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Intervention to Prevent Religious Persecution in International Law

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INTERVENTION TO PREVENT RELIGIOUS PERSECUTION IN INTERNATIONAL LAW.

INTERNATIONAL Law in its ideal state, has perhaps among its cardinal duties the maintenance of religious freedom throughout the world. That this is not merely of theoretical import is evidenced by recent developments in Roumania and Mexico. The former country apparently has countenanced religious persecution by its mobs. The latter apparently has permitted this anachronism by force of its own statutes and constitution. It therefore becomes a real problem to determine to what extent civilized nations must sit by and permit such conditions to continue or to what extent are they charged with the duty to put forth efforts to secure universal religious liberty.

The struggle for religious freedom was the foundation for the colonization of these United States and, as Chancellor Kent so aptly says, "the very exercise and enjoyment of religious profession and worship may be considered as one of the absolute rights of individuals recognized in our American Constitution, and secured to them by law. Civil and religious liberty generally go hand and hand and the separation of either of them, for any length of time, will terminate the existence of the other." [1]

The situation in Mexico is unique in that the vast majority of the inhabitants of that country profess the faith which is being persecuted. Mr. William D. Guthrie, president of the New York City Bar Association has in a recently published opinion [2] explained the existing situation in Mexico with great clarity. While Mr. Guthrie is opposed to intervention by the United States in Mexico, as a matter of policy, he recognizes the existence of the religious persecution and oppression and expounds the situation in his learned opinion.

With the overthrow of the government in Mexico in 1917 a new Constitution was foisted upon the peoples of that country. It is assumed that this Constitution was legally adopted. Among the Articles in this Constitution which so flagrantly violate the

[1] Kent-Commentaries part IV *p. 261.

[2] *New York Times,* Dec. 12, 1926.

recognized universal rights of the Roman Catholic Church, is Article 130, which provides:

> "The law recognizes no juridical personality in religious institutions known as churches."

The true significance and deliberate intent of this Act is to deny the right to all churches of court procedure and lawful redress of any wrong committed against them irrespective of cause. This Act denies the churches of Mexico the right to protection against any violation of rights by government officials, and denies the right to petition. Thus, when the Roman Catholic hierarchy respectfully presented, upon the admonition of President Calles, a petition to the Mexican Congress seeking redress for grievances and a protection against such violation of church rights in protesting against the confiscation of church property, this petition was tabled and wholly ignored, either upon the premise set forth in the above section or upon another section, Article XXXVII which provides that citizenship shall be lost

> "subdivision 3: by compromising themselves in any way before ministers of any religious creed or before any other person not to observe the present Constitution or the laws arising thereunder."

This denial to the Roman Catholic Church of juristic personality violates accepted international law among all civilized nations under the principles of universal acceptance. The Supreme Court of the United States, in the case of Ponce *v.* Roman Catholic Church,[3] Chief Justice Fuller, voicing the unanimous opinion of the Court, said:

> "The corporate existence of the Roman Catholic Church, as well as the position occupied by the Papacy, has always been recognized by the Government of the United States.
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> "The proposition, therefore, that the Church had no corporate or jural personality seems to be completely answered by an examination of the law and history of the Roman Empire, of Spain and of Porto Rico, down to the time of the cession, and by the recognition accorded to it as an ecclesiastical body by the Treaty of Paris and *by the law of nations.* * * *

[3] Ponce *v.* Roman Catholic Church, 210 U. S. 96 (1908).

"By the Spanish law, from the earliest moment of the settlement of the Island to the present time, the corporate existence of the Catholic Church has been recognized.

"The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris and its property rights similarly safe-guarded. In so doing, the Treaty has merely followed the recognized rule of international law which would have protected the property of the Church in Porto Pico subsequent to cession. This juristic personality and the Church's ownership of property had been recognized in the most formal way by the concordats between Spain and the Papacy and by Spanish laws from the beginning of settlement in the Indies. Such recognition has also been accorded the Church by all systems of European law from the Fourth Century of the Christian Era.

"The fact that the municipality may have furnished some funds for building and repairing the Churches cannot affect the title of the Roman Catholic Church, to whom such funds were thus irrevocably donated and by whom these temples were erected and dedicated to religious uses."

There is no doubt whatever that were such an amendment attempted in the United States by any statute of our Federal Congress or by any State by means of its Constitution or statutes, such acts would immediately be declared unconstitutional and void for it is not within the principles contained in American jurisprudence that such liberty and property could be confiscated without due process of law and denying at the same time equal protection of the law and deny juristic personality to the Churches is clearly in violation of recognized rules of international law.

To seal the possibility of any loophole in the Constitution there has been submitted to the Mexican Congress a still more rigid Church bill which is to emphasize that the law no longer recognizes any legal or juristic personality in religious groups and that consequently Churches do not have any rights which the law concedes to persons. Further, if Congress does not pass the bill, President Calles has the power to promulgate it on his own account.

The Constitution of 1917, Article XXVII, subdivision 2, provides not only for the confiscation of the property of the Roman Catholic Church as well as the property of all other churches, but also that they:

> "shall in no case have any legal capacity to acquire, hold or administer real property or loans made on such real property."

By Article V it provides that

> "states shall not permit any abridgement of personal liberty, whether by reason of labor, education or religious vows and does not permit the establishment of monastic orders of whatever denomination or for whatever purpose contemplated."

By this Article the right to maintain any sanitarium, charitable institution to care for the blind, crippled, or people otherwise incapacitated, or educational institution, is denied the Church.

The importance of religious liberty in connection with education must not be underestimated. To the Roman Catholic it is deemed even more so, and is essential and inseparable. For many centuries the education of children has been one of the principal functions and activities of the Roman Catholic Church and irrespective of creed, critics, however hostile they may be, have conceded to the church an immeasurable debt for the preservation of learning and of political and of other philosophies. Through the Dark Ages, the Church, up to the time of the Reformation, may well be regarded as a connecting link between the periods of learning in Europe.

Mr. Guthrie further points out that it is no exaggeration to say that whatever culture and education exists to-day in Mexico, is due primarily to teachers affiliated with the Roman Catholic Church. To attempt to indict the Church for not further spreading their educational possibilities is not tenable when attention is called to the sweeping confiscations of church property under the Mexican Constitutions of 1857 and 1917. It is obviously unfair and unreasonable to hold the Church responsible for not establishing more schools when its property and funds were being constantly confiscated or menaced with confiscation and with wholly inadequate provisions made by successive governments.

In the United States Supreme Court, in the case of Lawton *v.* Steel,[4] the Court said:

> "The American people have always regarded education and the acquisition of knowledge as matters of supreme

[4] Lawton *v.* Steel, 152 U. S. 133. (1894)

importance which should be diligently promoted. The Ordinance of 1787 declares,

> 'religion, morality and knowledge being necessary to make good government and happiness of mankind, schools and the means of education shall ever after be encouraged.'"

Following this, came the famous Oregon school cases [5] in which Mr. Justice MacReynolds delivered the unanimous decision of the Court, saying: [6]

> "The inevitable practical result of enforcing the Act under consideration would be the destruction of the appellees' (the Catholic Sisters) primary schools, and perhaps all other private primary schools for normal children within the State of Oregon.
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> "Under the doctrine of Meyer *v.* Nebraska, 262 U. S. 390 (1923) we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some provision within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose, excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations."

Article III of the Mexican Constitution of 1857 provided that instruction should be free and under this guarantee the Roman Church had been allowed to develop as far as it could possibly do so in view of the confiscation of its property, without any compensation or indemnity whatsoever, under Article XXIII of the same Constitution. The Mexican Constitution of 1917 in one breath declares that instruction shall be free and proceeds in the next to absolutely deny any such liberty. By Article III it is said:

> "Instruction is free; that given in public institutions of learning shall be secular. Primary instruction, whether

[5] Pierce *v.* Society of Sisters, 268 U. S. 510 (1924).

[6] Ibid. pp. 534, 535.

higher or lower, given in private institutions shall likewise be secular.

"No religious corporation nor ministers of any religious creed shall establish or direct schools of primary instruction."

The first three words of this section were in the Constitution of 1857, but the language following is added by the Constitution of 1917. It is the aim of the Presidential decree of 1926 to absolutely enforce its constitutional provisions by oppressive sanctions which are obviously intended to prevent parents from having their children educated with any religious instruction whatsoever. A cursory review of a few of these enactments are sufficient to establish the intent behind them.

Article III provides:

"That instruction that may be given in official educational establishments shall be secular; likewise, that given in the higher or lower primary branches of private educational establishments.

"Article XII. For no reason shall confirmation be made, exemption issued or any other procedure take place that may have for its purpose the official validating of the studies made in establishments destined for the professional instruction of ministers of religion."

All of the aforementioned provisions have each a punishment provided for in the form of imprisonment or fines and in some cases both. It is not unreasonable to hold that such enactments would be declared unjust and void and beyond the power of any legislative body if enacted in any civilized countries throughout the world. To say that under the Mexican Constitution of 1917 "instruction is free" is to jeer at the very meaning of the words themselves.

Under Article CXXX

"The Federal authorities have the power to exercise in matters of religious worship and outward ecclesiastical forms such intervention as authorized by law, all other officials shall act as auxiliaries to the Federal authorities.

"Ministers of religious creeds shall be considered as persons exercising a purpose and shall be directly subject to the laws enacted on the matter.

"The state legislature shall have the exclusive power of determining the maximum number of ministers of reli-

gious creeds, according to the needs of each locality. Only a Mexican by birth may be a minister of any religious creed in Mexico.

"No ministers of any religious creed may inherit, either on his own behalf or by means of a trustee or otherwise, any real property occupied by any association of religious propaganda or religious or charitable purposes. Ministers of religious creeds are incapable of legally inheriting by will from ministers of the same religious creed or from any private individual to whom they are not related by blood within the fourth degree, all real and personal property appertaining to the clergy or to the religious institution shall be governed insofar as their acquisition by private parties is concerned, in conformity with Article XXVII of this Constitution (confiscated).

"No trial by jury shall ever be granted for the enfraction of any of the preceding provisions."

Supplementing the above quoted provisions of the Constitution and the spirit that animated and brought about their adoption and the decretal provisions of the Presidential bill of 1926, all of these provisions have attached to them penalties ranging from a small fine to a major arrest and deportation. Among these provisions are:

"Article I: To exercise the ministry of any cult within the territory of a Mexican Republic, it is required to be Mexican by birth."

"Article IV: No religious corporation or minister of any cult shall be permitted to establish or direct schools of primary instruction."

"Article VI: The state cannot permit that there be carried into effect any contract, pact or agreement that may have as an object the diminution, loss or irrevocable sacrifice of the liberty of man, whether it be for the reason of work, education or religious vow; the law in consequence does not permit the establishment of monastic orders, whatever may be the denomination or the object for which they may seek to be established."

There follows a series of acts dealing primarily with restrictions of the freedom of speech in the exercise of the ministry or priesthood of any religious cult.

"Article XVII provides: All religious acts of public worship must be celebrated absolutely inside the Church,

which shall always be under the supervision of the authorities."

"Article XVIII. Nor shall religious ministers or individuals of other sects belonging to such religion, be required to wear outside the Church special garments or insignia that indicate their religion."

"Article XXI. The religious associations known as Churches, whatever may be their creed, shall not have, in any case, capacity for acquiring, possessing or administering real estate or real estate securities. Those who actually do have such real estate, either in their own behalf or through an intermediary agent shall turn it over to the government of the nation, the right being granted to any one to denounce property that may be found in such cases."

"Article XXII. The Churches destined for public worship are the property of the nation, represented by the Federal Government, which shall determine those Churches which shall continue destined for the purpose of worship.

"Bishops' residences, parish houses, seminaries, asylums or colleges of religious associations, convents or any other buildings that may have been constructed or destined for the administration, propaganda or teaching of any religious belief, shall immediately pass, under law (de plano derecho) to the full ownership of the nation, to be destined exclusively for the public use of the Federation or of the States in their respective jurisdictions."

The confiscations of the property of the Roman Catholic Church by the Mexican Constitution of 1917 merely supplemented such confiscatory measures made under the Constitution of 1857 and by the Mexican Government and other measures both by the Mexican Republic and the Government of Spain before the Independence of Mexico, under Article XVII of the present Constitution, it is provided that

"private property shall not be expropriated except for reasons of public utility and by means of indemnification.

"(a) The religious institution known as Churches, irrespective of creed, shall in no case have legal capacity to acquire, hold or administer real property or loans made on such real property; all such real property or loans as may be at present held by such religious institutions, either in their own behalf or through third parties, shall vest in the nation and any one shall have the right to denounce prop-

> erty so held. Presumptive proof shall be sufficient to declare the denunciation well founded. Places of public worship are property of the nation, as represented by the Federal Government, which shall determine which of them may continue to be devoted to their present purposes. Episcopal residences, rectories, seminaries, orphan asylums or collegiate establishments of religious institutions, convents or any other buildings built or designed for the administering, propaganda or teaching of the tenets of any religious creed shall forthwith vest as of full right, directly in the nation, to be used exclusively for the public services of the Federation or of the States within their jurisdictions. All places of public worship which shall later be enacted shall be the property of the nation.
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> "(3) * * * In no case shall institutions of this character be under the patronage, direction, administration, charge or supervision of religious corporations or institutions, nor ministers of any religious creed or of their dependence, even though either the former or the latter shall not be in active service."

It is obvious that although the Mexican Constitution expressly provides against expropriation without indemnification by the above quoted Article, discrimination is made against religious institutions providing for such expropriation without any indemnity or compensation whatsoever. It is manifest that under the principles of American liberty and the principles recognized by the laws of nations that such expropriation without indemnification is void and would be readily condemned. This view is voiced in the United States Supreme Court by the learned and revered Mr. Justice Storey. In the leading case of Terrett *v.* Taylor,[7]

> "Be, however, the general authority of the legislature as to the subject of religion, as it may, it will require other arguments to establish the position with which at the revolution all the public property acquired by the Episcopal Churches under the sanction of the law became the property of the State. Had the property thus acquired been originally granted by the State or King there might have been some color (and it would have been but a color) for such an extraordinary pretension. But the property was, in fact and in law, generally purchased by the parishioners or acquired by the benefactions of pious donors. The title

[7] Terret *v.* Taylor, 9 Cranch (U. S.) 43 (1815).

> thereto was indefeasibly vested in the churches, or rather in their legal agents. It was not in the power of the Crown to seize or assume it, nor the Parliament itself to destroy the grants, unless by the exercise of a power the most arbitrary, oppressive and unjust, and endured only because it could not be resisted. * * * Nor are we able to perceive any sound reason why the church lands escheated or devolved upon the State by the revolution any more than the property of any other corporation created by royal bounty or established by the legislature."

This doctrine has been repeatedly quoted and adhered to, to date. It is unnecessary to quote any further authorities to sustain the proposition that the property of no church may be taken by the Nation or State without just indemnification or compensation. Such just compensation is guaranteed to all religious corporations by the Constitution of the United States. (Fifth Article and by the Fourteenth Amendment which is an express restraint of confiscatory action by any State.)

The propriety of intervention is a matter which has long since been accepted in International law. However, the grounds for intervention have been the cause of much dissension and "it must be recognized that the ground of humanity is the most delicate of the causes which may be expected to justify the right of intervention, and it raises juridical difficulties in regard to the basis and extent of this right."

While it is true that certain publicists[8] have looked askance upon interventions on this ground and in some cases have denied its legality, the general weight of authority proclaims that it is within the duties of a civilized nation to intervene to uphold the law of nations. The premise from which these objections to inter-

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[8] Bernard, On the Principle of Non-Intervention (1860); Berner, Intervention, 5 Deutsches Staats-Woerterbuch of Bluntschli (1860) p. 341; Carnozzi Amori, 5 Revue du Droit International (1873) pp. 352, 531; Cimbali, Il Non-Intervento (1862) p. 261, "Il non intervento, dunque, che constituise la più perfetta e scrupolasa quarentegia della indipendenza nazionale dei populi è un diretto assoluto inviolabile"; Hervé, Intervention, 2 Block's Dictionnaire générale de la politique (1874); Maxey, International Law (1906) p. 341; 3 Mill Dissertations and Discussions (1861) p. 153; Rotteck, Das Recht der Einmeschung in die inneren Angelenheiten (1854) pp. 10, 16, 20-25, 47; Werdenhagen, Synopsis in sex libros (1645); 2 Vattel, Law of Nations (1916) sec. 54, p. 131 cf. sec. 56 p. 131; Stowell, Intervention in International Law (1921) n. p. 52 collates those who oppose humanitarian

vention start is the Vattel,[9] "Foreign nations have no right to interfere in the government of an independent State." Intervention is *prima facie* a hostile act inasmuch as it constitutes an attack upon the independence of the sovereignty. It is assumed that a nation does not undertake the possibilities of an extensive war with an entirely altruistic motive in mind. The claim as set forth by Vattel on its surface seems a distinct enough doctrine, but, unfortunately, its realization presupposes the existence of an ideal world. While it is not improbable that a nation might sit by and never intercede in behalf of another nation or subjects of that nation, such an attitude could not be taken in good conscience, "for intervention must result not only from mutual aggression but from the natural impulses to mutual aid." It becomes more and more apparent that the intervention which these publicists deny is

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intervention but Stowell himself favors its propriety with the weight of authority to the same effect. Rougier, 17 Revue Generale du droit International Public (1910) p. 472.

La theorie de l'intervention d'humanité est proprement celle que reconnaît pour un droit l'exercice du contrôle international d'un État sur les actes de souveraineté intérieure d'un autre État contraries "aux lois de l'humanité", et qui prétend en organiser juridiquement le fonctionnement. Suivant cette doctrine, chaque fois que las *droits humains* d'un peuple seraient méconnus par ses gouvernants, un au plusiers États pourraient intervenir au nom de la Société des nations, soit pour demander l'annulation des actes de puissance publique critiquables, soit pour empêcher à l'avenir le renouvellement de tels actes, soit pour suppliér à l'inaction du gouvernment en prenant des mesures conservatoires urgentes, et en substituant momentanément leur souveraineté à celle de l' État contrôlé. To the same effect is Arntz, 8 Revue du Droit International (1816) p. 675; Bluntschli, Völkerrecht (1868); Creasy First Platform of International Law (1876) Chap. IX; 2 Grotius, De Juri Belli et Pacis, Chap. 25, sec. 8; 2 Gunther, Europaisches Völkerrecht (1792) pp. 333-335, however, does not justify the use of force; Hall, International Law (4th ed. 1895) p. 57, cf. (8th ed. 1924) p. 342; Halleck, International Law (1861) pp. 81-97, 289-334; Martens, Précis (1821) p. 211; Moore, Digest of International Law (1906) vols. V, VI; Moser, Versuch des Deutschen Europaischen Völkerrechts (1770-1780) p. 184; 1 Oppenheim, International Law (3rd ed. 1920) p. 229; 1 Phillimore, Commentaries on International Law (3rd ed. 1879) p. 622; 1 Westlake, International Law (1910) p. 391; Wheaton, International Law (5th ed. 1915) p. 104; Wilson, International Law (1910) p. 64; Wilson and Tucker, International Law (8th ed. 1922) p. 91; Woolsey, International Law (6th ed. 1891) p. 58.

[9] 2 Vattel, Law of Nations sec. 54, p. 131. "C'est une conséquence manifeste de la Liberté et de l'indépendance des Nations, qui toutes sont en droit de se gouvernur comme elles le jugent á propos, et qu'ausune n'a le moindre droit de se mêler du Gouvernement d'une autre."

improper intervention and by the weight of authority since the very beginning of International Law, the propriety of intervention in many cases has been recognized as valid. If we are to regard law upon any hypothesis which results in the isolation of separate states, international rights and duties would thus equally cease and international law would lose the object of its existence. If we are to regard law as bounded within the frontiers of each individual state, then between these frontiers Hobbes' terrible conception of universal war would be realized.

The prevalent opinion as to the validity and grounds for intervention are well expressed in the following two quotations by Hall and Westlake:

> "When a State grossly and patently violates international law in a manner of serious importance, it is competent to another state or to the body of states to hinder the wrong doing from being accomplished or to punish the wrong doer. Whatever may be the action appropriate to the case it is open to every state to take it. International law being unprovided with the support of an organized authority the work of police must be done by such members of the community of nations as are able to perform it."[10]

> "The moral effect of misrule on the neighboring police is to be taken into account. Where these include considerable numbers allied by religion, language or race to the populace suffering from misrule, to refrain the former from giving support to the latter in violation of the legal rights of the misruled state may be a task beyond the power of their government, or requiring it to resort to modes of its subjects, and not necessary for their good order if they were not excited by the spectacle of miseries which they must feel acutely. It is idle to argue in such a case that the duty of the neighboring peoples is to look on quietly. Laws are made for man and not for creatures of situations which are beyond the endurance, we will not say of average human nature since laws may fairly expect to raise the standard by their operation, but of the best human nature that at the time and place they can hope to meet with." [11]

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[10] Hall, International Law (4th ed. 1895) p. 57. In a later work Hall seeks a ground upon which to rest the right of humanitarian intervention. 8th ed. 1924, p. 342.

[11] 1 Westlake, International Law (1910) p. 391.

There is ample precedent throughout the history of the world for intervention on humanitarian grounds. Grotius recognizes this in his famed work "De Jure et Pacis" where he quotes:

> "But rather as Procopius has it, 'it is more agreeable to the rules of equity that every man should carefully govern his own province and not trouble himself with the affairs of others' yet are all these to be understood in such cases where another man's subjects have manifestly offended or at least whereof is doubtful whether they have or not, for to this end were empires first distributed: but they do not hold in case subjects apparently grown in such tyrannies as no just man can approve of; and therefore, are precluded from those rights that are common to human society. For in such a case as this it was that Constantine made war against Maxentius and Licentius; and other Roman emperors against the Persians, or threatened to do so unless they protect from oppression such of their subjects as were Christians, being persecuted for no other cause but that of religion." [12]

In the Sixteenth Century we find continued requests for intervention "* * * in behalf of neighboring peoples who are oppressed of adherence to true religion or by any obvious tyranny." [13]

It would be impossible to attempt to review completely the long series of interventions based on humanitarian grounds and religious persecution. In the age which succeeded the Reformation, both self-preservation and religious sympathies induced Protestant states to aid one another against the superior might of the Catholic, and to aid the votaries of their faith within Catholic countries, in order to secure for them freedom of worship. Elizabeth of England sent aid to the revolted Hollanders on religious grounds,[14] and Cromwell's threats slackened the persecution of the Waldenses by the Duke of Savoy.[15]

Sweden interfered in 1707 on behalf of the Protestants in

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[12] 2 Grotius, De Jure Belli et Pacis, chap. 25, sec. 8, Evats Translation (1682) p. 425.

[13] Vindicae contra tyrannos (1579).

[14] Woolsey, International Law (6th ed. 1891) p. 58; 1 Phillimore, Commentaries on International Law (3rd ed. 1879) p. 622.

[15] Ibid.

Poland,[16] and the Treaties of Velau, 1657,[17] of Oliva, 1660,[18] of Nimeguan, 1679,[19] of Ryswick, 1698,[20] of Utrecht, 1713,[21] of Breslau, 1742,[22] may all be enumerated as instances of Roman Catholic intervention on behalf of Roman Catholic subjects in countries ceded to Protestant sovereigns.

In modern times the noteworthy examples of intervention avowedly dictated by motives of humanity, are the interceding by Great Britain, France and Russia in behalf of the Greeks in 1827. At that time these governments suggested mediation which the Greeks accepted but which the Turks rejected and accordingly instructions were given to the commanders of the allied squadrons to compel cessation of hostilities. This intercession by these three great powers is justifiable not only from the standpoint of religious persecution of the Greeks but from the cruel alternative given them of being transported from their native land or exterminated by their merciless oppressors. It is still more justifiable to vindicate the rights of human nature wantonly outraged by cruel warfare, prosecuted for six years against a civilized and Christian people.

There have been several other instances where insurrections have led other European states to interfere between the Porte and its subjects, either on the ground that the Porte would not redress the wrongs of which the insurgents justly complained, or that the treatment of the Christians by the Mohammedans was of such a nature as could not be tolerated. Of this interference Wheaton says: "So long as force was not used to coerce the government of the Sultan they may be justified in international law."[23] In 1877 Russia intervened in the Porte because of religious persecution and by virtue of her protectorate over the Greek Church.[24]

Another example[25] typical of humanitarian intervention to

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[16] 1 Phillimore, supra note 14.

[17] Article XVI.

[18] Article II.

[19] Article IX.

[20] Article IV.

[21] Article XXIII.

[22] Article VI.

[23] Protectorate first claimed by virtue of Treaty of Nynardgi (1774) art. VII, VIII, XIX in 1854 by Count Nesserolde and is basis for Treaty of Berlin in June 19, 1878.

[24] Wheaton, International Law (5th ed. 1916) p. 107.

[25] Stowell, Intervention in International Law (1921) p. 63.

prevent religious persecution is the French occupation of Syria from August, 1860, to June, 1861, after brutal massacre of Christian maronites without any efforts on the part of the Porte to fulfill its obligation to protect the victims.

Moser [26] gives as an illustration of intercession the representations addressed by the British and Netherland governments to Marie Theresa which may be regarded as an intervention in favor of the Jews in Prague. The oppression of the Jews and the many instances of outrages their persecution has brought about, lists a series of remarkable interventions in their favor. In Roumania in 1867 the British representative was instructed to interpose diplomatically in their favor.[27] The French consulate at Jassy received instructions from Paris to take "prompt and energetic steps to put a stop to an iniquity which is a dishonor to the Roumanian government." [28] In 1872 [29] the Secretary of State of the United States addressed a note authorizing the American Consul at Bucharest to do anything which may be done with a reasonable prospect of success toward preventing a recurrence or continuance of the persecution adverted to, and a month later approved of the action of the American Consul in joining in a remonstrance addressed by the representatives of the foreign powers at Bucharest against the maltreatment of the Israelites. Again, in 1902,[30] Secretary Hay called attention of the powers to Roumania's violation of the Treaty of Berlin and her unjustifiable oppression of the Jews and, as Rougier [31] pointed out, that while this note was based upon Article XX of the Berlin Treaty, it is in reality an exposition of humanitarian intervention.

In Russia, also, the Jews have frequently been subjected to outrages from the populace without interference on the part of the Rusian government. Stirred by these barbarous acts, the United States diplomatically intervened to the extent of making representations against the treatment of the Jews, and used these diplomatic influences in favor of toleration.[32] Finally, public opinion in

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[26] Moser-Versuch des neuesten europäischen Völkerrechts (1778) p. 96.

[27] 74 Parliamentary papers (1867) p. 3890; 62 British and Foreign State Papers (1877) p. 705.

[28] Ibid.

[29] 6 Moore, Digest of International Law (1906) p. 360.

[30] Ibid, p. 365.

[31] Rougier, supra note 8 p. 515.

[32] Foreign Relations (1880) p. 873; Foreign Relations (1882) p. 4511

America became so thoroughly aroused that on December 17, 1911, the American Ambassador officially notified the Russian government of the termination of the Treaty of 1832. In a previous interview with Mr. Sazanoff the American Ambassador explained the American view-point in regard to the contemplated abrogation of the Treaty and said that the action of the House of Representatives "was unquestionably influenced by a sincere conviction that such action might have far-reaching results in inducing Russia to abandon not only the restrictions on foreign Jews but the restriction of her own Jews." [33]

Turkey's persecution of the Armenians has been another ground for a series of continued interventions culminating in the report published in the New York Evening Post to the effect that "the Turkish government will be formally notified that unless the massacres of Armenians cease, friendly relations between American people and the people of Turkey will be threatened." [34] This action is of special interest since it took place at a critical moment of the war when intervention might well have had the most serious consequences for the Turkish government and those responsible for the persecutions perpetrated upon the defenceless Armenians. It is significant to note that the United States has already interposed in favor of the Roman Catholic bishops upon the attempted confiscation of a fund known as the Pious Fund of California. This fund had had a separate existence recognized by the several governments of Mexico for a period of well over a century and a half. This intervention brought about the attention of the Hague Peace Tribunal and subsequently an award was made of this fund by that body.[35]

It is not within the province of this article to determine the wisdom of intervention in Mexico. This problem is extremely delicate and complex, and many questions of policy arise which are beyond the scope of this paper.

The development of International law depends upon a crystallization of its precedents and we believe it is imperative to point out that the history of the Law of Nations confers the right and duty upon any civilized nation to intervene on humanitarian grounds and to prevent religious persecution. It is generally con-

[33] Foreign Relations (1911) pp. 695-699.
[34] *New York Evening Post*, Oct. 5, 1915.
[35] Wilson, Hague Arbitration Cases (1915) p. 1.

sidered that the U. S. exercises a certain hegemony on the American continent and when such persecution and oppression occur in the new world it is well to keep in mind an excerpt from the immortal American Theodore Roosevelt's annual message:

"Brutal wrongdoing, or impotence which results in the general loosening of the ties of civilized society may finally require intervention by more civilized nations, and in the Western Hemisphere the United States cannot ignore its duty." [36]

MURRY HARSTN.

New York City.

[36] Annual Message, Dec. 6, 1904.