The *Tubantia* was sunk March 16, 1916, by a torpedo. The torpedo was identified as German torpedo No. 2033. The sinking had led to much correspondence between Holland and Germany, and finally a commission of inquiry was agreed upon. The torpedo was from U-boat 13. The Germans maintained that this torpedo had been launched at a British vessel on March 6, 1916 at 4:43 P.M., and that through defects in the mechanism or for other reasons it may have remained afloat for ten days till struck by the *Tubantia*.

The commission admitted evidence that the wake of a moving torpedo was seen just before the *Tubantia* was struck, that parts of Torpedo No. 2033 belonging to U-boat 13 were found in the boats of the *Tubantia*, that the log-book of the U-boat does not give authentic data as to its location at the time of the sinking of the *Tubantia*, that it was not impossible that the *Tubantia* might have been sunk by a floating torpedo, but the conviction of the commission is "that the *Tubantia* was sunk on March 16, 1916, by the explosion of a torpedo launched by a German submarine. The question of the determining whether the torpedoing took place knowingly or as the result of an error of the commander of the submarine must remain in suspense."

Thus the responsibility is placed upon the German submarine, as was contended by Holland at the beginning, and this conclusion of the Commission of Inquiry rendered on February 27, 1922, puts an end to a longstanding controversy.

GEORGE GRAFTON WILSON.

INTERNATIONAL RESPONSIBILITY IN HAITI AND SANTO DOMINGO

The grave problem of international responsibility is most vividly presented in the prolonged intervention of the United States in the affairs of Haiti and Santo Domingo. "A stain has attached to our national honor, which, unless speedily expunged, will become an indelible blot," according to the report of twenty-four American lawyers of repute issued under the auspices of The Foreign Policy Association of New York City.

The facts concerning this situation may be ascertained by consulting the reports of the "Hearings before a Select Committee on Haiti and Santo Domingo, United States Senate." This special committee of the Senate conducted a most thorough and fair investigation in these countries, where natives and foreigners alike were given every possible opportunity to present their testimony. Part Four of these reports embodies a special report by Professor Carl Kelsey of the University of Pennsylvania, who spent several months in these Republics making an independent impartial investigation of great value. Mr. Lansing, former Secretary of State, under date of May 4, 1922, addressed to Hon. Medill McCormick, Chairman of the Select Committee on Haiti and Santo Domingo, a letter giving most important diplomatic information concerning the grounds for intervention.[1] This JOURNAL

[1] See Congressional Record, Vol. 62, No. 122, page 7081.

has had occasion to comment editorially on the separate interventions of the United States in Haiti and in Santo Domingo.[2]

Space will not permit a detailed resumé of the various charges brought against American intervention. It is only possible to consider the principles involved. Criticism has been directed firstly, against methods, and secondly, against the right of intervention.

Concerning the methods employed, there is evidently room for criticism. Most serious charges have been made against various American officials. Whether these charges are well-founded or not, it would appear that sufficient consideration has not always been shown for the natural sensitiveness of the people of Haiti and of Santo Domingo. The *Documents Diplomatiques* of correspondence with the United States as published by the Government of Haiti reveals at times a certain curtness and stiffness of tone not calculated to facilitate friendly diplomatic intercourse.

Given the extraordinary situations to be faced and the inevitable human equation, it is but natural, of course, that there should be considerable criticism of American methods in Haiti and Santo Domingo. The officials charged with the heavy task of supervising the internal and external affairs of these two unhappy republics are not angels endowed with superhuman wisdom and patience. Not all were equal to their tasks; not all worthy of their high responsibilities. But this demands great charity; not unbridled denunciation.

It is extremely difficult for an outsider to visualize fairly the problems of American officials charged with the grave responsibility of dealing with the baffling conditions in these countries. The attempt to apply to Haiti and Santo Domingo the same standards of procedure as might be invoked in Rhode Island is as unjust as it is unwise. To demand the employment of "the methods that obtain between free and independent sovereign states"—to quote the protest above cited—is to ignore the realities of the situation in the Caribbean and in other parts of the world.

The inequalities, moral and material, between nations are so marked in many instances that immense charity and good sense is required in international intercourse. Certain peoples in a retarded stage of political development cannot reasonably be held to rigid interpretations either of constitutional or of international law. Free elections in a good many countries would mean the elimination of those most fit to govern. Some nations clearly require great forbearance and assistance in the fulfillment of their international obligations. Legalistic theories and the tenuous refinements of abstract principles must not be permitted to thwart any genuine efforts to help raise the general average of civilization and to fit peoples for international privileges and obligations. There are no universal inflexible rules to be followed in all nations alike.

[2] See Vol. 10, page 859 (1916), and Vol. 11, page 394 (1917).

Criticism of methods, however, except as a wholesome corrective of public abuses, is of lesser importance than criticism of policies. Methods may be easily changed; policies are not so readily altered. If men are not agreed concerning policies, they naturally cannot agree concerning methods.

Criticism of American intervention in Haiti on grounds of policy has been based on the denial of the right to intervene either under the Constitution or under international law. It has been asserted by the twenty-four lawyers that, "the imposition and enforcement of martial law without a declaration of war by our Congress and the conduct of offensive operations in Haiti . . . prior to the acceptance of the treaty (of 1915) by Haiti were equally clear violations of international law and of our own Constitution."

The right of the President under the Constitution to intervene in foreign lands, as well as the nature of the military administration he may establish, were discussed in the editorial already cited (Vol. 11, p. 394.) It was there pointed out that the power of the President as Commander-in-Chief of the Army and Navy to conduct and to protect the foreign relations of the nation is most sweeping and comprehensive. This is clear in his enforcement of treaties, which are a part of the law of the land according to the Constitution; and, on technical grounds at least, would justify intervention in Santo Domingo. It would also seem clear in the President's power to protect American citizens abroad, as in the conspicuous instance of the military expedition to China during the Boxer uprising. The Supreme Court cited *In Re Neagle* (135 U. S. 1) the instance of the drastic action of Captain Ingraham of the U. S. sloop of war *St. Louis* in protecting Martin Koszta in Smyrna in 1853; and it did not seem to question the general right of the President under the implied powers of the Constitution to resort to extreme measures for the protection of national rights and interests.

Mr. Edward S. Corwin, in his book on *The President's Control of Foreign Relations*, stresses the fact that the Supreme Court has always been scrupulous to express no opinion on "political questions" which concern the field of diplomacy:

> Incidentally to the discharge of his diplomatic functions the President—and for that matter, Congress too, when action touches foreign relations—finds it necessary to decide many questions of a juristic character, questions involving the interpretation of treaties and other bilateral agreements, or even of the Law of Nations. Now it is the practice of the Court, when such determinations fall clearly within the diplomatic field, that is, are made with jurisdiction, to treat them not only as final but also as establishing binding rules for all future cases in which the same questions are raised collaterally. (p. 163).

The right of the President to land American troops on foreign soil and to set up a military administration may be open to grave abuse. Such power is undoubtedly portentous; but there would seem to be no justification for the assertion that such action is "a *clear* violation" of the Constitution. There

has certainly been no decision of the Supreme Court to this effect; nor is there reason to believe that the Court, in view of its traditional attitude towards "political questions," would ever wish to limit the freedom of action of the President in the protection of the foreign rights and interests of the nation.

It will be recalled that President Grant's intervention in Santo Domingo aroused violent criticism. Senator Sumner, in 1871, with the eloquent support of Senator Schurz, introduced a resolution denying the right of the President to employ the Navy "without the authority of Congress in acts of hostility against a friendly foreign nation, or in belligerent intervention in the affairs of a foreign nation." Senator Harlan by an appeal to numerous historical precedents effectively showed that it would be unwarranted to impose embarrassing restraints on the power of the President to protect national rights and interests in foreign lands.[3]

The most serious criticism against American intervention in Haiti and in Santo Domingo is not against the methods employed or the alleged violation of the Constitution, but against the right of any intervention under international law. There would appear to exist a considerable group of theorists who deny absolutely the right of one nation to intervene in the affairs of another.

It is undoubtedly true that the international law publicists are in substantial accord in denying the right of intervention. They recognize that the rights of independence, sovereignty, and equality of nations compel them to observe the strict obligation of non-intervention. While this is true theoretically, it is obviously at variance with precedents and that general usage on which the law of nations is based. It is not difficult to demonstrate that intervention is not merely tolerated, but fully justified, in certain instances, as a proper means of redress for offences against humanity and justice. If no intervention, either collective, under a mandate, by right of treaty, or for the protection of citizens from outrage, or for the expiation of crimes, were to be permitted; if the claims of humanity and justice were to be ignored, civilization would sink to lower levels: international society would soon fall into chaos.

As a matter of fact, the international law publicists, while insisting on the abstract principle of non-intervention, are constrained to concede such important concrete exceptions that the result is to concede the right of self-redress when other remedies are unavailing. Mr. Ellery C. Stowell in the preface to his admirable work on *Intervention in International Law* has soundly observed that: "Intervention in the relations between states is, it will be seen, the rightful use of force or the reliance thereon to constrain obedience to international law." And Oppenheim also adds: "there are interventions which take place by right, and there are others which, although they do not take place by right, are nevertheless admitted by the Law of Nations, and are excused in spite of the violation of the Personality of the respective States which they involve."[4]

[3] See Corwin, *op. cit.*, page 158.

[4] *International Law*, Vol. I, p. 222, 3d edition.

It is not to be believed that, though the signers of the protest above referred to consider American intervention in Haiti and Santo Domingo as violations of international law, they are oblivious to the needs of these unfortunate nations. They can hardly be understood to enunciate the cynical doctrine that every nation should be free to go to perdition in its own way. They are doubtless aware of the opinion held by many competent observers that, distasteful as American intervention has been to patriots of these republics, they would view with alarm the immediate withdrawal of the troops and officials of the United States. It is true that some of these critics would appear to impute the basest of motives to American intervention, namely, the desire for naval bases or for financial and commercial exploitation. Such critics present no proofs for these accusations and are therefore not entitled to serious consideration. Those other critics, however, who honestly consider intervention of any kind as "clear violations" of international law and of the Constitution of the United States are entitled to every possible consideration. It is to be hoped that they will not permit their abstract theories to obscure the necessity of practical measures of help to the peoples of Haiti and Santo Domingo to enjoy the blessings of law and order, and to be able adequately to meet all their international obligations. A descent respect for the opinions of others should constrain them to attach especial significance to the repeated warnings of Presidents Roosevelt, Taft, Wilson, and Harding against the dangers of diplomatic complications in the strategic waters of the Caribbean Sea. The statement of policy by Secretary Hughes made on April 29, 1922, to the delegation which presented the protest already cited, should be accepted in the utmost good faith by all fair-minded men:

> This Government is proceeding in this matter at this time in the desire to secure, in the first place, an effective co-ordination of the action which is being taken in connection with administration, so that difficulties which have existed in the past may be removed. It is also considering all that is essential for the tranquility and well being of the people of Haiti, and, of course, we are most desirous that the military occupation shall end as soon as it can properly end.

PHILIP MARSHALL BROWN.

THE REVISTA DE DERECHO INTERNACIONAL

For the past ten years a Spanish translation has been made of the American Journal of International Law. The success with which it has met has led to the conclusion that there is a demand in the Spanish-American Republics for a journal in Spanish. It is believed, however, that a journal appearing in the Spanish language, edited by a Spanish-speaking publicist and published in one of the Spanish-American countries, would more adequately meet the demand of which the Spanish translation of the American Journal of International Law has demonstrated the existence. Indeed, there are now two American journals of International Law appearing in Spanish;