

the various governments to the inquiry of the Preparatory Committee. Some of the governments, such as those of Japan, Norway, Netherlands, Poland and Roumania, state outright that there is no responsibility in this case. Other governments, viz., those of Germany and Great Britain, explain the reasons why no responsibility is involved and subordinate it to the duty of the State to protect alien subjects. In accordance with this view responsibility might be incurred, as stated by the German Government, if the State organs have acted in violation of international law, that is, if they have not afforded sufficient protection or have failed to accomplish everything they could under the circumstances, allowing thereby occasion for the claims of the aliens to arise by reason of the injuries inflicted upon them by private persons. Great Britain applies the rule of negligence as a basis for responsibility and extends it to cover the cases wherein the government allows reparation to its own nationals, which should then be also made applicable to foreigners; and cases in which the insurrection is successful and a *de facto* government is established. This rule covering the negligence of the State, or, inversely, of the due diligence which the State should exercise to prevent the damage or repress the culprits, is the one propounded in the Harvard codification plan,<sup>1</sup> and also the one adopted by the Institute of International Law.<sup>2</sup> The Harvard plan refers to due diligence, while that of the Institute sets forth the diligence which a State *should usually exercise* under the same circumstances. The project of the American Institute of International Law exempts the States from responsibility "except when the said governments have not maintained order in the interior, have been negligent in the suppression of acts disturbing this order, or, finally, have not taken precautions so far as they were able to prevent the occurrence of such damages or injuries."<sup>3</sup> This plan represents the gradual development of the various formulas of the Pan American Conferences. The Second Conference held the State responsible only in the event that the "constituted

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for damage caused by insurgents, and then gives a detailed list comprising three pages, covering the large number of cases in which international commissions have upheld this rule whenever their jurisdiction was not limited in this respect by the conventions under which they were created. Mr. Borchard adds that this rule is also stipulated in a great many treaties between European nations and Latin American Republics.

<sup>1</sup> Research in International Law—Harvard Law School.

<sup>2</sup> In order to determine whether the State is responsible, the formula of the Institute considers also the fact as to whether or not the State affords alien subjects the same protection accorded to its own nationals. It affirms, especially, the obligation to allow foreigners the same rights to indemnity provided for nationals in connection with the acts of municipalities or of other persons. Likewise, it recognizes that the State is relieved from responsibility for acts of insurgents when these have been recognized as belligerents. (*Annuaire de l'Institut*, 1927—tome 3.)

<sup>3</sup> Project No. 15, Responsibility of Governments, prepared by the American Institute of International Law at the request of the Governing Board of the Pan American Union, dated January 2, 1924, to be submitted to the International Committee of Jurists. Submitted to the Governing Board on March 2, 1925.