

authorities should be lax in the fulfillment of their duties."¹ The formula of the Government of Switzerland is more in line with that of the American Institute:

"The State is rightly to be held responsible for damage caused during an insurrection or riot if it has not taken proper steps, in conformity with its international obligations, to maintain order and public security. We agree with von Bar that the State does not guarantee to foreigners a security greater than that it guarantees to its own subjects: but, by allowing foreigners to enter the country and establish themselves therein, it promises to accord them as great a degree of security as it does to nationals; it is therefore responsible if it does not provide such a degree of security."²

(b) It may be noted, therefore, that the opinions are uniform in denying the responsibility of the State, but take into consideration the deficient conduct of the State in affording protection to aliens. However, the formula that would embrace this conception would present certain difficulties. The phrases "due diligence" and "the diligence which it is usually advisable to exercise" are either too vague or too comprehensive. The most vague ones are those of American or Swiss origin. The formula that takes into consideration the conduct of the State organs that have acted in violation of the international law is also indefinite. The doctrine which sets forth that negligence is shown by the fact that the State might have prevented the damage caused is, unquestionably, the best one. This is the British formula.

(c) It might be well at this time to call attention to the other exceptions to the rule whereby the State is relieved from responsibility, which deal: one, with the equal treatment of foreigners when the State allows indemnity to its own nationals; and the other, with cases in which the revolution is successful. The first exception does not present any difficulties. The States are quite particular about the fairness of their action. Besides, it is only fair that reparation should be accorded to all the victims. The ideal aim is to have this reparation constitute a principle both of national and of international law. The second exception is also supported by the majority of the governments. Most of them have replied to the inquiry of the Preparatory Committee in the affirmative. However, there are some dissenting opinions. That of Finland is conclusive: "The fact that the insurgent party becomes the Government does not alter the responsibility of the State itself." The Netherlands states: "It is doubtful whether the insurgent party can be held responsible for acts committed previous to its assumption of power." Poland

¹ Wiesse; *Le droit international appliqué aux guerres civiles*, Lausanne, 1898, trad. Blonay.

² Société des Nations. Conférence pour la codification du Droit international—No. officiel, C. 75. M. 69, 1929, V.