THE TACNA-ARICA CONTROVERSY

By Edwin M. Borchard

ON JULY 20, 1922, a protocol of arbitration and a supplementary act were signed in Washington by the plenipotentiaries of Chile and Peru, providing for submission to arbitration by the President of the United States of the major issue in the long-standing controversy between Chile and Peru arising out of the non-execution of Article 3 of the Treaty of Ancon, which brought to a close the war of the Pacific.

Article 3 of that treaty reads as follows:

> "The territory of the provinces of Tacna and Arica . . . shall continue in the possession (*continuará poseido*) of Chile, subject to Chilean legislation and authority for a period of ten years from the date of the ratification of the present treaty of peace. At the expiration of that term, a plebiscite will decide, by popular vote, whether the territory of the provinces above-mentioned is to remain (*queda*) definitely under the dominion and sovereignty of Chile or is to continue to constitute a part (*continua siendo parte*) of Peru. That country of the two to which the provinces of Tacna and Arica thus remain annexed (*queden anexadas*) shall pay to the other ten millions of pesos of Chilean silver or of Peruvian soles of equal weight and fineness.
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> "A special protocol, which shall be considered an integral part of the present treaty, will determine the form in which the plebiscite is to be carried out and the terms and time for the payment of the ten millions by the nation which remains the owner (*dueño*) of the provinces of Tacna and Arica."

The treaty was ratified on March 28, 1884, so that under the terms of the article just quoted the plebiscite should have been held on March 28, 1894. No protocol for the execution of the plebiscite has ever been concluded, so that the plebiscite was not held on March 28, 1894, or since then, and Chile still remains in possession of Tacna and Arica. Both parties have laid claim to sovereignty over the territory in dispute, each accusing the other of the non-fulfilment of the treaty stipulation.

Practically the only question submitted to arbitration is this: "Whether, in the present circumstances, a plebiscite shall or shall not be held." If the arbitrator determines that a plebiscite shall be held, he "shall have full power to determine the conditions" under which it shall be conducted. If he decides "that a plebiscite shall not be held, both parties agree, upon the request of either of them, to enter into a discussion of the situation," and, "in the event that no agreement is reached . . . the two govern-

ments will request the good offices of the Government of the United States, in order that an agreement may be reached." Whether or not the districts of Tarata and Chilcaya, occupied by Chile, are in fact included in the province of Tacna, is an incidental question for the arbitrator to determine.

The hope of students of Latin-American affairs that the present protocol marks the termination of this bitter controversy may be somewhat tempered by the realization that this is not the first time that a protocol of adjustment has been signed by plenipotentiaries. The exigencies of domestic politics in the two countries, where the question has reached major proportions, have on more than one occasion frustrated the efforts of negotiators to bring the matter to a satisfactory settlement. The present protocol provides for ratification by the two home governments, *i.e.*, the respective national legislatures, within a period of three months, or by October 20, 1922. It is to be hoped that the realization that public opinion throughout the American continent expects an early solution of this acrimonious dispute, which has disturbed international relations and often interfered with Latin-American cooperation, will persuade the home governments to subordinate considerations of domestic politics to the necessities of international accord. Besides, it is not believed that either country has much to gain by refusing ratification.

Properly to understand the origin and present status of the dispute now to be submitted to arbitration, it will be necessary to review briefly the history of the relations between Peru and Chile down to 1879; the course of events and negotiations leading up to the formulation of Article 3 of the Treaty of Ancon; and the diplomatic negotiations since the conclusion of the treaty designed to bring about the holding of the plebiscite. From the beginning of the dispute—and indeed before it arose—the United States took an active interest in the reestablishment of normal relations between the two contending countries. It is therefore fitting that the United States should assume a decisive share in the solution of the controversy.

THE PERIOD TO 1879

To appreciate the nature of the controversy, it is desirable to mention the geography of the territory in question and to set forth the chronology of events leading up to the war of the Pacific. Chile is a long, narrow country lying along the south-

western edge of South America. In length, about 2,000 miles, it would cover approximately a coastal strip from Maine to North Carolina; in width, it extends from 100 to 200 miles inland, from the Pacific Ocean to the Cordilleras of the Andes.

Down to 1842, there appears to have been no doubt as to the northern boundary of Chile. Chile's constitutions of 1822, 1823, 1828, 1832, and 1833, all appear expressly to recognize the northern boundary of Chile as the desert of Atacama, about 27° south latitude. The desert of Atacama, extending from about 27° to 23° south latitude, was up to 1842 under the undisputed dominion and sovereignty of Bolivia. North of 23° was Bolivian territory, including Antofagasta, extending to 21°; north of that, the Peruvian province of Tarapacá, extending from about 21° to 19°; and immediately to the north of this line are the provinces of Tacna and Arica, extending from about 19° to 17° 30′. From 17° 30′ to 17°, adjoining Tacna, lies the province of Tarata, which represents since 1883 the northern limit of Chilean occupation.

The immediate reason for the first step in this northward expansion appears to have been the discovery of guano in the desert of Atacama. President Montt, of Chile, in a message to the Chilean Congress, on July 31, 1842, informed the Congress that he had sent a commission of exploration "for the purpose of discovering if any guano deposits existed *in the territory of the Republic* which . . . might furnish a new source of revenue to the treasury. . . . Guano has been discovered from 29° 35′ to 23° 6′ south latitude." Chile's northern boundary was then 27°, so that evidently much of the territory exploited was in the desert of Atacama, then Bolivian. The Chilean Congress, in pursuance of the Presidential Message, enacted on October 31, 1842, a law providing that "all the guano deposits which existed in the Province of Coquimbo, *in the littoral of Atacama*, and in the adjacent islands, are hereby declared national property." Bolivia formally protested against this assumption of Chilean sovereignty over Bolivian territory, and thus began the controversy which culminated in the War of the Pacific of 1879, brought Peru into the conflict and created "the question of the Pacific."

Bolivia's protests went unheeded. Continuous incursions by Chilean guano hunters were followed in 1857 by the landing of a Chilean military expedition at Mejillones, one of the principal ports of the Atacama desert, and the ousting of the Bolivian

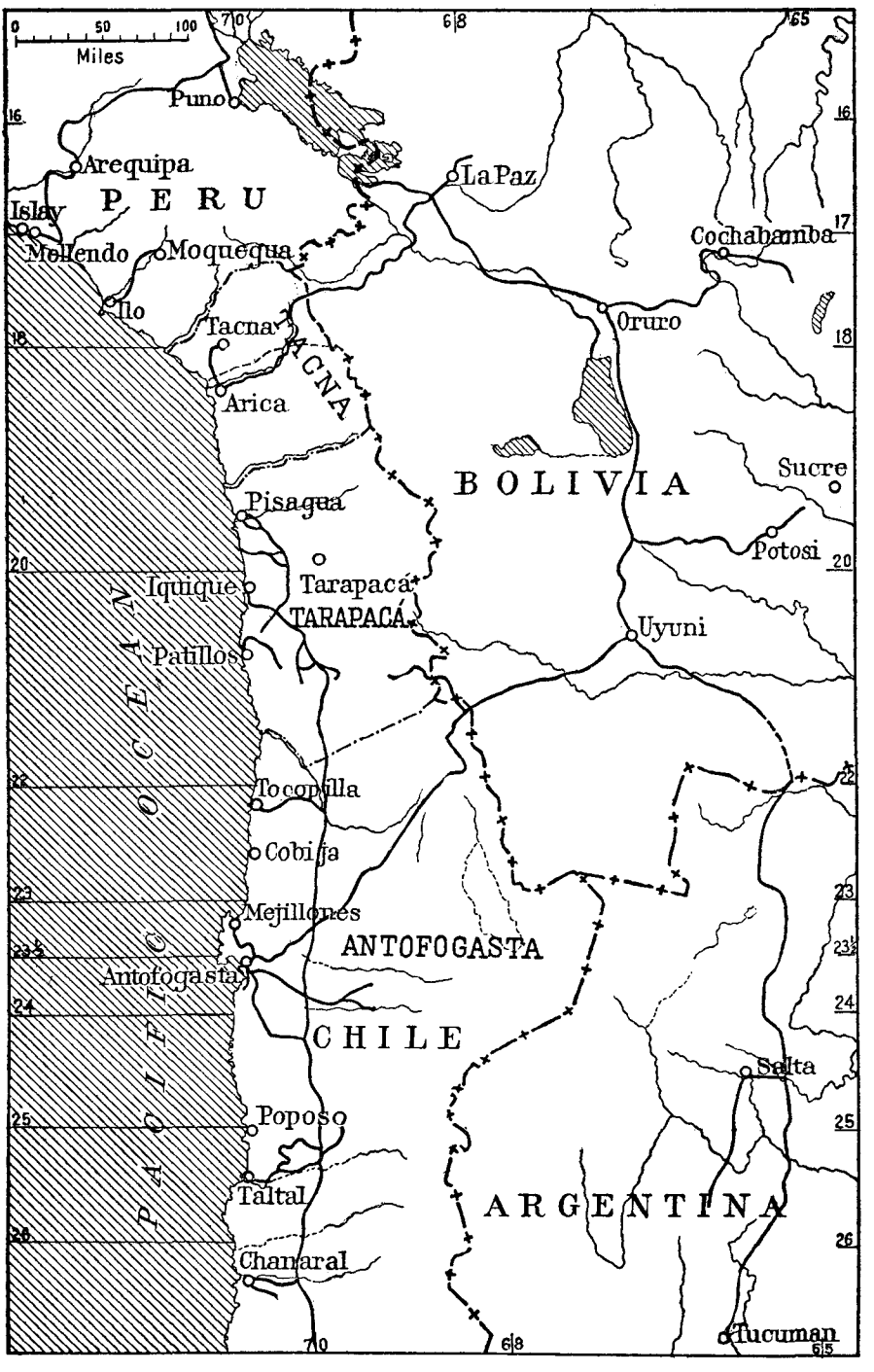
authorities. To Bolivia's demands for evacuation of the territory thus occupied, Chile set up a claim of territorial right and expressed a willingness to draw up a boundary treaty, dividing the Atacama desert between them. Bolivia, weak and misgoverned by a succession of military dictators, was constrained to yield. Protracted negotiations, interrupted by the war against Spain, finally resulted in the Treaty of 1866, by which the new boundary line was fixed at 24°, Bolivia thus surrendering the territory from 27° to 24°. Chile had claimed all the territory up to 23°. In the region between 23° and 25° a sort of condominium was set up, by which each country was to receive half the proceeds of the guano and mineral deposits and half the export duties. The condominium proving unsatisfactory in administration, a new treaty was concluded in 1874 which fixed 24° as the boundary between Chile and Bolivia. It also provided that guano deposits in the zone between 23° and 24° were to be equally divided between Bolivia and Chile. Article 4 of the treaty, which ultimately gave rise to the dispute which led to the war of 1879, reads:

> "The export duties to be levied on the minerals mined within the zone mentioned in the preceding articles shall not exceed those which are in force at the present time; and Chilean capital, Chilean persons and their industries, shall not be subject to any other taxes of whatsoever kind than at present exist."

A supplemental agreement of 1875 provided that all disputes arising out of the interpretation of this treaty were to be submitted to arbitration.

The progressive Chilean encroachment on Bolivian territory was disquieting, not only to Bolivia, but also to Peru, her northern and western neighbor. Down to this time the relations between Chile and Peru and between Bolivia and Peru had, on the whole and with minor interruptions, been friendly. In fact, Bolivia and Peru had joined in a Confederation in 1836—which Chile, indeed, aided to dissolve—and had given other evidences of solidarity. When, then, in 1872, the Bolivian Congress enacted a law instructing the Executive to "enter into a treaty of defensive alliance with the Government of Peru against all foreign aggression," Peru was found not unwilling. The treaty, as its wording plainly indicates, was designed to preserve the *status quo*, and has its counterpart in Article X of the Covenant of the League of Nations.

The Treaty of 1873 provided for reciprocal guaranties of inde-



pendence, sovereignty and integrity of territory against aggressions of third states upon either party (Art. 1), each remaining the judge of what was aggression (Art. 3); each was to employ conciliatory measures to avoid a rupture or end a war between its ally and a third power, arbitration to be preferred (Art. 8), and the adhesion of one or more "other American states" could be invited by either party "to the present defensive treaty of alliance" (Art. 10).

For some unaccountable reason this treaty was kept secret. It was concluded at a time when Bolivia was being subjected to great pressure and threats from Chile, arising out of the alleged violation of the Treaty of 1866, a violation denied, however, by the Chilean diplomat, Marcial Martinez. In the Chilean-Bolivian controversies, Peru's sympathies had been with Bolivia, and Peru had in fact on November 19, 1872, some months prior to the treaty of alliance, declared that it would lend its aid "to reject any demands which it should consider as unjust or menacing to Bolivian independence." It should be observed, moreover, that in 1871 the Chilean Congress had passed an Act authorizing the building of new war vessels. This fact, combined with Chile's aggressive policy in pushing northward along the coast, probably accounts for the treaty alliance. While it is true that the line between a defensive and an offensive alliance is often vague, there is much evidence to show that in the minds of the contracting parties its purpose was solely that of preserving intact their respective territories.

Chile at this time was engaged in a boundary dispute with Argentina, respecting Patagonia, a fact which had some influence on Bolivian policy, to be noted presently. The Argentine Chamber of Deputies voted adhesion to the treaty of alliance, but the Senate declined. The existence and secrecy of this treaty were among the grounds advanced by Chile in 1879 as a justification for her declaration of war against Peru; but however much the secrecy of the treaty may be deprecated or condemned, the evidence seems to indicate that the treaty was fully known in Santiago; and the Chilean Minister of Foreign Affairs in his Circular note of December, 1918, to Chilean diplomatic representatives in foreign capitals confines himself to denying Chile's "*exact*" knowledge of the treaty. Moreover, the evidence adduced by the Chilean publicist Anselmo Blanlot Holley and by the Bolivian historian Alberto Gutierrez in his work *La Guerra*

de 1879 leaves it beyond question that from November 1, 1873, the treaty was fully known in Santiago.

Nitrate had in the sixties been discovered in considerable quantities in Bolivian and Peruvian territory, particularly around Antofagasta, Bolivia, and in the Peruvian province of Tarapacá. Among other foreign concessionaires, Chilean citizens owned several *oficinas* and numerous Chileans were employed in the works. The Peruvian Government at that time conceived the idea of nationalizing the nitrate industry in Peruvian territory, partly by exercising the power of eminent domain and partly by high taxation. Chile professed to regard the policy as directed solely to the injury of Chileans, although Chilean interests were very considerably less in Tarapacá than those of Peruvian and other nationalities. At all events, no diplomatic claims or protests appear to have been entered against Peru, an eventuality almost certain had the Peruvian measures been regarded as illegal.

To return to the Chilean-Bolivian situation: Two Chilean citizens had obtained from Melgarejo, Bolivian president and ephemeral dictator, a nitrate and railroad concession in the Bolivian zone between 23° and 24°. Later the Bolivian Government sought to annul all the concessions granted by Melgarejo, but this particular concession, which had been assigned to an important nitrate company, was confirmed by executive agreement in 1873. The Treaty of 1874 with Chile, it will be recalled, had provided against any future taxes on Chileans higher than those then in force. It was not until 1878 that the Bolivian Congress ratified the agreement of 1873 and they did so on condition that the company should pay ten cents (*centavos*) per quintal of nitrate exported, instead of 10 per cent of the profits of the business, which under the old contract the government was to receive. Against this tax Chile, with some justice, it would seem, protested, as in violation of the Treaty of 1874. Bolivia answered that this was not a general tax, but that the matter concerned merely a private contract between the company and the Bolivian Government. Possibly Bolivia was encouraged in her stand by the belief that impending difficulties between Chile and Argentina, shortly thereafter settled by agreement to arbitrate, would deflect Chile's attention and firmness. In this she was in error. Her legal position also seems untenable. Chile assumed a very firm policy, threatening to break relations unless the tax

law was repealed and to reassert her old claims to a northern boundary at 23° which she had asserted prior to the Treaty of 1866. The company having refused to pay the tax, Bolivia first attached the property; but owing to difficulties of administration Bolivia decided by decree to cancel the concession-contract. Chile asked for the suspension of all these measures until arbitration could settle the matter under the agreement of 1875, and gave an ultimatum of 48 hours for the Bolivian answer. Bolivia delayed her answer until the expiration of the period allowed, when the Chilean Chargé d'Affaires requested his passports.

Before the decree cancelling the concession-contract there appeared in the harbor of Antofagasta the Chilean cruiser *Blanco Encalada*. This unexpected step appeared to confuse the Bolivian Foreign Office and her diplomacy. As soon as the decree of rescission was announced in Chile and before the delivery of the ultimatum by the Chilean Chargé, the occupation of the Bolivian littoral was ordered and immediately accomplished without firing a shot. To give the seizure a legal basis it was rested on the civil law right of "revindication," a reclaiming of that which one had once owned or possessed. The reason thus asserted has not commanded general favor, even in Chile, where the action itself was approved. The Chilean legal claim to this territory, *i.e.*, up to 23°, has been placed by some of the most extreme among the advocates of Chile on two grounds: (1) that it was Chilean under the principle of *uti possidetis*, applied by the independent states of South America on their separation from Spain; and (2) that it was "Chilean soil because of its conquest for civilization, thanks to the enterprise, capital and labor of Chilean nationals." The first of these grounds is apparently not supported by the Chilean constitutions which, as has been observed, fixed the northern boundary at the desert of Atacama, about 27°, a boundary not questioned by Chile until 1842, when guano was discovered in the desert. The second, used frequently to sustain the Chilean territorial claims, has no legal basis. Even if it were true that the development of the territory of the Bolivian littoral was due entirely to Chilean capital and labor—an allegation which is unsupported by evidence—such contribution is not recognized as a title to territorial sovereignty. Whatever the weakness of the Bolivian position, it hardly seems to have justified the aggressive belligerent action of Chile before the breach of diplomatic relations, while the

question was still pending, and without a declaration of war. Bolivia never regained the territory from which she was ejected.

Until Chile thus forced the issue, considerable sympathy for the justice of her claim had been expressed in Peru. Peru did not approve of the decree cancelling the contract, and instructed her minister in La Paz to use his good offices to compose the differences. These efforts continued until some time after hostilities had begun in February, 1879, and on March 5, 1879, Bolivia signed a protocol with Peru among whose bases was the suspension of the effects of the obnoxious tax law. Peru likewise directed her efforts at mediation to Chile. She sent to Santiago a mission headed by José Antonio Lavalle who proposed as a means of settlement the reëstablishment of the *status quo ante* by the Chilean evacuation of the occupied littoral and the submission to arbitration of the question of the Bolivian tax law and the cancellation of the concession-contract. Chile refused these terms or the submission of counter-proposals, stating that the question no longer involved a tax, but Chile's title to the soil of the territory. Lavalle proposed the submission of the question to arbitration and the temporary neutralization of the territory. Chile refused. The Chilean Minister of Foreign Affairs then assumed the initiative by denying Peru's disinterestedness, charging Peru with seeking to injure Chilean interests by her nitrate measures, and with keeping secret the treaty of alliance between Peru and Bolivia. Lavalle was now on the defensive. He did not admit knowledge of or possession of the secret treaty, but promised to inquire for it at Lima. Shortly thereafter, the Chilean Minister at Lima was shown the treaty, the defensive character of which was manifest. Lavalle was accused by Chile of insincerity in his attempted mediation, because of this Peruvian agreement with Bolivia. This hardly seems sustainable, for Peru, very weak militarily, had every interest in preventing a war between Chile and Bolivia, even apart from the stipulations of Article VIII of the treaty which bound her to seek to conciliate the belligerents.

It has already been shown that the Treaty of 1873, which had been openly discussed in diplomatic circles in La Paz, Lima, Buenos Aires and Santiago, was not unknown to the Chilean Foreign Office. All these facts lead to the conclusion expressed by Sir Clements R. Markham, the English historian, that Chile sought a pretext for the war against Peru, the object being the

nitrate wealth of Antofagasta and Tarapacá. The Chilean Minister of Foreign Affairs brought the negotiations with Lavalle to a close by asking (1) a declaration of neutrality by Peru as a condition for the resumption of the *pourparlers*, (2) the abrogation of the Bolivian-Peruvian Treaty of 1873, and (3) the cessation by Peru of all armed preparations. Peru, finding it impossible to accept such conditions, a fact doubtless realized by the Chilean Minister of Foreign Affairs, Lavalle was dismissed and Chile declared war on Peru, April 5, 1879.

While there is no question that Peru entertained a feeling of suspicion against Chile, in evidence of which the secret treaty of 1873 has been cited by Chile; and while it is possible that the "nitrate policy" of Peru was not free from a desire to nationalize by eminent domain the entire nitrate works, still, with all possible allowances for the sincerity of the Chilean contentions, it is difficult to accept the Chilean assertion that "Peru provoked the war at the time when it considered Chile compromised and engaged in serious difficulties with Argentina" —shortly thereafter submitted to arbitral settlement—and that Chile was "dragged into the war" by virtue of "the offensive and defensive alliance between Bolivia and Peru." On the contrary, whatever inference against Peru may be drawn from the secrecy of the treaty, all the evidence indicates that neither the parties themselves nor those whose adherence was sought considered it anything but a defensive alliance for the maintenance of the *status quo*. Moreover, it is impossible to doubt the sincerity of Peru's effort to avoid and, if that proved unsuccessful, to terminate, the war between Chile and Bolivia. In the matter of motive, it seems reasonable to conclude that Peru had nothing to gain from a war against Chile. They were not adjoining countries, had no boundary dispute, and whatever guano and nitrate Chile had obtained through the treaty of 1874 with Bolivia, Peru had so much more that it is not reasonable to suppose that she coveted Chile's. On the other hand, the same absence of motive cannot be ascribed to Chile, whose policy had since 1842 been directed toward acquiring greater control of the nitrate territory.

THE WAR AND THE TREATY

The war resulted in an easy victory for Chile. At the battle of Tacna in 1880 the Peruvian and Bolivian armies were severely

defeated, and after the failure of the negotiations initiated in 1880 by the United States, to be mentioned presently, the occupation of Lima and practically all of Peru by the Chilean armies and naval forces placed Chile in a position to dictate peace.

The United States, at an early stage of the contest, manifested its deep interest in bringing the conflict to a close by insistent offers of mediation. These succeeded to the extent that a meeting was brought about in 1880 between plenipotentiaries of the three belligerents and the American Ministers accredited to those countries on board an American naval vessel in the harbor of Arica. Chile having maintained that the war on her part was not a war of conquest, a position she has consistently maintained, but that she sought only reparation and "guaranties" for the future, it seemed not unreasonable to hope that an acceptable arrangement might be made. At the conference at Arica the Chilean plenipotentiaries demanded as the principal conditions of peace (1) the unconditional cession to Chile of the whole Bolivian littoral and of the Peruvian province of Tarapacá; (2) the payment of twenty million pesos by Bolivia and Peru; and (3) the retention of the occupied provinces of Moquegua, Tacna and Arica as a pledge for this payment, until it was effected. The conditions seemed shocking to the United States in the light of Chile's avowal that the war was not one of conquest. Tarapacá alone was of immense value in nitrate, and yielded large sums to Chile during its military occupation. Peru could not reconcile herself to the cession of Peruvian territory, but offered to arbitrate the question of indemnities and other questions arising out of the war. In this proposal she received the hearty support of the United States. Chile rejected the proposal.

Chile's refusal to negotiate on any but her own terms ended the Arica conferences. The occupation of Lima and the rest of Peru soon followed. Mr. Blaine, who had become Secretary of State, and who was an informed student of Latin-American affairs, was not discouraged in his efforts to mediate between the belligerents. Relying upon Chile's disavowal of the idea of conquest, yet recognizing her claim as victor to some indemnity, he sought, on the one hand, to temper the excessive demands of Chile for annexation of territory and large sums claimable only under the "right" of conquest and, on the other hand, to reconcile Peru to the cession of some territory. These efforts proving fruitless, Mr. Blaine then intrusted Mr. Trescot, of South

Carolina, with a special mission to effect mediation. For him, the Chilean Minister of Foreign Affairs, Balmaceda, formulated the Chilean conditions of peace, which included, among other items, (1) the unconditional cession of Tarapacá; (2) the occupation of Tacna and Arica for ten years, at the end of which time Peru was to pay twenty million pesos, and (3) Tacna and Arica to be ceded to Chile if the money was not paid in the time indicated. Mr. Trescot considered it useless to present these terms to Peru.

President Garfield's assassination brought about a change in the State Department. Secretary Blaine was succeeded by Mr. Frelinghuysen, and the change was reflected in the American attitude toward the belligerents. American good offices were withdrawn and Mr. Trescot recalled. Finally, after an abortive negotiation in September, 1882, the Treaty of Ancon was signed, Article 3 of which has already been quoted. The treaty incorporated the provision for the perpetual and unconditional cession of Tarapacá; and with respect to Tacna and Arica, provided for continued possession by Chile for a period of ten years, at the end of which time a plebiscite was to be taken to determine by popular vote the definitive dominion and sovereignty of the provinces in question, the winning country to pay to the loser the sum of ten million pesos or soles, as the case might be; and a protocol to be agreed on was to determine the form of the plebiscite and the terms and time of the payment of the ten millions.

These negotiations and the terms offered by Chile in the course thereof have been set out in order properly to consider the Chilean contentions: (1) that the war was not one of conquest; and (2) that the provisions of Article 3 with reference to Tacna and Arica imply a complete cession of those provinces to Chile and were so intended. I shall later examine Chile's further contention that Peru has prevented the holding of the plebiscite.

That the war was not one of conquest has been affirmed by the official and unofficial spokesmen of Chile without exception. But if the war was not one of conquest, it yet remains true that for the ten to fifteen million dollars which it has been estimated to have cost Chile, Chile secured the entire Bolivian littoral and the Peruvian province of Tarapacá, together with the temporary and still unrelinquished administration of Tacna and Arica. The territories she secured were among the most valuable nitrate fields known. It appears that Chile more than supported her

entire war expenses from the proceeds of the occupied Bolivian and Peruvian territory. What she has secured since would seem then to be clear gain and it has been estimated that from the province of Tarapacá alone one hundred and fifty million pounds sterling in nitrate wealth has already been extracted. That sum will doubtless be doubled before many years. In addition to nitrate, the territory contains guano, copper, silver and tin and deposits of salt and borax. The natural resources Chile acquired constitute the economic and fiscal backbone of the country and have developed Chile from a poor into a rich country, the duties on the exports of nitrate paying a large share of her budget expenses. No one would underestimate the high quality of Chilean citizenship nor the ability of her leaders in all branches of economic and intellectual activity. Yet in considering the character of the war of the Pacific it is difficult to escape the conclusion that the annexation of territories containing almost inexhaustible quantities of valuable natural resources can not be reconciled with a disclaimer of conquest.

Now, whatever may be said of the morality of conquest, it has been and still is a method of acquiring territory. On the American continent, it may be observed that the various nations of Latin-America, in view of the similarity of their origin and of many of their international questions have sought to work out a uniformity of principle in the settlement of their problems. Among the most conspicuous of these principles to which general Latin-American adherence has been sought has been that of outlawing conquest on the American continent as a method of acquiring territory and that of universal arbitration of all international disputes. General acceptance of the second would doubtless contribute materially to bring about the first. Earnest efforts to obtain unanimous support for these doctrines have been made at various Pan-American congresses. The International American Conference of 1889 unanimously adopted a resolution that "the principle of conquest shall not . . . be recognized as admissible under American public law," Chile abstaining from voting. These efforts to abolish conquest it may fairly be said Chile has since 1883 done nothing to aid; yet to the general American opinion, far more hostile to conquest than is that of Europe, Chile has been constrained to yield to the extent of repudiating the *purpose* of conquest in her actual seizure of Peruvian territory. Few modern nations have been

willing to accept the moral obloquy involved in an admission of conquest, yet few have escaped the temptation of accomplishing the result when physically possible, justifying the conquest on grounds deemed adequate to itself, and sufficiently defensible to the outside world. Treaties embodying such conquest may be regarded as valid when signed by the victorious and the defeated countries and they are not, like ordinary contracts signed under duress, legally voidable on that account. They contain, however, an inherent moral defect; and their continued execution depends upon the continuance of the same preponderance of physical force which imposed them and of the continued plausibility of the grounds on which the conquest was justified. The abrogation of such treaties then is likely to be attempted whenever the object to be attained seems important enough to justify the effort, and whenever the balance of power sufficiently changes, either by a direct change in the relative strength of the two parties to the treaty or through the addition, by combinations, of strength to the defeated nation. This the defeated nation usually seeks to obtain diplomatically; and one of the customary methods is to persuade other powers that the grounds advanced in justification of a conquest are indefensible. When the intention of conquest is entirely repudiated, as in the case of Chile, and the justification for annexations is placed on the ground of indemnity for war expenses and sacrifices, and "guaranties" for the future, it would seem that Peru is at least warranted in calling attention to economic statistics to escape the burdens imposed by the treaty.

To Peru, the greatest injury imposed by the Treaty of Ancon has been the compulsory cession of the rich province of Tarapacá. Tacna and Arica, with their 42,000 inhabitants and lack of natural resources, have had little more than a sentimental value. The charge brought by Peru against Chile of a violation of Article 3 in refusing to hold the plebiscite and in retaining Tacna and Arica has been associated with the effort to use it as a basis for denouncing the entire treaty, as an integral unit of interdependent clauses, and thereby to invalidate the cession of Tarapacá. This impeachment of Chile's title to Tarapacá would appear by the present protocol of arbitration, to be abandoned, for it is expressly recorded "that the only difficulty arising out of the Treaty of Ancon concerning which the two countries have not been able to reach an agreement, are the questions arising out of

the unfulfilled provisions of Article 3." By the protocol, therefore, Chile gains the relinquishment of Peru's former claims of the invalidity of the entire treaty and notably of the cession of Tarapacá, and leaves open merely the question as to who shall have the unimportant area of Tacna and Arica. It is regrettable that so comparatively trifling a question should have been permitted so long to disturb international relations.

TACNA-ARICA AND THE PLEBISCITE

The condition as to holding a plebiscite in Tacna and Arica not having been performed, the spokesmen of Chile have devoted themselves to an endeavor to show that when the condition was stipulated it was fully understood that the cession was absolute and definitive and that the plebiscite was a mere formality not seriously intended to be carried out, and designed to "save the faces" of the Peruvian negotiators. Inasmuch as Chile was in a position to dictate the terms of the whole treaty, there is no reason to suppose that the language used does not accurately express Chile's intentions at the time. Article 3 provides that Tacna and Arica, then militarily occupied by Chile, "shall continue in the *possession* of Chile, subject to Chilean legislation and authority for a period of ten years. . . . At the expiration of that term, a plebiscite will decide . . . whether the territory . . . is to remain definitely under the dominion and sovereignty of Chile *or is to continue to constitute a part of Peru.*" (Italics mine.)

The meaning of these clauses seems clear. Chile is to continue a *possession* she then exercised. Such possession was at the time military occupation which automatically subjected the territory to Chilean legislation and authority. That possession or occupation are not the equivalent of sovereignty seems obvious. If it had been intended to transfer complete sovereignty to Chile, how could the negotiators, in describing the status after an eventual plebiscite favorable to Peru, have used the phrase, "*is to continue to constitute a part of Peru.*" Evidently it was recognized to be and to continue *a part of Peru*, which precludes the validity of the contention that it was to become immediately a part of Chile. That could not happen until a plebiscite favorable to Chile had taken place, and that condition having been accomplished it was thereafter "to remain definitely under the dominion and sovereignty of Chile." That is, Tacna and Arica were to

continue to be a part of Peru until a condition precedent, a vote favorable to Chile, occurred as an operative fact to transfer complete and permanent sovereignty to Chile. It was not, as Chile has contended, a complete cession of sovereignty to Chile, subject to being divested by the happening of a condition subsequent, a vote unfavorable to Chile. But for the earnestness with which numerous Chilean publicists have advanced the contention that complete sovereignty was immediately transferred to Chile, it might be said that the construction of the express language of the article was not open to serious question.

The advocates of Chile earnestly contend that the provision for a plebiscite was a mere formality designed to allay public opinion at home in Peru and to remove all pretext to the opposition against the new government which signed the treaty; and that the negotiators were fully aware that it was intended to be a complete cession of sovereignty to Chile, the plebiscite being a mere screen to "save their faces." This view is believed to be widely entertained in Chile. Those who advance it do so in order to explain the failure to hold the plebiscite, presumably on a theory that a failure to do that which was not intended to be done negatives culpability. Without emphasizing the fact that this view contradicts the plain words of the treaty, it does not seem to be consistent with the allegation that Chile has used all reasonable efforts to have the plebiscite held, but that Peru has prevented it.

A final contention of Chile and of Peru which it is proper to consider relates to the responsibility for the non-performance of the condition requiring the holding of the plebiscite. Chile charges Peru with obstructing it; Peru makes an identical charge against Chile. To arrive at a probably correct conclusion it would be necessary to examine in detail the confusing course of a long series of diplomatic negotiations, marked by all the undisclosed and hidden motives which characterize the vicissitudes of diplomacy. For this examination, space is lacking. On the whole it may be said that Chile's attitude toward making arrangements for the holding of the plebiscite has been passive, whereas that of Peru has been active. Chile's willingness to entertain proposals has varied somewhat according to the status of her international relations with Argentina and Bolivia. The prospect of difficulties with those countries, especially with the former, as in 1898, has inclined her from time to time to agree to

some of the various Peruvian proposals for the plebiscite; whereas a lessening in the tension with Argentina or Bolivia has been marked by greater firmness toward Peru. The difficulty of negotiation has been increased not infrequently by sudden changes in governments, short tenures of Ministers of Foreign Affairs, and the consequent necessity for suspending negotiations under way and of taking up with an uninformed Minister, or one adopting a new policy, the thread of former negotiations.

The long and tortuous negotiations for the holding of the plebiscite were begun in August, 1892, and were renewed, at intervals, until 1912. Inasmuch as they all proved abortive, it may suffice to mention merely the principal proposals advanced by one or the other party at different stages during the several negotiations between 1892 and 1912, when negotiations practically ceased, with the suspension of diplomatic relations between the two nations. The Peruvian proposals at one time or another included the following: Withdrawal by Chile, in return for free entry of Chilean goods into Peru; the plebiscite to be held by Peru or by a neutral Power; a division of the territory into two zones, Peru to conduct the voting in the northern zone, Chile in the southern, payments to be effected by a free market to Chilean goods; arbitration of the entire issue or of the particular question as to who shall have the right to vote, natives only, or all the residents. It soon appeared that the qualifications of the voters as well as the control of the election were vital questions. The principal Chilean proposals included: A division of the territory into three zones, the northern to go definitely to Peru, the southern to Chile, and in the middle a plebiscite to be held, the winning nation paying the loser four million pesos or soles, with an extension of the Chilean possession to 1898; the annexation of Tacna and Arica by a new treaty; a proposal of 1910, providing for a plebiscite to be open to those who had resided in the territory six months, the election board to be presided over by a Chilean, the vote to be taken six months after ratification of a protocol. The scheme seemed transparent to Peru, but she countered with a suggestion by which the vote was to be open to those who had resided in Tacna and Arica since July, 1907, the board to be presided over by a neutral. Realizing that Peru was financially embarrassed, Chile occasionally blocked negotiations by insisting on the production of the ten millions before the holding of the plebiscite, though it is quite

probable that Peru could, in the event of winning, have obtained the necessary loan on her unpledged resources. Finally in 1912, President Billinghurst, harassed and discouraged, and desirous of getting the question temporarily disposed of, actually agreed by telegram to accept the following Chilean bases: A postponement of the plebiscite until 1933, Chilean "occupation" continuing; the election board to consist of five delegates, two Chileans, two Peruvians, and the Chief Justice of Chile, presiding; the voters to consist of all the natives and all those resident for three years in the territory who could read and write. This proposal the Peruvian people and Congress flatly rejected.

The nearest approach to an agreement was in December, 1893, when a draft protocol was concluded, providing for a vote by resident Chileans and Peruvians over 21, including Chileans who had resided two years in the provinces, the losing nation to be allowed an agreed advance of frontiers, and payment, in bonds, to be reduced to three millions; and again in 1898, when the so-called Billinghurst-Latorre protocol provided for an arbitration by Spain of the questions: Who shall vote and the qualifications of the voters, and whether the voting shall be public or secret. Chile declined ratification to both these protocols.

Peru's efforts after 1912 were directed largely toward creating a sentiment favorable to the arbitration of the whole Tacna-Arica controversy. Peru heartily supported the effort of the Pan-American Congress of 1901 to commit itself to a resolution favoring universal arbitration of all American questions. Chile resisted such a resolution and threatened not to send delegates if such a resolution were placed on the program of the Conference. Apart from the unratified protocol of 1898, it was not until 1921 that Chile manifested positive acquiescence to submit to arbitration any element of the issues involved, finally agreeing in the protocol of July 20, 1922, now awaiting ratification, to submit the single question whether or not a plebiscite shall now be held, and if so, on what conditions.

It should be observed that in 1900 the population of Tacna and Arica was still overwhelmingly Peruvian. Another circumstance then requires attention. After the failure of Chile to ratify the Billinghurst-Latorre protocol, Chile began in the provinces of Tacna and Arica a policy which has been called "Chilenization." This has consisted in the closing of schools conducted by Peruvians, the extension of the military zone to

Tacna, the dismissal of Peruvian prelates and interference with Peruvian religious establishments, the initiation of a Chilean press propaganda and restrictions upon Peruvian press and political agitation, and a colonization policy for Chileans. More recently, the expulsion of Peruvians has been alleged. Doubtless Chile has felt herself justified in adopting some of these measures for the maintenance of Chilean patriotism in what she has deemed to be Chilean territory. Many of the charges of arbitrary oppression which Peru has directed against Chile because of her "Chilenization" policy are explainable on this ground and on the ground that the assumed Chilean sovereignty conferred the privilege of enacting any legislation considered essential in the interests of the sovereign. However much such an explanation tempers the culpability or arbitrariness of the measures adopted, it has, I believe, no legal foundation in that Chile never was or has been the legal sovereign in Tacna and Arica, but merely exercised the rights and powers of an occupant.

And now, through the initiative of President Harding and Secretary of State Hughes, the two contending nations have been brought to an agreement for a limited arbitration of the question which so long has disturbed friendly relations between them. The case illustrates the difficulties to which a postponement of a plebiscite to the future are almost certain to give rise. Conditions in the disputed territory, notably the personnel of the population, have so greatly changed since 1894, that it is doubtful whether a plebiscite held today would, under any circumstances, reflect conditions of 1894 or carry out measurably the stipulations of the Treaty of Ancon. For that reason, and because of the extreme difficulty of arranging satisfactory terms and conditions for a plebiscite, it may well be that the distinguished arbitrator will decide that a plebiscite today is impracticable. In that event, the two parties will endeavor again to enter into direct negotiations for a final settlement of the status of Tacna and Arica, and given a sufficiently accommodating disposition, there should be no difficulty in arriving at an agreement. Should the two governments be unable to agree, they "will request the good offices of the Government of the United States, in order that an agreement may be reached." These good offices, now for the first time invoked by both parties, should insure a prompt and satisfactory disposition of the long-standing controversy.

One other matter requires consideration. Bolivia was through the War of 1879 deprived by Chile of her littoral, a cession which she has since confirmed by formal treaty (1895 and 1904). Ever since then she has made demands, now on Chile, now on Peru, for that access to the sea of which she was deprived. On several occasions, tentative agreements to give her such access have been concluded, but they have never been carried into effect. Bolivian diplomacy has vacillated between a Chilean and Peruvian rapprochement, as either one or the other seemed the more disposed or able to satisfy Bolivia's demand. When the arbitration proceedings and diplomatic negotiations between Peru and Chile contemplated by the accord of July 20th shall have been concluded, it will be proper to enter into friendly negotiations with Bolivia for the satisfaction of an economic demand which a considerable public opinion believes to be at least just if not legally sustainable. Until such demand is satisfied by the slight concession which that will require, the Question of the Pacific will probably not be finally adjusted. American public opinion entertains the justifiable expectation that the troublesome questions arising out of the War of 1879–1883 shall now be definitely and justly disposed of and settled.

THE NEXT AMERICAN CONTRIBUTION TO CIVILIZATION

By Charles W. Eliot

IN THE summer of 1896 I gave an address at the original Chautauqua, created and conducted by Bishop John H. Vincent of the Methodist Episcopal Church, on "Five American Contributions to Civilization." In the last paragraph but one of the address these five contributions were succinctly described and characterized as follows:

"These five contributions to civilization—peace-keeping, religious toleration, the development of manhood suffrage, the welcoming of newcomers, and the diffusion of well-being—I hold to have been eminently characteristic of our country, and so important that, in spite of the qualifications and deductions which every candid citizen would admit with regard to every one of them, they will ever be held in the grateful remembrance of mankind. They are reasonable grounds for a steady, glowing patriotism. They have had much to do, both as causes and as effects, with the material prosperity of the United States; but they are all five essentially moral contributions, being triumphs of reason, enterprise, courage, faith, and justice, over passion, selfishness, inertness, timidity, and distrust. Beneath each one of these developments there lies a strong ethical sentiment, a strenuous moral and social purpose. It is for such work that multitudinous democracies are fit."

I wished to emphasize in this paragraph that the five contributions were not material but moral, not evidences of a coarse and selfish materialism in the American people, but on the contrary evidences of a good spiritual quality as the result of their experience in political and social liberty, and in chronic conflict with their various foes—some of them human beings, and some adverse forces of Nature.

Ten years earlier, at the two hundred and fiftieth anniversary of the First Parish Church in Cambridge, in an address entitled "Why we honor the Puritans," I had spoken near the end of the address as follows, trying to answer the question: Have we, the descendants of the Puritans, ideals for which we would toil, and suffer, and if need be die?