Violations of this kind may be considered a denial of justice within the larger definition of the term. Vattel refers to the ways in which justice is denied . . . "(2) by pretended delays, for which no good reason can be given, delays equivalent to a refusal or even more ruinous than one." [11]

Unwarranted delays in the administration of justice are frequently a concomitant of the lack of an independent judiciary, the method and tempo of procedure being under the control of political officers. The importance of the Simpson case lies in its having pointed out the greater peril to the rights of aliens where the ordinary safeguards are lacking against arbitrary trial and punishment. The dangers are magnified by the fact that it is precisely in such countries that crimes such as the dissemination of propaganda material, sabotage, violation of monetary restrictions, are subject to extreme penalties. The protection of nationals if limited in such cases to the presentation of a claim becomes wholly inadequate. Westlake pointed out that where there was flagrant injustice in the methods either of the judicial or of the administrative departments, or in the law applied, the state to which a foreigner belongs has a claim to step in for his protection, which often has this in common with political claims, that the justice which the foreign Power demands for its subjects is not measurable by definite rules.[12]

Where summary methods of criminal procedure are provided for, diplomatic interposition in behalf of the nationals of foreign states must be prompt and energetic in order to be effective. A probable development will be the organization of groups of citizens in democratic states to bring the weight and influence of numbers to bear upon Foreign Offices in order that the vital interests of nationals may not be sacrificed because of the disappearance of individual rights under local law in the particular state.

ARTHUR K. KUHN

THE ECUADOR-PERU BOUNDARY CONTROVERSY

The official delegations of Ecuador and Peru are now negotiating in Washington under the friendly auspices of the President, a settlement of their century-old boundary dispute. By this convincing example their governments are showing loyal adherence to the enlightened practice of maintaining international peace. The high purpose of the delegations is to carry out the Quito Protocol of June 21, 1924, outlining a method of settling the boundary controversy between the two countries. Pursuant to that protocol, the two parties in February, 1934, requested the United States Government to give its consent to the sending of delegations to Washington to discuss the adjustment of their common frontier, and the President promptly gave his cordial approval of the suggestion and consented to serve as arbitrator. On July 6, 1936, the two countries signed a further protocol provid-

[11] The Law of Nations, Book II, § 350 (Classics of International Law, Fenwick's translation).

[12] Westlake, International Law, Part I: Peace (1910), p. 327.

ing that the delegations of the respective countries commence their final negotiations in Washington on September 30, 1936, and that meanwhile they undertake to maintain the existing territorial *status quo* until an arbitral award be rendered. At the opening session on September 30, 1936, the plan was stated in the address of the Chairman of the Ecuadorean Delegation, as follows:

> The Protocol of 1924 which we are going to carry out and execute establishes the procedure to be followed in the negotiation.
>
> In the first place, we must strive for a direct total settlement, in which the high contracting parties, by deciding between themselves the entire and definitive boundary line, will end the age-old dispute.
>
> If this should not be accomplished, we shall next try partial direct settlement and a corresponding partial arbitration.
>
> For that we must try to determine, by common accord, the zones which are reciprocally recognized by each one of the parties and the zone which will be submitted to the arbitral decision of His Excellency the President of the United States of America.

The President replied stating the further steps preliminary to arbitration by himself:

> The Protocol of June 21, 1924, provides for a further protocol to embody the terms of the common agreement reached through these discussions. After the ratification of this agreement by the Congresses of your two countries, if there is a territorial zone upon which agreement has not been possible, that zone is to be submitted to the arbitral determination of the President of the United States. If that duty falls to me, I pledge to you my best endeavors to conclude successfully the work of peace which you are about to begin.

The nature of this controversy has been outlined in earlier pages of this JOURNAL,[1] and it is only necessary to say that the main region involved, known as the "Oriente" territory (part of Mainas province), comprises over 40,000 square miles and lies east of the Andes on the headwaters of the Amazon. There are two other small districts in dispute, namely, Túmbez on the coast, and Jaén, inland on the Rio Chinchipe.

Ecuador rests its claim on the basis of exploration of the area in colonial days, the peace treaty of 1829 between New Granada (of which Ecuador was then a part) and Peru which defined the boundary and a method of demarcation, and the protocol between the same countries of August 11, 1830. Peru, on the other hand, rests its claim on the boundaries of colonial administration of these areas as shown by the Royal Decree of July 15, 1802, and subsequent decrees and effective colonization and occupation (acts of jurisdiction and possession) since that time.

The treaty of 1829 was the result of the victory of Colombia over Peru at Tarqui, and provided in Article 5 that "both parties acknowledge as the limits of their respective territories, those belonging to the ancient vice-

[1] See editorial comment in Vol. 25 (1931), pp. 330–331.

royalties of New Granada and Peru prior to their independence with such variations as they deem it convenient to agree upon . . . ," and in Article 6 that a boundary commission shall fix said limits.

Ecuador contended that when New Granada separated into Ecuador, Colombia and Venezuela, and Ecuador became independent in 1830, she succeeded to the advantages of this treaty fixing her southern boundary. Peru, on the contrary, contended that the treaty fell by that separation, for the other party, New Granada, ceased to exist and could not carry out the formation of the demarcation commission. At any rate, she insisted, the later treaty of 1832 between herself and Ecuador, which provided that the then existing line should be recognized pending negotiations of a boundary treaty, superseded the 1829 treaty if it ever subsisted. Moreover, Peru argued that in the negotiations leading up to this treaty Ecuador in effect gave support to this view.

The same arguments apply to the Protocol of August 11, 1830, which Ecuador claims put the treaty of 1829 in execution and left only a small part of the boundary in doubt. This protocol was first disclosed by Colombia in 1892 when she remarked that it did not appear in the collection of treaties published by Peru. Peru denied at length the existence of the protocol or the authenticity of the copy then brought to light.

The boundary being unsettled by any treaty in force in Peru's view, she maintained the principle of *uti possidetis*, including the decree of 1802 and later decrees. The 1802 decree separated the provinces of Mainas and Quijos (except Papallacta) from the vice-royalty of New Granada and attached them to the vice-royalty of Peru, because of better facilities of communication with Lima than distant Bogotá (Santa Fé). Ecuador asserted that this decree was purely of ecclesiastical nature and did not transfer or change the political status or administration of these provinces, *i.e.*, she stood for the principle of *uti possidetis* under her interpretation of this decree. At any rate, this and other decrees, she said, had been set aside by the 1829 treaty and 1830 protocol. Peru countered by claiming that the provinces in question have always been a part of her territory since independence when they cleaved to her, and have been represented in her Parliament ever since. In fact, she insisted, they were so represented in the Parliament which recognized Ecuador at the birth of her independence.

Several questions of international law and practice are involved in this controversy. The principle of *uti possidetis* already mentioned, which has been frequently invoked in Latin American boundary controversies, depends upon the date to which possession is referred. In this case does it refer to the date of 1810 as generally adopted in South America, or to the date of proclamation of independence, or to the date of the achievement of independence, and do these dates apply to separate colonial provinces or to the group that became an independent state?

War broke out between Ecuador and Peru in 1858, and Peru for a time

occupied the port of Guayaquil. The war terminated and peaceful relations were resumed without a peace treaty. What effect did this war have upon the treaties of 1829 and 1832, and have they since been reaffirmed by act or deed?

While the so-called "right of self-determination" probably may not be called a principle of international law, yet it may have a bearing on this controversy. When the districts of Mainas, Túmbez and Jaén were emancipated from Spain, were they free to adhere to any group they chose with a view to forming an independent state regardless of their prior political connections in colonial times?

Finally, is the principle of prescription applicable to this case? Authorities say that even illegal or violent possession if maintained long enough will be transformed into a legal and honorable title. Is a century of possession sufficient, and must possession be actual or constructive? Must possession be in opposition to an adverse claim of right, and how may that claim be maintained between nations short of going to war?

It would seem that the solution in the pending negotiations of these various questions of difference and of principle will require the patience of understanding and liberality of wisdom worthy of the statesmanship of peace.

L. H. WOOLSEY

PERIODIC CONSULTATIVE TREATY RECONSIDERATION

Some recent treaties have made provision for periodic reconsideration with a view to revision if deemed desirable. Such treaties may be easily adapted to changing conditions, and in international relations changes are inevitable. The larger the number of states parties to a treaty, the greater the probability of the need of revision. This is illustrated by recent action relating to the Covenant of the League of Nations.

The Assembly of the League of Nations on July 4, 1936, expressed the conviction "that it is necessary to strengthen the real effectiveness of the guarantees of security which the League affords its members." A prime objective of the League had been "to promote international coöperation and to achieve international peace and security." A review of events since the coming into force of the Treaty of Versailles, January 10, 1920, justifies the Assembly in the opinion that the hopes of 1919 have not been fully realized. The forecasts for the future of the Allied and Associated Powers under the treaty were generally too optimistic.

The Assembly accordingly recommended on July 4, 1936, that the Council canvass the members of the League as far as possible before September 1, 1936, for proposals with a view to improving the application of the principles of the Covenant. Many members of the League in their replies suggested that provisions for collective security should be emphasized. Some suggested that these provisions be operative regionally, while others, recognizing that inter-