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Pan-American International Law: Latin American and USA Perspective

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Abstract

The article gives a historical overview of the development of the idea of Pan-American law from two perspectives: one of the United States, and other of the Latin American countries. The dialectical struggle between anti-imperialist and imperialist aspects within the Monroe doctrine is revealed. Calvo-Drago doctrine is overviewed, noting its progressive character and essential compliance with the original meaning of the Monroe doctrine. International effect of the Drago doctrine is compared to that of Calvo doctrine, as well as US successful efforts to deprive it of its original meaning is mentioned. Perspectives for the future development of both doctrines is outlined.

Keywords: pan-Americanism, Monroe doctrine, Calvo-Drago doctrine, Latin America, imperialism, hegemony, intervention, national debt, Western Hemisphere.

"There are two opposing concepts: the Panamericanism of Jefferson, Clay and Monroe, paving the way for the subordination of Latin American countries created at the end of the 19th century, and the Latin Americanism of Bolivar, San Martin and Morelos, reflecting the struggle of our peoples for full independence".

A. Aguilar-Monteverde

1. Introduction

The history of the proclamation of the doctrine is closely linked to the War of Independence of the Spanish colonies in Latin America (1810-1826), led by Simon Bolivar. Bolivar sought to strengthen the sovereignty of the young republics within the Latin American Union without US participation. James Monroe's principle of "America for Americans" later served as the cornerstone of Pan-Americanism. In advocating the theory of the "American system", the statesmen of the United States did not at all resort to unselfish sympathy for the national liberation movement of the peoples of Latin America or the existence of "common interests" with them, but were guided primarily by their own interests.

The concept of the "American system" has an offensive, expansionist bend at its very roots and has turned into an instrument of space conquest in the Western Hemisphere and the transformation of this space into an American continental empire.

The doctrine of pan-Americanism, which called for a united American course, became a convenient form of counteraction to the policy of the European powers and one of the instruments

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of the struggle of the United States against its competitors in Latin America, and above all against its main rival at the end of the 19th century – England.

2. Materials and methods

As argued above in this study, the Monroe Doctrine became a theoretical and moral-political justification for US participation of the expansion to Latin America. In the United States, the principles of Pan-Americanism were represented in the Monroe Doctrine from 1823 and the “America for Americans” slogan derived from it, which were aimed against the interference of European powers into the affairs of countries of the New World. The Monroe Doctrine was created to expand the sphere of influence of the US to both Americas and to occupy territories formerly owned by Spain. It was also determined by the fear of colonization of Latin America by more powerful European countries.

The independence of Latin America was conquered primarily by Latin Americans themselves, but the further path to freedom and real independence proved to be long and incredibly difficult to achieve. The approaches and principal attitudes of Bolivar and the US ruling elite to the creation of the Latin American Union were of a different nature. The roots of the contradictions between the US and Latin America were originally laid in the very essence of the South American liberation movement. Bolivar believed that the peoples of Latin America after the conquest of independence in their state building must proceed from the specific conditions and characteristics of their countries.

3. Discussion

3.1. *Pan-American International Law: general characteristics*

The first step towards Pan-American international law was the proclamation of the Monroe doctrine by the US government back in 1823. The doctrine was aimed at preventing the European monarchies from interfering into the decolonization process in South America. But, as the course of history showed, the protection from European imperialism did not protect Latin American countries from the imperialism of the US itself. In order to counter the imperialist nature of the Monroe doctrine, Latin American countries developed their own version of Pan-American International law, namely the Calvo doctrine, later developed into Drago doctrine. This project would limit the imperialist behavior of the US towards Latin American countries. In this article we follow the historical process of the creation and development of these two perspectives on Pan-American international law.

In the context of Pan-Americanism, U.S. hemispheric hegemony entailed the use of police power and interventionism in Central America and the Caribbean, and more importantly, a cooperative approach towards the ABC countries (Argentina, Brazil, Chile) and Uruguay based on hemispheric intellectual exchanges and the assistance and mediation of South American jurists and politicians who, like Alvarez, Drago, and Brum, occupied important positions in the fields of law and government. They sought to moderate U.S. interventionism and unilateralism in the Americas by advocating a redefinition of U.S. hemispheric hegemony and the Monroe Doctrine along the lines of Pan-Americanism, multilateralism, and non-intervention, promoting a continental language of American international law. As an informal empire, the United States was not concerned with territorial control, so these exchanges and assistance became central features of hegemony in this Pan- American period.

The turn of the century was a moment when U.S. and Latin American international lawyers, politicians, and intellectuals promoted a sustained continent-wide debate over the meaning and scope of the Monroe Doctrine at the very time when the United States was attempting to redefine and legitimize the hemispheric hegemony that would later allow it to become a world power. As I will show throughout this article, its meaning and scope shifted in four different dimensions:

- 1) from a principle of intervention to one of non-intervention;
- 2) from a unilateral to a multilateral doctrine;
- 3) from a political to an international law principle;
- 4) from a national to a hemispheric principle (Scarfi, 2014).

3.2. *Pan-Americanism of the USA: the Monroe doctrine*

The Monroe Doctrine and Pan-Americanism epitomize different aspects of the complex history of U.S.–Latin American relations. The Monroe Doctrine has traditionally symbolized the

long-standing attachment of the United States to unilateralism and a nostalgic aspiration to isolation from global geopolitics, coupled with paternalism in the Americas.

The proclamation by the United States of the Monroe Doctrine in 1823, which excluded the intervention of European powers to the New World, to some extent helped their southern neighbours to avoid the restoration of Spanish colonialism. When the United States itself became an imperialist power, all colonies were already divided between other countries, so it was late, just like Germany. Therefore, the Monroe Doctrine served it as a convenient basis for expansion by subjugating its southern neighbours to its control, imposing bonded loans and unequal treaties.

The Monroe Doctrine was expressed during President Monroe's seventh annual message to Congress, December 2, 1823:

It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the results have been so far very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers ([Monroe, 1823](#)).

The Monroe Doctrine became a theoretical and moral-political justification for US participation of the expansion to Latin America. In the United States, the principles of Pan-Americanism were represented in the Monroe Doctrine from 1823 and the "America for Americans" slogan derived from it, which were aimed against the interference of European powers into the affairs of countries of the New World. The Monroe Doctrine was created to expand the sphere of influence of the US to both Americas and to occupy territories formerly owned by Spain. It was also determined by the fear of colonization of Latin America by more powerful European countries.

These ideas are grounded in much earlier thinking, such as the "Farewell Address" of George Washington, in which he spoke against close political association with European states, and in the first inaugural address of Tomas Jefferson. The idea of an exceptional status for the United States and for the Western Hemisphere had been launched before Monroe's address to Congress.

The Monroe Doctrine meant little at the time of its proclamation in 1823, when the Americans lacked the army and navy to enforce it. The Latin American republics kept their Independence with British, rather than American, help. The doctrine became much more important later in the nineteenth century, when the United States began to intervene militarily in the Caribbean and Central America.

The principles of James Monroe contain two conceptual provisions that determined the new US foreign policy: first, non-interference of American states in the internal affairs of Europe; and second, non-interference of European states in the internal affairs of America; "America for Americans" is categorically stated in the presidential address to the Congress, and goes as following: "As regards the governments of countries that proclaimed and retained their independence and those whose independence, after careful study and on the basis of the principles of justice, we recognized, we can not consider any intervention by the European powers with the aim of oppressing these countries or establishing any control over them other than an unfriendly manifestation in relation to the United States" ([Monroe, 1823](#)).

Such a slogan expressing one of the principles of James Monroe, is at first glance quite democratic in nature. The United States declared its determination to discourage any attempt by European states to question the independence of the American countries by colonization. Monroe unequivocally warned that the US will not tolerate any interference of Europeans into the affairs in the Western Hemisphere. Why? Because any attempt to military intervention into the affairs of the former colonies would be the violation of the vital interests of the United States, according to Monroe.

At the same time, the president's message did not contain any statements about the US refusal from the aggressive policy in the American continent. Moreover, it linked the growth of power and prosperity of the United States with the possibility of joining new territories and increasing the number of its states at the expense of Latin American countries. The most ardent expansionists already at that time dreamed of establishing the hegemony of the United States within the Western hemisphere.

As can be seen from the text of Monroe's message, the doctrine articulated by him clearly and categorically stated that the United States is no longer going to put up with the further expansion of European powers in the Western Hemisphere. And the US itself refused to pursue an expansionist policy with regard to the peoples who have freed themselves from the colonial yoke. But on this issue, the message contained very vaguely formulated statements about the "rights and interests of the United States", which in fact asserted the right of the US to act in the Western Hemisphere in the way they consider to be profitable for themselves.

The United States in the near future should be completely freed from the need for colonization and the subsequent involvement into the domestic policy of any European state, the Monroe Doctrine said. Moreover, from that moment the United States had to maintain complete neutrality in all European wars. For example, in the event of war in Spain or Italy, the United States could not take the side of any of the rivals.

Few people believed that America would be able to withstand neutrality. Especially it was clear from the principles of Monroe that the country reserved for itself the full right to interfere into the internal affairs of absolutely all countries south of the United States.

In this situation the Monroe principle of non-colonization imposed a ban on interference into "American affairs" by third countries, to establish US dominance in the Western Hemisphere. Subsequently, the "non-colonization principle" became an instrument for the creation of colonial territories by the United States itself. Already immediately after 1823, the "principle of non-colonization" was used by US ruling circles to justify their systematic intervention in the affairs of Latin American states through the imposition of bonded contracts.

The idea of a division of the world into European and American systems has become one of the central principles of Monroe's message: "... we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety" ([Monroe, 1823](#)). Such an attempt on the part of the European powers, according to the presidential message, was impossible, "without endangering our peace and happiness" ([Monroe, 1823](#)).

Unlike Europe, where great powers challenged one another, the United States was the sole leader on the American continent, and only external - European – powers represented a threat to them. The rest of the American countries were theoretically interested in the same thing as the US (regardless of European colonialism), but their level of sovereignty was much weaker.

Two other important paragraphs of the presidential message (§ 48 and § 49) later known as the "Monroe Doctrine", were finally a result of the discussion of the responses to the proposals of the British Minister of Foreign Affairs J. Canning on joint activities of US and England in the Spanish-American question in connection with rumours about the threat of intervention of the Holy Alliance (August 1823), as well as messages from Tsar Nicholas I about Russia's refusal to accept the representative of Colombia and the principles of the policy of the allied powers in Europe. Decisions of the government on these questions were supposed, according to J.Q. Adams, to constitute a single "combined policy system" ([Bolkhovitinov, 1959: 6](#)).

In general, the contents of the Monroe Doctrine turned out to be quite elusive. It was supplemented by all the variety of theory and practice of the country's foreign policy. Already at the time of the proclamation of the doctrine in each specific case, for example in respect of Cuba, England, Russia or the countries of South America, various parts of this very convenient "combined policy system" were used. The vague nature of the wording and the very form of the doctrine proclaimed in the form of the president's message to Congress and not even formalized as an ordinary legislative act allowed the government of the United States in every concrete case to adapt the doctrine to the rapidly changing historical situation and for a very long time to use it in ever new conditions.

Thus, the Monroe Doctrine put forward the principle of dividing the world into European and American systems of state structure, proclaimed the concept of US non-interference in the internal affairs of the European countries and, accordingly, the non-interference of European powers in the

internal affairs of countries of the Western Hemisphere. Declaring their neutrality in relation to the struggle of the Spanish colonies for independence, the US simultaneously warned the European metropolitan countries that any attempt to interfere in the affairs of their former colonies in America would be regarded as a violation of the vital interests of the United States.

The Monroe Doctrine was used not only as an ideological justification to determine the choice of priorities and the direction of US behaviour towards European powers and neighbours on the continent, but also as a historical justification for its legitimacy. On this basis the course of American foreign policy thought, so called "monroeism", was formed, which maintained its leading positions until the outbreak of the First World War.

Designed to counter an immediate threat to American interests, Monroe's position did not instantly become a national doctrine. In fact, it largely disappeared from the American political consciousness for a couple decades, until events in the 1840's revived it. The efforts of Britain and France to involve themselves in the annexation of Texas, Britain's disputes in Oregon and potential involvement in California, led to a revival, which President Polk put into words in a speech on December 2, 1845, the 22nd anniversary of the original.

In the other words for the first time officially the doctrine of Monroe was openly referenced by James Polk in December 1845 during his first presidential message to Congress. Polk reiterated the statement in terms of the prevailing spirit of Manifest Destiny and applied it to British and Spanish ambitions in the Yucatan. In order to prevent Europe from interfering into the conflict between the United States and Mexico, the eleventh President of the United States (1845-1849) based on the "non-colonization principle" accused France and England of wanting to prevent California from joining the United States and create a European satellite on its territory that in no way correlated with the American concept and was unacceptable.

It was during the presidency of James Knox Polk that the US finally turned into a great power. For the first time since the Louisiana purchase the country's territory increased significantly. Under the slogan of the Monroe Doctrine the territories of the future states of the USA - Texas, New Mexico and California were annexed in 1846-1848, in addition, the territory of the State of Oregon was obtained from the United Kingdom. Thus, the US gained access to the Pacific Ocean and was finally entrenched in the American continent as the only full-fledged master.

In the period of the administration of the country by D. N. Polk, the theory of "natural boundaries" assumed great importance in the expansionist ideology of the ruling circles of the United States. In its broadest sense, this theory reveals an unquestionable connection with the principles of the Monroe Doctrine, and especially with ideas that later became known as "Manifest destiny" ("explicit predestination" or "predestination of fate").

The emergence of "Manifest destiny" is usually attributed to the mid 40's of the 19th century. The essence of the "explicit predestination" concept is the assumption that fate predetermined the domination of the United States throughout the continent. Supporters of this slogan believed that the annexation of territories adjacent to the United States is inevitable and is only the fulfilment of the mission entrusted to the American nation by providence.

In the 1850's the principle came to represent not just partisan but national dogma. It was in this period that the word "doctrine" came to be applied to it. In 1861, the United States warned Spain to avoid involvement in the Dominican Republic and was brushed off, but after the triumph of federal armies in 1865 and the failure of Spain's military efforts in the Dominican Republic, Spain beat a retreat in 1865.

The Monroe Doctrine was also invoked by the United States against the involvement of France in the affairs of Mexico. The French had installed Archduke Maximilian of Austria as head of a puppet government in Mexico. Again the United States declared a violation of the Monroe doctrine. The French eventually abandoned Maximilian, who was executed by the Mexicans.

Gradually, the Monroe Doctrine was used for purposes that Monroe himself would not have foreseen. It was cited as a reason that the European powers could not build a canal across Panama and, further, that if any such canal were ever built, it would necessarily be under the control of the United States.

In 1895, Grover Cleveland attempted to invoke the Monroe Doctrine to compel the British to accept arbitration in a border dispute between Venezuela and British Guiana, and went to far as to threaten to create a commission for this purpose if the British did not agree. Eventually the arbitration took place by mutual consent, but the British, through their foreign secretary Lord

Salisbury, made it clear that they rejected the idea that the Monroe Doctrine was a legitimate part of international law.

Theodore Roosevelt was never shy about asserting American interests, so it's not surprising that he devised what became known as the Roosevelt Corollary to the Monroe Doctrine. In it, Roosevelt acknowledged that at times, chaos in a small country could necessarily lead to the intervention of a great power, and that in the Western Hemisphere, that great power would always be the United States.

The first application of the Roosevelt Corollary was in the Dominican Republic, where the United States compelled that country to give the United States control over its customs, in order to stabilize its finances. This mild application was succeeded by military intervention in Nicaragua and Haiti, as well as the Dominican Republic.

At the end of the 19th century, the United States, relying on the Monroe Doctrine, entered into a battle for world power against the British Empire, the undisputed "ruler of the seas". The doctrine of naval domination of America in the Pacific and Atlantic Ocean was developed and put into practice, especially after the construction of the Panama Canal. In the early 1900's, the Monroe Doctrine proved its power. President Theodore Roosevelt aggressively enforced it during the Venezuela Border Dispute and in securing the independence of Cuba from abusive Spanish rule.

The logic of the apologists of the Monroe Doctrine leads to the idea that all countries must agree with the role of the US as an absolutely necessary world leader, which, while defending its own national interests, simultaneously works for common good.

The Monroe Doctrine and the Platt Amendment, reflecting Washington's foreign policy line, signify a system for building up US international relations with Latin America and the European states as a whole (the Monroe Doctrine) and Cuba in particular (the Platt amendment). In fact, the "Platt amendment" is a stage in the development of the doctrine of President Monroe, put forward by the latter in 1823. Speaking of the "Platt Amendment", it should be pointed out that the US Congress approved it in the framework of the Army Appropriation Act. Thus, on March 2, 1901, in accordance with this amendment, the United States obtained the right to purchase or lease any section of the Cuban territory for the deployment of its military bases and warehouses.

"Bayonet diplomacy" allowed Washington to turn Cuba into its protectorate, while playing a farce with granting it formal independence. A few days after the adoption of the "Platt amendment," L. Wood frankly wrote to T. Roosevelt, now the US vice-president: "Obviously, by the Platt amendment we left very little or no independence for Cuba. The next question is the practical implementation of annexation. With this you need to wait a little. The control we have over Cuba, which soon will no doubt become ours, will help us in the near future to keep the whole world trade of sugar in our hands. I believe that Cuba is the most desired acquisition for the United States. The island will gradually become Americanized, and the hour will come when we will get one of the richest and long-awaited possessions of the world." ([Humanismo, 1959: 38-39](#))

The "Platt Amendment" was abolished in 1934 as part of the "good neighbour" policy declared by US President Franklin Roosevelt regarding Latin American countries. Only in 1940, Jose Manuel Cortina and other members of the Cuban Constitutional Convention removed the "Platt amendment" from the new Cuban constitution. Despite the fact that the "Platt amendment" was abolished, this in no way abolished the established domination of political and economic interests of Washington in Cuba. The formal cancellation of the amendment somewhat lowered the degree of tension in Cuban society and the degree of negative attitude towards the United States. However, the cancellation of the amendment coincided with the entry into the presidency of F. Batista, a man whose loyalty to Washington was not to be doubted.

Thus, from gaining formal independence from Spain and until coming to power of the revolutionary Castro, all the foreign and domestic policies of the island were somehow controlled by Washington based on the "Platt amendment", which became the apogee of the development of the Monroe Doctrine.

At the Fifth Pan American Conference (Santiago, 1923), representatives of some Latin American countries raised the question of the nature and interpretation of the Monroe Doctrine. In response, US Ambassador Fletcher directly and unequivocally stated that the doctrine is not subject to discussion, since it represents a "unilateral matter of US national policy".

At the insistence of President Woodrow Wilson, the Monroe doctrine, as the first geopolitical concept of American foreign policy, was included into the first universal international legal

instrument – the Charter of the League of Nations (Article 21). The provision of this article fixed a legal opportunity for the United States not to fulfil its international obligations. Article 21 deals with treaties involving the United States on arbitration proceedings and agreements that are limited to known areas that ensure peace. From this provision, the conclusion suggests that any violation by the United States of international obligations, if they do not contradict the Monroe Doctrine, can not cause international legal responsibility.

During the time of Truman, the Monroe doctrine was modified to fit new ambitions of ruling classes, as the United States gained power and became an economic superpower by the results of the Second World War (1939-1945). But its essence remained the same: interference in the internal affairs of states with the aim of countering the communist threat, since the interests of the United States allegedly suffered from the fall of the democratic regimes. In new realities monarchical threat to USA was replaced by communist threat; the latter, just as the former, required US to interfere into domestic policies of Latin American countries and keep them under control.

When the Cuban revolution established a socialist government with ties to the Soviet Union, after an attempt to establish fruitful relations with the United States, it was suggested that the spirit of the Monroe Doctrine should be called again, this time to prevent the further spread of Soviet communism in Latin America.

Already in 1980 the debate over the new spirit of the Monroe Doctrine was part of the Iran-Contra affair following the Khomeini Islamic Revolution. In the same years, the Carter and Reagan administrations dragged their country into a civil war in El Salvador, citing the Monroe Doctrine as an excuse. The Monroe Doctrine was also officially mentioned during the US invasion of Guatemala and Grenada.

In short, the "classic" technology of coups d'etat, accompanied by open military support for the insurgents, has been repeatedly tested by the United States within the framework of the famous "Monroe Doctrine" during the entire 20th century. And the 21st century is no exception. The flexible character of the doctrine's wording, not burdened with legislative fixing, allows the US government in every particular case to adapt the Monroe doctrine to a changing historical situation.

Over the years, the Monroe Doctrine became an object, not of deep appreciation, but of great dislike in Latin America. The countries of Latin America found that they had much more reason to fear intervention by the United States than by any European power. This was particularly evident in the Pan American Conference of 1928. In that year, the United States issued the Clark Memorandum, which definitely repudiated the Roosevelt Corollary. In 1933, Secretary of State Cordell Hull signed a protocol that bound the United States not to intervene in the affairs of any other country in the hemisphere.

The Monroe Doctrine is the cornerstone of the idea of Pan-Americanism, viewed from US perspective. The doctrine of Pan-Americanism, which called for a united American course, became a convenient form of counteraction to the policy of the European powers and one of the instruments of the struggle of the United States against its competitors in Latin America, and above all against its main rival during 19th century – England.

Though after 1889 Pan-Americanism was a U.S.-led policy, it conveyed a commitment to a set of values that were consistent with continental cooperation, and which consequently held considerable appeal for Latin American states from the turn of the century until the late 1930s. But this is to state the case far too starkly. In the 1890s, when the U.S. modern policy of Pan-Americanism was originally formulated, the Monroe Doctrine was revived and even reinvented. In other words, it may be said to have been Pan-Americanized ([Scarfì, 2014](#)).

The thoughts expressed by Ed. Everett, one of the editors of the "North American Review", quite fully and openly characterizes North American sentiments with regard to their southern neighbours. He summed up: "We have no relation to South America; we have no well-founded sympathy for it. We come from different races, we speak different languages, we are brought up on different legal norms, we profess different kinds of religion." His more interesting conclusion was that: "South America will become to North America, as we are strongly inclined to believe, what Asia and Africa are towards Europe" ([Tusinov, 2013: 149](#)), thereby dotting all the "i"s.

The doctrine of Olney (1895), just like the doctrine of Theodore Roosevelt (1904) a little later, also contributed to the idea of Pan-Americanism, according to which all countries of America were united by a single destiny for the embodiment of the great principles of national independence and

people's sovereignty. The basis of pan-Americanism was a desire of the Latin American countries to unite against the colonial yoke of Spain, which had grown stronger since the beginning of the 19th century.

From 1898, the United States embarked on an expansionist and interventionist policy toward Latin America until the 1930-s with the rise of the so-called Good Neighbor Policy, which led to the expressed commitment of the United States, in the context of the Seventh Pan-American Conference (1933) and the Inter-American Conference for the Maintenance of Peace (1936), to stop intervening in the Americas.

Long before the 1930-s, a series of reinterpretations of the Monroe Doctrine arose, proposing it as a hemispheric and multilateral principle primarily in South America. U.S. reaction toward these initiatives was ambivalent, because U.S. international lawyers, politicians, and intellectuals supported a wide range of interpretations of the Monroe Doctrine. Indeed, for the most part U.S. politicians and jurists sought to retain a right to enforce the Monroe Doctrine unilaterally in the Americas and thus resisted the Pan-Americanization of the doctrine until 1933, but at the same time they tended to promote Pan-Americanism. Nevertheless, these hemispheric redefinitions of the doctrine allowed the United States to begin a progressive but still difficult and slow transition from interventionism to multilateral Pan-Americanism (Scarfi, 2014).

Under the banner of Pan-Americanism, all-American conferences began to be held to develop the foundations of continental politics. The idea of convening such conferences was put forward as early as 1826 at the Panamanian Congress of the Latin American States, after that American republics started to be regularly convened from 1889 to 1948, which began to be called the International Conferences of American States or Pan American Conferences.

In the early twentieth century, the "pan-Americanization" of the Monroe Doctrine was reflected and formalized in a special memorandum by the US State Department called "Lansing Memorandum." It was described as "Pan-Americanization of the Monroe Doctrine". The first draft of this "Pan-American Pact" was read out in 1914 by US President V. Wilson and its most important provisions were theses "on mutual guarantees of political independence under the republican form of government and mutual guarantees of territorial integrity". In fact, the US received a "legitimate" right to intervene in case of any socio-political transformation in Latin America, which Washington could qualify as a threat to the republican system.

The proclamation of a unilateral declaration, which does not bind its author with any obligations and preserves for him the possibility of interpreting it, depending on the prevailing situation, gave the United States a priori advantage in all occasions.

Since the beginning of the 20th century, the ideas of Pan-Americanism have been overtaken in Latin America by an acute critique in connection with many acts of military aggression from the US (it encircled the territory of Cuba in the years 1899-1902, in 1916-1924 it occupied the Dominican Republic, in 1915-1934 – Haiti).

At the same time, the Latin American states gradually turned into US protectorates, devoid of any material sovereignty, preserving only its external, symbolic attributes. Senator Lodge in March 1895 stated in an article published in the "Forum" magazine that in "... the future from the Rio Grande to the Arctic Ocean there should be a single flag and one country". (Lodge, 1895).

To be fair, it should be noted that the US foreign policy towards Latin American countries was differentiated, flexible, varying its tactics and forms with time. This was due to the need to resolve disagreements with European rivals, as well as taking into account the independent behaviour of some of the southern neighbours. At the same time, in respect to South America, the United States asserted the role of the hegemon, and in respect of the countries of Central America (the Caribbean) it tried to subordinate them directly, imposing on them forms of traditional colonial rule, primarily the protectorate. In all cases, the goal was political stability, which ensured the preservation and dynamic consolidation of US economic positions in the region.

3.3. *Latin American perspective: Calvo and Drago Doctrines*

In the last quarter of the 19th century the idea of developing "Latin American international law" gained a large number of supporters. It was about the common all-American international law designed to equip the states of the region with international legal protection against foreign intervention and create an arbitration mechanism for the peaceful settlement of disputes between them without the participation of the United States. A major contribution to the formation of international Latin American law was the well-known "Calvo doctrine", the main provisions of

which were formulated in 1885 by Carlos Calvo (1824-1906), Argentinean historian and diplomat. Although he was originally from Argentina, he spent almost his entire life outside his homeland, first as consul in Montevideo, and then from 1860 a diplomatic representative at various European courts, including Russian (accredited in 1889); he participated in many international congresses, including the foundation of the Institute of International Law in 1884. It is rightly believed that today the doctrine of Calvo is a part of the Latin American legal tradition.

Simon Bolivar, taking the oath as President of Great Colombia, began to prepare the Panamanian Congress of representatives of the newly independent states. Liberator expressed this idea as early as 1815 in the program statement "Letter from Jamaica." Bolivar sought to strengthen the sovereignty of the young republics within the Latin American Union without US participation. Thus, he rejected in practice the continental policy of the "northern neighbour" embodied soon in the "Monroe Doctrine". The true attitude of Bolivar to the "Monroe Doctrine" is clearly evident from the analysis of his foreign policy strategy, imbued with the desire to rally all the Latin American peoples around Colombia, and not around the US. By the way, under "American nations" Bolivar usually understood only the Spanish America.

The United States felt its solidarity with Latin America in all that concerned the independence of the nations of the New World. The Latin States recognized the community of interests that existed between them, and, feeling that they were members of one great family of nations, desired to establish a political unity, a confederation, which would furnish them protection from the dangers of European intervention, show them the course to take in their new life, aid them in arriving at the best solution of their special problems, bind them together through mutual interests, and obviate the conflicts that might arise between them. At the same time, the United States, while coming forward naturally, to make common cause with these nations to prevent their oppression by Europe, soon began to develop a policy of hegemony on the American continent.

In the second period, from the middle to the last third of the nineteenth century, the domestic and foreign relations of the Latin American States underwent a great change. The idea of confederation weakened with the disappearance of the fear of re-conquest, but the sentiment of a new solidarity persisted, and the attention of these nations was directed to the formation of closer relations amongst themselves and with Europe. The policy of hegemony of the United States in its evolution also presented new phases, meeting the new necessities of the American continent.

At the time of its announcement, the doctrine was very positively received in Latin America. The opposition to the policy of colonization carried out by the European powers was historically progressive. But at the same time, the Monroe Doctrine clearly revealed the expansionist aspirations of the US ruling circles. Under the guise of protecting the countries of America from European intervention, the US has appropriated itself the right to control the relations of all other American states with the countries of Europe.

The independence of Latin America was conquered primarily by Latin Americans themselves, but the further path to freedom and real independence proved to be long and incredibly difficult to achieve. The approaches and principal attitudes of Bolivar and the US ruling elite to the creation of the Latin American Union were of a different nature. The roots of the contradictions between the US and Latin America were originally laid in the very essence of the South American liberation movement. Bolivar believed that the peoples of Latin America after the conquest of independence in their state building must proceed from the specific conditions and characteristics of their countries.

The true attitude of Bolivar to the "Monroe Doctrine" is clearly evident from the analysis of his foreign policy strategy, imbued with the desire to strengthen the sovereignty of the young independent states and to unite them within the framework of the Latin American Union without the participation of the United States. Thus, he rejected in practice the continental policy of the "northern neighbor" embodied in the "Monroe Doctrine".

In 1824-1826, the US rejected the proposals of a number of Latin American countries – namely, Colombia, Brazil and Argentina – to sign bilateral alliance agreements that would guarantee them US support in case of an external threat.

Throughout the 19th century Latin American countries have repeatedly appealed to the United States to jointly oppose the intervention of European powers into their affairs. Colombia requested US assistance in 1824, Venezuela in 1846 and five times in the eighties, Peru and Ecuador in 1846, Nicaragua in 1848 and 1849, Mexico in 1862, etc. However, US state leaders did

not respond to these appeals. They did not have a real counteraction to such aggressive acts of the European powers as the capture of the Falkland Islands by England in 1833; the transformation of Honduras into an English colony in 1835. It was similar case with many other acts of aggression from European powers.

The ruling circles of the US colluded with the European powers over the division of spheres of influence in Latin America, signed agreements, bypassing certain countries of Latin America and obviously violating their sovereign interests. As an example, in 1850 the United States government signed the so-called "Clayton-Bulwer Treaty" with England, which was the first Anglo-American compromise agreement on the issue of the inter-oceanic routes through the lands of Central America. It satisfied the claims of the American bourgeoisie to an equal participation with the British in any enterprise connected with the construction of the projected canal, and was a clear violation of the sovereignty of the state of Nicaragua, whose territory was regarded as an object of the policy of foreign powers.

The Calvo doctrine was received enthusiastically in the region, and many of its countries sought to incorporate these principles into their constitutions, in terms of contracts with foreign firms, in treaties signed among themselves, as well as with other states. Some of Calvo's principles were even reflected in the German-Mexican treaty of 1882, in the Spanish-Peruvian treaty of 1898, the peace, friendship, arbitration and trade treaty signed in 1906 by Costa Rica, El Salvador, Guatemala and Honduras and others.

By the end of the 19th century, the countries of Latin America, based on the Calvo doctrine, defended the view that states are required to treat foreigners in the same way as local citizens, but nothing more. The damage caused by the actions of states that were not discriminatory did not constitute a violation of international law.

As a lawyer, Calvo fully understood the legal consequences of the enslaving policy pursued first by European countries, and then by the United States. He set forth these problems in his treatise on international law in 1863. His doctrine was born out of a sense of imbalance in diplomatic protection, which Calvo considered a violation by stronger states of the sovereign rights of weaker states. Nevertheless, its fundamental conceptual foundations were further developed in the "Drago Doctrine" (1902), named after the Minister of Foreign Affairs of Argentina, who developed the principle of inadmissibility of diplomatic or armed intervention by states to recover international debts.

The following legal provisions served as the basis of the Latin American doctrine: foreign firms should not enjoy preferential treatment; claims against aliens in the country of investment should be subject to review in national courts of the same country, and not in international arbitration courts; diplomatic protection can be exercised by the alien's nationality state only in cases of direct violation of international law. These legal norms are enshrined in many Latin American constitutions and treaties with foreign investors.

Arnulf Becker Lorca proposes the following periodization of international law's trajectory in Latin America:

first, international law as an instrument in the process of nation building (1810s–1880s);

second, international law as part of the discursive creation of Latin America as well as a language for contesting its definition (1880s–1950s);

third, a period of professional radicalization and fragmentation (1950s–1970s); and

fourth, a period of professional depoliticization and irrelevance of international law as a discourse for thinking the region (1970s–2000s) (Lorca, 2006: 284).

Lorca shows that international law played an important role from the 1880s to the 1950s in laying down one of the languages through which Latin Americans have discussed and contested their identity, politics, and place in the international world. On the one hand, the periods in which the international legal tradition has been harnessed to support, as well as to contest, divergent ideals about Latin America correspond to the moments of disciplinary relevance and disputation. On the other hand, the appeasement and translation of disciplinary contentions into doctrinal and institutional settlements signaled the shift in significance from international law toward other discourses, making the international legal tradition less appealing for imaging Latin America (Lorca, 2006).

In the third period, beginning with the last third of the nineteenth century, the foreign policy of the various countries followed a new course. This policy, which was characterized by a desire for

peace, aimed to strengthen a triple bond of interests, which, far from being mutually exclusive, support and complete each other, with Europe, with the United States, and amongst themselves. This triple bond gave to the community of American states and to the world community of nations their present characteristics (Alvarez, 1909).

As it was mentioned above, Monroe Doctrine became a theoretical and ethical-political foundation of the US expansion in Latin America (Malkov, 2004). Taking into consideration the epoch of imperialism, pan Americanism of the late 19th century developed the Monroe Doctrine and the ideas of the founding fathers concerning the leading role of the US in the affairs in the Western Hemisphere .

The principle of inadmissibility of diplomatic or armed intervention by states to recover international debts was proclaimed for the first time by Argentine lawyer and diplomat Carlos Calvo in 1868. The Calvo Doctrine was later developed in 1902 into Drago doctrine. Both Calvo and Drago wanted to provide Latin American countries with a legal and internationally acknowledged tool to prevent such interventions.

It is rightly believed that today the doctrine of Calvo is a part of the Latin American legal tradition. He is the author of several works, such as «Theory and practice of international law in Europe and America» (Derecho internacional, 1863); 15-volume collection of Latin American diplomatic documents of 1862-1867; 5-volume «Historical annals of Latin American war of independence», 1864-1875).

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At Calvo's opinion, the principle of legal equality of all nations makes any diplomatic intercessions absolutely inadmissible, as well as military intervention to collect debts. Calvo's principles were included into several treaties between Latin American and European countries (Italo-Paraguayan treaty of 1893, Franco-Mexican-Nicaraguan treaty of 1894 and so on).

Calvo's Doctrine is based on one basic statement: foreigners should not be granted any special right or privilege, i.e. they are not provided with national treatment. Foreign firms should not enjoy preferential treatment; claims against aliens in the country of investment should be subject to review in national courts of the same country, and not in international arbitration courts; diplomatic protection can be exercised by the alien's nationality state only in cases of direct violation of international law. These legal norms are enshrined in many Latin American constitutions and treaties with foreign investors.

A classical statement of the Calvo Doctrine is found in Art. 27 Mexican Constitution (1927), which provided that: only Mexicans by birth or naturalization and Mexican corporations have the right to acquire ownership of lands, water and their appurtenance, or to obtain concessions for working mines or for the utilization of waters or mineral fuel in the Republic of Mexico. The Nation may grant the same rights to aliens, provided they agree before the Ministry of Justice to consider themselves as Mexicans in respect to such property, and bind themselves not to invoke the protection of their governments in matters relating thereto, under penalty, in case of non compliance, of forfeiture to the Nation of property so acquired (Juillard, 2007).

The Calvo Doctrine has surfaced in connection with the reappraisal by developing countries of their investment relations with developed countries (Investments, Bilateral Treaties; Investments, International Protection). For instance, the Charter of Economic Rights and Duties of States (1974) contains provisions which seem to be inspired by the Calvo Doctrine. The notion that aliens should receive no better treatment than nationals, and the notion that disputes between aliens and States should be resolved by local courts applying local law, which both appear in Art. 2 Charter of Economic Rights and Duties of States, seem to echo the Calvo Doctrine, more than one century after it was first formulated. In that connection, one might venture to say that the tenets of the Calvo Doctrine have worked their way into the tenets of the New International Economic Order (NIEO) of the 1970s (Juillard, 2007).

It is quite paradoxical that those who, in the old days, championed the Calvo Doctrine as a tool intended to fight the excesses of diplomatic protection may now have come to a more benevolent view towards that mechanism. This is explicable: inherent in the mechanism of

diplomatic protection is the rule of exhaustion of local remedies; and exhaustion of domestic remedies means submission of the disputes to local authorities. Thus, diplomatic protection may nowadays seem less abhorrent to the champions of the Calvo Doctrine than it used to be.

Criticizing the international minimal standard, Calvo put forward the so-called national standard, which is based on the principles of territorial sovereignty of countries:

- 1) principle of equality of residents and non-residents;
- 2) principle of regulation of legal status of non-residents and their property by domestic law;
- 3) principle of non-interference by other countries, particularly those, that foreign investors are citizens of, in the settling of disputes between foreign investors and national governments concerning the legal status of the residents and their property;
- 4) principle of non-obligation of government to compensate the damage to the property of foreign investors, which was caused by the civil war.

Calvo's Doctrine does not oppose the principles of international standard in respect of nationalization of foreign property. All those norms are present in laws of Latin American countries. But, according to the doctrine, abovementioned principles are of national law nature, not international. Therefore all disputes should be settled in national courts in accordance with domestic law (Farkhutdinov, 2017). Any other approach would mean "establishing a dangerous privilege of abuse of force for mighty countries in prejudice of weaker countries and establishment of inequality between local and foreign citizens" (Tarasov, 1972: 394).

At the turn of the century, the idea of developing "international Latin American law" gained wide support. It was supposed to arm the countries of the region with tools for international legal defense from foreign interventions and creation of arbitrary mechanism that would peacefully settle arguments between them without US involvement. With this aim a special congress was called by Argentine and Uruguay in Montevideo in 1888. Seven Latin American countries were involved in the work of congress. In accordance with accepted recommendations, in Rio de Janeiro in 1906 a commission of lawyers started to prepare a codex of private and public international law of countries of Western Hemisphere. The work of commission was interrupted by World War I.

Among the challenges, launched at US, the note by minister of foreign affairs of Argentina L.M. Drago is the most famous. It was at the time of Venezuela crisis of 1902-1903, when he articulated his doctrine, which developed the Calvo doctrine. In 1903 he rejected the right to play the role of "international policeman", declaring that all conflicts between Latin American and other countries should be passed to international arbitrary court in Hague. In slightly modified version the Drago doctrine was approved in 1907 at the international conference at Hague. Argentines opposition to the growing coercive pressure of the USA had only particular success. However, United States were forced to take Argentinian challenge into consideration and diversify the methods of political influence in the region.

Although Drago's doctrine was more limited, compared to Calvo's doctrine, because it dealt only with government debts and allowed diplomatic interference, nevertheless almost all Latin American countries supported it. Only Brazilian media kept talking about Argentina's lack of right to talk with Washington on behalf of collective interests, and Brazilian diplomacy rejected the Drago's doctrine.

The doctrine of Luis Drago approved the Latin American principle of international law, developing Calvo's doctrine and filling the gaps of Monroe's doctrine. In his note Drago said: «State debt can not be a cause of military intervention, even more so of occupation of territories of American states by European power». The document states that foreign countries have no right to exert diplomatic or military sanctions on debtor-countries seeking to collect debt or interest. However, Washington practically avoided Drago's answer. On the one hand, it caused a strong anti-American reaction in Argentine, on the other hand, Buenos-Aires earned sympathy of many Latin American countries for not recognizing the Monroe doctrine. The doctrine was supported by the participants of 3rd Inter-American conference, held in 1906 in Rio de Janeiro.

Drago's doctrine is of more narrow character, than Calvo's doctrine, for it mentions only collection of debts, created by emission of state loans, and rejects military intervention of foreign governments. The government emitting the obligation, Drago notes, does not establish any contractual relations with its creditor-capitalists, who by this obligations on an open market at their own risk. Therefore the sovereign power of government allows it to determine the payout time

of its debt and even stop payments. In the last case foreign holders of obligations should only apply to direct negotiations with debtor-governments.

Drago's doctrine, formally directed against European powers, was aimed also at USA, who repeatedly resorted to military interventions of countries of the Caribbean. This doctrine was supported by Latin American countries, but USA succeeded to make alterations in it, such as that military intervention was possible in case of non-obedience of debtor-country to the decision of the arbitrary. Drago considered his doctrine to be the development of Monroe doctrine, saying that «...collection of debts with military force includes the occupation of territory, which presupposes the suppression and subjugation of governments. Such situation...directly contradicts the Monroe doctrine» (Hershey, 1907: 30).

In contrast with Calvo's doctrine, the doctrine of Drago got certain legal formalization as international law, dealing with not only American countries, but all countries-members of 2nd Hague conference. But still, it actually was not used in international diplomatic practice.

It was not only the growth of economic and political might of the USA that helped it to achieve suitable decisions, but also the position of some of the Latin American countries, specifically Brazil. Rio de Janeiro supported the Washington's international policy and was an active supporter of strengthening of continental solidarity under the aegis of USA, whereas in other Latin American countries the policy of "big stick" caused the growth of anti-American sentiments. For example, at the 4th Pan-American conference Brazilian delegation brought with it a project of resolution on official recognition of the Monroe doctrine as a "permanent factor of international peace on the American continent", on expressing "heartly thanks for a noble and unselfish act, which had great positive effects for the whole New World". But already at the stage of preliminary consultations representatives of other countries expressed negative attitude towards Brazilian initiative, so that the proposal was not discussed during the conference.

As it was mentioned earlier, at the 2nd Hague conference the Drago doctrine was accepted in such a distorted form that Drago's principle was essentially denied. Perverted articulation allowed the use of military force to collect government debt in cases, when debtor-government denies the decision of arbitrary. 44 states voted, 39 of them "for", 5 – "against"; Argentina, Bolivia, Columbia, Dominican Republic, Greece, Guatemala and Peru signed the convention with some stipulations.

Convention calls for the refusal of use of military force to demand and obtain contract debts, "exacted by the government of one country from the government of another country". Deviation of this obligation are possible:

- 1) when the debtor-country rejects or leaves without response the proposal of arbitration;
- 2) when it accepts such arbitration but makes the submission bonds impossible;
- 3) if after the arbitration it refuses to carry out the judgment awarded (Labin, 2008: 187-191).

But in any case the adoption of the convention was a huge move forward in the field of legal defense of international investment and integration processes.

At the one hand, the Drago-Porter's convention is wider than Drago's doctrine in that it is not restricted by territorial scope of Western Hemisphere. On the other hand, it is more narrow, because it allows the use of military force at certain conditions. Drago-Porter's convention was ratified by Russia, USA, Britain, Germany, Austro-Hungary, Denmark, Netherlands, Mexico, Salvador, Nicaragua (1909), China, Haiti, France, Norway (1910), Guatemala, Portugal, Panama (1911).

According to the Calvo doctrine, international legal usage demands that government grants foreigners the same rights as its own citizens. The law of many Latin American countries confirms the right of foreign investors to national regime in accordance with international law. However such laws could not protect the foreign property from being nationalized in the course of economic reforms in Latin American countries, agrarian reforms in Mexico being an exception.

At the view-point of the theory and practice of international law, government has the right to control the inflow of foreign investments on its territory, as well as the activity of foreign investors at the country of investment. Problems arising with this issue are a subject of argument between countries. Discussing the case of *Mavrommatis (Greece vs. The United Kingdom)* in 1924 at the Permanent Court of International Justice it was noted, that from the point of view of international law diplomatic protection is a right of state, not a company or individual.

But for obvious reasons this doctrine did not gain universal support. As it was mentioned earlier, at the end of 19th century Latin American countries defended the point of view that in

accordance with international law states should treat foreigner just like they treat their own citizens. Damage, caused by non-discriminatory action of state, are not a deviation of international law. The following legal provisions served as the basis of the Latin American doctrine: foreign firms should not enjoy preferential treatment; claims against aliens in the country of investment should be subject to review in national courts of the same country, and not in international arbitration courts; diplomatic protection can be exercised by the alien's nationality state only in cases of direct violation of international law. These legal norms are enshrined in many Latin American constitutions and treaties with foreign investors.

After more than a hundred years Calvo's doctrine was declared "dead", especially after the liberalization of world economy in 1990-s. However, some recent Latin American court decisions concerning international investments in favor of recipient-countries confirm the revival of its principles (Shan, 2007: 631-634). That is why today we can say that Calvo's doctrine has a future.

4. Results

At the beginning of the twentieth century, the Pan-Americanization of the Monroe Doctrine began, which still uses a plentiful demagogic phraseology about common American unity. The Pan-Americanism doctrine, or in this case "monroeism", calling for a single American course on the continent, has become a convenient form of counteraction to the policy of Europeans. The majority of Hispanics are strongly opposed to the Monroe Doctrine. "Bolivarianism", in contrast to "monroism," still assumes the genuine desire of Latin Americans to have a common destiny and interests. "Amendment of the Plate" of the US Congress of 1901, which made Cuba an American protectorate, can be called the apogee of the development of the Monroe Doctrine at that time.

In the third stage (1914-1945) the Monroe doctrine underwent a transformation in the external political concepts of Presidents Woodrow Wilson (1912-1920) and Franklin Roosevelt (1933-1945), and in 1919 the Monroe Doctrine was fixed in the Versailles Peace Treaty fixing the results of the First World War, and in 1920 in Article 21 of the Charter of the League of the Nation. Of course, the first world organization-the League of Nations, which embodied the "universal interests of mankind" - was to be dominated by the United States. The teaching of James Monroe, which arose for regional foreign policy in Latin America, during this period gave a powerful impetus to the establishment of world domination.

5. Conclusion

As the article shows, the process of creation of Pan-American International law is full of contradictions. The Monroe doctrine, being progressive at the time of its appearance, very soon degraded to its opposite. Initially designed to protect the whole American continent from imperialism, after short time it itself became a tool of imperialism at the hands of the US elites. As we have shown in this article, Latin American countries tried to counter this imperialist interpretation of the Monroe doctrine by proclaiming the Calvo and Drago doctrines, which they considered to be the correction of the misused Monroe doctrine. Their initiative gained only partial success, which in the 20th century resulted in alienation of Latin America from the US, growth of anti-American sentiments and leftist ideas in the region. These tendencies lead to the formation of so-called "bolivarianism" movement in modern Latin America, which has socialist and anti-American nature, therefore strengthening the contradiction between Latin America and the US. As we have shown in this article, the roots of such condition lie in the 19th century, when the Monroe and Calvo-Drago doctrines were developed.

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