clause. They are not external loans, however. The inclusion of the clause was required by the Act of February 4, 1910. On the other hand, most of the war-debt funding agreements made by the United States provide for payment either in United States bonds or "in United States gold coin of the present standard of weight and fineness." The agreement with Great Britain permits payment in equivalent gold bullion. Congress endeavored to be fair in declaring the enforcement of the gold clause to be against public policy inasmuch as the joint resolution includes all obligations *of* as well as *to* the United States (excepting currency). But its terms are also broad enough to cover obligations of foreign governments held by American nationals. Many of these loans issued since the World War contain the gold clause. Whether or not obligations of the last named category are affected by the joint resolution under the ordinary principles of the conflict of laws, it is manifest that the Department of State would not now espouse the rights of private holders to the extent of endeavoring to enforce payment under the gold clause.

The recent decision of the House of Lords in the case of the Belgian company, the authority of the Gold Clause cases in the Permanent Court, and the indications of the United States Supreme Court given during the period of the Legal Tender Acts [8] all tend toward removing the element of controversial construction from the gold clause and placing it, so far as possible international claims are concerned, upon a frankly more realistic basis. If security as to the medium of payment, or its equivalent measured by some reasonable standard, cannot be assured through proper clauses against attack by action of the borrowing government, the placement of international loans with private investors will have become extremely difficult, even as to governments concerning whose financial stability at the moment there may be no question.

ARTHUR K. KUHN

THE NEW DEAL IN INTERVENTION

On September 11, 1933, Secretary of State Cordell Hull declared:

> The chief concern of the Government of the United States is as it has been that Cuba solve her own political problems in accordance with the desires of the Cuban people themselves. . . . Our government is prepared to welcome any government representing the will of the people of the Republic and capable of maintaining law and order throughout the island. Such a government would be competent to carry out the functions and obligations incumbent upon any stable government. This has been the exact attitude of the United States Government from the beginning.[1]

[8] See besides the case of Bronson *v.* Rodes cited *supra*, Trebilock *v.* Wilson (1871), 12 Wall. 687 at p. 697; Butler *v.* Horwitz (1869), 7 Wall. 258; Gregory *v.* Morris (1878), 96 U. S. 619 at p. 625.

[1] Press Releases, Dept. of State, Weekly Issue No. 207, p. 152.

Six weeks later, on November 1, the Secretary, at a meeting of the Governing Board of the Pan American Union, in the course of his remarks thanking members of the Governing Board for re-electing him as presiding officer, said:

> The President in his inaugural address said: "I would dedicate this nation to the policy of the good neighbor—the neighbor who resolutely respects himself and, because he does so, respects the rights of others—the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors." Without reading further, that is the keynote—the touchstone, I might say—that so far has and hereafter will continue to govern the plans and purposes and utterances and actions of my government.[2]

At the Seventh International Conference of American States, at Montevideo, which the Secretary attended as Chairman of the American Delegation, in the course of his remarks made December 15, 1933, in seconding the proposal of Dr. Saavedra Lamas that all nations at the conference give their adherence to the existing peace conventions since the Gondra Pact, he declared that the real significance of the passage of this resolution and the agreement to attach from twelve to twenty signatures of governments to the five peace pacts [3] thus far unsigned by them, lay in the deep and solemn spirit of peace which pervaded the mind and heart of every delegate and moved each one to promote conditions of peace. And in amplification of this thought, he said:

> Peace and economic rehabilitation must be our objective. The avoidance of war must be our supreme purpose. . . . I grant with all my heart that with the end of that conflict [in the Gran Chaco] war as an instrument for settling international disputes will have lost its last foothold in this hemisphere.
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> . . . . .
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> I am safe in the statement that each of the American nations wholeheartedly supports this doctrine—that every nation alike earnestly favors the absolute independence, the unimpaired sovereignty, the perfect equality, and the political integrity of each nation, large or small, as they similarly oppose aggression in every sense of the word.
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> . . . My government is doing its utmost, with due regard to commitments made in the past, to end with all possible speed engagements which

[2] Press Releases, Dept. of State, Weekly Issue No. 214, pp. 252–253.

[3] The five pacts indicated were:

Kellogg-Briand Peace Pact (Pact of Paris), signed in Paris, Aug. 27, 1928. Signed and ratified by the United States. Printed in this JOURNAL, Supplement Vol. 22 (1928), p. 171.

Anti-War Pact, proposed by the Argentine Foreign Minister, Dr. Saavedra Lamas, signed at Rio de Janeiro, Oct. 10, 1933, by Argentina, Brazil, Chile, Mexico, Paraguay and Uruguay.

Treaty to Avoid or Prevent Conflicts between the American States (Gondra Treaty), signed at the Fifth Pan American Conference, Santiago, Chile, May 3, 1923. Signed and ratified by the United States. Printed, *ibid.*, Vol. 21 (1927), p. 107.

General Convention of Inter-American Conciliation, signed at Washington, Jan. 5, 1929. Signed and ratified by the United States. *Ibid.*, Vol. 23 (1929), p. 76.

General Treaty of Inter-American Arbitration, signed at Washington, Jan. 5, 1929. Signed but not yet ratified by the United States. *Ibid.*, p. 82.

> have been set up by previous circumstances. There are some engagements which can be removed more speedily than others. In some instances disentanglement from obligations of another era can only be brought about through the exercise of some patience. The United States is determined that its new policy of the New Deal—of enlightened liberalism—shall have full effect and shall be recognized in its fullest import by its neighbors. The people of my country strongly feel that the so-called right of conquest must forever be banished from this hemisphere, and most of all they shun and reject that so-called right for themselves. The New Deal indeed would be an empty boast if it did not mean that.[4]

In the statement issued by Secretary Hull upon his return to Washington, referring to the achievements of the conference, he emphasized especially the importance of the development of "affinity of spirit and sentiment, based on common interests of the twenty-one American republics, unlike anything that has existed in generations." Continuing, he said:

> When we went to Montevideo, there were perhaps some traces of the suspicions and misgivings that marred inter-American relations in the past. . . . When the President, supporting the actions of the delegation, emphasized the assurance that the United States disavows and despises all the old themes of conquest or armed intervention, it became evident that solidarity of purpose of all the Americas could be attained. . . . This made it possible for the conference to act with unity in conferring upon the American nations the leadership in pointing the way for the world to attain economic order, by removing economic barriers as rapidly as temporary emergency measures would permit, and political order, by dinning into the ears of all the world the heinousness of war as a method of settling international disputes. At the same time, with the same unanimity, the conference recognized, by concrete action in many directions, the desirability of closer cultural and commercial interchange between the continents through improved methods of transportation and communication.
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> In the matter of the war in the Gran Chaco, the delegates moved in common accord not only to bring about an end to that conflict but to open up honorable avenues for the retirement of the two nations made desperate by protracted fighting. I firmly believe that the result will be the elimination of warfare in this hemisphere. Montevideo stigmatized this cruel survival of darker ages as it has never been stigmatized before.[5]

In all of these statements there is no radical departure from the existing or traditional policy of our government. Nevertheless, the emphasis laid on the coöperative action of the American states and the repeated declarations of our Secretary that warlike measures must be excluded as an instrument of policy, bring out very clearly the firm intention of the administration to refrain as far as possible from armed intervention, and if it should ever be necessary to have recourse to this measure, to first use every effort to secure the coöperative and collective action of the other states.

[4] Press Releases, Dept. of State, Weekly Issue No. 220, pp. 343–346.
[5] *Ibid.*, No. 226, pp. 43–45.

Secretary Root was a proponent of this same policy. Policy it must for the present be considered, for the law still remains that each state may, in the last analysis, when necessary for the protection of its rights under international law, have recourse to armed intervention. The foreign state, grieved by the disregard of its recognized right, might, under the rules of international law, employ such force as is reasonably necessary to secure respect for its rights. The inconvenience and danger of such a result is apparent. But more recently the nations have come to recognize the enormously increased disadvantages of such recourse to force. The loss of life and the incidental expenses are often out of all proportion to the significance of the rights intervention is intended to vindicate. Furthermore, the recourse to economic discrimination and the refusal to permit the floating of desired loans has become so serious a penalty that, in most instances, it fulfils much more effectively than actual recourse to force the rôle of a sanction.

Collective intervention has always been desirable, since it indicates that a single state injured by the disregard of its rights is not really using intervention as an excuse to cloak political desires of conquest. Relying upon these formal statements of the policy of President Roosevelt, as proclaimed by Secretary of State Hull, we may rest assured that when intervention does become necessary, it will be employed in a collective form. If, unfortunately, it should happen that such collective action were impossible of organization, and the disregard should be found of sufficient gravity to require redress, it would then be necessary for the administration to consider whether it would not have to return to the ancient practice of single intervention.

In the days of Jefferson, the United States took advanced ground in proclaiming its new policy in regard to the law of neutrality, and what was then a "new deal" has become the recognized law of the nations. Two generations later, this country proclaimed the inalienable right of each individual to expatriate himself, thereby laying the basis for the ultimate recognition of this principle of transcending importance. This latter principle has not yet, it is true, received the complete recognition of all of the states, but it moves gradually and surely forward toward the goal.

In the preceding administration, Secretary Stimson announced the doctrine of non-recognition of the fruits of conquest. It was no slight achievement for the cause of peace when the League of Nations unanimously branded the action of Japan as that of an aggressor. Yet today, when it is evident that the coöperation of the nations is not sufficiently well organized to permit combined action to enforce compliance with respect for this rule, it is right that they should choose to meet Japan in friendly intercourse, since it profiteth no state to pursue a fruitless course of bickering.

And now comes this latest policy of the New Deal, which means that recourse to force in the vindication of international law shall be employed only after prolonged and serious efforts for peaceful settlement, and then only when supported by the collective action of the states. This, like the doctrine of ex-

patriation, must, we repeat, still be regarded as policy, but it is a policy which is in accord with the trend of world affairs, and, as in the case of Jefferson's policy of neutrality, we may confidently expect that it will, in the not distant future, secure the support of the entire world.

ELLERY C. STOWELL

THE MONTEVIDEO RESOLUTION ON CODIFICATION

Among the ninety-four resolutions adopted by the recent Pan American Conference at Montevideo, Resolution LXX,[1] involves a radical departure from the system of procedure and technique set up by the Sixth Conference at Havana. In order to understand the new proposals it is necessary to recall to mind the efforts to establish a codification system since the matter was first broached at the Second Pan American Conference in the City of Mexico in 1901. By a convention there signed, a committee of seven jurists was to be created, serving by appointment by the Secretary of State and the Ministers of the American Republics at Washington. The convention was never in effect because ratified by only three signatories, Bolivia, Guatemala, and Salvador. The proposed committee was to consist of five American and two European members. It was to draft for presentation to the Third Pan American Conference "and in the shortest possible time," a code of public international law and another of private international law "which will govern the relations between the American nations." At the Third Pan American Conference at Rio, 1906, a new convention was signed, and later ratified by fifteen states, by which an international commission of jurists was established, consisting of one member from each of the signatory states. The first meeting of the commission was to have been in 1907 at Rio for organization and distribution of the work. Due to delay in ratification the commission did not meet until June, 1912. In July of that year the Fourth Pan American Conference was held at Buenos Aires. It took no action upon the matter. The commission sat at Rio from June 26 until July 19, 1912, with sixteen states represented. Its paper organization was elaborate with six subcommissions, each to meet in a different capital, the full commission to meet in 1914. The World War interfered with the preparatory work of the subcommissions, and the commission never met again.

Perhaps partly because the Rio meeting of the International Commission of Jurists had not produced the substantial results looked for, the American Institute of International Law was organized at Washington on Columbus Day, 1912, under the honorary presidency of Elihu Root. It is not too much to say that whatever has been accomplished in the way of the codification of international law under the auspices of official Pan Americanism has been due to the activities of the American Institute. It revived the project of codification at Santiago in 1923. It performed all of the preparatory work for the Rio meeting of the reconstructed Commission of American Jurists

[1] Printed in Supplement to this JOURNAL, p. 55.