bonds.[19] In any analysis of the Drago Doctrine as such, some of the complexities of the question may be clarified by keeping in mind the distinction, as Westlake, Borchard, and others

[18] *Amer. Jour. of Intern. Law.*, I. 692-726.

[19] E. Borchard, *Diplomatic Protection of Citizens Abroad*, p. 281.

point out, between *ordinary contractual* debts and *those* arising from public bonds.

With a few exceptions,[20] writers who make a distinction are agreed that the bond obligation is in its nature different from the ordinary contract,[21] though some avoid committing themselves by stating that "bonds are the *basis* of a contract between the holder and government".[22] Drago himself emphasized this difference in all his discussions, but admitted that the legal difference is not always clearly recognized.[23] The essential political, and perhaps legal, difference may well be given in Drago's own words:

> In the first place, the lender knows that he is entering into a contract with a sovereign entity, and 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 is to be noted here, nevertheless, that he uses the phrase "entered into a contract", obviously implying that there is some sort of contractual obligation. But he states further that,

> with regard to foreign loans there arises a distinct class of claims. The issue of government bonds is, like the issue of money, a positive manifestation of sovereignty. . . . It is by act of sovereignty that a nation orders payments of coupons at maturity, and . . . it is by an act of the same character that it decides, in a few special cases, to suspend payment on the debt. It is not in reality any particular creditor who has contracted directly with the government, but an indeterminate, un-named person who purchases bonds in . . . the market.[25]

[20] Vattel, *Law of Nations*, II. Ch., XIV, sec. 214-216; Phillimore, Ch. 3.

[21] *Amer. Jour. of Intern. Law*, I. 698 (Drago quoting Rivier); Westlake, *Int. Law*, p. 332; Borchard, p. 302; J. B. Scott, *Hague Conferences*, I. 417. W. L. Penfield, in *Proc. Amer. Soc. of Intern. Law*, April, 1907, p. 128; *Amer. Jour. of Intern. Law*, (1907), 26.

[22] G. W. Scott, in *Amer. Jour. of Intern. Law*, II. 90-91.

[23] Pres. Mess. & For. Rel., House Doc., I, 58th Cong., p. 2; *Amer. Jour.* of *Intern. Law*, I. 69; J. B. Scott, *Hague Conf.*, I. 406 (quoting Drago).

[24] Pres. Mess., etc., p. 1.

[25] J. B. Scott, *Hague Conf.*, I. 406 (Drago's formal statement at the Hague).

Leading responsible governmental officials in recent times have, in the main, recognized the difference in the public loan from ordinary contract debts. Lords Palmerston, Russell, Salisbury, Balfour, and other British statesmen in the Foreign Office have by direct statement or by implication noted the special character of the public loan contract or obligation.[26] Marcy, Seward, Fish, Bayard, Blaine, Root, and other Secretaries of State of the United States have also indicated a difference in the nature of such obligations,[27] as did the so-called big-stick message (1905) of President Roosevelt. From such evidence, it seems that we may fairly conclude that the great preponderance of official governmental policy during the last three-quarters of a century—the period in which public loans have come into general prominence—has tended to consider public bonds as a special type of contract, different in fact, if not in law, from the ordinary contract.

A rather significant subordinate question arising from the Drago Doctrine is that of the suability of the state, especially its suability on contractual obligations of this character. Quite obviously this matter of suability on contractual obligations involves the principles of "exhaustion of local remedies" and the "denial of justice" as held in international law. Drago, in his original note (quoted above) stated that,

> The United States . . . constitution provided (eleventh amendment) that the judicial power of the nation should not be extended to any suit in law or equity prosecuted against one of the United States by . . . the citizens or subjects of any foreign state.

Without branching off on this side issue of the constitutional and legal development in the United States since the adoption of the eleventh amendment, it may be briefly stated, nevertheless, that the United States court of claims does allow claims on national bonds, interest, and directly related matters, to be

[26] *Ibid.*, p. 402; *Proc.* Amer. Soc. Intern. Law, April, 1907, pp. 116, 134; *Amer. Jour. of Intern. Law*, I. 698.

[27] Pres. Mess., etc., 41; *Proc.* Amer. Soc. of Intern. Law, 1907, p. 134; G. W. Scott, *North Amer. Rev.*, October, 1906, p. 605; J. B. Scott, *Hague Conf.*, I. 398.

filed against the government, and also that mandamus may be issued against the secretary of the treasury to compel him to pay the interest on United States bonds.[28] This modification of the principle of non-suability in recent American constitutional development would seem to weaken the force of Drago's argument on the said basis. He further stated that Argentine

> has made its provinces indictable, and even . . . that the nation itself may be brought to trial before the Supreme Court on contracts . . . with individuals. (Original note, December 1902.)

What he meant to show by these citations was, apparently, that the United States is absolute and conservative in its lack of legal processes available to the foreigner or even to its own citizens in claims against its government, while Argentine is very liberal in this respect toward its citizens, but that both countries are or ought to be a unit on the matter of non-suability of a nation in international law. In other words,

> The sovereignty of the claimant state finds itself face to face with the debtor sovereignty without prescribed process.[29]

Furthermore, he asserted that

> claims arising from foreign loans have necessarily to follow a different [*i.e.*, from private contracts] course. In respect to these there is not and cannot be a denial of justice, because . . . there does not exist a tribunal competent to bring action against a debtor state.[30]

And just here, it is emphasized by those who disagree with Drago, is the very reason why the claimant state reserves the right to judge for itself as to the "denial of justice", and if, in its present judgment there has been an extreme case of such denial, then that the creditor state may take the next legal step by deciding as to the expediency of the use of its right of intervention. Suability on ordinary contract is now

[28] G. W. Scott, in *Amer. Jour. of Intern. Law*, II. 91.
[29] Drago, in *Amer. Jour. of Intern. Law*, I. 697.
[30] *Ibid.*, p. 697.

allowed in practically all so-called civilized countries.[31] International usage decrees that a sovereign state is, however, not subject to the jurisdiction of another state in any suit of law unless it expressly consents thereto.[32] The public loan, it is true, has characteristics both public and private or ordinary, and hence would seem to be a sort of international contract,[33] in the breach of which, municipal law ordinarily does not claim jurisdiction. The rather complicated question of the distinction between contracts made by the government in its administrative or business capacity, and those made by it as a sovereign, need not be fully considered in this study. The recognized rule is, however, that a government may be sued on contracts of the one type but not on the other.[34] If national bonds or public loans are always to be classed among those contracts made by a government in its capacity as a sovereign, then Drago's stand as to non-suability was well taken.

The second, and perhaps the most important phase of the Drago Doctrine is that concerned with the question of intervention for the purpose of collecting claims based on the public debt. The heart of the Drago Doctrine is:

*That the public debt cannot occasion armed intervention nor even the actual occupation of the territory of American nations by a European power.*[35]

Leaving aside for the moment any discussion of the definite aim of Drago to establish a special American political policy supplemental to the Monroe Doctrine, the question of the legality of intervention on the grounds of claims arising out of the non-payment of public debts invites attention. Drago argued that intervention on such grounds was unwise and

[31] Borchard, p. 285.

[32] Case Helfeld, in *Amer. Jour. of Intern. Law,* V. 490-512.

[33] Borchard, p. 304.

[34] *Ibid.,* pp. 127-170, 303; Nathan Wolfman, in *Amer. Jour. of Intern. Law,* IV. 377.

[35] Drago, Note, *supra,* pp. 208-210.

unjustifiable, if not illegal, for various reasons. His reasoning may be briefly summarized as follows. Intervention by force is to be condemned because: (1) the capitalist who lends his money knows the risks he is taking and measures his terms accordingly; (2) the lender knows that he is contracting with a sovereign entity and that hence there is no assurance of legal recourse for the recovery of such loan; (3) the collection of loans by force means the suppression or subordination of the country on which it is imposed, thus rendering the debtor less able to pay than otherwise; (4) the loss of credit and prestige by the state which does not pay its lawful debts makes intervention unnecessary; (5) there is no probability that an intervening state may be assured that it is proceeding in favor of its own subjects or citizens, and not in behalf of foreigners; (6) hopeless confusion will result if bonds are held in various nations and these nations intervene separately; (7) the preferential treatment resulting from the Venezuela case shows that the creditor nations which do not intervene are handicappel; (8) coercion encourages fraudulent speculations and loans; (9) force is always the weapon of the strong powers for oppressing the weak nations; (10) it is evidently illegal, for judicially the public debt cannot be an object of compulsion.[36] Other writers on this subject have repeated these same arguments, while a few of them have offered some additional reasons, namely, that intervention on such grounds involves more expense in armaments than the total claims amount to,[37] that it is injurious to the trade of neutrals,[38] and that it is unfair to the great body of the fellow citizens of the few bondholders that the former be thus burdened for the benefit of a special class of speculators.[39]

[36] Drago, in the various references cited above.

[37] Amos Hershey, in *Proc.*, Amer. Soc. of Intern. Law, April 1907, p. 127; J. B. Scott, *Hague Conf.*, I. 391; G. W. Scott, in *North Amer. Rev.*, October, 1906, p. 605.

[38] J. H. Latané, in *Proc.* Amer. Soc. of Intern. Law, April 1907, p. 138; J. B. Scott, *Hague Conf.*, I. 404.

[39] Borchard, p. 404.

Such an array of arguments against forcible intervention would seem to leave little room for the defense of such a policy. Nevertheless, the other side of the question has its advocates. In fact, the arguments already cited are chiefly of a moral or political character, and have little to offer from a legal standpoint. Drago, though he denied the legality of intervention in such cases as this Venezuelan affair, nevertheless admitted that warfare is sometimes justifiable. He simply asserted that the right to go to war is based on an injury of a nation's honor, vital interest, and legitimate development, but that the non-payment of public debts could never be classed among such causes.[40] Whatever legal case Drago might have hoped to establish was frankly and seriously weakened when he closed one of his discussions with this significant statement:

> But if it should be proven—that coercion is legitimate and in accordance with the law, we shall continue to maintain that violent methods of recovery are not applicable to us—because they involve conquest.[41]

Hall, Phillimore, G. W. Scott, Rivier, and others assert that the state has the right of intervention by force to collect claims based on the public debt,[42] while Calvo, F. de Martens, and others deny such right.[43] Some of the older legal writers simply failed to discuss this particular ground of intervention. It is difficult to determine, therefore, just where the majority of the ablest writers on international law stand on this question. Even if we could truthfully state that most of them take this or that attitude, still, to conclude that a majority establishes the law in the case would be erroneous. Their stand furnishes valuable reasoning and evidence, but there

[40] J. B. Scott, *Hague Conf.*, I. 407 (paraphrasing Drago).

[41] Drago, in *Amer. Jour. of Intern. Law*, I. 725.

[42] Hall, *Int. Law*, sec. 86; Phillimore, II. Pt. V. Ch. 3, 26-30; Hershey, in *Amer. Jour. of Intern. Law*, I. 37; G. W. Scott, in *North Amer. Rev.*, October 1906, p. 604.

[43] Hershey, in *Amer. Jour. of Intern. Law*, I. 37.

must be adduced some important additional evidence. And that brings us to the actual policies of nations.

What do the practices of nations and the pronouncements of their responsible officials have to offer us? From their point of view is intervention legal? Is it legal for governments to intervene in behalf of their citizens who hold contract claims? And, of more definite relevance to the Drago Doctrine, is it lawful to use force to collect debts due to holders of public bonds? As a matter of practice it is undeniable that there has been a considerable number of interventions on the basis of debt claims, both public and private, as for example, in Mexico, Egypt, Portugal, Nicaragua, Turkey, Venezuela, and Persia. Certain writers contend, however, that these cases were exceptional and that the general rule is non-intervention on the basis of debt claims, both public and private, on these grounds.[44] But here again it should be noted that there was no distinct separation of claims based on the public bonded debt as the *exclusive* cause of intervention, for in each case claims based on *other injuries were involved.*

The practice of the United States has been *non-intervention* in behalf of claims based on ordinary contracts made by its citizens with foreign governments,[45] though it has reserved the right to intervene in cases of tort, or denial of justice.[46] Many secretaries of state have gone on record to this effect.[47] However, such principles and practice do not, in most cases, make clear the attitude of the United States government on the question of the use of force in the collection of public debts. Before Drago penned his famous note in 1902, there seemed in fact, to have been no effort to distinguish such claims, in relation to intervention, from those based on ordinary contracts. Drago hoped that the United States would

[44] Hershey, in *Amer. Jour. of Intern. Law,* I. 39.
[45] *Ibid.,* p. 39; Borchard, p. 289.
[46] Pres. Mess. and For. Rel. (1900), p. 903 (Delogoa Bay R. R. Case).
[47] Borchard, pp. 287-294.

definitely subscribe to his special doctrine, but he was disappointed at Secretary Hay's "ceremonious but cordial evasion"[48] in reply to his note. His later attempts to commit Secretary Root to this policy were apparently no more successful. Root's instructions to the American delegation to the Rio de Janeiro conference of 1906, bear out this conclusion, and are well worth noting in this connection:

> It has long been the established policy of the United States not to use its armed forces for the collection of ordinary contract debts due to its citizens by other governments. . . . We regret that other powers . . . have . . . permitted themselves, though we believe, with reluctance, to collect such debts by force. It is doubtless true that the non-payment of *public debts* may be accompanied by such circumstances of fraud and wrong-doing or violation of treaties as to justify the use of force. This government would be glad to see an international consideration of the subject which shall discriminate between such cases and the simple non-performance of a contract with a private person, and a resolution in favor of reliance upon peaceful means in cases of the latter class.[49]

Here we see, first, the traditional policy of the United States on ordinary contract debts; second, the admission that other powers have not subscribed to that policy; third, that forcible intervention to collect public debts is justifiable in extreme cases; fourth, that there should be a clear distinction between the two types of obligations; and last, a definite implication that the United States is not ready to adopt a new policy in opposition to the principle of the right of intervention to collect claims on the public debt. President Roosevelt gave utterance to this same general attitude in his message of 1905.[50] The practice of the United States in recent times has been to reserve the right of intervening in the Central American and Caribbean countries on behalf of claimants

[48] Drago, in *Amer. Jour. of Intern. Law*, I. 723.
[49] J. B. Scott, *Hague Conf.*, I. 398.
[50] Pres. Mess. and For. Rel. (1905), pp. 6-11.

against the public debt.[51] This practice is to a great extent due to what is considered a special responsibility under the Monroe Doctrine, and hence might or might not be classed as binding in international law. Drago was so optimistic as to argue that both Root and Roosevelt tacitly supported his doctrine,[52] but it seems evident that the United States not only did not commit itself to his program, but by implication, actually rejected it.[53] This rejection was, in the light of the expressed attitude of Root and Roosevelt, both as to its *legality* and as to its *wisdom* as a policy. The fundamental policy of the United States on ordinary contract debts is rather lightly disposed of by Drago thus:

> The isolated claims of individuals arising from ordinary contract can indeed always be disposed of with more or less difficulty, avoiding by means of payment the action which, though unjust, a foreign government might take to compel it.[54]

Thus Drago at least left no doubt of the vital difference to his mind, between the two types of contract, and the supreme importance of the public debt, in its international bearing, in comparison with that of a private character. The stand taken by General Porter and the other American delegates at the Second Hague Conference—the high point, perhaps, of the international consideration of the Drago program—shows conclusively that Drago had not won his case so far as the official attitude of the United States was concerned.[55]

Great Britain has officially noted the difference in the types of obligation or contracts as such, but has apparently made no effort to separate them as grounds for intervention in its active policy. That kingdom has, in extreme cases, intervened where the claims of bondholders were involved.[56]

[51] Borchard, p. 295, and footnote.

[52] Drago, in *Amer. Jour. of Intern. Law*, I. 723.

[53] J. B. Scott, *Hague Conf.*, I. 422.

[54] Drago, in *Amer. Jour. of Intern. Law*, I. 735.

[55] J. B. Scott, *Hague Conf.*, I. 400, 403.

[56] Borchard, pp. 390, 313, 314; G. W. Scott, in *Amer. Jour. of Intern. Law*, II. 83; Wharton, II. 655.

Lord Palmerston's rather famous note of 1848 has been specifically endorsed by Russell, Salisbury, Balfour, and other leading heads of the foreign office. This note stated, among other things, that there was no question of the right of the government to intervene in such cases, and that it was simply a matter of expediency in each case as to whether it would actually intervene to collect debts of any sort.[57] It should be observed, however, that British officials have time and again refused to do more than use the good offices of the government in behalf of bondholders.[58] This attitude has caused some authorities to conclude that the British practice is not to intervene and that it is merely Great Britain's policy to reserve the right,[59] though that seems an awkward negative statement of the case. It seems quite evident, however, that our final conclusion, from the attitude of both writers and statesmen, should be that the leading nations reserve the right to intervene with armed force in extreme cases, for the collection of public debts. Nevertheless, as a matter of practice, such right is rarely, if ever, used as the sole basis of intervention.

Strictly speaking, Dr. Drago's doctrine as such was not considered at the Second Hague Conference, because it was designed as an exclusively American policy. Hence it was fundamentally modified, in adapting it to the world policies considered at The Hague. Drago considered it a necessary complement of the Monroe Doctrine, and devoted much of his effort to having it recognized as such. When he saw that his policy was not to receive immediate endorsement as a Pan-American undertaking, he went to the Hague Conference, hoping the proposal would receive some sort of favorable consideration there. The final form of the convention on

[57] J. H. Latané, in *Proc.* Amer. Soc. Intern. Law, April, 1907, p. 134; Borchard, pp. 314-315.

[58] Borchard, pp. 315.

[59] J. H. Latané, in *Proc.* of Amer. Soc. of Intern. Law, April, 1907, p. 134.

contract debts adopted (by a vote of 39 for, and 5 against) at The Hague was:

> 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 to its nationals.
>
> This undertaking is, however, not applicable when the debtor state refuses or neglects to accept an offer of arbitration, or after accepting the offer, prevents any "Compromis" [mode of procedure] from being agreed upon, or, after the arbitration, fails to submit to the award.[60]

Drago signed this convention with two reservations; first, that, in case of ordinary contract debts, arbitration be used only in the specific case of a denial of justice, and second, that public loans with bond issues constituting the national debt cannot in any case give rise to military aggression nor to the actual occupation of the soil of an American nation. Certain writers have made elaborate explanations[61] to show that the language of this Hague Conference cannot be interpreted to cover the scheme advocated by Drago, but the best evidence for such a conclusion is this second definite reservation made by Drago himself. And thus, in a measure at least, Drago lost his case at The Hague, though his doctrine had by this time gained a world-wide publicity. His second reservation also attests the fact that he still clung to the idea that his plan was an exclusively American policy. Doubtless he still hoped to secure greater Pan-American approval of his scheme.

Curiously enough, two of Drago's keenest critics were contemporary fellow South Americans. Álvarez of Chile felt that the doctrine is either superfluous or defective, according to the object in view. Superfluous if it seeks to prevent the European states

[60] *The Hague Conventions and Declarations*, ed. by J. B. Scott, p. 89.

[61] G. W. Scott, in *Amer. Jour. of Intern. Law*, II. 90.

from gaining American soil, for the Monroe Doctrine accomplishes that purpose.

And it is defective, he contended, in that it urges only

a special type of opposition to European pressure instead of a general formula.[62]

M. Barbosa of Brazil thought that

a contract is a contract whether it be evidenced by a bond or by an ordinary instrument. The distinction between state loans and private contracts—refusing force in the one and allowing it in the other—is contrary to legal reason.

"According to Drago", Barbosa argued,

the debtor retains the right, in state loans, to control both the time and manner of payment. Hence the debtor may never pay it. Legally speaking if I have the right to pay only when I care to pay, then . . . I may postpone forever the date of payment.[63]

Doubtless some of this argument is rather far-fetched, but the attitude of these two writers at least shows clearly that even South America was not without discord on the Drago doctrine.

Finally it should be emphasized again that Drago had no expectations, perhaps did not even hope, either to see his doctrine become world-wide in actual application, or to be accepted as a legal formula.

It is . . . before and above all a statement of policy. . . . The Argentine Republic proclaimed the unlawfulness of these forcible collections of public debts . . . not as an abstract principle . . . nor as a rule of law for universal application, but as an expression of American diplomatic policy.[64]

The specific type of economic and political imperialism which Drago feared has not developed, and hence it seems that the

[62] A. Alvarez, in *Amer. Jour. of Intern. Law*, III. 334.
[63] Barbosa, quoted by J. B. Scott, *Hague Conf.*, I. 410-411
[64] Drago, in *Amer. Jour. of Intern. Law*, I. 725.

Monroe Doctrine needed no special complementary doctrine of a financial nature.

Hay, Root, Roosevelt, or other responsible officials have offered only meager reasons for the refusal of the United States government to endorse the Drago Doctrine as a matter of policy. Perhaps they pictured, from a knowledge of previous actual conditions, the quite possible orgy of public loan issues, and the consequent financial chaos in certain countries of South America, were the United States to say hands-off to Europe in such a *laissez-faire* scheme. In other words, in the light of the experiences of certain Central American and Caribbean countries with the intervention of the United States in their financial affairs, if the Drago Doctrine were to be accepted, then the Monroe Doctrine would lose its terror for Central and South America. The United States was apparently not ready to undergo such a loss.

In conclusion, it may be stated that the Drago Doctrine has not been accepted as a new legal principle; it has not been made a Pan-American diplomatic policy; nor has it superseded the older international practice on the contractual responsibility of the state. But, on the other hand, it has been an aid to clearer thinking on types of pecuniary obligation, and it has undoubtedly been influential in deterring forcible intervention on the basis of financial claims.

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