The "permanent" *règlement* was to enter into force on January 1, 1934. The essential points of this *règlement* are: (1) the unlimited free entry (*franchise illimitée*) for the entire production of agriculture and its branches (*branches annexes*), as well as for mineral products (*bruts*); (2) free entry for manufactured products within the limits of *crédits d'importation;* (3) allowance of temporary restrictions on the system of unlimited free entry, in exceptional circumstances; (4) establishment of an agency of conciliation and control; (5) establishment of an arbitral procedure. Under the fourth point, a permanent French-Swiss Commission is provided for, of which three members should be chosen by each government, to smooth out difficulties and to exercise other powers. Under the fifth point, an elaborate procedure is envisaged for disputes as to the interpretation or application of the *règlement,* which may call for arbitration by a single arbitrator, or by an *ad hoc* tribunal of five members acting *ex aequo et bono.*

On December 15, 1933, a French decree was promulgated, fixing the boundaries of the zones.[14] On December 27, 1933,[15] a law was promulgated in France for the establishment of the customs and fiscal régime in the French territories. On December 31, 1933, the French members of the permanent commission provided for in the *règlement* were designated. On the Swiss side, prior to January 1, 1934, the Federal Council promulgated a decree putting the *règlement* into effect.[16]

After some twelve years of contest, an important international dispute is thus, for the time being at any rate, brought to an end. Neither side is much satisfied, in consequence. The French Government has found itself compelled to reverse action taken in 1923. The people of Geneva, which is the part of Switzerland immediately affected, seem to have taken little satisfaction in the outcome since the first flush of pride in their victory has faded. Now that it is finished, the whole affair seems to have been hardly worth the effort. Yet it has furnished fresh indication of the value of permanent agencies in international relations, even if their rôle is confined to building bridges from one public attitude to another. The existence of the Permanent Court of International Justice served in this case to prevent estrangement of the relations between two peoples. Perhaps one can say, also, that the later events have vindicated the judgment of the court.

MANLEY O. HUDSON

THE RECOGNITION OF THE GOVERNMENT OF EL SALVADOR

On January 26, 1934, the United States instructed the American representative in Salvador to extend recognition to the government of that country. On the same day the Department of State made an announcement of this action as follows:

[14] French *Journal Officiel,* Dec. 16, 1933, p. 12481.
[15] *Id.,* Dec. 29, 1933, p. 13016. [16] *Recueil des Lois Fédérales,* 1933, p. 1027.

> In view of the denunciation by El Salvador of the Treaty of Peace and Amity of 1923, and the recognition, on January 25, of the present régime there by the Republics of Nicaragua, Honduras, and Guatemala, Costa Rica having previously denounced the treaty and extended recognition to El Salvador, the American Chargé d'Affaires ad interim in San Salvador has today been instructed, under authorization of the President, to extend recognition to the Government of El Salvador, on behalf of the United States.

This action of the United States disposed of an irritating question between the two governments which had been pending since December, 1931. Early in that month the government of President Arturo Araujo fell to a revolutionary movement, and General Maximiliano Hernandez Martinez became President. The American Minister on December 3 reported that the leadership of the revolution was in the hands of a number of military officers and that it was reported that the revolutionists planned to put Vice-President Martinez in office. On December 5 General Martinez announced in a decree, "I now assume the Presidency of the Republic." Martinez had been Secretary of State for War and also Vice-President in the Araujo administration, resigning the portfolio of War a few days before the revolution. This relation of Martinez to the prior government, the Department of State ruled, disqualified him from recognition as President of the Republic under the provisions of Article 2 of the treaty of February 7, 1923, between the five Central American Republics:

> The governments of the contracting parties will not recognize any other government which may come into power in any of the five republics through a *coup d'état* or a revolution against a recognized government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country. And even in such a case they obligate themselves not to acknowledge the recognition if any of the persons elected as President, Vice-President or Chief of State designate should fall under any of the following heads:
>
> (1) If he should be the leader or one of the leaders of a *coup d'état* or revolution, or through blood relationship or marriage, be an ascendant or descendant or brother of such leader or leaders.
>
> (2) If he should have been a Secretary of State or should have held some high military command during the accomplishment of the *coup d'état*, the revolution, or while the election was being carried on, or if he should have held this office or command within the six months preceding the *coup d'état*, revolution or the election.
>
> Furthermore, in no case shall recognition be accorded to a government which arises from election to power of a citizen expressly and unquestionably disqualified by the Constitution of his country as eligible to election as President, Vice-President or Chief of State designate.

Early in December Secretary Stimson in telegrams to the American representatives in the respective Republics of Central America, reiterated the earlier attitude of the United States with reference to the recognition policy of the 1923 treaty to the effect that it would continue to be consonant with

the provisions of Article 2 thereof. After consulting with the other Central American countries, Mr. Stimson on December 22 notified the Martinez government that it would not be recognized. Apparently the four other Central American countries likewise declined to recognize the Martinez government. At the time the Department of State issued the following explanation of its action:

> As concerns the present situation in Salvador growing out of the recent revolution in that country, it is clear that the régime headed by General Martinez is barred from recognition by the terms of the 1923 treaty. It is clear, first, that General Martinez has come into power through a revolution and that the country has not been constitutionally reorganized by the freely elected representatives of the people; and, second, even in the event of such constitutional reorganization, General Martinez could not be recognized inasmuch as he held office as Minister of War up to a few days prior to the outbreak of the revolution.

It may be recalled in this connection that the doctrine of non-recognition set forth in the treaty of 1923 originated in a note of March 15, 1907, by Dr. Tobar, the Minister of Foreign Relations of Ecuador, in which he advocated that "Intervention might consist at least in the non-recognition of *de facto* governments sprung from revolution against the constitution." The Tobar doctrine was incorporated in the Central American Convention of 1907, Article I, in the following language:

> The Governments of the high contracting parties shall not recognize any other government which may come into power in any of the five Republics as a consequence of a *coup d'état,* or of a revolution against the recognized government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country.

This article was elaborated at the Washington Conference of Central American Republics held in 1922–23, into the form of Article 2 of the treaty of 1923, above-quoted. This treaty was duly ratified by the Central American Republics between March 15, 1923, and May 26, 1925; but the treaty came into force November 24, 1924, according to its stipulations, when three countries had ratified it. No countries made any reservations except Salvador, which made three reservations in its decree of ratification of May 26, 1925. The reservation as to Article 2 deleted the sentence beginning "And even," including sub-paragraphs 1 and 2. These parts were "not approved since they are in contradiction with the Constitution of the country." This reservation was made after the treaty was in effect as to other countries and, therefore, it may be questioned whether the ratification of Salvador made her a party without the approval of her reservation by the other signatories.

Although the United States, at the request of the Central American Republics, participated through a delegation (Mr. Hughes and Mr. Welles) in the deliberations in the Washington Conference of 1922–23, it did not sign the conventions or adhere to them. Nevertheless, it would seem that the United States from its participation in the conference was morally bound to support

the General Treaty of Peace and Amity, which its representatives had assisted in drafting. At any rate, on the occasion of an impending revolution in Honduras and at her request, Secretary Hughes announced, June 20, 1923, that the United States was in "hearty accord" with the policy of non-recognition in Article 2 of the treaty and that its attitude would be governed thereby. This policy was confirmed by the action of the United States in connection with the unconstitutional continuance in office of President Lopez Gutierrez of Honduras in 1924, by Secretary Kellogg's note of January 25, 1926, declining to recognize the Chamorro government in Nicaragua,[1] and by the non-recognition of General Orellana, who had overturned the Government of Guatemala in 1930. Thus the United States had continued to follow this policy until the recent recognition of the Martinez government of El Salvador.[2]

In the application of the doctrine to El Salvador, the Central American countries themselves were divided on the question. The President of Costa Rica by decree of December 23, 1932, and the President of Salvador by decree of December 26, 1932, denounced the treaty of 1923, to take effect January 1, 1934, pursuant to the provisions of Article 18. Costa Rica recognized the Martinez government on January 3, 1934, in accordance with that article. In view of the fact that Salvador and Costa Rica were by their action no longer parties to the treaty of 1923, the other three republics, still bound by the treaty, had to reconsider their policy of recognition of Salvador, irrespective of the treaty. Apparently on the grounds of expediency, therefore, they determined to recognize the Martinez government. In view of all the circumstances, the United States also came to the conclusion that it was not feasible to follow a treaty policy outside of the circle of treaty members. It was doubtful whether such a policy could be successfully pursued in Central America with a bare majority of adherents.

The treaty policy of non-recognition has been the subject of criticism during recent years as contrary to the traditional and fundamental principle laid down by Thomas Jefferson in 1793, in these words:

> We surely can not deny to any nation that right whereon our own government is founded—that every one may govern itself according to whatever form it pleases, and change these forms at its own will; and that it may transact its business with foreign nations through whatever organ it thinks proper, whether king, convention, assembly, committee, president, or anything else it may choose. The will of the nation is the only thing essential to be regarded.

It has also been objected that the treaty policy is a form of intervention in the domestic affairs of foreign countries, with the implication that the recognition of a government involves approval of the governmental system of the country. While each case of recognition, it is said, is a question of policy to be considered on its merits, yet to refuse to apply to certain states the general

[1] See Editorial in this JOURNAL, Vol. 20 (1926), p. 543.

[2] But elsewhere in Latin America the United States has followed its traditional policy, as, for example, in the recognition during recent years of governments in Bolivia, Peru, Brazil, Panama, Argentina and Cuba.

policy that prevails throughout the world inevitably leads to charges of partiality, technical discrimination and the retention of weak and venal governments in power. Furthermore, the suspense incident to non-recognition produces a period of uncertainty detrimental to the country concerned.

On the other hand, it is argued that the Central American Republics, on account of lack of transportation and coherence in their population, need some damper on the success of disorder and civil strife. It is said that since 1907, when the policy first came into existence under an early treaty, there have been no international wars and few revolutions in Central America, and that in that period there have been several fair and free elections as a result of which the government was turned over to the victors without disorder. Besides, it is pointed out that the treaty policy originated not with the United States, but in Central America, in an effort to cure a local malady, and that the United States at the request of the parties lent its assistance and influence toward carrying out a remedy which the republics themselves desired.

Undoubtedly there is strength on both sides of the argument. The problem is one of great difficulty. Probably in some instances non-recognition has been productive of good, but it is proper to consider whether the rules laid down in the 1923 treaty lead to decisions upon technical and legalistic considerations rather than upon broad principles and equitable examination of what is best for the country concerned. Perhaps less restrictive limits of recognition should replace the technical rules of the treaty, if any conventional restrictions are to be retained.

The present conference of Central American States is doubtless reconsidering the whole question of recognition in the light of experience during ten years of the treaty policy in Central America and of enlightened practice elsewhere in Latin America. On the one hand we have Cuba appealing to the Montevideo Conference of American States to define standards of recognition following political upheavals; and on the other hand we have Mexico initiating a new doctrine of no recognition called the "Estrada Doctrine." On September 27, 1930, Dr. Estrada, Foreign Minister of Mexico, in order to avoid questions of legitimacy or intervention, announced that

"The Mexican Government was issuing no declarations in the sense of grants of recognition," and "confines itself to the maintenance or withdrawal, as it may deem advisable, of its diplomatic agents, and to the continued acceptance, also when it may deem advisable, of such similar accredited diplomatic agents as the respective nations may have in Mexico" without pronouncing judgment on their governments. In other words, under the Estrada Doctrine diplomatic agents may be regarded as in theory accredited to the state and not to any particular government, and as free to carry on business officially with any government which happens to be in power without such action being regarded as recognition or non-recognition of a new government.[3]

L. H. WOOLSEY

[3] See editorial comment in this JOURNAL, Vol. 25 (1931), p. 719.