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Navigating the Monroe Doctrine as a Law

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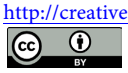

Abstract

The Monroe Doctrine was proclaimed by U.S. President James Monroe in 1823 as he aimed to deter European intervention into Latin America. Although it was unaccepted as a rule of law in the Old Europe, the Monroe Doctrine was hailed by the states in the New World as the *de jure* clause to protect themselves against European trespass on their sovereign rights. Meanwhile, Washington had unilaterally took the Monroe Doctrine to intervene in the internal affairs of Latin America which was termed as the "backyard" of U.S. security in terms of geopolitics. The disputes thus arise if the Monroe Doctrine is within the realm of justice. The article argues that the Monroe Doctrine is essentially a political policy and a rule of law as well. At the turn of the 20th century, the Drago Doctrine lifted the Monroe Doctrine to the status of international law as it underscored that nonintervention and sovereignty were the core tenets of public law consented by all states of Latin America. It was plain that the U.S. was committed to nonintervention of Latin American states which was coveted by the European powers of the day while trying to preserve intact its ability unilaterally to interpret and act on the Monroe Doctrine in whatever it deemed fit. Nonetheless, the Drago Doctrine advanced the dimensions of the Monroe Doctrine that the independence, freedom and welfare of all states in Latin America should be respected in a modern system of public international law.

Keywords

Monroe Doctrine, Nonintervention, Latin America, Law, Drago Doctrine

1. Introduction

Since the Monroe Doctrine was proclaimed by the U.S. President James Monroe in 1823, it served as an operating definition of America's national interest throughout the most part of the 19th century. It stipulates that the United States

had not interfered and should not interfere with the existing colonies or dependencies of any European power in Latin America. But it would resist any change of the *de jury* order by any non-American nation (Oppenheim, 1905).

Given this, at the turn of the new century, the Monroe Doctrine deeply affected inter-state relations in the New World and beyond. Essentially, it didn't limit itself to declaration of abstract principle but unilaterally laid down the official lines of keeping the existing distribution of power in Latin America while deterring European colonial powers from violating the principle of self-determination of newly-independent states in the region (Malanczuk, 1997a). One century later, in 1933 President Franklin Roosevelt echoed the imminent crisis in Europe that "The Monroe Doctrine was aimed and is aimed against the acquisition in any manner of the control of additional territory in this hemisphere by any non-American power." (Mead, 2009)

For more than one century, the legitimacy of the Monroe Doctrine itself has been questioned. On the one hand, until the turn of the 20th century, the Monroe Doctrine had been used by the U.S. as the *de jure* clause to dictate the relations with Latin American states. On the other hand, American jurists formally admitted that the Monroe Doctrine hadn't been elevated to the level of constituting a general principle of public law recognized by the nations of the world. Rather, it merely professed an official position of international political policy by the U.S. that was tacitly respected by European states for reasons of political or military expediency and diplomatic necessity (Boyle, 1999).

In contrast, Latin American states held that the Monroe Doctrine was not objectionable since it was pursuant in part to the ability of Latin American states to secure legitimate rights from the European powers. In 1902, Argentinian Foreign Minister Luis Dragon sent a formal note to Washington that since nonintervention was a necessary corollary to the freedom, independence and equality of all sovereign states in terms of international law, the U.S. should publically endorse the principle that "the foreign debt of any state in Latin America could not be seen as the pretext for intervention, coercion or even armed occupation of its territory by a European power." (Malanczuk, 1997b)

However, the U.S. reaction to the request from Latin American states with reference to the Monroe Doctrine was evidently hesitative. Rather, the ruling elite of the day in Washington preferred the practice of using force short of war since it was covered by international law. They even reasoned that foreign intervention would not occur if Latin American states respected their international obligations concerning the protection of foreign property that were written into international law. It seems that the United States, though the rising power of the day, insisted on interacting with other states in line with the rules of law that were generally recognized by Europe (Mead, 2002).

The Monroe Doctrine has been discussed at times by historians, political scientists and jurists as well. This article traced to the context that when the Monroe Doctrine was proclaimed, the United States was still far away from the rank

of the great powers of Europe. First, what were the primary factors to urge the U.S. to challenge the existing European colonial order in the New World? But, when the newly-independent states in Latin America were bullied and coerced by European powers, the United States showed reluctance to implement the Monroe Doctrine as expected by the states involved. It aroused the enduring arguments on the legitimacy of the Monroe Doctrine when it was applied to the test of *realpolitik* by which foreign policy is made in terms of power more than law.

Second, why did the U.S. reinterpreted the Monroe Doctrine in a legal term at the turn of the 20th century when it had become much stronger than it was in 1823? Equally why did the U.S. foreign policy-making elite not to challenge the ruling power of the day—Great Britain—but see another rising power—Germany—as the systemic rival? Simply put, what kind of the world order was the United States trying to create in the historic moment when it had risen to be one of the major powers of the world? Was it in the best interests of the U.S. to make an arrangement with Britain on the shape of the ultimate trade-off between the ruling empire and the rising empire in which the U.S. was destined to be the master of the world? (Morgenthau & Thompson, 1985)

To answer the questions presented here, what follows is a treatment of the Monroe Doctrine as it had inspired Latin American states to seek for national security from the U.S. while making all efforts to resist the monarchs of Europe threatening the newly-born republics. This study argues that it is more reasonable to explore the Drago Doctrine that was put forward by Argentine in 1902 to grasp the legal dimensions of the Monroe Doctrine in Latin America.

2. The Origins of the Monroe Doctrine

Much of substantial discussion of the Monroe Doctrine have done in the academic circles around the world. The reasons behind were the enduring impacts on the destiny of Latin America and the fragile relations with Europe from the year of 1823 until the early 20th century. On the one hand, the United States had been recognized as the rising power unprecedentedly, but shifted its stance on the Monroe Doctrine in dealings with the great powers of Europe. On the other hand, the American independence from Britain had inspired Latin America to struggle for independence from the colonial European powers. They had invoked the principle of self-determination while looking to the United States for political advice and financial aid to their legitimate course.

It is a cliché that international law is an approach to international relations because it premises that the international issues can be negotiated and then settled in line with the rules of law while power is still the last resort. The Monroe Doctrine, in 1823 and later, was the seminal case under review to expose the U.S. obliging foreign policy towards Latin America and its ambiguous view towards public law. In reality, it was taken by the U.S. as the legal basis for unilateral interventions in Latin America while the new states in Latin America were earnest

to champion the Monroe Doctrine as law to serve their security against the coercive diplomacy of European powers. But, the powers of Europe never accepted it as having legal status at all (Grew, 2000).

Now the question arises if the Monroe Doctrine is within the realm of law or simply a political policy towards international affairs. First, Oppenheim who was one of the great jurists of the 20th century opined that the Monroe Doctrine owed its origin to the dangerous policy of the European Powers as regards intervention. During 1820-1823, the Holly Alliance of Europe pursued the policy of intervention to trespass against the independence of Greece and Belgium. Thus, the Monroe Doctrine was indirectly a product of the policy of intervention since the dynastic powers of Europe were prepared to extend their policy of intervention in the name of legitimacy to the republics in Latin America and assist Spain in regaining her former colonies in the New World where newly-freed states declared independence that were recognized as full sovereign states by the U.S. for reasons involved (Oppenheim, 1905).

Given the prospect of European inroad into Americas, the Monroe Doctrine delivered two key messages. 1) Considering the unsettled boundary lines in the north-west of the American continent, the first message read "that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European power." This message was not recognized by any European state, and Britain and Russia even protested expressly against it. But, 2) In regard to the contemplated intervention of the Holy Alliance between Spain and the South American states, another message clarified that the U.S. had not intervened, and would never intervene, in wars in Europe, but could not, on the other hand, in the interest of her own peace and happiness, allow the allied European powers to extend their political system to any part of America and try to intervene in the independence of the South American republics." (Oppenheim, 1905)

Yet, during 1860-1865 when the United States was distracted by the Civil War, the Anglo-French coalition posed the grossest and most dangerous challenge to the Monroe Doctrine. In reality, Washington had never made serious efforts to implement the Monroe Doctrine when Latin American states appealed to the U.S. to mediate their disputes with the European colonial powers in line with nonintervention. However, since the 1870s, the U.S. became more and more assertive to apply the Monroe Doctrine to the regional geopolitics, e.g. it was eager to create a kind of hegemonic order in Latin America. For example, whenever a crisis occurred between the states in Latin America and European powers, the United States was more than ready to demonstrate its "willingness" to be involved. Thus, the Monroe Doctrine was read as mandating as a first principle of statecraft that the United States would prohibit any foreign power from meddling in the New World. Given this, during the debt dispute between Britain and Venezuela, the latter appealed to the Monroe Doctrine to reject British coercive diplomacy (Mead, 2002).

Despite numerous law scholars who have talked about the Monroe Doctrine from their own perspectives, it is essentially a political policy in foreign affairs other than a legal code. As international law aims to endorse legitimate rights and equality among all members of the international society, it needs a consensus of the sovereign states. In the early 20th century when most states of Europe fretted about the growing power of the United States and its arrogant Monroe Doctrine, it was seen as the bulwark against foreign intervention in Latin America.

This study declines accepting Oppenheim's view that the European states were, as far as the international law is concerned, free to acquire territory in America as elsewhere. Since geography and the memory of state are always the major elements on which nation's foreign and security policy depend, the Monroe Doctrine reflected not a return towards hemispheric isolationism, but a continuing American belief that "Events in Europe were of profound relevance to the security of the republic in the new world." (Simms, 2013)

The Monroe Doctrine aimed to nullify the colonial ruling in Latin America as it was against European intervention in international affairs. In effect, the U.S. and Latin American states remained within the system of European public law and then made significant contributions to its development. The rationale behind was that the U.S. urged arbitration to settle international disputes while South American states had attempted to protect themselves from any intervention by formulating a new American international law. It was worth noting that the general American attitude towards international relations was more idealistic and law-orientated than the traditional realistic and power-motivated perspective of European states (Boyle, 1999). It is by no means that the U.S. had walked on the line of isolationism defined by the Farewell Address Washington made in 1783.

In fact, the United States during its formative decades had engaged in at least two formal international wars with significant hemispheric consequences: the war of 1812 against British illegal practice of impressment of Americans and interference with neutral shipping on the high sea; and then the Mexican war of 1845 that was a flagrant seizing of land and then the entire continent. In 1895, Secretary of State Olney further invoked the Monroe Doctrine to warn European powers that the United States was *de facto* sovereign in the New World with its fiat as law upon all states involved (Kissinger, 1994). This arrogant rhetoric revealed that the United States had grown steadily stronger through the 19th century and turned out a global power in the early 20th century. Yet, Latin America, though it had extremely rich in natural resources and labor force, was then plunged into the periodical anarchy and their weakness that tempted European dynastic adventures in Latin America was anything but fanciful.

3. From the Monroe Doctrine to the Drago Doctrine

Upon entering the 20th century, the United States had risen to a global power with the great potentials to outmatch all major powers of Europe. It was interesting that the U.S. had talked about international law while never hesitating to

use force short of war since it was within the realm of public law. The textbook cases were the international tensions erupted between the European powers and Latin American states as they ushered in a series of global crises that led to transform the international system. On the one hand, many states of Latin America were in general poorly governed and most of them left behind in modern industries and owned huge debts to the European powers which had coveted the rich resources of the region. On the other hand, it was against the Monroe Doctrine and unacceptable to the U.S. and all other republics in Latin America.

Then the controversy involves the default on its public debts by Venezuela to Britain and Germany as they jointly coerced the country rather than offered it an option to collect their nationals' claims. Venezuela then argued that the question of debts that were owed to the European nationals needed to be settled through peaceful settlement. When Venezuela refused to accept full compensation of the European claims and, after an ultimatum, in December 1902, Luis Drago who was the Argentine Minister of Foreign Affairs sent a formal note to Washington asserting that the principle of nonintervention referred to independence, freedom and equality of all states in terms of public law. Thus, the United States should hold fast that the public debt of an America state could not serve as the pretext for intervention or military occupation of its territory by a European power. Later, this note was the genesis for the so-called Drago Doctrine to the effect that physical force can't be used to compel the collection of public debt under any circumstances (Boyle, 1999).

The article argues that like the Monroe Doctrine, the Drago Doctrine was in fact premised on the theory that nonintervention was a necessary corollary to the sovereignty of all states in a modern system of law." (Boyle, 1999) Otherwise, recognition of such a right to intervene a sovereign states would allow for strong states to trespass against militarily weaker states in order to establish sphere of influence or advance other imperialist enterprises. Since the U.S. to follow contrary rule would be tantamount to sanctioning a trespass on the tenets of the Monroe Doctrine, the Drago Doctrine was representative of the public opinion Latin America that the U.S. had adopted the Porter Convention in 1907 since it legalized war as a means for the collection of sovereign debts in any sovereign state (Malanczuk, 1997a).

At the crucial moment, Latin American states held that the real problem arose from the Roosevelt Corollary when President Theodore Roosevelt addressed his annual message to the Congress in 1904. On the role of the Monroe Doctrine in retrospect, he spoke to the effect that foreign intervention would not occur if Latin American states adhered to the international obligations concerning the protection of foreign property. Having outlined some key aspects of state practice, it was appropriate to turn to the Monroe Doctrine that had much less influence on the actual development of international law than many writers were willing to admit. The notion of European international law was prepared by academic writers who during the formative period of public law provided legal concepts and systematic arguments justifying the interests of the emerging pow-

ers, especially with regard to the ambitions of their own respective countries, as may be noted in the development of the law of the sea. Since they had left a mark on the modern law, it was necessary to say something about them, and in particular to describe the two main schools of thought: naturalists and positivists, lines of thinking about international law which still belong to the mainstream of Western conceptions of law even today, although they have faced challenge.

Geopolitically, according to classic realism, the ruling power and the rising power would likely confront each other to gain the supremacy in the world affairs. But the United States administrations decided to adopt a "cordial friendship with Great Britain." Historically, the rapprochement with Britain that the Monroe system entailed was the best possible policy for the United States. It was plain that Britain was the nation which could do America the most harm of anyone, or all on earth; and with her on our side the U.S. needed not fear the whole world (Kissinger, 1994). Although America and Britain moved to the brink of war at times over the past decades since 1815, neither country ever broke with the logic of the arrangement proposed by British foreign secretary George Canning and shrewdly modified by Secretary of State John Quincy Adams.

Now, the policy-making elites in Washington had decided to recast the Monroe Doctrine as a formal policy of a rapidly rising power in the changing world for the reasons. First, as long as British respect for American core interests and territorial integrity, Washington would no longer hesitate to come to an arrangement that would strengthen Britain on the seas other than to support the efforts of Continental powers to limit British power. Second, the logic of geopolitics defined that if Britain were ever weakened, the Continental powers of Europe would be only anxious to retake advantage of Latin America's prevailing anarchy to intervene and carve new empires for themselves in the New World. Third, the Monroe Doctrine was a tacit consensus by the Anglo-American powers to maintain the balance of power in a global range. But the policy-makers and practical statesmen on the two sides could not afford to plunge into these dangerous cross-currents. The law order of the 19th century was a precise reflection of the global State system which developed under the dominant influence of British world policy, although it was only one side of the intellectual, political and economic universalism that had corresponded to that system (Grew, 2000).

For sure, the U.S. and Latin American states had remained within the system of international law and made seminal contributions to its development. While the practice of the U.S. furthered international arbitration to settle disputes, Latin American states had protected themselves against European intervention and potential dominance by creating a new regional American international law. On the whole, the general American attitude towards international relations was more idealistic and law-orientated than the classical realistic and power politics of European states.

4. Conclusion

Now it comes to the conclusion that first the Monroe Doctrine was presented as

a political policy other than a legal code. Yet, it embraces two core concepts of international law. The first one refers to nonintervention into the internal affairs of a sovereign states; second one goes to sovereignty that is the core concept of international law. As Grewe put it, the American continents, by the free and independent condition which they had assumed and resolutely maintained, were henceforth not to be considered as subjects for future colonization by any European powers. Due to this, the U.S. held fast that any attempt on their part to extend European monarchial system to any portion of the New World as dangerous to the sovereignty and security of all American states including the U.S. itself.

Since the concept of sovereignty recurred frequently in the writings of Vattel's followers, the theory of sovereignty served as an attempt to analyze the internal structure of a state. Political philosophers taught that there must be, within each state, some entity which possessed supreme legislative power and/or supreme political power. But the fact that a ruler can do what he likes to his own subjects inside his realm does not mean that he can do what he likes—either as a matter of law or as a matter of politics—to other states. When international lawyers say that a state is sovereign, what they really mean is "independence", that is, it is not a dependency of some other state.

Due to the existence of the Monroe Doctrine, Latin America states had argued that the United States should not assume the function of a public debt collector on behalf of Europe as it was then doing in the Dominican Republic. Given this, Latin America was not a U.S. sphere of influence, and the Washington government had no right to exercise "international police functions" throughout Latin America. It argued that the Roosevelt corollary explicitly contradicted the underlying principles of nonintervention, sovereignty and state equality fundamental to the Monroe Doctrine. Given this, they were in full agreement with the positions advocated by such notable Latin American jurists as Luis Drago and many others (Boyle, 1999).

Also, during the years from the 1890s to 1922, the U.S. political elite adhered to the proposition that international law and organization involved were effective means by which to further the country's national interest. In both the legal literature and diplomatic practice of the day, promoting international law and peace was placed on a par with the Monroe Doctrine in terms of their seminal role in formulating and conduct of U.S. foreign policy. This scenario verified the U.S. attitude towards international law in terms of *realpolitik*.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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