pressure of politics into yielding in whole or in part to the "peace and security via disarmament" view. The question of what means of putting pressure upon France are available to British and American, not to mention Italian, German, and Russian, adherents of this view, lies outside the scope of consideration here.

Finally it may be noted that if France is right in fearing that in a disarmed world war potential—or perhaps it should be called peace potential!—would be the measure of predominance, then *a fortiori* success in securing the establishment of an effective system of international sanctions would bring about the same situation. In proportion as such a system of sanctions rendered competition or combat between nations by arms futile, international competition in economic power and in the influence based thereon or upon cultural superiorities would be the order of the day, just as, and even more than, in a disarmed world without sanctions. France possibly would be willing to face this competition, if protected in her recognized rights, in reliance upon her traditions of intellectual and spiritual merit, even including the hazard of revision of the *status quo* by agreement, or possibly even some degree of majority control, concessions which she would most certainly have to make as a price of protection, and perhaps she would ask nothing better. At the present moment she seems, logically and rightly enough under the competitive international system which British and American statesmen refuse to see replaced by a system of truly organized international government, to be holding to her momentary advantage in terms of armaments and alliances.

This is the problem in international organization posed by the recent French utterances and which will demand settlement next year, or the next, or the next, until finally met and disposed of.

PITMAN B. POTTER

THE ESTRADA DOCTRINE

The topic of recognition has been much discussed in the United States recently. A very high government official and a very eminent American international lawyer have lately crossed swords on the question. Yet little notice has been taken here of a new doctrine which has stirred the officials, editors and scholars south of the Rio Grande.[1] The new doctrine seems to be definitely labelled with the name of Estrada, although "*La Doctrina México*," "*La Doctrina Mexicana*" and "*La Doctrina Ortiz Rubio*" have all been suggested as titles. The doctrine is contained in some brief "declarations" made to the press in Mexico City on September 27, 1930, by the Mexican Secretary of Foreign Relations, Señor Don Genaro Estrada.[2] The declaration is, in effect, an announcement of instructions sent to the diplomatic representatives of Mexico to acquaint them with a new policy

[1] See this JOURNAL, p. 805, *infra*, for book-note reviewing *La Opinion Universal sobre La Doctrina Estrada*. [2] See text of the declaration in this JOURNAL, Supplement, p. 203.

of their government. The policy is said to have had the specific endorsement of President Ortiz Rubio.

The declaration begins with several paragraphs containing the Mexican Government's reflections on the practice of recognition of *de facto* governments. It is stated to be a well-known fact that Mexico has suffered particularly from the consequences of the present practice of recognition whereby foreign governments assume the prerogative of passing on the legitimacy or illegitimacy of governments, thus subordinating national authority to foreign opinion. This recognition practice is said to be largely of post-war development and of particular application to the Latin American Republics. After careful study of these matters, the Mexican Government announces, it has instructed its diplomatic representatives that it will no longer give any expression regarding recognition of new governments which come into power by *coups d'état* or revolution.

The reason for this new policy is the belief that recognition involves the assumption of a right to pass critically upon the legal capacity of foreign régimes, a right which is derogatory to the sovereignty of other states. Consequently, the Mexican Government hereafter will confine itself to continuing or withdrawing its diplomatic representatives, and to continuing or not continuing to accept diplomatic representatives of other states, as it may deem appropriate from time to time, without any regard to accepting or not accepting any change of government. In respect of accrediting and receiving diplomatic representatives, Mexico will continue to observe the established formalities.

In terms of a factual situation, the Mexican position will apparently be as follows: a successful revolution takes place in State X; while other states may be considering recognizing or not recognizing the new *de facto* government, Mexico will merely continue its diplomatic representation without expressing any opinion as to recognition, *vel non*. If some circumstance, other than the mere change of government, gives umbrage to Mexico, the Mexican diplomats will be withdrawn.

There can be little doubt of the unsatisfactory nature of the existing situation regarding the recognition of governments which come into power by revolution or *coup d'état*. With the recent epidemic of revolutionary outbursts in Latin America, there has been ample opportunity to appreciate this fact. The late Chief Justice Taft, as sole arbitrator in the Tinoco arbitration between Great Britain and Costa Rica,[3] clearly recognized that

[3] Award in this JOURNAL, Vol. 18 (1924), p. 147. The Arbitrator declared:

"The non-recognition by other nations of a government claiming to be a national personality, is usually appropriate evidence that it has not attained the independence and control entitling it by international law to be classed as such. But when recognition *vel non* of a government is by such nations determined by inquiry, not into its *de facto* sovereignty and complete governmental control, but into its illegitimacy or irregularity of origin, their non-recognition loses something of evidential weight on the issue with which those applying the rules of international law are alone concerned."

the practice of basing recognition on constitutional legitimacy instead of on actual existence and control of the country, had not as yet been widely enough accepted to be acknowledged as having the force of customary law. Baty, writing in his usual lucid manner, pointed out several years ago, the fallacy of so-called "*de facto* recognition" by likening it to the case of the teacher who told the little boy his sums were correct if he would be good. A Mexican jurist has suggested the analogy of requiring an infant on coming of age to secure certificates from other persons before his majority would be admitted.

It is not too much to assert that revolutionary governments in the Spanish American Republics, particularly in the Caribbean area, have but slight chances of survival if they fail to secure the recognition of foreign states, particularly of the United States. It will also be recalled that recently the recognition policy of this country required the State Department to pass on a disputed question of the interpretation of the Constitution of Nicaragua. The familiar Central American treaties concluded in Washington in 1907 and 1923 have served to increase the difficulties of recognition in that they impose additional burdens and confer additional prerogatives on the recognizing state. Opinions vary as to whether those treaties and the adoption of their principles by the Department of State have served to discourage revolutions.[4] There can be no doubt that revolutions have not been eliminated thereby.

Theoretically, there is much to be said in favor of the Estrada Doctrine. Latin American commentators have emphasized the view that it is desirable in that it acknowledges the full sovereignty of the state and eliminates foreign interference in the internal affairs of governments which are not constantly stable. It has also been argued that the Estrada Doctrine properly assumes that diplomatic representatives should be considered as accredited to the state and not to the government. In times of revolutionary disturbance a foreign state may frequently be called upon to decide whether it owes a duty of non-interference to the disturbed state or of support to the threatened government. Witness the case of the recent revolution in Brazil, wherein the United States proceeded on the latter thesis just before the triumph of the revolutionary party which it recognized shortly thereafter. Of course the problem is less difficult when the belligerency of the revolutionary faction is recognized and the foreign state may be guided by the obligations of neutrality. It is said that the Estrada Doctrine is in accord with the principles of the continuity of the state and of the juridical equality of states. It is argued that governments *de facto* are necessarily *de jure* and that the Estrada Doctrine admits this reality. It is true that this new doctrine gives welcome evidence to the important

[4] *Cf.* the excellent studies of Raymond Leslie Buell, "The United States and Central American Stability" and "The United States and Central American Revolutions," Foreign Policy Association Reports, Vol. VII, Nos. 9 and 10, July, 1931.

distinction between recognition of a new state and recognition of a new government.

Practically, the Estrada Doctrine does not remove all difficulties, although only a few of the Latin American commentators have remarked on this fact. Granted that the diplomatic relations remain unaffected by changes of government, with whom are the foreign diplomats to deal? Should they continue to carry on their business with the local officials who are in the capital, even if the revolutionists are in *de facto* control of all the rest of the country? Should they carry on their business with the revolutionary leaders if the latter seize the capital, although the government to which the diplomats were originally accredited retains control of all the rest of the country, including the seaports? Or should they deal with both sets of officials in respect of problems arising in areas in which they respectively exercise *de facto* control? And will the "constitutional" government be quite willing that the foreign representatives should deal with revolutionary leaders in certain parts of the country? If money payments should fall due to the state during a revolutionary disturbance, to whom should the sums be paid? Probably both factions could be looked to for the satisfaction of state obligations and for the protection of foreign interests. The Estrada Doctrine will not always save foreign governments from the necessity of choosing between rival claimants. Nor, as the Tinoco arbitration showed, would the elimination of recognition solve those difficulties which arise from the necessity of determining whether the state is bound by obligations incurred by *de facto* authorities.

According to South American press reports, the Estrada Doctrine has already been put in practice on a number of occasions; there have been plenty of opportunities. Unfortunately the writer has not seen any official reports covering the details of such applications. It would be interesting to know at what moment and under what circumstances the diplomatic representatives began to deal with a new set of officials. An Ecuadorian writer sees an application of the new Doctrine in the announcement of the United States regarding the recent recognition of the revolutionary government in Brazil.[5]

Fundamentally, however, the Estrada Doctrine seems to contemplate the obliteration of the distinction between change of government by peaceful balloting and change of government by revolution or *coup d'état*. The formalities of presenting credentials may be dismissed as relatively unimportant, but the formalities are frequently indicative of underlying reality. When a new president is elected in the United States, diplomatic relations

[5] ". . . This Government [The United States] will be happy to continue with the new Government of Brazil the same friendly relations as with its predecessors." Dept. of State, Press Releases, Publication No. 129, Nov. 8, 1930, p. 323. *Cf.* the statement of Secretary Hay regarding a change of government in Venezuela in 1899, I Moore, Int. Law Digest, p. 236.

with other states continue unbroken.[6] According to the Estrada Doctrine, the same consequences would follow a change of government by revolution, whereas at present, some states seem to consider the deposed government as having gone out of existence, thus terminating the foreign missions.

It is a far cry to the days when *de jure* meant *de jure divino* and any upstart republican head of state was merely a ruler *de facto* in the eyes of "legitimate" monarchs. Recognition has become a powerful weapon in the hands of the rich and strong state: an essential to the life of a government in a weak state. Fervid writers paint lurid pictures of international bankers giving orders to government officials as to whether recognition should be extended in the interests of bond prices and the value of concessions and other investments. That is largely a tale "full of sound and fury, signifying nothing." It is not necessary to believe such extravagances in order to agree that the most beneficent and well-meaning strong state may err in its judgment as to what is best for a small neighbor. President Coolidge told the delegates at the Havana Conference in 1928 that the true path to democratic progress lay in making one's own mistakes rather than in having others make them for one. The present practice of extending recognition to or withholding it from *de facto* governments for reasons other than those governments' factual control of their countries is not conducive to the smooth workings of international affairs; it is not conducive to Pan American amity. The Mexican Government deserves credit for suggesting an alternative practice. The operation of the Estrada Doctrine should be watched with careful interest and an open mind, not alone because it is likely to be discussed at the next Inter-American Conference. Meanwhile, Mexico and other states which espouse the doctrine would do a great service in making public all relevant details regarding its functioning in practice.[7]

PHILIP C. JESSUP

THE RECALL OF WITNESSES UNDER THE WALSH ACT

In 1924 one Blackmer, a citizen of the United States and an important witness in proceedings to uncover fraudulent oil leases, left the United States and took up his residence in France. In 1926 the Congress of the United States passed the so-called Walsh Act (An Act Relating to Contempts, Chap. 762, 44 U. S. Stat. L. 835) authorizing United States courts to sub-

[6] "The change of a head of state, or the change of its government is not believed to terminate a foreign mission" although "It is the practice of the United States to forward new letters of credence accrediting the minister to the new sovereign or head of state in case of a change thereof." Hyde, International Law, Vol. I, pp. 730 and 728.

[7] The *Instituto Americano de Derecho y Legislación Comparada* contemplates the publication of a further volume of comments on the Estrada Doctrine. (See *infra*, p. 805, for review of the first volume.) It is to be hoped that the new volume will contain all the available official data.