

## IX

### CIVIL WAR, INSURRECTIONS AND MOB VIOLENCE

(a) The damages which involve the responsibility of the State, resulting either from the acts of its organs or of private persons, might arise under certain circumstances that give them a special nature. This refers to such situations as insurrections, civil wars, riots, or popular disturbances. Some of the authorities consider these acts subject to the same common rules of international responsibility applicable to illicit acts of public officers or private persons. It seems evident, however, that the peculiar circumstances involved in these various acts should not be altogether barred from consideration. It is just precisely due to this fact that attempts have been made to establish different doctrines as a basis for responsibility. In some cases responsibility is made absolute, or with exceptions; in others there is utter exemption from responsibility, or with certain exceptions; and finally, in certain instances responsibility is subject to the consideration of the conduct of the State as regards the damage caused or the public disturbance.<sup>1</sup> However, all these doctrines are still mere theories. There is, on the other hand, a practical and well defined principle, as very few are, that is observed both in practice and in international jurisprudence. This is the doctrine whereby the State is not responsible for damage caused by insurgents or revolutionists.<sup>2</sup> It is thus set forth in most of the replies of

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<sup>1</sup>The following doctrines have been propounded: 1. The *quasi ex contractu* of Breton. 2. The one which applies State risks in international matters. (Fauchille.) This is based upon the fact that foreigners constitute a source of profit for the State wherein they reside and that it is only logical and fair that in consideration thereof, the State should have the obligation to indemnify them for whatever damage they may sustain on account of the acts of the State's nationals or of other aliens. 3. The one which renders the principle of indemnity for compulsory expropriation applicable to the international jurisdiction. (Brusa.) 4. The objective theory of impotence (Wiese), which derives the responsibility of the State from its failure to preserve order. And finally, 5, the so-called doctrine of "common interest", which considers an alien residing in a foreign country as an integral unit of the national community. The damage which he sustains, or might sustain, in case of riot, insurrection or civil war, is covered by a sort of virtual nationalization and does not involve international responsibility. (Podestá Costa.)

<sup>2</sup>In his work on "*Diplomatic Protection*", Mr. Edwin Borchard cites the outstanding scientific authorities in support of the doctrine that the State is not responsible