

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Mixed Commission established under the Convention concluded between the
United States of America and Mexico on 4 July 1868

**Case of Charles J. Jansen v. Mexico,
opinion of the Commission delivered by the United States Commissioner, Mr. Wadsworth**

Commission mixte constituée en vertu de la Convention conclue entre les
États-Unis d'Amérique et le Mexique le 4 juillet 1868

**Affaire relative à Charles J. Jansen c. Mexico,
opinion de la Commission rendue par le Commissaire américain, M. Wadsworth**

VOLUME XXIX, pp.159-187



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to justify the umpire in making an award for their value. There is only the evidence of one of the claimants to show that they were taken for that purpose by the order of the Mexican officer in command.

One of the claimants, Joseph Cooper, swears that he was born in New Orleans, but he has not complied with the rule of the commission by stating the date of his birth, nor does he bring any other proof that he is a citizen of the United States.

For the above-mentioned reasons the umpire considers that the Mexican Government can not be held responsible for the losses suffered by the claimants, and he therefore awards that the claim be dismissed.

Case of Charles J. Jansen v. Mexico, opinion of the Commission delivered by the United States Commissioner, Mr. Wadsworth*

Affaire relative à Charles J. Jansen c. Mexico, opinion de la Commission rendue par le Commissaire américain, M. Wadsworth**

State responsibility—principle of responsibility of the successor government for wrongful acts committed by a former government *de facto*—absence of responsibility for wrongful acts committed by a so-called empire resulting from foreign intervention and never recognized as a government *de facto*.

Government *de facto*—popular support and possession of territory viewed as imperative for the recognition of a government *de facto*—government *de facto* not created by a temporary interference of foreign authorities—government *de facto* viewed as equivalent to government *de jure*, outside of the field of moral considerations.

Responsabilité de l'État—principe de la responsabilité du gouvernement successeur pour les faits illicites commis par un gouvernement *de facto* précédent—absence de responsabilité pour faits illicites commis par un soi-disant empire résultant d'une intervention étrangère et jamais reconnu comme gouvernement *de facto*.

Gouvernement *de facto*—soutien populaire et possession du territoire considérés comme impératifs pour la reconnaissance d'un gouvernement de fait—un gouvernement *de facto* ne se constitue pas par l'interférence temporaire d'autorités étrangères—un gouvernement *de facto* est considéré comme équivalent à un gouvernement *de jure*, en dehors de toutes considérations morales.

* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p.2902.

** Reproduit de John Bassett Moore (éd.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 2902.

This claim is for the value of the bark *Francis Palmer*, etc.

The bark, an American vessel, owned by claimant, an American citizen, was seized at Port Angel, Lower California, in July 1866, by some Mexican soldiers, taken into the port of Guaymas, and libeled on a charge of violating Mexican law. Before any judicial determination of the guilt or innocence of the vessel, and on the night of the 13th September 1866, she was sailed out of the port by the Mexican customs and other officials and lost to the owner.

The seizure of the vessel, in the first instance, and the judicial proceedings against her were acts proceeding from the authorities of the so-called empire and adhering to the cause of the late Archduke Maximilian. The officials who were guilty of the robbery of the vessel also adhered to the same party, and seized the vessel to facilitate their escape from the hands of the troops of the Mexican republic.

The French naval forces, supporting the war of the intervention in Mexico and the pretensions of the Archduke, took possession of Guaymas on the 29th of March 1865 and held it till it was evacuated, on the 13th of September 1866.

There can be no doubt of the fact, therefore, that this aggravated injury was inflicted by the authorities and officials of the so-called empire, supported and countenanced by the French naval forces.

The American consul at Guaymas, in his letter of 20th September 1866 to the Assistant Secretary of State, speaks of the affair as "proceedings of the officers of the defunct empire."

The question is now, therefore, directly presented for our consideration whether indemnity for injuries inflicted by the officials of the Maximilian government upon American citizens has been provided for in the convention between the United States and Mexico?

The language of the convention confines indemnity to injuries arising from acts of "authorities of the Mexican Republic." Since it was the direct aim of the French intervention and the Maximilian empire, so called, to overthrow the republican form of government in Mexico and substitute a monarchy in its place, it will not be allowable to consider, in any literal sense, the officials of the monarchical experiment as "authorities of the Republic of Mexico."

It may well be doubted whether the language of the convention was not designedly employed to exclude all claims against Mexico growing out of the pretensions of the monarchy. But if the United States can hold the republic of Mexico to responsibility for injuries inflicted by the agents of the so-called empire, it must be upon the ground that the latter, at the date of such injuries, was a government *de facto*, and that the former, as its successor, can not escape responsibility for the acts of the government for the time being in possession.

It will be proper, therefore, to inquire whether it was such a government, and whether, if it was, the United States is at liberty to assume that ground in view of the history of that remarkable chapter in the life of the New World which is known as the French intervention in Mexico.

That intervention was born out of the opportunity presented by the war of the rebellion in the United States—was an attack upon the popular institutions and republican form of government so deeply embedded in the affections of the people of the United States, and designed to check the growth and undermine the power and influence of the United States, the principal guaranty of the security and liberties of the people of Mexico and of every other republic in the Americas against the monarchies of Europe.

If these propositions be true, it will be seen that the war of the intervention in Mexico was also a war against the United States, and that the firm, complete, and permanent possession of the Government of Mexico by the so-called empire only was possible in the event of the success of the rebellion in the United States and the destruction of the power and influence of that republic.

Thus the United States, on the one hand warring against the rebellion, and Mexico, on the other, resisting the intervention of the foreigner leagued with the traitor, were fighting a joint battle for themselves and all others, the republics of this continent.

That this is true is evident from the spontaneous and cordial manner in which the people of the two republics exchanged sympathies during the trials to which they were subjected, respectively, by rebellion and intervention, and by the friendly anxiety with which the other American republics watched the progress of the struggle. Moreover, as the rebellion in the United States precipitated the intervention upon Mexico, so the suppression of the former, by expelling the army of the French, terminated the latter.

In view of these prominent facts we would not expect to find that the government and people of the United States regarded the fugitive rule of the Austrian prince with any favor, gave it any recognition, or contemplated the possibility of holding the government of the Mexican republic responsible for *its* injustice.

To make the position of the United States plain upon this important subject, and to show how truly it accorded with the principles and sympathies of the people of that country, it is needful to rehearse a few of the prominent facts of Mexican history for the last few years.

The long contest in Mexico between conservatism, represented by the church and the army aspiring to a restoration of the monarchical form of government and the perpetuation of the old ideas and abuses, and liberalism, representing the masses of the people, firmly attached to the republican form, and incessantly struggling to sweep away the ideas which belonged to a past age, and to liberate themselves from great oppressions, culminated in 1855, when

the liberals, under "the plan of Ayutla," overthrew the party of the monarchy and expelled Santa Anna.

This notorious man, on the 1st July 1854, commissioned Senor Gutierrez Estrada (the same who afterward offered the crown to Maximilian) to negotiate in Europe for the establishment of a monarchy in Mexico. The following extract from this commission is interesting in view of subsequent events:

I confer upon him (Senor Estrada) by these presents the full powers necessary to enter into arrangements and make the proper offers at the courts of London, Paris, Madrid, and Vienna to obtain from those governments, or from any one of them, the establishment of a monarchy derived from any of the royal races of those powers, under qualifications and conditions to be established by special instructions.

The revolution under the "plan of Ayutla" called the aged and patriotic Alvarez to the presidency. Two measures signalize his brief administration and characterize the liberal movement; "The law of Jaurez," November 22, 1855, organizing and reforming the administration of justice, but chiefly celebrated for its abolition of the privileges of the clergy and the army (military and ecclesiastical *fueros*), and the proclamation of 17th October 1855, summoning a constituent congress "for the purpose of reconstituting the nation under the form of a popular representative democratic republic."

This constituent body met on the 18th February 1856 and continued its labors till the 5th of February 1857, when it proclaimed the constitution of that date. This instrument, in all substantial effects, is closely modeled on that of the United States. It divides, limits, and distributes the powers of the government, purely republican in form; it guarantees the political and personal rights of the citizen; it abolishes the *fueros* and secures the equality of the citizen; it proclaims a cordial fraternity with foreigners; the abolition of judicial costs; *the freedom of religion and of the press*; and the equal responsibility of all persons and classes of persons to the same impartial laws and tribunals.

I need not be more specific. The instrument embodies the most liberal principles of free, responsible, popular government known to modern society.

Ignacio Comonfort was the first president elected under this constitution. He took the oath to support it, and was inaugurated December 1, 1857.

On the 17th of the same month the President betrayed the people who had honored him with their confidence, and uniting with Zuloaga in the interest of the church party or *reactionaires*, pronounced against the constitution and made himself dictator. On the 11th of January 1858 Zuloaga and the church party abandoned Comonfort, and on the 20th of the same month drove him from the capital and country.

On the 22d of January Zuloaga convoked in the capital a junta of twenty-eight persons of his own choice, and these named him president. This revolution is known as "the plan of Tacubaya." As the long and bloody struggle which followed, including the war of the intervention, was a contest between the

principles of the constitution of 1857 and the party of the republic on the one hand, and “the plan of Tacubaya” and the party of the monarchy on the other, I will briefly state some of the points of this plan, as follows, viz:

1. The inviolability of church property and revenues, and the reestablishment of old ecclesiastical exactions.
2. The reestablishment of the *fueros*, or the special ecclesiastical and military tribunals, with exclusive civil and criminal jurisdiction of all matters affecting the army and clergy.
3. The restoration of a state religion, sole and exclusive.
4. The censorship of the press.
5. The restoration of the system of interior duties (*alcavala*) and of special monopolies.
6. The exclusive system of emigration from Catholic countries.
7. The old central dictatorship in the interest of the *reaccionaires*.
8. The monarchy under European patronage.

By the constitution of 1857, in default of a president, it is provided that “the president of the supreme court of justice shall enter upon the exercise of the functions of president.” (Article 79.)

At the time of this notable “default” of Comonfort the office of “president of the supreme court of justice” was held by Benito Juarez, a native-born Mexican citizen, and the presidency was devolved on him by the constitution. He raised the standard of the constitution and the republic at Guanajuato on the 19th of January 1858, and, supported by the States and the people, he maintained the contest against the reaction with varying fortunes, but with a fortitude and constancy under great difficulties worthy of the virtues of his private character and his zeal for reform and republican institutions. His cause triumphed; the liberals entered the capital on the 25th December 1860, the president and his cabinet on the 11th February following.

Miramón, with other chiefs of the monarchical party, military and ecclesiastical, left the country to invite the intervention of Europe, while their adherents at home confined all armed resistance to the government to predatory excursions by roving bands under such leaders as Márquez, “the butcher of Tacubaya.”

The ministers of France, England, and other European powers resident in Mexico, two days after the expulsion from the capital of Comonfort by Zuloaga, recognized the government of the latter. Five days after the American minister (Mr. Forsyth) followed their example; but his government practically repudiated his act by making haste to establish relations with the government of President Juárez, continued through all subsequent trials, so far as possible to the present time.

A perusal of the official correspondence (Mexican document 1861–1862) leaves no doubt of the real sympathy of the French, English, and Spanish cabi-

nets with the cause represented by Zuloaga and Miramon, and the partiality of the Government of the United States with the cause sustained by Juarez.

The hesitation shown by the English cabinet to recognize the constitutional government after its complete triumph is in significant contrast with the immediate recognition of Zuloaga, an insurgent, holding nothing but the capital. (Lord J. Russell to Sir C. Wyke, No. 1, March 30, 1861.) Although "the final triumph of the liberal party" is here admitted, the recognition of a government *de jure* and *de facto* both, is to be upon conditions; the constitutional government must first admit its responsibility for the wrongs and crimes of Zuloaga and Miramon.

The character of this government thus regarded with disfavor is contrasted with that of the insurgents in these words by the British representative subsequently displaced by Sir Charles Wyke:

"However faulty and weak the present government may be, they who witnessed the murders, the acts of atrocity and of plunder, almost of daily occurrence, under the government of General Miramon and his counselors, Senor Diaz and General Marquez, can not but appreciate the existence of law and justice. Foreigners, especially, who suffered so heavily under that arbitrary rule and by the hatred and intolerance toward them, which is a dogma of the church party in Mexico, can not but make a broad distinction between the past and the present." And, again:

"I do not believe it possible that the church party or that the former rule of intolerance and of gross superstition can ever be restored to power; so far, at least, has been secured by the result of the last civil war—the first contest for principles, it may be remarked, in this republic." (Mr. Matthews to Lord J. Russell, May 12, 1861.)

The successor of Mr. Matthews (Sir Charles L. Wyke) brought different views and sympathies to inspire his labors near the Government of Mexico. He viewed President Juarez and his liberal government with disfavor, distrust—almost disgust. He had no confidence in its intentions, ability, or stability. The church party, though beaten, he did not (or would not) regard as subdued. His only hope was "in the small moderate party," who perhaps might step in before all was lost "to save their country from impending ruin." In one of his earliest dispatches this diplomatist calls for foreign force as the only remedy. He says:

"Such is the actual state of affairs in Mexico, and your lordship will perceive, therefore, that there is little chance of justice or redress from such people except by the employment of force to exact that which both persuasion and menaces have hitherto failed to obtain." (Sir C. Lennox Wyke to Lord J. Russell, May 27, 1861.)

Later dispatches marking the progress of Sir Charles's opinions prove that he had been enlisted or deceived into the support of the intrigue at the capital of Mexico fomented by those pecuniary and political interests to be finally

ruined unless the party of Miramon, under some form, should be restored to power. October 28, 1861, he writes:

“Every day’s experience tends to prove the utter absurdity of attempting to govern the country with the limited powers granted to the executive by the present ultra-liberal constitution, and I see no hope of improvement unless it comes from a foreign intervention or the formation of a rational government composed of the leading men of the moderate party who, however, at present are void of moral courage and afraid to move unless with some material support from abroad.” (Dispatch to Lord J. Russell.)

September 29 previous he was of opinion that an occupation of the Mexican ports by the British naval forces, by its moral power, would enable “the moderate and respectable party”, to turn out the Juarez administration and form a government willing to treat, etc. The next step to armed intervention for the overthrow of an “ultra-liberal constitution” and the formation of a government with a strong executive was easy.

In these efforts to disparage the government of the Liberals and procure its overthrow by foreign force Sir Charles Wyke was preceded or zealously seconded by the French chargé, M. de Saligny, and the bishops and military chiefs of the church party—part of them at the courts of Spain and France and part intriguing in the capital of Mexico. It would be interesting to set forth the principal reasons for this combined hostility against the government of the Liberals. Apart from political considerations, which were allied with a sympathy with the church party and the reactionary ideas it represented, there were large pecuniary interests to be compromised by the overthrow of the Miramon government. Not to speak of the reclamations for the massacres of foreigners and the plunder of their effects, the bonds which Mr. Jecker held or had put in circulation amounted to \$15,000,000, and the whole of them were likely to be lost if the Liberal government was suffered to consolidate its power uninfluenced by foreign coercion. Against these combinations, therefore, of political and pecuniary interests, supported by powerful influences within and without the state, the government of President Juarez had no defense except in the confidence of the Mexican people and the sympathy of the government and people of the United States—the one exhausted by a civil war just ending, the other paralyzed by a similar struggle just beginning.

The civil war in Mexico had exhausted the resources of the country, and the government was bankrupt. Bands of marauders under the chiefs of the church party, the same which had massacred the wounded prisoners and beardless boys at Tacubaya, and the foreign surgeons who humanely attended them (which chiefs the intervention afterward took into its alliance), ravaged the country, filling it with murders and nameless crimes. The illustrious patriot, Ocampo, retired to private life, among others was ruthlessly put to death.

The only available resources of the government in such an emergency were the customs revenue. *Seventy-seven per cent* or more of these were pledged

for the regular payment of the interest and principal of the debt due English, French, and Spanish subjects.

On the 17th of July 1861 the Congress suspended for two years all payments, "including the assignments for the loan made in London, and for the foreign conventions," and recovered the complete product of the federal revenues into the treasury. The government placed this suspension upon the ground of necessity, imperious by reason of the perils of society.

This deplorable measure furnished the English and French ministers (the representative of Spain had been expelled) an occasion to break off diplomatic relations with the Liberal government, which they promptly and without reluctance embraced, July 25, 1861.

In the mean time the Mexican exiles (headed by Almonte, Miramon, Padre Miranda, etc.), assisted by the pecuniary interests compromised by the overthrow of the Miramon government, were laboring at European courts for intervention in support of a monarchy in Mexico to be founded on the conservative elements represented to be powerful in that country. The time was propitious. The progress of the rebellion in the United States induced a hasty belief among the partisans of monarchy in Europe in the destruction of the American Union, and the consequent failure of republican government. The embarrassments of the Government of the United States and the dangers which encompassed it suggested and encouraged European pretensions in the affairs of this continent. Santo Domingo and Mexico presented irresistible enticements. Both, it was thought, offered opportunities to limit the growth of the United States and secure existing European dependencies on this continent whether the rebellion in that country succeeded or failed.

Moreover, let us add to this, that Spain, France, and England had grievances against Mexico to redress, more or less serious, and some of them very just. Accordingly, Spain, probably hearing by "the fine ear of Europe", that France and England contemplated a combined movement against Mexico, herself took the lead, issued orders for the reinforcement of the garrison at Havana, and for the preparation of an expedition to be directed against Vera Cruz and Tampico, and then invited the co-operation of the other two powers. (Earl Cowley to Lord Russell, September 5, 1861; and same to same, September 10, 1861, and September 17, 1861; also, Sir J. Crampton to Lord J. Russell, September 13, 1861, and September 16, 1861.)

A complete unison of action in Mexican affairs between the cabinets of London and France was earnestly desired by M. Thouvenel as early as September 5, 1861, and that early he wished to obtain the opinion of Lord Russell as to whether the association of the Spanish Government in the affair might not be advisable.

The views of the different signatories to the subsequent treaty of London, in the beginning, were rather ill-defined or purposely obscured.

One is very much puzzled to ascertain the real purpose of Spain in the beginning—Spain that took the lead, and furnished the largest force, first to reach Vera Cruz, and first to leave it.

She started full of dreams born of ancient recollections, and perhaps saw in the distance a prince of the house of Bourbon on the throne of Mexico, but finally fell into the views of the English cabinet; still, however, down to the conferences at Orizaba expecting something to “turn up” for her advantage. When, however, at Orizaba she saw the French Emperor (having reinforced his military contingent) leading the Austrian prince by the hand, she embarked her troops, decimated by disease, and returned to Havana.

England hesitated in the beginning, but as the affair progressed her views narrowed and became more distinct.

M. Thouvenel, after communicating to Lord Russell through the Count de Flahault his views in reference to several contingencies that might be realized, proceeds to say that he “is, however, of opinion that the two governments should carry their common understanding still further, and devise means for promoting the political reorganization of Mexico,” etc.

In reply the English minister says: “With respect to the measures to be taken for the future peace and tranquillity of Mexico, Her Majesty’s government are ready to discuss the subject with France, Spain, and the *United States*. But it is evident that much must depend on the actual state of affairs at the time when our forces may be ready to act on the shores of Mexico.” (Lord J. Russell to Earl Cowley, September 23, 1861.)

Afterward, however, the cabinet of London seems to have reduced its views to the very well-defined objects set forth in the treaty of October 31 following.

The government of His Majesty the Emperor, from the first, knew what it wished to accomplish by intervention, and, without giving its ulterior designs too much prominence, explained them to its allies with sufficient frankness.

On the 11th October 1861, while the means of combining the action of the two governments were under discussion, M. Thouvenel, in a dispatch to Count Flahault, rehearses a conversation had with the ambassador from England, and of which the latter was to give an account to his government.

Her Majesty’s government, it seems, was ready to sign a convention with France and Spain to the end of obtaining redress by force from Mexico for certain grievances, etc., provided it should be declared in said convention that the forces of the three powers were not to be employed in any ulterior object whatever it should be, and above all not to interfere with the interior government of Mexico.

M. Thouvenel was perfectly agreed that the grievances of the respective governments, together with the means of redressing them, and of preventing them in the future, constituted alone the object of an “ostensible convention.” He admitted, also, without difficulty, that the contracting parties might

bind themselves not to derive any political or commercial advantage to the exclusion of each other, or of any other power; *but, beyond this, to interdict in advance the eventual exercise of a legitimate participation in the events which their joint operations might originate, seemed to him of no use.*

M. Thouvenel was of opinion also that it was evidently to the interest of France and England (Spain is not here in his thought) to see established in Mexico a state of things that would secure the interest existing already, and favor a development of the exchanges of the two countries with a land so richly endowed. The events just then taking place in the United States, M. Thouvenel thought, added new importance and (he was pleased to say) *urgency* to these considerations. He was led to suppose that, if the issue of the contest between the North and South should accomplish their definitive separation (a different eventuality seems not to have been contemplated) both confederations would naturally look to Mexico for compensations. The only obstacle which would prevent such an event, not indifferent to England, in the opinion of the Emperor's government, would be the constitution of a government in Mexico strong enough to redress wrongs and stop interior dissolution. The interest of France and England in the regeneration of Mexico would not allow them to neglect any symptom giving hope of the success of an attempt. As to the form of government, England and France had not any preference, provided it afforded sufficient guaranties. But if the Mexicans themselves, tired of trials, decided to react—should come back, and, consulting the instinct of their race, find in monarchy the repose and prosperity which in vain they looked for in republican institutions, M. Thouvenel did not think the two governments ought absolutely to refuse to aid them, if there was a chance, bearing, nevertheless, in mind that they were perfectly free to choose whatever means they might think best to attain their object.

The respect shown for the principle of nonintervention and the will of the people in the foregoing by the Emperor's government is only equalled by the disinterestedness and prevision of what follows. Says M. Thouvenel:

“In developing these ideas in the form of an intimate and confidential conversation, I added that in case my prevision was to be realized, the government of the Emperor, disengaged from all preoccupation, rejected, in advance, the candidature for any prince of the imperial house; and that, desirous to treat gently all susceptibilities, it would see with pleasure that the election of the Mexicans and the assent of the powers should fall on some prince of the house of Austria.”

Summing the whole up, M. Thouvenel said, in a word, to Her Majesty's minister, that in drawing up the convention they should say what they would do, but not what they would not do.

We learn also from this interesting dispatch that it was the wish of the English cabinet that the United States should become a party to the convention. M. Thouvenel, however, could not then have desired such a result.

These opinions of the French minister seem to have been heartily concurred in by the Spanish minister, M. Calderon Collantes, who even thought it better to abstain from going to Mexico at all than to go under the conditions proposed by the English project. (Barrot to M. Thouvenel, October 21, 1861. See also dispatch from same to same, November 6, 1861.)

Even after the treaty was signed the Duke of Tetuan unhesitatingly adhered to the opinion of the government of the Emperor. He authorized the French minister to inform his government that very "elastic" instructions would be given the Spanish commander.

At all events, the English cabinet placed its views in the treaty, and the three powers signed it on the 31st October 1861 at London, none of them deceived (I most surely believe) as to the purposes of the intervention, unless it was Spain.

The English cabinet was entirely possessed of the Emperor's purpose to avail himself of eventualities (and to create them, for that matter) for the purpose of introducing a monarchy into Mexico; and was not unwilling to see the experiment tried at the cost and upon the responsibility of the French.

The contingency of a march on the City of Mexico was foreseen by the English minister, but he was careful to instruct his plenipotentiary that while he had nothing to say against "the measures in contemplation", nevertheless, the 700 marines, constituting the whole of Her Majesty's forces co-operating, were not to join in such expedition. (Lord Russell to C. Wyke, November 15, 1861.)

In the mean time the United States Government was not an unconcerned observer of this combination against its neighbor. That government conceived itself so far interested that it offered to the cabinets of London, Paris, and Madrid to guarantee the interest upon the debts of Mexico secured by conventions with these powers, including the London loan, for five years, provided they would refrain from the employment of force against their helpless debtor. (Mr. Seward to Mr. Adams, August 24, 1861, No. 71; same to Mr. Corwin, same date; Lord Lyons to Earl Russell, September 10, 1861; Mr. Adams to Mr. Seward, September 28, 1861.)

In reference to this proposition M. Thouvenel observed to the English minister resident at Paris: It might not be possible to prevent the United States from offering money to Mexico, or to prevent Mexico receiving money from the United States, but neither England nor France ought in any way to recognize the transaction. (Earl Cowley to Lord J. Russell, September 24, 1861.)

Lord Russell put the proposition aside by remarking to Mr. Adams that the offer was not co-extensive with their demands. Yet it is certain both England and France broke off diplomatic relations with Mexico on account of the law of July 17, 1861, suspending for two years the payments on these debts. To prosecute a war against the constitutional government of Mexico, at the moment exhausted by the civil war, for the remainder of their pecuniary claims would seem to be not only cruel, but unwise on the part of these governments. Few

of the wrongs complained of could be attributed to the government of Jaurez, while nearly all had been inflicted, sometimes with savage barbarity, by the party of Zuloaga and Miramon.

The loan by the United States to Mexico of \$2,000,000 a year would have recovered the customs into the Mexican treasury, and have enabled the government to restore its finances and settle all just demands. The acceptance of it by the allies would have given peace to a distracted land and spared it all those miseries which for five years were poured out on it, to no end except the enduring disgrace of the European intervention.

We now know that the offer of the United States was rejected because the objects sought by the allies were not simply pecuniary; and, above all, did not contemplate an increase of the influence of the United States.

This government, the moment it was apprised of the conference looking to a combined intervention, sought explanations of the powers, expressing its considerable alarm and deep concern. (Mr. Seward to Mr. Adams, September 24, 1861; same to Mr. Dayton, November 4, 1861; Lord Russell to Earl Cowley September 27, 1861; Mr. Seward to Mr. Adams, October 10, 1861; Mr. Schurz to Mr. Seward, September 7, 1861.)

The answers were uniformly reassuring, and disavowed any designs upon the territory or independence of Mexico, or any purpose to intervene in the internal affairs of the country.

Such, however, was the friendly concern of the United States for its neighbor republic, and its conception of its own interest in this alarming movement of the powers, that it communicated to the cabinets of London and Paris its willingness to enlarge its offer of pecuniary assistance to Mexico, if this might dispense with the use of force against that republic; but no notice seems to have been taken of this offer, the cause having already been judged. (Mr. Seward to Mr. Adams, October 10, 1861; Lord Lyons to Lord J. Russell, October 14, 1861.)

The treaty of London was signed October 31, 1861, and by its terms the United States was to be invited to become a party.

It seems probable that the allies would never have decided to discuss and settle by themselves the stipulations of a treaty naturally so interesting to the United States, and to which that power was to be invited to affix its signature, only after everything had been arranged, except for the prevalence of the civil war in that country.

The treaty was communicated to the Government of the United States by the ministers at Washington of the allies, by a joint note, November 30, 1861, inviting the United States to accede to it.

Mr. Seward declined this invitation by a reply dated December 4, in which he admitted that the United States had claims to urge against Mexico, but that the President deemed it inexpedient to seek satisfaction of those claims at that time through an act of accession to the convention. For this declension two reasons were urged, the first founded on traditions derived from Washington,

the father of his country, who recommended that entangling alliances with foreign nations should not be made. The second was couched in these words:

“Mexico being a neighbor of the United States on this continent, and possessing a system of government similar to our own in many of its important features, the United States habitually cherish a decided good will toward that republic, and a lively interest in its security, prosperity, and welfare. Animated by these sentiments the United States do not feel inclined to resort to forcible remedies for their claims at the present moment, when the Government of Mexico is deeply disturbed by factions within, and war with foreign nations. And, of course, the same sentiments render them still more disinclined to allied war against Mexico.”

Upon the 17th of December following, the commander of the Spanish forces took possession of Vera Cruz, and the castle of San Juan de Ulloa.

The 23d of November previous the law of 17th July 1861, suspending payments had been repealed, and payments according to the convention ordered.

The French and English armaments arrived subsequent to the Spanish, and on the 10th of January the plenipotentiaries issued their proclamation to the Mexicans from Vera Cruz. This emphatically denied plans of conquest and restoration, and purposes of interfering in the politics or the government of the country. The Mexicans were invited to the work of regeneration, over which spectacle the allies were to preside impassively. Even the supreme government of Juarez was addressed.

On the 17th of January the government of the Emperor, dissatisfied with the precipitation of his Spanish ally and deeming it inevitable that the allied forces must march into the interior of Mexico, informed the English Government of its intention to reinforce the French troops in Mexico.

The preliminaries of Soledad followed, February 19. It was a negotiation with the government of Juarez, acknowledging its strength and stability, resting on public opinion, and protesting the purpose of the allies not to attempt anything against the independence, sovereignty, and integrity of the territory of the republic, and providing for the opening of negotiations at Orizaba.

These preliminaries were condemned by all the allied governments; severely so, at first, by the Spanish, and uniformly and unqualifiedly so by the French Government.

Moreover, a difference had developed itself among the plenipotentiaries with reference to the French ultimatum. The French claims had swollen to twelve million piasters, leaving others of more recent date to be ascertained and added, and for the first time the Jecker bonds were brought forward by M. de Saligny. General Prim and Sir Charles Wyke were rather indignant; the affair wore the aspect of an intrigue and of oppression. The spirit manifested boded no good for the future. The commissioners, however, with fresh advices

from Europe, proceeded toward the conference of Orizaba, set for the 15th of April, but a final rupture took place on the 9th of that month.

General Miramon had before made his appearance, with Padre Miranda and others, at Vera Cruz. Sir Charles Wyke, remembering the plunder of the English legation of six hundred and sixty thousand piasters, denounced Miramon as a robber, and demanded his expulsion from the allied camp. But now at Orizaba, General Almonte, direct from the court of the Emperor and the palace of Miramar, made his entry, and spoke of a march on the capital in the name of the monarchy and Maximilian. He said he had the Emperor's license, "the confidence of the French Government, and came to re-establish monarchy in Mexico in favor of an Austrian prince."

In effect the English and Spanish argument was: "We have all assumed the attitude of people coming to negotiate; how can we take that of people having in their camp a leader of insurrection?" This was quite true, and the French admiral could not gainsay it, and M. de Saligny did not pretend to conceal the fact that *he* had never wished to negotiate with Juarez, and that he had always been of the opinion that a monarchy should be substituted for the republic.

The Spanish and English plenipotentiaries required the expulsion of Almonte. M. Jurien de la Gravière, without repeating M. de Saligny's declaration for a monarchy, said that he had *orders*; that General Almonte had the confidence of his government, and that they could not compel him to leave the ranks of the French army. The French declined to await the 15th of April, with a view to an effort to treat with Juarez, but marched out of the position assigned under the preliminaries of Soledad, and the English and Spanish went home.

From this time forward the intervention is relieved from all obscurity. Its design is set forth in a dispatch from Earl Cowley to Earl Russell, dated May 2, 1862, in these words:

"I would deceive your lordship if I concealed from you my personal conviction that there exists a fixed determination, though not avowed, to overturn the government of Juarez whatever may be the consequences of that act, and whether civil war results from it or not."

General Prim, in his letter dated Orizaba, April 14, 1862, and published in the Spanish newspapers shortly afterward, says:

"The triple alliance no longer exists. The soldiers of the Emperor remain in this country to establish a throne for the Archduke Maximilian—what madness—while the soldiers of England and Spain withdraw from Mexican soil." He could not support this radical change in the treaty of London, and the political system of Mexico, (being "a Spaniard,") "*if a prince of the Austrian monarchy was to be imposed on it.*"

However, His Majesty the Emperor of the French makes his designs on Mexico clear from the beginning by his letter to General Forey dated Fontainebleau, July 3, 1862. This historical document contains specific instructions. The French army was to march on the capital. When this was reached

General Forey was to have an understanding with the *notable* persons of every shade of opinion who might have espoused the *French* cause. Those notables, in pursuance to such understanding, should organize a provisional government, which would submit to the Mexican people the question of the form of political rule which should be definitely established, etc. But the Emperor himself, always ruling by virtue of the popular will, is careful to respect this principle. He says, therefore:

“The end to be obtained is not to impose upon the Mexicans a form of government which will be distasteful to them, but to aid them to establish, in conformity to their wishes, a government which may have some chance of stability and will assure to France the redress of the wrongs of which she complains.”

Possibly some absurd persons may be found who will ask General Forey why the Emperor should spend men and money to establish a regular government in Mexico, and to such the Emperor furnishes an answer. He says:

“In the present state of the world’s civilization Europe is not indifferent to the prosperity of America, for it is she which nourishes our industry and gives life to our commerce. It is our interest that the Republic of the United States shall be powerful and prosperous, but it is not at all to our interest that she should grasp the whole Gulf of Mexico, rule thence the Antilles, as well as South America, and be the sole dispenser of the products of the New World. . . . If, on the contrary Mexico can preserve its independence and maintain the integrity of its territory, if a stable government be there established with the aid of France, we shall have restored to the Latin race on the other side of the ocean its force and its prestige; we shall have guaranteed the safety of our own and the Spanish colonies in the Antilles; we shall have established our *benign* influence in the center of America, and this influence, while creating immense outlets for our commerce, will procure the raw material which is indispensable to our industry.”

Added to all this, the gratitude of regenerated Mexico would always favor the beneficent source of her blessings. Such was the programme and such the reasons in support sketched by the hand of a man then supposed to be the ablest politician in Europe. This, however, was before the days of Sedan; well, it was even before the noble Carlotta lost her reason and Maximilian his life.

It will be seen that the Emperor sent the treasures and the brave soldiers of France to Mexico not merely to enforce violated rights, but, as M. Billaud, minister without portfolio, in a debate in the French Chambers, February 1863, after some admirable declamation about the Crimea, Italy, China, etc., observed with great effect, glancing next toward Mexico, “There, also, great political vistas are open to clear-sighted eyes; diverse interests come in contact, and it is not opportune to neglect them.”

What the clear sight of the Emperor beheld as the fruits of the intervention, therefore, were these:

1. A pecuniary redress of wrongs suffered by Frenchmen, including payment under the conventions.

2. The regeneration of Mexico under a stable monarchy with an Austrian prince.

3. An insurmountable barrier to the too great expansion of the Anglo-Saxon race in the New World, represented by the United States, by restoring the power and prestige of the Latin race.

4. A benign French influence in the center of America, founded on the gratitude of Mexico, and creating immense outlets for French commerce.

After a long delay, some disasters to the French arms, and a resistance not foreseen by the Emperor and his advisers, General Forey, largely reinforced from France, entered Mexico on the 10th of June 1863. Almost the entire Mexican nation, including all parties, were in arms or in opposition to the intervention. Only one shade of political opinion sustained the French cause. General Forey at once proceeded to organize the Emperor's benevolent plan of government in order that the Mexican people might freely manifest their wishes as to their form of rule; and, as the Mexican nation was, with singular unanimity, outside the French lines, supporting the constitutional government, it was not General Forey's fault that his choice of a body of notables was limited to a small area and number of persons compared with the whole territory and population.

The indefatigable M. de Saligny took upon himself the whole labor of digesting a plan of government for the Mexican people and selecting its agents. He made a lucid and able report to General Forey, June 16, 1863, which was adopted by that distinguished officer and the same day carried out by a decree signed "Forey, General of Division, Senator of France, Commander-in-Chief of the Expeditionary Corps in Mexico."

This decree provided that a special decree should designate a superior junta of government, composed of thirty-five Mexican citizens, according to the recommendation of the Emperor's minister. This junta should nominate three Mexican citizens, charged with the executive power, and two substitutes for these high functions. (The archbishop was still absent in Europe.) The junta should choose from the Mexican citizens, without distinction of rank or class, 245 members, and these, associated with the junta, should constitute the assembly of notables. This assembly should occupy itself especially with the form of the permanent government of Mexico. The sessions of the junta and notables should not be public; in short, they were to be secret. Other minor particulars of this decree may be omitted.

Two days afterward General Forey, by special decree, named the thirty-five persons who were to constitute the superior junta. They all belonged to the defeated party of Zuloaga and of Miramon, Sir Charles Wyke's robber, recently expelled by the allies from Vera Cruz. This junta named for the executive functions:

First. His Excellency Don Juan N. Almonte, general of division.

Second. The most illustrious Senor Don Pelagio Antonio de Labastida, archbishop of Mexico.

Third. His Excellency Don Mariano Salas, general of division.

The substitutes were Ormaechea, bishop elect of Tulancingo, and Pavon, president of the supreme court.

Forey by proclamation, sanctioned, the assumption of executive power by this triumvirate, to date from 24th June.

The notables, nominated from the population of the city, assembled, and on the 10th July 1863 adopted and promulgated this decree. Its importance on the question under investigation requires its insertion entire:

The assembly of notables, in virtue of the decree of the 16th ultimo that it should make known the form of government which best suited the nation, in use of the full right which the nation has to constitute itself, and as its organ and interpreter, declares with absolute liberty and independence as follows, viz:

1. The Mexican nation adopts as its form of government a limited hereditary monarchy, with a Catholic prince.
2. The sovereign shall take the title of Emperor of Mexico.
3. The imperial crown of Mexico is offered to His Imperial and Royal Highness the Prince Ferdinand Maximilian, Archduke of Austria, for himself and his descendants.
4. If, under circumstances which can not be foreseen, the Archduke of Austria, Ferdinand Maximilian, should not take possession of the throne which is offered to him, the Mexican nation relies on the good will of His Majesty Napoleon III., Emperor of the French, to indicate for it another Catholic prince.

Given in the hall of sessions of the assembly on the 10th of July 1863.

Teodosio Lares
President, etc.

The next day the notables completed their labors by vesting the regency of the empire, until the arrival of the sovereign, in the executive triumvirate already theretofore created.

Here was a slight departure, it must be confessed, from the programme laid down in the Emperor's letter to General Forey. This, in terms, provided that the provisional government to be established by an understanding between Forey and the notables should "submit to the Mexican people the question of the political *régime* which is to be definitely established."

The notables knew the futility and the impossibility of submitting their work to approval and ratification by the people of Mexico. Nevertheless M. Drouyn de l'Huys, not insensible to public opinion, to say nothing of the committals of the Emperor, wrote on the 17th of August following to General Bazaine, then

in command of the French forces in Mexico, that it was indispensable that the scheme of the notables should be ratified by the popular will, and he was directed to collect the suffrages in such a manner that no doubt should hang over the expression. The mode of ascertaining this will was left to the general, but this essential point was commended to his constant care by the Emperor.

The reply made by the Archduke in October following (the 3d) to the deputation, headed by Senor Estrada, which offered him the crown, made known that his acceptance of the offered throne must depend upon the result of the vote of the whole country.

These instructions were very embarrassing to General Bazaine. In point of fact, he could not carry them out. He had under his control a very small part of the Mexican people and soil. Even his lines (incessantly penetrated by a hundred guerrilla bands) embraced but about one-eighth of the population and one-thirtieth of the territory. The Emperor surely had not looked at a map of Mexico. Bazaine might overawe the 700,000 people in reach of his arms, but outside 7,000,000 sustained the government of Juarez. There was no remedy for it but a campaign against the Mexicans in order to collect their votes.

The military results of that campaign in 1863–64 will appear when I come to describe the territory occupied by the French troops in June following, the date of the entry of Maximilian into the capital.

Just exactly how Marshal Bazaine collected the suffrages, in obedience to the particular charge given him by the French Emperor through his minister, M. Drouyn de l'Huys, it is difficult to determine, for after a patient search I have nowhere been able to find his official report.

This much is certain, that the decree of the assembly of notables was never submitted to any vote of even that part of the people subject to the control of the French arms.

What seems to have been done in obedience to the orders of the great champion of universal national suffrage, and to satisfy the scruples of the coy prince at Miramar, was simply this: A circular dated December 2, 1863, under the orders of the regency, was issued by the subsecretary of state and government dispatch, José Maria Gonzalez de la Vega, directed to a few political prefects appointed and upheld by the French, notifying them that private letters and reports addressed to the regency by "reliable persons" assured that as soon as the empire is recognized by four or five principal departments of the interior his Illustrious and Royal Highness the Archduke Ferdinand Maximilian would commence his march; and these prefects are directed to procure this recognition.

In response to this circular the prefects of Pachuco, of the first district of Mexico, and of Puebla, and perhaps a few others, under date 4th December 1863, certify that it being beyond doubt that the departments mentioned in the circular will be occupied by the French forces in a few days, the inhabitants will joyfully manifest their adhesion. One even reports, as already held, on the 29th November, a *fête champêtre*, under the auspices of the French officers, at

which the inhabitants, in a delirium of joy, rang bells, fired off rockets, and sent up two balloons with the names of the Emperor and Empress upon them.

It is probable that a number of municipalities within the territory overrun by the French arms, and completely, by appointment or otherwise, in the French interest or under its control, signified their adhesion to the decree of the notables.

Both Maximilian and Mejia, in their defense before the court martial at Queretaro, relied alone upon the vote of the notables, and "the adhesion of many municipalities remitted to the Emperor-elect." (Mexican Documents, 1867, page 53 [40th Congress, 1st session, S. Ex. Doc. No. 20], published by the United States Government, and extract from the defense of General Mejia annexed hereto.)

I append hereto some translations of these prefect reports from the *Periodico Oficial*, published at the City of Mexico December 15, 1863.

In this reckless manner the French general and his government paltered with their solemn pledges and the sacred right of a people to form and regulate their own internal government.

Maximilian, furnished with such evidences of the popular will, "began his march" from Miramar on the 11th of April, and entered the City of Mexico on the 12th day of June 1864, accompanied by that excellent, amiable, and most unfortunate princess, Carlotta.

At this date only so much of the extensive territory of Mexico as was occupied by the French troops owned the rule of the new Emperor.

The only States then wholly occupied by the invaders and their few and feeble Mexican allies were Mexico and Yucatan. In Vera Cruz they held the port and the towns on the line to the City of Mexico. The rest of the State, including over twenty towns, adhered to the constitutional government, and was defended by several thousand troops.

In Puebla the only point held by the French was the capital of the State. The rest of its territory was in the armed possession of the state and federal governments. In Michoacan, Morelia and the towns on the line to Mexico were occupied. The state government at Pastcuaro and Rivas Palacio (of excellent fame), with federal troops, dominated the rest of that State. So in Guanajuato the French held the capital and the town of Leon alone. The rest of that important State adhered to the republic.

In San Luis Potosi the French likewise held the capital, but the state government and federal forces, five thousand strong and well disciplined, held the remainder of the territory.

In Tamaulipas only the port of Tampico was occupied.

In Jalisco the enemy was confined to the capital by a force ten thousand strong under General Uraga. In Zacatecas and Toluca the French likewise held the capitals.

The constitutional government held undisputed sway over the States of Nueva Leon, Coahuila, Chihuahua, Sonora, Sinaloa, Oajaca, Chiapas, Guerro, Durango, Tabasco, Lower California, Colima, and Tehuantepec. From this perhaps we must except the ports of Acapulco and Mazatlan, on the Pacific.

If, now we consult a map and table of population, we will see that the French held on the 12th June 1864 about one-thirtieth of the Mexican territory and less than one-tenth of the population. Outside of the French lines was an inflamed, united, and hostile people.

The new Emperor was without an army or a fleet. His revenues were pledged in advance for debts which they were unable to carry. His only real military support was the French expeditionary corps, and his only pecuniary resource a fragment of a loan raised under French patronage at a most usurious rate. The support given by the party which "brought the Moors into Spain", was not only feeble, but treacherous. Under such circumstances the young Austrian began the desperate adventure of subduing and pacifying the country, and founding a monarchy in Mexico. The result is now known. His rule was as wide and his power as ample the day he entered the capital as at any future period.

The party of the republic was led by a man of no ordinary endowments. He was a republican and a reformer who had laid the ax to the root of the tree. He believed in his cause and his countrymen. He was upright, patriotic, temperate, patient, resolute—for that matter, obstinate. Difficulties never deterred, defeats never discouraged him. Supported by the best and bravest of Mexico, he carried the flag of national independence and republican self-government from the capital to the remotest border of the land, until, by the unaided efforts of his countrymen, he brought it back to the ancient city in triumph.

Substantially the whole Mexican people supported the constitutional government. There was no party of the monarchy that deserved the name. The presence of a victorious French army failed to develop such a party.

Says General Prim, in his letter to the French Emperor, dated Orizaba, March 17, 1862:

"I have, moreover, the profound conviction that the partisans of monarchy are very few in this country. . . . The vicinity of the United States, and their severe reprobation of monarchy, has contributed to create a hate for it here. . . . For these reasons and others that can not escape the attention of your Imperial Majesty, you will understand that the general opinion of this country is against monarchy. If logic does not demonstrate it, facts prove it, for during the two months that the flags of the allied powers floated over Vera Cruz, and now that we occupy Cordoba, Orizaba, and Tehuacan, important towns where there is no Mexican force, the partisans of monarchy have made no demonstrations to tell of their existence."

General Prim's appreciation of the real truth appears where he says:

“You can easily carry Maximilian to Mexico and crown him king, but the King will find no adherents in the country but conservative chiefs,” etc.

This is literal. The people were almost unanimous in their hatred of monarchy and foreign intervention; only defeated chiefs and a despoiled hierarchy were the support of the new monarch. If the late French Emperor, in his unfortunate exile, should again read the letter of his former friend, General Prim, fallen, too, in a world of changes, he will be struck with these words—

“A few rich men are willing to receive a foreign monarch who comes supported by your Majesty’s soldiers, but the monarch will have nothing to sustain him when the time shall come for your soldiers to withdraw, and he will fall from the throne, as others will fall, when the mantle of your Imperial Majesty shall cease to protect and defend them.”

In like manner Sir Charles Wyke as late as March 27, 1862, with ample opportunities of observation, and no faith in republican government, was of opinion that a party in Mexico “did not exist” favorable to monarchy (dispatch to Lord Russell); and although this gentleman had no partiality for President Juarez, he expressed the opinion in the final conference between the Spanish, French, and English plenipotentiaries, at Orizaba, April 9, 1862, that a majority of the Mexican people was favorable to the existing government, and that it would be difficult to find partisans of a monarchy.

Earl Russell also communicates to Earl Cowley, British minister resident at Paris, June 14, 1862, his information “that the majority of the Mexican people were liberal and republican, and that it would be impossible for the French troops to establish monarchy in Mexico with any chance of stability.”

The opinion of the American Government, equally enlightened, emphatic, and sound, never underwent any change or modification from the beginning of the intervention until its final eclipse in the blood of the victim of the French Emperor. March 3, 1862, Mr. Seward addressed these weighty words to the American ministers at London and Paris:

“The President, however, deems it his duty to express to the allies, in all candor and frankness, the opinion that no monarchical government which could be founded in Mexico, in the presence of foreign navies and armies in the waters and upon the soil of Mexico, would have any prospect of security or permanency. . . . Under such circumstances the new government must speedily fall unless it could draw into its support European alliances, which, relating back to the present invasion, would, in fact, make it the beginning of a permanent policy of armed European monarchical intervention injurious and practically hostile to the most general system of government on the continent of America, and this would be the beginning rather than the ending of revolution in Mexico.”

The same minister, in a dispatch to Mr. Dayton of 26th September 1863, expressing the solicitude of the Government of the United States awakened by the progress of the war of intervention, says: “This government knows full well

that the inherent normal opinion of Mexico favors a government there republican in form and domestic in its organization in preference to any monarchical institutions to be imposed from abroad."

And again, as late as December 6, 1865, Mr. Seward, in a dispatch to the French minister in Washington, holds this language: "Having thus frankly stated our position, I leave the question for the consideration of France, sincerely hoping that that great nation may find it compatible with its best interests and its high honor to withdraw from its aggressive attitude in Mexico within some convenient and reasonable time, and thus leave the people of that country to the free enjoyment of the system of republican government which they have established for themselves, and of their adherence to which they have given what seems to the United States to be *decisive and conclusive, as well as very touching proofs.*"

This accumulated testimony is rendered conclusive by the subsequent history of this attempt to found a monarchy in Mexico. The people and government of that country never ceased their armed resistance to this invasion of the foreigner. Hundreds of combats were fought and many thousand brave Mexicans laid down their lives for their native land and well-derived rights. The contest raged in every State where the invading foe was found; even the line from the capital to Vera Cruz was incessantly assailed, and frequently cut; the empire consisted only so to speak, of the ground upon which stood the feet of foreign soldiers. *These* were the empire; when these were withdrawn, as General Prim had assured his Imperial Majesty the Emperor of the French, the costly but unsubstantial fabric which he had erected fell, and the poor play ended.

At the time Maximilian entered his capital the rebellion in the United States was drawing to a close. The organized power of that republic at that moment was grinding to pieces on the fields of Virginia that great revolt which may be truly styled the enemy of the whole continent, since it had revived the alliance of kings against America, an alliance in a former age baffled by President Monroe.

As soon as the United States had ended its formidable domestic troubles it brought its powerful influence to bear to procure the withdrawal of the French army from Mexico. The efforts of Mr. Seward to this end were unceasing, adroit, and resolute. He had steadily refused to recognize the Maximilian government, and had uniformly made known to the French and other European cabinets that the United States maintained the most friendly relations with the republican government of President Juarez. October 23, 1863, he writes Mr. Dayton; "M. Drouyn de l'Huys should be informed that the United States continue to regard Mexico as the theater of a war which has not yet ended in the subversion of the government long existing there, with which the United States remain in the relation of peace and sincere friendship; and that for this reason the United States are not now at liberty to consider the question of recognizing a government which in the further chances of war may come into its place."

So, again, on the anniversary of the entry by the new Emperor into his capital, June 12, 1864, Mr. Seward writes the United States chargé at Paris: "It is already known to the government of France that the United States are not prepared to recognize a monarchical and European power in Mexico, which is yet engaged in a war with a domestic republican government and a portion of the Mexican people."

On the 30th of the same month, writing to the same official, Mr. Seward says: "What we hold in regard to Mexico is that France is a belligerent there, in war with the Republic of Mexico."

On the 6th of November following he writes: "The United States still regard the effort to establish permanently a foreign and imperial government in Mexico as disallowable and impracticable. . . . They are not prepared to recognize, or to pledge themselves hereafter to recognize, any political institutions in Mexico which are in opposition to the republican government with which we have so long and so constantly maintained relations of unity and friendship." (Same to same.)

This dispatch adroitly presses the removal of the French forces as a means of preserving "the inherited relations of friendship" between the two countries.

The dispatch of December 16, 1865, from the same minister to Mr. Bigelow, is particularly in point on the question in this case. There in answer to an invitation from His Majesty's government to recognize the institution of Maximilian in Mexico as a *de facto* government, as the price of the withdrawal of the French intervention, Mr. Seward replies, "that the recognition which the Emperor has thus suggested can not be made."

Previously, on the 6th December, Mr. Seward, writing to the French minister in Washington, in answer to the same suggestion from the Emperor, had, with regret, felt "obliged to say that the condition the Emperor suggests is one which seems quite impracticable."

Pressing the withdrawal of the French troops, Mr. Seward insists that "the real cause of our national discontent is that the French army which is now in Mexico is invading a domestic republican government there which was established by her people, with whom the United States sympathize most profoundly, for the avowed purpose of suppressing it and establishing on its ruins a foreign monarchical government, whose presence there, so long as it should endure, could not but be regarded by the people of the United States as injurious and menacing to their chosen and endeared republican institutions."

In reply to this dispatch, M. Drouyn de l'Huys, in a letter addressed to the French minister at Washington January 9, 1866, after seeking to reconcile the proceedings of the Emperor in Mexico with the principle of nonintervention by labored arguments, which have been nowhere more criticised and condemned than in France, announces *that the French Government is hastening to make arrangements with the Emperor Maximilian which, while satisfying its interest and dignity, allows it to consider the part of its army on Mexican soil at an end.*

On the 12th February following Mr. Seward, addressing the Count de Montholon, replies at length to this dispatch. He lays down the position of the American Government on the whole subject with distinctness and much emphasis. He affirms that the proceedings in Mexico adopted by a class of persons to found a monarchy on the ruins of the republic were without authority and prosecuted against the will and opinions of the Mexican people, and that, in supporting these proceedings in derogation of the inalienable rights of the people of Mexico, the original purposes of the French expedition seem to have become subordinate to a political revolution, which would not have occurred had not France forcibly intervened, and which could not be maintained if that intervention should cease; that the United States had not seen any satisfactory evidence that the people of Mexico had called into being or accepted the so-called empire; that they are of opinion that such acceptance could not have been freely procured or lawfully taken at any time in the presence of the French army; that this government, therefore, recognizes and must continue to recognize in Mexico only the ancient republic, and can not consent, directly or indirectly, to involve itself in relation with or recognition of the institution of the Prince Maximilian in Mexico.

Mr. Seward says: This is held without one dissenting voice by his countrymen, and that the judgment of the United States thus expressed has been adopted by every state on the American hemisphere; and that thus the presence of European armies in Mexico, maintaining a European prince with imperial attributes, without her consent and against her will, is deemed a source of apprehension and danger by the United States and all the independent and sovereign republican states on the American continent and its adjacent islands; and he denies that foreign nations can rightfully intervene by force to subvert republican institutions in any one of those states. Seeking relief of the Mexican embarrassments without disturbing the amicable relations of the United States with France, Mr. Seward presses for definitive information of the time when French military operations may be expected to cease in Mexico.

This, in effect, closes the correspondence, for M. Drouyn de l'Huys, in reply, addressing the French minister in Washington April 5, 1866, confines himself to announcing that the Emperor has decided that the French troops should evacuate Mexico in three detachments, the first to depart in the month of November 1866, the second in March 1867, and the third in November of the same year. By a subsequent change of programme the whole force was withdrawn at once, and in the month of February 1867.

While this negotiation was in progress a treaty was arranged between the prince, Maximilian, and the Emperor of Austria for the enlistment of troops in Austria for service in Mexico. Mr. Seward, in a series of dispatches dating from March 19 to April 30, 1866, stimulated the American minister in Vienna, Mr. Motley (who seemed to hesitate), to an energetic protest, and, in the event that troops were allowed to depart before an answer to the protest, he was even

ordered to retire from Vienna. In this last dispatch (April 30) Mr. Seward states the real conviction of the people of the United States in a sentence, as follows:

“The European war against the Republic of Mexico has been from the beginning a continual menace against this government, and even against free institutions throughout the American continent.”

The protest, however, was effectual, and Count Mensdorff, in his reply dated May 20, assured the United States Government that no troops would be allowed to depart for Mexico.

This practically closed the romantic enterprise in Mexico. The French troops withdrawn, all hope of new recruits from Europe cut off, the empire fell into cureless ruin.

In anticipation of the departure of the foreign troops, the whole people of Mexico rose in arms. The officials and adherents of the so-called empire were seized with a panic and hastened to provide the means of escape from the justice and the vengeance of their outraged countrymen. On the night of September 13, 1867, these guilty betrayers of their country, at Acapulco seized the bark *Francis Palmer*, claimant's vessel, and sailed away after their sole security, the withdrawing French. So it was in every part of the country. The French evacuation was followed by the flight of the imperialistic families, and the liberal forces hung on the retreating rear of the French columns, occupying every evacuated town.

On the 1st of February 1867 Miramon was defeated by General Escobedo at San Jacinto. The second of the same month Colima surrendered to General Corona. On the 5th, the French marched out of the City of Mexico. On the 13th, Maximilian marched for the fatal City of Queretaro. On the 21st, President Juarez, with his ministers, entered the city of San Luis Potosi amidst the joy and acclamations of the inhabitants.

Queretaro and Puebla were speedily invested by the liberal troops. Puebla was taken by storm on the 4th of April by Porfirio Diaz. On the 10th, Marquez, the assassin of Tacubaya, but the lieutenant-general and main prop of the crumbling empire, was defeated and driven into the City of Mexico. Diaz began the siege of the capital with twenty thousand men on the 17th. On the 15th of May Queretaro fell, and Maximilian, with Generals Miramon and Thos. Mejia and his entire force of eight thousand men surrendered at discretion. On the 14th of June, a court-martial, constituted under the orders of the constitutional government and sitting in the theater of Iturbide, at Queretaro, condemned Maximilian, Miramon, and Mejia to be shot. The sentence was approved by the commanding general, Escobedo, and the government, and was carried into execution on the morning of the 19th of June. On the 20th the City of Mexico with its garrison surrendered to General Diaz, but the infamous Marquez had already disappeared and made his escape.

This brief recapitulation of facts, which have now become history, will demonstrate that the empire in Mexico, introduced by the visionary politician, who

then, also, was preparing France for destruction, was sustained only by his bayonets, and fell by the uprising of the people of Mexico the moment these bayonets were withdrawn under the pressure of public opinion in France, and the growing discontent and impatience of the people and government of the United States.

It is believed that in no event would the monarchical substituted for the republican form of government in any state of this hemisphere by armed European intervention ever be recognized by the United States or any other American republic so long as such intervention continued. The United States has been pledged against such intervention for fifty years.

In considering the question of government *de facto*, it will be observed that it was attempted in Mexico, not only to change the person of the ruler, but the form of government, and in a direction opposed to the history, tendencies, and prejudices of every republic in North and South America.

Such a change, in fact, could only be accomplished by invasion from without or revolution within the state. In the former case the force must accomplish a secure and permanent conquest. In the latter the change must be supported by the mass of the people and rest upon their consent. Should foreign intervention aid this change we can never regard the fact as accomplished or as resting upon the favor of the people unless the new government is strong enough to maintain itself after the foreign aid shall be withdrawn.

Here, a French conquest of Mexico was never desired or aimed at.

On the contrary, the government of his Imperial Majesty uniformly declared that there was no purpose of intervention on his part in the internal affairs of Mexico. Having grounds of war against that country the occasion was to be embraced to extend an opportunity to its inhabitants, assumed to be ready to accomplish their own regeneration. In point of fact, the French Emperor, deceived by the Mexican exiles and betrayed by persons near him whom he trusted, but who were interested in Mexican bonds, lands, and mines, overestimated the strength, of the conservatives of that country and the influence of the church, whose power he understood in France. Add to this he miscalculated the result of the rebellion in the United States. His scheme for restoring the Latin race in Mexico (where it never existed) and increasing "immensely" French power and commerce, at best visionary and romantic, would have been simply insane had he not believed the people of Mexico willing to support or accept the monarchy once established by his arms.

A change in the form of government in Mexico as a fact, therefore, never existed, because it never rested for a moment upon the popular consent, and the Emperor never expected to accomplish it by the permanent armed occupation of the country.

However this may be, there can be but one government in the same state at the same time. The French found a government in Mexico when they came there, and recognized it at Soledad; when they left, it was still there, stronger than when they found it; it is there now, stronger than any government Mexico

ever had, having put down all enemies under its feet, the monarchical party crushed by the weight of its crimes and the odium attached to responsibility for foreign invasion.

This government, elected according to the constitution and laws, always in possession of much the largest portion of its territory, was sustained against domestic treason and foreign levies throughout its long and severe trials by the Mexican masses, and upheld by the sympathy of every republican state in the Americas.

But, waiving these considerations, it is impossible for the United States successfully to claim that the so-called empire was a government *de facto*. The government of that country uniformly and expressly refused to regard it as such, when the inducements to do so were strong and the danger of refusing great. On the contrary it recognized the republic and maintained relations of amity and friendship with it to the close, as it had done from the beginning of its trials. This fact must oppose an insuperable barrier to any and all reclamations by the United States against the Republic of Mexico for the acts of the Maximilian authorities, so called. There could be but one government at a time, as a matter of fact, and the United States has determined the question between the two contending parties for itself.

Wisely, the decision could not have been otherwise. The government and people of the United States understood and heartily approved the cause for which the people and government of Mexico fought and suffered; the plan of Ayutla and the constitution of 1857; equal rights secured by a government of all the people; resistance to military and ecclesiastical oppressions; a free religion and a free press; cordial fraternity with the people of all nations.

The anarchy in Mexico of which Europe complains was made by the friends of class privileges, state religions, and monarchy, conservatives of the dregs of old Spanish colonial policy, and abuses founded on ideas which belong only to past ages.

Says Mr. Seward to the Marquis de Montholon, February 12, 1866; "We can not deny that all the anarchy in Mexico of which Mr. Drouyn de l'Huys complains was necessarily and even wisely endured in the attempts to lay sure foundations of broad republican liberty."

But the people of the United States also understood what the intervention in Mexico meant for themselves: the destruction of the republican form; a monarchy on their borders to endanger their peace, menace their institutions, and check their growth; a speculation in their downfall at the hands of the rebellion then raging. A government in the United States that had shown any sympathy with such an enterprise would have sunk beneath the power of public opinion.

Moreover, the people of the United States knew the monarchical attempt in Mexico would fail. They believed the people of that country would crush it; but, in any event, they were of one mind on the subject, and intended, when the hour came, it should fail.

Yet more, the trials of their neighbors, borne so bravely and patiently, had their fullest sympathy. They were too near the scenes of suffering and cruelty to be deaf to the cries of patriots dying for their native soil and national independence. If Europe heard the guns which shot Prince Maximilian to death, Americans, however shocked by their report, yet heard the groans of the victims of his folly and ambition. On the 20th of October 1865, at Uruapan, under a presumptuous and barbarous decree of the pretended Emperor of the 3d of that month, were shot to death prisoners by the fortune of war, Generals Arteaga and Salazar, Colonels Diaz Paracho, Villa Gomez, Perez Milicua, and Villanos, five lieutenant-colonels, eight commanders, and a number of subordinate officers. Hear them a moment, for they were men and brethren.

General Arteaga writes to his mother, Dona Apolonia Magallanes:

“ADORED MOTHER: I was taken prisoner on the 13th instant, and to-morrow I am to be shot. . . . Mama, in spite of all my efforts to aid you, the only means I had I sent you in April last; but God is with you, and He will not suffer you to perish, nor my sister Trinidad, *the little Yankee*.”

And Salazar to another mother:

“ADORED MOTHER: I go down to the tomb at thirty-three years of age, without a blot upon my name. Weep not, but be comforted, for the only crime your son has committed is the defense of a holy cause—the independence of his country. For this I am to be shot. . . . Direct my children and my brothers in the path of honor, for the scaffold can not attain loyal names.”

And Gomez to a father:

“MY DEAR FATHER: I employ my last moments in writing to you. . . . I would like to leave an honored name to my family. I have worked for it, defending the cause I embraced; but I could not succeed. Patience!”

Patience did its perfect work at last, and the national cause triumphed for which these martyrs bled. The ashes of Salazar may now repose in peace by the side of his children in his mother’s town.

To-day the Liberals of Mexico, in possession of the blessings of national independence and the right of self-government, won at the price of such costly blood, have the opportunity to prove that it was not shed in vain, by union among themselves, moderation toward their opponents, and justice toward all men.

It results from the foregoing investigation that the so-called empire was not a government *de facto*; because, lacking the element of popular support or of habitual obedience from the mass of the people, it rested alone on the assistance of foreign force, which contemplated and extended only a temporary interference, and because another government, disputing successfully its pretensions, bore rule in Mexico as a fact, in possession of much the largest part of the territory, and sustained by the mass of the people.

It further results that the United States, at least, is not now at liberty to claim a government *de facto* for the Prince Maximilian, having always during the contest in Mexico recognized the republic and repudiated the empire—committed no less by the sympathies of its people with the people of Mexico in their arduous struggle for the republican form (endeared to the people of the United States) and liberal principles (which they also cherish) than by their appreciation of the fact that the European intervention attacked the United States and every other republican state in America.

I have said nothing about governments *de jure*, because, outside of the field of moral considerations, a government *de facto* is also a government *de jure*.

I feel assured, moreover, that the Government of the United States can not desire to hold the Republic of Mexico responsible for the acts of the so-called empire by obtaining awards here, which must condemn the stand taken by that government in behalf of republican institutions in its hour of trial and danger; but that this case has found its way here in the name of that government, in pursuance of a purpose to acquit itself of responsibility to claimants, by the final judgment of this impartial tribunal.

For my part, I cheerfully accept the responsibility thus imposed and the labor which belongs to it.

Claimant may have a remedy for the wrong which he has sustained; but he must look elsewhere than to the government of the Republic of Mexico.

It is therefore considered by this commission that the Republic of Mexico is not responsible for the injury complained of herein, and this claim is rejected and disallowed.

Case of Salvador Prats v. the United States of America, opinions of the Commissioners*

Affaire concernant Salvador Prats c. les États-Unis d'Amérique, opinions des Commissaires**

Commissioner of the United States

Civil war—conflict to be governed by the laws of war—question of the recognition by foreign States of the belligerent rights of insurgents—non-recognition by a foreign State does not deprive the United States of any right of war or immunity against this foreign State.

* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 2886.

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