NON-INTERVENTION: THE LAW AND ITS IMPORT IN THE AMERICAS. By Ann Van Wynen Thomas and A. J. Thomas, Jr. Dallas: Southern Methodist University Press, 1956. Pp. xvi, 476. $8.00.

THE preface of this book advises that the principle of non-intervention "is one of the most controversial subjects in the law of nations."[1] This assertion follows from the fact that it is in the practical application of the doctrines of intervention and non-intervention that the interaction of law and politics is most clearly seen. To show this interaction, however, is not the purpose of this book. Its primary purpose is to study intervention and non-intervention strictly against their legal setting, for Professor and Mrs. Thomas believe that "non-intervention and intervention are basic legal concepts, capable of definition, analysis and evaluation,"[2] and that political considerations have unduly influenced and obscured the meaning of these doctrines.

Despite the subtitle, the book is not restricted to the treatment of non-intervention in Inter-American law and relations. It's attention is broader in that the pertinent theory and practice of the United Nations are similarly discussed. The discussion is segregated under the following headings: "Under General International Law," "Under the Inter-American System," and "Under the United Nations System." At almost every point the law of the United Nations can be compared with the law of the Inter-American system, so that the book is of interest not only to Pan-American lawyers but to other international lawyers as well. Moreover, the material is presented in a lucid and compact fashion, and the amount of research involved was indeed enormous.

It is in matters of substance that the reviewer takes issue with the authors. Unless the entire reasoning of the writers is properly qualified, one cannot accept their view of intervention as being a single concept identifiable everywhere with similarity of manifestations. The authors appear to have overlooked that from the perspective of contemporary world politics, intervention has acquired two shades of meaning: on the one hand, it has been traditionally applied to dictatorial interferences of one State in the affairs of another. This technical meaning is precisely that which has been and is still used in Inter-American relations. On the other hand, the doctrine of intervention is used in order to block the enforcement machinery of the United Nations under article 2, paragraph 7 of the Charter—the clause that excludes from the competence of the United Nations matters essentially falling within the domestic jurisdiction of the State.[3] The authors fail to bring out this fundamental distinction; though reference is made to non-intervention of the United Nations, the matter is inadequately handled. This treatment makes the doctrine of intervention appear too simple, for it is quite safe to argue that intervention

1. P. xi.
2. *Ibid.*
3. See PREUSS, ARTICLE 2, PARAGRAPH 7 OF THE CHARTER OF THE UNITED NATIONS AND MATTERS OF DOMESTIC JURISDICTION 20, 38 (1949); FINCHAM, DOMESTIC JURISDICTION 193 (1948).

in the sense in which it is used in the United Nations Charter cannot arise in the Inter-American system. It is thus a matter for conjecture whether the authors have adequately laid down the foundations of the doctrines of intervention and non-intervention.

My greatest doubts as to the authors' approach arise in connection with the legality of intervention under international law. They maintain substantially that the consent of the victim State removes the act from the category of intervention and that interventions for self-defense are not interventions at all.[4] This would seem to amount, in effect, to saying that consent and self-defense legalize acts of intervention that would otherwise be considered illegal. This line of reasoning clearly opens disturbing possibilites. The view may have been more tenable under the old law in the absence of a world organization to enforce collective security.[5] Even then, however, the door was left open to all kinds of interventions for purely unilateral purposes, making it difficult, if not impossible, to say which interventions were justified and which were not. Under the authors' theory of self-defense much of the intervention of the United States in Latin America can be justified as undertaken largely to prevent European interventions. The fact still remains, however, that these interventions for self-defense were interventions from the standpoint of the Latin American States. Similar contentions may be made regarding intervention by consent, for while in some cases interventions by the United States were permitted by treaty, as in Panama and Cuba, the character of intervention still existed from the point of view of Panama and Cuba, though perhaps not from the standpoint of the United States.[6]

There is surely a stubborn contradiction in the attempt to include within the scope of intervention "enforcement actions" of the States acting either collectively or through an international organization.[7] To reconcile this conflict the authors speak of collective intervention which, significantly, is extended to enforcement actions of the United Nations.[8] But surely if the United Nations takes enforcement action against a State for violations of international law, the action thus taken cannot properly be characterized as collective intervention. Technically speaking, the term "intervention" can apply only to dictatorial interferences of a State in the internal or external conduct of another, provided the latter exercises its sovereignty within the framework of the law. The very nature of an enforcement action would seem to imply that the State against which action is taken has violated the law, and it can scarcely be suggested that a State that violates international law is protected by the very same law it has transgressed. An enforcement action against a wrongdoer vindicates the authority of international law, and, from the standpoint of the interests

4. Pp. 91-97, 79-85. This view also appears in reference to civil strife, p. 215.

5. Fenwick, *Has the Specter of Intervention Been Laid in Latin America?* 50 AM. J. INT'L L. 636 (1956).

6. *Ibid.*

7. Pp. 98-100.

8. P. 99.

of the world society, it makes no difference whether such action is undertaken by the international organization or by a group of States.[9]

It is of course quite possible that the difficulty in accepting the conception of collective intervention arises from the fact that we are nowhere told whether the authors are using the word "intervention" in a loose and nontechnical sense, or in the rather restrictive and technical connotation. At one instance we are informed that intervention is any action of a State designed to influence the will of another.[10] The unavoidable implication is that intervention is being used in a broad and nontechnical sense. Yet in another part of the book the authors make a distinction between intervention and interference,[11] the controlling element of the distinction being the existence of coercion in the former. In this instance Professor and Mrs. Thomas appear to be using intervention as a technical term. Their preference for the nontechnical connotation is, however, unmistakably clear throughout the book. The main objection to the nontechnical connotation is that it fails to consider adequately the dictatorial character of intervention. From Vattel onwards the dictatorial character of intervention has been significantly singled out, and even Latin American writers, who have spoken most vigorously against intervention, regard the dictatorial element as being an essential element of the doctrine.[12] The constant hesitation of the authors in respect to the context in which they used the word "intervention" is disconcerting and misleading, and it is clear from the standpoint of their own definition that the term "collective intervention" is probably incorrect.

It is not easy to regard as fully acceptable the authors' treatment of the United Nations practice. They sharply question the practice of the United Nations, where "the legal outlook, the legal method, and legal procedures have fallen by the wayside."[13] They refer to this practice as the "breakdown in respect for international law" in the United Nations.[14] This assertion proceeds from the questionable assumptions that the function of the United Nations can be rigidly classified as legal and that international law is not adequately promoted unless traditional legal methods are employed to settle controversies between States. What seems to have particularly impressed the authors are the political activities of the United Nations, and it is apparently in this connection that they deplore the use of nonlegal methods. Obviously they view the subject from the standpoint of traditional international law. Yet there is a curious contradiction between this approach and their treatment of

9. It should be recalled that article 51 of the United Nations Charter does not impair the States' right of "collective self-defense."

10. P. 71.

11. P. 96.

12. 1 PODESTÁ COSTA, DERECHO INTERNACIONAL PUBLICO 96 (3d ed. 1955); YEPES, PHILOSOPHIE DU PANAMÉRICANISME ET ORGANISATION DE LA PAIX c. 22 (1945); ACCIOLY, MANUAL DE DIREITO INTERNACIONAL PUBLICO 66 (1948).

13. P. 106.

14. *Ibid.*

the Uniting for Peace Resolution adopted by the General Assembly on November 30, 1950. In this regard, the authors go to great lengths to prove the legality of the resolution and, in so doing, rely on the same nonlegal methods to which they so vigorously object.[15] What they fail to tell us is that within the United Nations a whole new system of law has developed and that inadequate traditional channels have not been resorted to because the function of the United Nations may demand the use of legal, political, social or economic action.[16] This practice undoubtedly does violence to the cherished preconceptions of the defenders of traditional legal doctrines, but its urgency is nevertheless real.

There are other aspects of the book that call for comment. The difficult questions of recognition [17] and asylum [18] as forms of intervention are treated in an inconclusive manner and one that perhaps unduly simplifies the nature of the problem. Whether or not recognition is a form of intervention depends largely upon the theory of recognition to which one subscribes. In this connection, it is a familiar proposition that the theory of recognition in international law has been greatly influenced by the constitutive and the declaratory doctrines.[19] The constitutive view maintains that a State comes into being as a subject of international law through the process of recognition, and thus no legal relations can exist with a political community prior to recognition. The element of interference is clearly apparent in this theory, for in fact it amounts to making the existence of a State dependent upon the unilateral action of other States. On the other hand, under the declaratory view recognition merely declares the fact that a State exists. The State comes into being by fulfilling the conditions of statehood and not by the action of other States. It can readily be seen, therefore, that the declaratory view cannot be regarded as a form of intervention. This distinction between the two views of recognition is not adequately made in the book, and one naturally wonders how the authors have arrived at the conclusion that recognition is a form of intervention without any further qualification. Moreover, since the Charter of Bogotá of 1948 adheres to the declaratory view,[20] it would necessarily follow that intervention by way of recognition is absent from Inter-American law. Yet this aspect of the problem is nowhere to be found despite its significance for the development of recognition law in the Western Hemisphere.

Nor is the discussion in regard to asylum any more conclusive. The view that territorial asylum is a form of intervention is wholly unacceptable. If it proceeds, as it does, from the exercise of territorial sovereignty on the part of the State granting asylum, the element of interference or even coercion is

15. Pp. 172-76.

16. Sohn, *The Impact of the United Nations on International Law*, 46 PROC. AM. SOC'Y INT'L L. 104 (1952).

17. P. 241.

18. Pp. 391-99.

19. LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 38-42 (1947).

20. Article 9 of the Charter of Bogotá says: "The political existence of the State is independent of recognition by other States. . . . "

conspicuously absent, so that it cannot properly fall within either definition of intervention.[21] It is in respect to diplomatic asylum that the authors' whole conception of intervention as "any action of a State designed to influence the will of another" breaks down altogether and loses all its force; for though the Latin American governments and writers were greatly instrumental in establishing the principle of non-intervention, they have been similarly instrumental in establishing diplomatic asylum as a doctrine sui generis. This further illustrates the proposition that intervention is a technical term and that the absence of dictatorial interference removes an action from the category of intervention. Moreover, the authors' statement, in dealing with the celebrated *Haya de la Torre Cases*, that "as for diplomatic asylum, the Court concluded that it was an illegal intervention,"[22] although not inaccurate per se, fails to bring out the true position. Actually, the International Court of Justice was limiting its ruling to the unilateral qualification of the offense by the State granting asylum, which would be an act of intervention unless its legal basis were clearly established in each specific case.[23]

The foregoing observations are not intended to detract in any way from the merits of the work. There can be no doubt that Professor and Mrs. Thomas have dealt exhaustively with the law of intervention and non-intervention. One should look upon the book as a valuable contribution to the solution of a problem that has greatly disturbed the development of international law.

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STERLING-DOLLAR DIPLOMACY, ANGLO-AMERICAN COLLABORATION IN THE RECONSTRUCTION OF MULTILATERAL TRADE. By Richard N. Gardner. Oxford: Clarendon Press, 1956. Pp. xxiv, 424. $6.75.

IT is a rare joy to come across a book as appealing to the layman as it is to the specialist. This is such a book. Historians, economists, political scientists and lawyers will learn more from it than from many an esoteric volume on the same subject. And the layman will begin to understand the intricacies of international economic negotiations and the monotonous succession of high hopes and bitter disillusionment which have marked the bewildering proliferation of international economic agreements and institutions in the postwar era.

The curtain rises with the blazing trumpets of the Atlantic Charter in August 1941 and falls on the quiet burial of the proposed Charter for an In-

21. GARCIA-MORA, INTERNATIONAL LAW AND ASYLUM AS A HUMAN RIGHT c. 4 (1956).

22. P. 397.

23. The Colombian-Peruvian Asylum Case, [1950] I.C.J. Rep. 275. See also García-Mora, *The Colombian-Peruvian Asylum Case and The Doctrine of Human Rights*, 37 VA. L. REV. 927 (1951).

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