

# RALEIGH STAR & N. CAROLINA GAZETTE.

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No. 7

## MR. BADGERS SPEECH.

In Senate—Tuesday, January 10, 1848, INCREASE OF THE ARMY.

The Senate having resumed the consideration, on its third reading, of the bill to raise for a limited time, an additional military force—

Mr. Badger said: If I believed, sir, that the duty which I owe to the country, and to the State which has sent me here, could be performed by yielding to the requisitions of the Executive such supplies as he may deem requisite for the prosecution of the war, upon plans for prosecuting it which have not been fully made known to Congress—if I believed that I had not a high and controlling obligation to exercise my own best judgment for the benefit of those whom I represent, and for the general welfare of the country, upon every question submitted to the consideration of this body, I might be disposed to vote for the bill upon your table. If, sir, the yeas and nays had not been ordered upon the passage of this bill, I might have been content to permit the measure to pass, as far as I am concerned, without offering a single word to the Senate, upon its intrinsic merits. But the yeas and nays have been ordered upon this bill—I cannot vote for it. I shall record my vote against it; and I think that it is due to the country—I feel that it is due to myself—that the views and principles which will govern my conduct in giving this vote should be plainly and distinctly stated, and should accompany to the public the vote itself. I shall endeavor to assign those views and principles in as short a compass as is consistent with a full exposition of what I believe to be the truth on this all important subject, and which every consideration obliges me to put before those whom I represent, without any unnecessary diminution, without leaving out anything that may be required in a full and complete expression of the argument, which, in my mind, is conclusive in regard to the measure before you. I shall offer my own opinions, sir, with entire respect, and even deferential consideration, for the great minds of this body and throughout the country, whom I know to be arrayed against me. Without intending towards them any disrespect, I shall take the liberty to declare what are the opinions which I entertain with regard to the origin of the war, the manner of its prosecution, the tendency of the measures now proposed, and the schemes that are evidently entertained by the Executive of the country in relation to it. I shall not go far back, sir, as an honorable Senator from Maryland did a few days ago, (I mean the honorable Senator from that State who first addressed the Senate upon this bill), but, nevertheless, I shall be under the necessity of going a little back for the purpose of making myself fully understood.

First, then, I will lay it down, and endeavor to demonstrate, that the war in which we are now engaged with Mexico was the immediate result of the unlawful and unconstitutional act of the President of the United States. I suppose, sir, that there is no gentleman on this floor, or elsewhere, who supposes or believes that the President of the U. S. is vested with the war power of this country. It is a power expressly, and in terms, conferred upon the Congress of the U. States. And the President would have no control over it, direct or indirect, except from the incidental circumstance of his limited veto on the action of the two Houses; and except from the fact that, in virtue of his office, he is the chief commander, the principal military officer, of the United States.

I maintain, then, Mr. President, that when the President of the U. S. moved the troops under General Taylor to the Rio Grande, and took possession of the left bank of that stream, he committed a clear and unclouded act of war. What is war? What do all the writers on the law of nations tell us it is? They all, in substance, define it to be a contest about rights, which is carried on or maintained, not by argument, but by force. It can, therefore, admit of no question, that when a nation claiming certain rights, which are disputed by another, undertakes to support those rights by force, she undertakes to support them by war—war as far as she is concerned. It is true, if the act of violence or aggression on her part be not resisted by the nation that suffers it—if it be patiently and tamely submitted to—no war results. To constitute war, it is as essential that there should be two parties, as it is that there should be two parties to a treaty of peace. The act of one nation cannot alone constitute war; it is like the case of an individual striking a blow: if it be not resisted, no contest, no battle, no fight is the result. The blow is an act of aggression; it is an act commencing a contest, but it does not amount to a perfect contest.—Whether this act on the part of the President was an act of war, of hostility, of aggression, depends not at all upon the question, whether we had a right to the territory of which he took forcible possession. War, between nations, pre-supposes a contest about rights. The publicists, who speak of certis between nations, never suppose them to contend except about rights. War is a contest about rights. Public war is a contest between nations about rights, carried on by force and not by argument. If, therefore, it were assumed as clear and unquestionable that the title of Texas and the U. S. extended to the Rio Grande, it is still beyond all doubt that Mexico, possessing the left bank of

that stream, having settlements there, having officers there, and exercising jurisdiction there—an movement to dispossess Mexico, to occupy what she thus occupied, and what she claimed to be her own, is an act of war. It is an act of war, just and rightful if the territory be ours—just and rightful if the territory be unjustly and improperly withheld—just and rightful if, also, the act of war be directed by those who represent the sovereignty of the nation. Well, sir, this act was directed by the President of the U. S. He ordered the troops to the Rio Grande. They advanced. When they came into the Mexican settlement, the inhabitants fled before them in dismay; the officers abandoned the public buildings and set fire to them; and, under such circumstances, our forces, under the command of officers of the U. S., took from Mexico that of which she was in possession, and by force kept possession of the territory, and placed it under the jurisdiction of the United States.

Now, sir, on this subject I had the honor at the last session to bring to the attention of the Senate the action of Mr. Jefferson, during his administration of this Government, under circumstances of a very similar character; with this difference, that the title of the territory then withheld from us was truly and clearly ours. In every other respect the case was like this. The territory was withheld by another power, and a disposition manifested by that power to deprive us of what we owned. Under these circumstances, Mr. Jefferson conceived that he had no right to use the military force of the country to obtain possession of that which was withheld from us, though clearly ours. And he states, as the reason for referring the subject to the determination of Congress, that matters relating to peace and war belong exclusively to that body, and not to him; and as this movement might change the relation of the two countries from peace to war, therefore, it belonged to Congress to determine whether the movement should be made.

But, Mr. President, I have other authority. I certainly shall not say that it is more respectable in itself than the authority of Mr. Jefferson. I doubt very much whether, with a large portion of the American people, and of the Senate, it will be thought quite equal to Mr. Jefferson's. But upon this question, with respect to the President of the U. S., the authority is conclusive and overpowering. It creates upon him, what lawyers call an estoppel. For I am able to show that the President of the U. S. has himself recognized that such an act as this is an act of hostility—of aggression—of war. On the 11th of July, 1845, the Secretary of the Navy writes a confidential communication to Commodore Conner, then commanding in the Gulf of Mexico. He says:

"The unanimous vote of the Texas Congress for annexation leaves no doubt of the consummation of that measure. When you ascertain, satisfactorily, that the Texas convention, which assembled on the 4th, has also acceded to annexation, you will regard Texas as a part of your country—to be defended like any other part of it.

"At the same time, every honorable effort is to be made to preserve peace with all nations. The restoration of our boundary on the southwest, by the consent and choice of the people of Texas, is due to the strong attraction of the principles of liberty, which endear America to every one of its sons, and is a tribute before the world to the policy of peace, of political freedom, and of union on the principles of freedom. It is the President's desire that this great event should be consummated without the effusion of blood, and without the exercise of force, believing that free institutions, in their own right, will achieve all that can be desired."

I read this part of the communication for the purpose of shewing, that though this paper was written on the 11th of July—prior to the actual consummation of the act of annexation—yet the instructions to which I propose more particularly to call the attention of the Senate, are given prospectively—cautiously—and with a view to the actual completion of that measure, when, as appears from the instructions themselves, the officer to whom they were directed was required to consider Texas as a part of this country. The letter proceeds:

"To secure this end most effectually, you are charged to commit no act of aggression; and, at the same time, you are invested with the command of a force sufficient to take from others a disposition to hostile acts."

Then, after enumerating the force at the officer's command, the Secretary says:

"That you may precisely understand what is meant by the aggression which you are instructed to avoid, I will add, that while the annexation of Texas extends our boundary to the Del Norte, the President reserves the vindication of our boundary, if possible, to methods of peace. You will, therefore, not employ force to dislodge Mexican troops from any post east of the Del Norte which was in the actual possession of the Mexicans at the time of annexation."

"Should Mexico declare war, you will at once dislodge her troops from any post she may have east of the mouth of the Del Norte, take possession of Tampico; and, if your force is sufficient, will take the castle of San Juan d'Ulloa; it being the determination of the President to preserve peace if possible; and, if war ensues, to recover peace by adopting the most prompt and energetic measures."—Doc. H. R. 19—2d sess., 29th Congress.

Again: The Secretary of War writes General Taylor under date of July 8, 1845:

"This department is informed that Mexico has some military establishments on the east side of the Rio Grande, which are, and for some time have been, in the actual occupancy of her troops. In carrying out the instructions

heretofore received, you will be careful to avoid any acts of aggression, unless an actual state of war should exist. The Mexican forces at the posts in their possession, and which have been so, will not be disturbed as long as the relations of peace between the U. S. and Mexico continue."

Here we have, from the representatives of the President in the two Departments, War and Navy, a clear and distinct recognition of this position, that, although the President held our true boundary to be the Del Norte, yet it would be "AN ACT OF AGGRESSION," "A HOSTILE ACT," an act which would not be justifiable except in a STATE OF WAR, to dispossess Mexico of any portion of that territory of which she held possession at the time of the annexation. When, therefore, orders were issued to General Taylor, on the 15th of January, 1846, to advance and occupy a position on the left bank of the Rio Grande, admitted to be in the possession of Mexico, the President ordered what he then, undoubtedly, understood to be an act of war. He ordered what he intended, and what he supposed would be regarded on the part of Mexico, as an act of hostility—of aggression. For, sir, you will observe, that when General Taylor, in the execution of this order, advanced to the Rio Grande, and drove the Mexicans from their possessions—when he occupied what had before been occupied by the Mexicans—and these facts were reported to the President, there was not the slightest intimation on his part that General Taylor had exceeded the scope of the orders which had been given him, and had thus been the means of precipitating the country into a war, which, by a prudent forbearance, might have been avoided. On the contrary, up to this very moment, all that was done in pursuance of that order has been recognized by the President as having been rightfully done, as having been done in accordance with the purposes which the Executive had in view when the orders were given.

But, sir, if the act was not an act of war, it was plainly and manifestly an act which was likely to produce a state of war. It was an act the tendency of which was to change the relations of Mexico and this country from a state of peace to a state of war. Can there be any doubt of this, sir? It is impossible to doubt it, when we recollect the unhappy and angry state of feeling which existed between the two countries. When we recollect the position which our army held at Corpus Christi for so many months, and the disputes existing between the two countries—the mutual charges of insincerity and breaches of faith—when we recollect all this, it must be manifest that such an act as moving an armed force to the Rio Grande was, in itself, if not an act of war, at least one which wore the appearance of aggression, and one which was calculated to rouse the feelings of the Mexicans, and to provoke retaliation.—Thus much must be conceded; and if so, sir, whence did the President of the United States derive his power to do this without the consent of Congress?

According to Mr. Jefferson, an act which in its execution may change the relations of the country from peace to war, is an act beyond the competency of the Executive, and to be passed upon only by Congress. The Constitution has undergone no change; the people have made no amendment to it; it stands now as it stood in the time of Mr. Jefferson. Whence, then, has Mr. Polk derived his authority to precipitate measures which must lead directly to war—Congress being in session—without taking their advice, or even deigning to inform them of what he proposed to do? But, sir, at all events, there is not the slightest reason to doubt, as I apprehend, that the movement of the troops upon the Rio Grande was the act which produced war. There had been, previously, threatenings, on the part of Mexico. There had been exactly that state of feeling which was likely to result in war. But there had been no war, and my conviction is clear, that if our troops had remained quiet at Corpus Christi—where they had a right to remain, on the ground so strongly put by the Senator from Maryland, (Mr. FRANK), that it belonged to Texas by virtue of her revolution, and was then in her possession—there would have been no war. But, at all events, supposing that war would have been produced in some other manner, or by some other movement, though our troops had remained, which is mere matter of speculation, yet it cannot be denied that, in point of fact, this war—the war in which we are now engaged—was the immediate result of the movement of our troops upon the Del Norte, and of nothing else. That movement was an act of war; it was, at all events, an act directly tending to change the relations of the two countries from peace to war; and, therefore, an act which the President could not lawfully or constitutionally perform.

The next proposition which I lay down is, that this war, thus resulting from an act of the President, has been prosecuted by him from the commencement with a view to the conquest—the permanent conquest—of at least New Mexico and Upper and Lower California. I beg the attention of the Senate while I attempt to demonstrate this proposition from public documents.—First, sir, I will call the attention of the Senate to the instructions given by the Secretary of War on the 3d of June, 1846, to General Kearney:

"Should you conquer and take possession of New Mexico and Upper California, or even

erale places in either, you will establish temporary civil governments therein—abolishing all arbitrary restrictions that may exist, so far as it may be done with safety. In performing this duty, it would be wise and prudent to confine to their employment all such of the existing officers as are known to be friendly to the U. States, and will take the oath of allegiance to them. The duties at the custom-houses ought, at once, to be reduced to such a rate as may be barely sufficient to maintain the necessary officers, without yielding any revenue to the government. You may assure the people of those provinces that it is the wish and design of the United States to provide for them a free government, with the least possible delay, similar to that which exists in our Territories. They will then be called on to exercise the rights of freemen in electing their own representatives to the territorial legislature. It is foreseen that what relates to the civil government will be a difficult and unpleasant part of your duty, and much necessarily be left to your own discretion."—Doc. H. R. 19—2d sess., 29th Congress—p. 5.

In further proof of this, I read the instructions given by the Navy Department to Commodore Sloat, 12th July, 1846:

"The object of the United States is, under its rights as a belligerent nation, to possess itself entirely of Upper California.

"The object of the United States has reference to ultimate peace with Mexico; and if, at that peace, the basis of the *uti possidetis* shall be established, the government expects, through your forces, to be found in actual possession of Upper California.

"This will bring with it the necessity of a civil administration. Such a government should be established under your protection; and, in selecting persons to hold office, due respect should be had to the wishes of the people of California, as well as to the actual possessors of authority in that province. It may be proper to require an oath of allegiance to the United States from those who are interested with authority. You will also assure the people of California of the protection of the United States.

"After you shall have secured Upper California, if your force is sufficient, you will take possession, and keep the harbors on the Gulf of California as far down, at least, as Guaymas. But this is not to interfere with the permanent occupation of Upper California."—Doc. H. R. 19—2d sess., 29th Congress—pp. 31-2.

Then, sir, on the 13th of August, 1846, we have instructions from the Navy Department to Commodore Stockton, or the commanding officer, in the Pacific:

"You will take immediate possession of Upper California, especially of the three ports of San Francisco, Monterey, and San Diego, so that if the treaty of peace should be made on the basis of the *uti possidetis*, it may LEAVE CALIFORNIA TO THE UNITED STATES."

"Having provided for the full possession of Upper California, the next point of importance is the Gulf of California. From the best judgment I can form, you should take possession of the port of Guaymas. The progress of our arms will probably be such that, in conjunction with land forces, you will be able to hold possession of Guaymas, and so to reduce ALL THE COUNTRY NORTH OF IT TO OUR OBEY."—Doc. H. R. 19—2d sess., 29th Congress—p. 82.

Now, sir, in order to understand the scope and bearing of these orders still more clearly, let us see what was done under them by the officers to whom they were addressed. In a letter of General Kearney to the Adjutant General of the 24th August, 1846, written from Santa Fe, he says:

"On the 22d I issued a proclamation claiming the whole of New Mexico, with its ten boundaries, as a territory of the United States of America, and taking it under our protection."—Doc. H. R. 19—3d sess., 29th Congress—pp. 19-20.

In another part of the same letter he says:

"On my return (which will be in two or three weeks) a civil government shall be organized, and the officers appointed for it; after which I will be ready to start for Upper California, which I hope may be by the latter end of next month; and in such case I shall expect to have possession of that department by the close of November."

Then we have General Kearney's proclamation to hold New Mexico as a part of the United States, under the name of the "territory of New Mexico."

"As, by the act of the republic of Mexico, a state of war exists between that government and the United States; and as the undersigned, at the head of his troops, on the 18th instant, took possession of Santa Fe, the capital of the department of New Mexico, he now announces his intention to hold the department, with its original boundaries, (on both sides of the Del Norte) AS A PART OF THE UNITED STATES, and under the name of THE TERRITORY OF NEW MEXICO."

"The undersigned has instructions from his Government to respect the religious institutions of New Mexico—to protect the property of the church—to cause the worship of those belonging to it to be undisturbed, and their religious rights in the simplest manner preserved to them; also to protect the persons and property of all quiet and peaceable inhabitants within its boundaries against their enemies, the Ectaws, the Navajoes, and others; and when he assures all that it will be his pleasure, as well as his duty, to comply with those instructions, he calls upon them to exert themselves in preserving order, in promoting concord, and in maintaining the authority and efficacy of the laws.

"And he requires of those who have left their homes, and taken up arms against the troops of the United States, to return forthwith to them, or else they will be considered as enemies and traitors; subjecting their persons to punishment, and their property to seizure and confiscation, for the benefit of the public treasury."

"It is the wish and intention of the United States to provide for New Mexico a free government, with the least possible delay, similar to those in the United States, and the people of New Mexico will then be called on to exercise

the rights of freemen in electing their own representatives to the territorial legislature. But, until this can be done, the laws hitherto in existence will be continued until changed or modified by competent authority; and those persons holding office will continue in the same for the present, provided they will consider themselves good citizens, and are willing to take the oath of allegiance to the United States.

"The United States hereby absolves all persons residing within the boundaries of New Mexico from any further allegiance to the republic of Mexico, and hereby claims them as citizens of the United States. Those who remain quiet and peaceable will be considered good citizens, and receive protection—those who are found in arms, or instigating others against the United States, will be considered traitors, and treated accordingly."—Doc. H. R. 19—2d Sess., 29th Congress—pp. 30, 31.

What was the action of Commodore Sloat? How did he interpret and understand the orders he had received? We have distinct information upon this point, communicated in the proclamation of Commodore Sloat to the people of California. He says:

"Henceforward California will be a portion of the United States, and its peaceable inhabitants will enjoy the same rights and privileges they now enjoy, together with the privilege of choosing their own magistrates and other officers, for the administration of justice among themselves, and the same protection will be extended to them as to any other State in the Union. They will also enjoy a permanent government."—Doc. H. R. 19—2d Sess., 29th Congress, p. 103.

And in a general order of July 7, 1846, he says:

"It is not only our duty to take California, but to preserve it afterwards, as a part of the United States, at all hazards."

What was the understanding of Commodore Stockton? In an address to the people of California, of the 17th August, 1846, he says:

"The Territory of California now belongs to the United States, and will be governed, as soon as circumstances will permit, by officers and laws similar to those by which the Territories of the United States are regulated and protected."—Doc. H. R. 19—2d Sess., 29th Congress, p. 107.

Again, in a proclamation, he says:

"I, Robert P. Stockton, commander-in-chief of the United States forces in the Pacific ocean, and Governor of the Territory of California, and commander-in-chief of the army of the same, do hereby make known to all men, that having by conquest taken possession of that territory known by the name of Upper and Lower California, do now declare it to be a Territory of the United States, under the name of the Territory of California."—Doc. H. R. 19—2d Sess., 29th Congress, p. 109.

Now, sir, it is impossible, I think, to read what was done—what was reported by our officers to the President as having been done by them—without seeing that they understood and acted on his instructions, as designed to make a permanent conquest of such portions of Mexican territory as they were instructed to take possession of. There is not one word said in the instructions—nothing declared in the actions of the officers obeying those instructions—which referred or appeared to refer to a military occupation of those territories, for the purpose of compelling Mexico to do us justice for the wrongs we had sustained at her hands; on the contrary, the instructions to General Kearney, before read, require him to establish temporary civil governments therein, and authorize him to assure the people of the design of the United States to provide for them a free government similar to that which exists in our territories. These officers clearly understood that they were to take possession of and hold those territories as a portion of the United States.

They accordingly took possession; they organized government; and they acted in all respects as if from that time forward these territories ceased to be the property of Mexico, and became for all time the property of the United States.

Now, did they understand their instruction aright? Why, sir, in the message of the President of the United States, communicating those documents to us, there is something said which implies a disavowal of something that was done; an intimation that in some respects the instructions had been exceeded.

"These documents contain all the orders or instructions to any military or naval officer of the Government (in relation to the establishment or organization of civil government in any portion of the territory of Mexico."

"Among the documents accompanying the report of the Secretary of War will be found a form of government established and organized by the military commander who conquered and occupied with his forces the territory of New Mexico. This document was received at the War Department in the latter part of last month, and, as will be perceived by the report of the Secretary of War, was not, for the reason stated by that officer, brought to my notice until after my annual Message of the 8th instant was communicated to Congress. It is declared on its face to be a temporary government of said territory; but there are portions of it which purport to establish and organize a permanent territorial government of the United States over the territory, and to impart to its inhabitants political rights, which, under the constitution of the United States, can be enjoyed permanently only by citizens of the United States. These have not been approved and recognized by me."

The Secretary of War, in the report referred to by the President states that the organic law of the territory of New Mexico was not received until the 23d of November; and because of its being voluminous,

was not read by him or submitted to the President until after his annual message was sent in."

It appears, then, upon the statement of the President of the United States and the report of the Secretary of War, that the "organic law" established by General Kearney for the government of the territory of New Mexico, in consequence of its late arrival—late with reference to the then succeeding session—had not been read by him and submitted to the President; and his orders taken with respect to it. Well, now that is the only one of the documents of which it is intimated that the contents were not known by the proper department and communicated to the President, and approved and sanctioned by him. Therefore it is reasonable, just, and necessary conclusion, that every one of the other documents, except the one thus specified and taken out by the exception, had been read, and considered, and approved. And, further, even in reference to General Kearney's organic law, nothing is excepted by the President but this: that he undertook to make that law a "permanent" form of government; whereas the President intended a permanent occupation, with a permanent government to be finally settled by Congress, leaving to the military officer the establishment of a temporary government only.—No exception was taken by the President to General Kearney's proclamation of the 24th August, declaring his intention to hold New Mexico "AS A PART OF THE UNITED STATES"—none to his requiring ALL THE INHABITANTS TO RETURN TO THEIR HOMES on pain of being considered traitors, and subjecting their persons to punishment, and their property to confiscation—none to his requiring the office holders to consider themselves "CITIZENS OF, AND TO TAKE AN OATH OF ALLEGIANCE TO THE UNITED STATES"—none to his declaring the INTENTION of the United States to provide a CIVIL GOVERNMENT FOR NEW MEXICO with a TERRITORIAL LEGISLATURE—none to his ABSOLVING, in the name of the United States, the inhabitants of that country from their allegiance to the republic of Mexico—and finally, none to his claiming all persons residing within that territory as citizens of the United States, and denouncing the doom of traitors against all of them who should be found in arms against us. To nothing that was done, by either Commodore Sloat or Commodore Stockton, in regard to these matters, is any exception taken; yet Commodore Sloat proclaimed to the inhabitants of California, as early as July, 1846, that HENCEFORWARD CALIFORNIA WOULD BE "A PORTION OF THE UNITED STATES," and would enjoy "A PERMANENT GOVERNMENT." And, in his general orders, issued July 7th, he says to the troops who were about to be landed on the coast, that it was their duty not only to take California, but to preserve it afterwards, as "A PART OF THE UNITED STATES," at all hazards. And Commodore Stockton, by his proclamation, makes known to all men, that he has by right of conquest taken possession of the territory known as Upper and Lower California, and declares it to be "THE TERRITORY OF THE UNITED STATES," under the name of "THE TERRITORY OF CALIFORNIA." And again, on the 17th of August, he declares that "the territory of California now belongs to the United States, and will be governed, as soon as circumstances permit, by officers and laws similar to those by which other territories of the United States are regulated and governed."

Here, then, we see officers acting under the authority of the President, without re-buke from him, seizing and establishing civil governments in New Mexico and California, as the permanent territories of the United States; claiming their inhabitants as our citizens, promising them a permanent form of Government, and denouncing them as traitors if they should take up arms against the United States. What is this but conquest? What is it but seizure and permanent annexation by force of arms? This, then, sir, I presume the President designed to do at the very time when he called upon the country for a recognition of this war, and for men and money to prosecute it. No intimation is given to us in any of the correspondence—if it did not then entertain the design—at what time the change took place in the Presidential mind. In June, July, and August, from the Navy and the War Departments to all the officers charged with carrying into execution the wishes of the President in the prosecution of the war, we have the same general tone of instructions, and we have all these officers seizing territories and treating them as a permanent part of the United States. And to these proceedings the President takes no exception! He does not intimate, by the slightest breath of disapprobation, that the zeal of these commanders has exceeded the purpose of the Executive!

I must suppose, then, that conquest was the object for which the President prosecuted the war from the beginning, and not indemnity. Why, sir, is it not a singular mode of securing indemnity, if such had been his purpose? At the commencement of the war, what did he want indemnity for? Mexico, it is true, owed to our citizens money. If the object had been to seize the Mexican territory, and simply to hold it by military occupation, in order to compel Mexico to recognise and discharge her debts to us, why is nothing of this kind