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C.H. McLaughlin

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NEUTRAL RIGHTS UNDER INTERNATIONAL LAW IN THE EUROPEAN WAR, 1939-1941*

By C. H. McLAUGHLIN†

III. VISIT, SEARCH, AND SEIZURE

Apart from the problems involved in blockade, contraband and continuous voyage there is another set of issues created by the liberties which have been taken with the law of visit and search, interference with mails, and removal of enemy persons from neutral vessels.

The traditional law of diversion permitted belligerents to force a neutral vessel into port under escort or prize crew when visit and search at sea revealed at least a prima facie case for condemnation of the cargo or vessel as prize. During the World War Great Britain, France, Germany, and Italy all diverted neutral ships into their ports without having obtained any evidence of contraband carriage or suspicious circumstances by preliminary visit and search at sea. The British Government began with a suggestion that ships bound for Scandinavia should call at British ports to "avoid the delay and inconvenience of being stopped at sea." By the end of 1914 it had progressed so far as to set up ports of detention, or control bases, into which neutral vessels were diverted for search. The reprisals Order in Council of March 11, 1915, authorized the detention and diversion

*Continued from 26 MINNESOTA LAW REVIEW 49.

As the proofs of these pages were being corrected the United States abandoned its formal status of neutrality and declared war upon Japan, Germany and Italy. In the light of this country's more immediate problems as a belligerent it is of course difficult to concentrate attention upon problems of neutrality. Whether neutrality as a legal status will survive the present war and the peace settlement which terminates it, or whether the United States will in any future war wish to occupy such a status, are questions as yet unanswerable. Yet it may be well to recall that indifference in the United States during and after the first World War to the problems of 1914-1917, and preoccupation on the one hand with proposals for collective security, on the other hand with isolationism even at the sacrifice of neutral rights, were factors which contributed largely to the present chaotic condition of the law of neutrality and the consequent flagrant disregard of neutral rights during the past two years. It would be rash to assume that similar indifference today to the problems of neutrality will not some day produce a like result.

†Instructor in international law, Department of Political Science, University of Minnesota.

158See generally Harvard Research, Neutrality, 578-601, where the pertinent materials are collected.

159For. Rel., 1914, Supplement, 323.
into British ports of all ships carrying goods presumed to have enemy destination, origin, or ownership.\textsuperscript{100} In the extensive correspondence with neutrals which ensued the British Government took the position that diversion into port for search was justified by the physical difficulty of complete examination of large cargoes at sea, as well as by changed conditions of warfare, including danger of submarine attack during search at sea.\textsuperscript{101} A further extension of the practice under the Order in Council of February 16, 1917, whereby vessels carrying goods of enemy origin or destination were made liable to condemnation if they omitted to call at a British port, was placed frankly upon the ground of reprisal.\textsuperscript{102} Proceedings under both these orders in council were interpreted as reprisals by the British prize courts.\textsuperscript{103} Apart from these special measures based upon reprisal, the usual practice of the World War belligerents was to board the vessel at sea and maintain control over it during its progress into port.\textsuperscript{104} In view of this, and of repeated protests by the United States, The Netherlands, and the Scandinavian States, it can hardly be said that the new practices obtained the acquiescence of neutrals. Subsequent consideration of the problem by the Hague Commission of Jurists of 1923 revealed some disposition on the part of The Netherlands and the United States to accept the practice of diversion after preliminary boarding, but no agreement upon a draft convention was reached.\textsuperscript{105}

During the present war the British established contraband control bases at Weymouth, Ramsgate, Kirkwall, Gibraltar and Haifa, and suggested to neutral shippers that examination of their cargoes there would be expedited by having papers in good order, including duplicate manifests in the English language, by avoiding consignments "to order," and by providing a stowage plan of the cargo.\textsuperscript{106} These suggestions appear to have been offered in the hope of inducing shippers to proceed to control ports volu-

\textsuperscript{100}Ibid., 1915, Supplement, 143; Savage, II, Document 54 (p. 274).
\textsuperscript{101}Harvard Draft, Neutrality, 590-593; For. Rel., 1916, Supplement, 368, 382.
\textsuperscript{102}For. Rel., 1917, Supplement 1, p. 493.
\textsuperscript{104}Harvard Draft, Neutrality, 597.
\textsuperscript{105}Ibid., 597-598.
\textsuperscript{106}Notices issued through British Consulate General, New York, September 11 and 12, 1939, CCH War Law Service, Nos. 65,501; 65,502. At one time British authorities were considering the practicability of a Canadian control port into which American vessels might be diverted. AP dispatch, London, January 7, 1940.
arily in order to minimize delay. Those ships which do not acquiesce in the British arrangements may be compelled to comply if intercepted by the vessels of the British contraband patrol. But there has been no suggestion as yet, comparable to that of the Order in Council of February 16, 1917, that a penalty might be imposed upon a ship carrying goods of enemy origin or destination if it failed to call at a control port. The "navicert" system of the World War has been revived, and vessels obtaining this certification of the innocent character of their cargo from British authorities at the port of origin are not required to call at control ports. The same is true when vessels give the so-called "Black Diamond guarantee" to submit goods to examination by British officials at the neutral port of destination.

On December 14, 1939 the Government of the United States protested against the assumption by the British Government of a right to divert American vessels to control bases in the combat zone. The secretary of state pointed out that in pursuance of the terms of the Neutrality Act of November 4, 1939, the president had designated a combat area around the British Isles and the Northern Coast of Europe, which American vessels were forbidden to enter. He argued that in view of the prohibition in the Act against carriage of goods to belligerent ports in Europe and North Africa by American vessels they would necessarily be carrying "only such cargo as is shipped from one neutral country to another," and therefore "entitled to the presumption of innocent character, in the absence of substantial evidence justifying a suspicion to the contrary." The argument fails to take into account the fact that such cargoes might be subject to condemnation under the continuous voyage doctrine as having an ultimate enemy destination. In any case it is a complaint founded upon certain peculiarities of our domestic law, and does not go to the root of the international law issue. A second protest on January

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168 A "navicert" is a certificate issued by British authorities in the neutral port of export after satisfying themselves that there is no ground for interception of the ship. The system was used in the World War; see Ritchie, The "Navicert" System During the World War (Carnegie Endowment, 1938). For the regulations reviving the system see CCH War Law Service, Nos. 40,620, 65,555, 66,005, 66,015. The "navicerts" are issued through British consulates for a fee of $2.00.
169 The guarantee derives its name from the Black Diamond Steamship Line, which first employed the device in the present war.
170 Bulletin 4-5. The Moore-McCormack line ship Mornacsun had been diverted into the control port of Kirkwall, within the combat area.
171 For the proclamations defining combat zones, see notes 70 and 104, supra.
20, 1940, expressed “serious concern” over unduly long detentions of American ships at Gibraltar, which appeared to be discriminatory treatment in view of the more expeditious examination of Italian vessels.\(^{172}\) This of course contributes nothing to the basic issue.

The related problem of interference with the mails carried by neutral ships has attracted special attention. The Eleventh Hague Convention of 1907 provided that postal correspondence intercepted on the high seas should be treated as inviolable and promptly forwarded, whether public or private, neutral or belligerent, and irrespective of the belligerent or neutral character of the ship.\(^{173}\) This sweeping provision was not in force during the World War and was not observed. Neutral vessels carrying American mail directly to or from Scandinavian and other North Sea neutral states were brought into British ports, where the mail was censored or removed. This practice was the subject of protests by Secretary of State Lansing on January 4 and May 24, 1916,\(^{174}\) in the course of which he denied that diversion of vessels into British ports could invest the British authorities with greater rights to examine mail than they would possess on the high seas. Yet he made damaging admissions. The British Government had professed to desire no interference with genuine correspondence, but felt that its right to examine mail bags in order to detect contraband secreted there was not contrary to the Hague Convention.\(^{175}\) Lansing agreed “that the class of mail matter which includes stocks, bonds, coupons and similar securities is

\(^{172}\) Bulletin 93-94. At that time the average delay imposed upon American vessels at Gibraltar was over 12 days. It was subsequently reduced to 2 or 3 days.

\(^{173}\) Eleventh Hague Convention, 1907:

“Article 1. The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral or enemy ship, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

“The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for or proceeding from a blockaded port.

“Article 2. The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to neutral merchant ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.”


\(^{175}\) Ibid., 601:

“2. That the inviolability of postal correspondence stipulated by the eleventh convention of The Hague of 1907 does not in any way affect the right of the Allied Governments to visit and, if occasion arise, arrest
to be regarded as of the same nature as merchandise or other articles of property and subject to the same exercise of belligerent rights. Money orders, checks, drafts, notes, and other negotiable instruments which may pass as the equivalent of money are, it is considered, also to be classed as merchandise."¹⁷⁶ This admission of course implied that sealed letter mail could be opened in order to determine whether this class of "merchandise" was present, and thus had the practical effect of opening letter post to the same form of contraband control as that applied to postal packages and cargo. It is not surprising that the British Government has now resumed the practice of removing mails at control ports and subjecting them to contraband inspection, nor that a protest by Secretary Hull on January 2, 1940¹⁷⁷ should have been answered by Great Britain in terms nearly identical with the language of its World War notes on the subject.¹⁷⁸ German sources are reported to have suggested that as a counter-measure the United States might return undelivered to England and France a number of mail sacks equal to those confiscated or held up by the British and French.¹⁷⁹ Despite its source the suggestion probably indicated the only type of protest which would now carry any weight.

What the merits of the British position may be from a practical point of view is not wholly clear. Officials of the Ministry and seize merchandise hidden in the wrappers, envelopes, or letters contained in the mail bags.

"3. That true to their engagements and respectful of genuine correspondence, the Allied Governments will continue, for the present, to refrain on the high seas from seizing and confiscating such correspondence, letters, or dispatches, and will insure their speediest possible transmission as soon as the sincerity of their character shall have been ascertained."

¹⁷⁶Ibid., 607-608:

"The principle being plain and definite, and the present practice of the Governments of Great Britain and France being clearly in contravention of the principle, I will state more in detail the position of the Government of the United States in regard to the treatment of certain classes of sealed mails under a strict application of the principle upon which our Governments seem to be in general accord. The Government of the United States is inclined to the opinion that the class of mail matter which includes stocks, bonds, coupons, and similar securities is to be regarded as of the same nature as merchandise or other articles of property and subject to the same exercise of belligerent rights. Money orders, checks, drafts, notes, and other negotiable instruments which may pass as the equivalent of money are, it is considered, also to be classed as merchandise. Correspondence, including shipping documents, money-order lists, and papers of that character, even though relating to 'enemy supplies or exports,' unless carried on the same ship as the property referred to, are, in the opinion of this Government, to be regarded as 'genuine correspondence,' and entitled to unmolested passage."

¹⁷⁷Bulletin 3-5. ¹⁷⁸Bulletin 91-93.
¹⁷⁹N. Y. Times, January 24, 1940, p. 6:5.
of Economic Warfare asserted that large quantities of contraband had been found in American letter mail to Germany, including cash, securities, and industrial diamonds. Attention was also directed to the activities of German organizations in the United States which accepted money from German-Americans and placed orders in neutral European countries for food shipments to persons in Germany. On the other hand it appears probable that with the exception of a few valuable articles of small bulk such as industrial diamonds, not much contraband can be excluded by censorship of letter post. Transfers of credits can be effected by cable or if necessary by wireless, so that it is hardly conceivable that substantial sums would be entrusted to the mails at present. However, this may be, it can have no proper bearing upon the legal issue, for the principle of inviolability of postal correspondence is based upon other considerations.

An interesting contribution to the solution of this problem has been made by the Inter-American Neutrality Committee. On December 26, 1940 the Brazilian merchant ship Almirante Alexandrino, bound for Vigo, was visited and searched near the coast of Spain by French naval officers. They removed twenty bags of Brazilian mail destined for Germany. After unsuccessfully protesting to the Government of France the Brazilian Government referred the question to the committee. It examined the history of the problem carefully, concluding

"that the principle obstacle to the observance by belligerents of the principle of inviolability arises from the fact that neutrals do not draw a distinction between epistolary correspondence and other postal communications which, intermingled with the former, are transported by mail, and that from the confusion which this intermingling produces, there results as a consequence that the belligerent, in exercising the right of search for and seizure of contraband, does not confine himself to packages, parcel-post and articles of declared value, but extends it to the seizure and examination of all mails, improperly including correspondence to which the principle of inviolability applies."

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180Ibid., January 25, 1940, p. 1.
181Ibid.
182Apparently the censorship drives transmission of money from mail to cable or wireless. Thus the president of Fortra Corporation candidly admitted that the company stopped using the mails because of the British control system and then transacted its business of sending food packages to German nationals by wireless. That is, a credit was established by wireless in a neutral country adjacent to Germany, where the food was bought. N. Y. Times, January 23, 1940, p. 4:2.
183See the preliminary statement preceding its draft resolution of May 31, 1940, (1940) 34 A. J. I. L., Supplement, 135-137.
184Ibid., par. 6.
To meet the difficulty the committee proposed that the American
Republics should reaffirm the principle contained in the Eleventh
Hague Convention, but should themselves undertake to apply a
practical means of segregating and identifying the nature and
destination of the epistolary correspondence which should be in-
violable. This would be done by the creation of

"a special postal service of epistolary correspondence destined
to belligerent countries or occupied by them, which services shall
carry only letters, business papers or postal cards, and shall not
include any of the objects enumerated in paragraph 4 of article 34
of the Universal Postal Convention in Cairo of 1934, namely:
bank-notes, paper money or any values payable to the bearer;
manufactured or unmanufactured platinum, gold or silver; pre-
cious stones, jewelry, or other precious articles, merchandise of
any kind, no matter how insignificant the value."

Mail bags of this service, containing only epistolary correspon-
dence, would be marked C. E. and equipped with a control seal
and a large pink label bearing the words "correspondance épi-
loaire." In future American mails should exclude from pouches
containing correspondence destined to neutral non-American states
all objects whatsoever addressed to places in belligerent states or
areas occupied by them. Despite the administrative burden
which such a plan would impose upon the neutral state, it might
well be thought more satisfactory than continued submission to
the examination of letter post by belligerent censors. Presumably
such a plan, if carefully administered, would not prove unaccept-
able to belligerents.

A new application of the problem has occurred as a result of
the removal of air mail from the transatlantic clippers by British
censors in the crown colony of Bermuda. Although difficulty
has been avoided by a decision of Pan American Airways to
abandon the Bermuda call when weather conditions permit, the
situation holds interesting implications. Since it is physically im-
possible to visit and search transatlantic planes in mid-ocean, the
only possible method of contraband control would be by diversion
into an appropriate port. In view of the present method of

\[185\) Ibid., 137-139; Resolution, Articles I and II, pr.
\[186\) Ibid., Article II (a).
\[187\) Ibid., Article II (b).
\[188\) Ibid., Article II (c).
\[189\) There would be no difficulty in forcing them down, but this could
not be done in mid-ocean without danger to the planes, or the risk that
they might be unable to take off again. Even if the clipper were forced
down the interceptor plane might have no facilities for proceeding with
a search. For abandonment of the Bermuda call see N. Y. Times, March
10, 1940, p. 1.
contraband control as applied to ships, and the expressed intention of the British to search mails for contraband, it would seem a logical application of their position to attempt forcible diversion of the clippers into Bermuda or perhaps Gibraltar. Should this occur the Government of the United States ought to consider seriously whether so notorious an extension of practices which it now tolerates under protest should be permitted to pass without positive action. No practical solution is perceived whereby this government could acquiesce in the diversion of aircraft into control bases without virtual surrender of its neutral rights in aerial commerce.

The question of the right of a belligerent to remove from neutral vessels on the high seas enemy persons not embodied in the armed forces of the enemy need not be dealt with at length here. It involves two issues: on the one hand whether a right of removal exists under any circumstances without bringing the vessel into port for adjudication; on the other hand what classes of persons the belligerent is entitled to intercept. During the World War removal of persons from American ships by British warships led to an interesting exchange of notes in which the British Government expressed the view that removal was not an illegal practice and was in fact more advantageous to neutrals than the expensive and slow process of diversion into port for adjudication. Furthermore it advocated the right to remove not only persons embodied in the enemy armed forces but also, as a logical extension, reservists or even persons liable to military service or of military age and character. On these points no agreement seems to have been reached, and the legal issue remained unsettled at the end of the war.

On January 21, 1940 a British warship removed twenty-one Germans from the Japanese steamship Asama Maru. This incident

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191 The news reports of the removal of clipper mail indicated that Bermudan authorities had exhibited armed force when the pilot demurred. The official Department of State release, however, denied any information of a show of force. References in note 189.


194 See generally, Harvard Research, Neutrality, 612-618, where the whole correspondence is summarized, with numerous extracts. Also 2 Hyde, International Law 639-643.
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occurred when the ship was only thirty-five miles from the Japanese coast and seems on that account to have aroused special indignation. On the legal point the Japanese contended that only members of the enemy armed forces could be intercepted, whereas the British considered that evidence of the liability of the Germans to military service and their technical training in marine engineering was a sufficient indication of the service which would be required of them. However, a compromise was reached whereby nine of the men found to be “relatively unsuitable for military service” were released in return for assurances that Japanese shipping companies would in future refuse passage to members or suspected members of the enemy armed forces. Both governments reserved their legal rights. In Japan the settlement led to severe criticism of Foreign Minister Arita, and seems not to have been fully observed by Japanese vessels.

On December 17, 1939, a German warship removed from an Estonian vessel Mr. Gordon Vereker, counselor of the British Embassy in Moscow, who was then en route from Moscow to a new post as minister to Bolivia. After detention at Swinemünde for about ten days he was released, apparently after the German Government had satisfied itself that the British Government was not detaining diplomatic officers passing through its control.

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295See British White Paper, Japan No. 1 (1940), Correspondence... regarding the Removal of German Citizens from the Japanese Ship Asama Maru, January-February, 1940 (Cmd. 6166); London Times, February 7, 1940, 10:2-3; N. Y. Times, January 24, 1940, January 26, 3:1. Also Briggs, Removal of Enemy Persons from Neutral Vessels on the High Seas, (1940) 34 A. J. I. L., 249-259.

296Craigie to Arita, February 5, 1940, British White Paper, loc. cit.; Prime Minister Chamberlain in House of Commons, February 6, 1940, London Times, same date, 8:2.

297A disturbance amounting almost to a riot occurred in the Japanese Chamber of Deputies on March 19, 1940, when Arita declined to answer certain questions put to him on the case. N. Y. Times, March 20, 17:2-3.

298On February 3, 1940 the liner Kawakura Maru arrived in Honolulu, carrying sixteen Germans, who had been accepted as passengers on the intervention of a German consul after signing statements absolving the carrier of any liability in case of interception and removal. N. Y. Times, February 4, 1940, 24:6. On February 18, thirty German officers and seamen en route from Valparaiso, Chile to their homes reached San Pedro, California on the Nippon Yusen Heiyo liner Heiyo Maru, and were expected to continue on it to Kobe. Ibid., February 19, 1940, 6:4. These may, however, have been instances in a transitional period, for in April, 1941 the Nippon Yusen Kaisha line refused to accept certain German nationals of military age, who thereafter took passage on the American liner President Garfield, from which they were removed. Ibid., May 1, 1941, 1:4.

299Ibid., December 18, 1939, 4:3, December 19, 10:6.
It is not known whether any protest was made by the Estonian Government.\textsuperscript{201}

Other instances of internment of enemy persons, including several traveling on ships of United States registry, have occurred but seem not to have produced diplomatic exchanges.\textsuperscript{202} It is believed that the position taken by the Japanese Government against removal of persons not embodied in the enemy armed forces or holding some commission as agents of the enemy state continues to be the correct view of the law, despite belligerent pretensions to a broader right during the World War.\textsuperscript{203} On the other hand it cannot be said that the present status of the law commends itself as a practical solution of the problem. To require diversion of the ship into port for adjudication is probably not in

\textsuperscript{200}Ibid., December 28, 1939, 6:6.

\textsuperscript{201}The release was effected through the efforts of the United States Embassy in Berlin, which had assumed the representation of British interests after the outbreak of the war. A London report stated that it was based upon a reciprocal agreement under which diplomats of belligerent nations travelling to their posts on neutral ships would be permitted to pass. Ibid.

\textsuperscript{202}British naval authorities arrested on board the liner \textit{Nieuw Amsterdam} two reputedly notorious German spies, and interned thirty-four German stewards and members of the crew, but no complaint could have been made as to the method of removal, for it occurred in the Downs, where inspection of cargo was taking place. Ibid., September 17, 1939, 45:8. The same would be true of removal of three Germans from the American ship \textit{Exochorda} at Bermuda, ibid., September 1, 1940, 13:1. Twenty-five Germans were reported to have been removed from the Portuguese liner \textit{Cavalho Araujo} while en route from the Azores to Germany, ibid., December 11, 1939, 10:2. In the case of the \textit{President Garfield}, referred to in note 198, supra, a Canadian auxiliary cruiser, the \textit{Prince Robert}, removed four German aviators about 400 miles from Honolulu. Ibid., May 1, 1941, 1:4.

\textsuperscript{203}Apparently the British Government did not itself aver that the established rule of law permitted removal of others, but rather hoped to persuade neutral states to accept a more liberal principle. Thus, in his note of May 8, 1916, Grey remarked:

"His Majesty's Government do not desire to raise any question of altering the established international rule in this respect without the consent of other governments; but it may be suggested that the organized activity of enemy agents in this war, their ubiquity, their ingenuity, violations of neutrality perpetrated or planned by them, have made more difficult, more complicated and more invidious than ever before, the responsibility of neutral governments for any breaches of neutrality committed or attempted in the territories. It is suggested in view of the experiences of this war, that the American Government might find it not unreasonable to consider whether in future years there should not by international agreement be allowed some greater power in controlling the movements of enemy subjects across the seas, at any rate in cases where there is prima facie evidence of [intent] to use neutral territory to commit criminal or hostile acts."

In view of the refusal of the neutrals to acquiesce the law of course stood in its original form.
the interest of either party. Nor is it reasonable to expect belligerents to content themselves with artificial categories of persons liable to interception when these may exclude individuals whose services to the enemy state are of great importance. It is believed that agreements containing more precise definition of these categories, coupled with examination and certification of enemy persons by officers of the neutral state at the port of departure, would contribute to a more satisfactory treatment of the problem.

IV. Violation of Neutral Ports and Waters

In two much publicized incidents, the cases of the City of Flint and the Altmark, questions relating to the status of neutral ports and waters have been raised.

The American steamship City of Flint was captured by a German warship in mid-Atlantic on October 9, 1939 while en route from New York to London with a cargo admitted to be partly contraband. No question has been raised of the propriety of the capture, or of diversion of the ship to a proper port for proceedings in prize. A German prize crew was put aboard and took the ship into the harbor of Tromsø, Norway (then neutral).

204 This point was strongly expressed by the British Government during the World War correspondence, For. Rel., 1917, Supplement I, 531-532. In fact it may be doubted that states would rely exclusively upon the ground that deviation of the vessel and prize court proceedings are required, for the point has usually been injected into diplomatic exchanges as a subsidiary argument in a case initially based upon the non-military character of the persons removed. See Briggs, Removal of Enemy Persons from Neutral Vessels on the High Seas, (1940) 34 A. J. I. L. 249, 254-55.


206 The U. S. Maritime Commission, owner of the ship, stated that it carried a general cargo comprising more than fifty items, including lard, cereals, canned meats, flour, canned goods, apples, wax, lubricating oil, cotton, sewing machines, plows, asphalt, pitch, grease, shade rollers, machinery, silk, commercial chemicals, abrasive grains, disinfectants, feathers, coffee, lumber, gauze, hair and wall board. N. Y. Times, October 24, 1939, p. 1. Apparently the percentage of the cargo which could be considered contraband under the German list (which sufficiently coincided with the United States list of 1917 to obviate difficulties on that score; see note 121 and text, pp. 44-45) was small, but the German Government took the position that the rule permitting confiscation of the ship only when more than half the cargo is contraband (supra, note 72) applied only to the deliberations of the prize court, not to the right of capture (statement in N. Y. Times, October 27, 1939, p. 6). This is dubious doctrine, for there ought to be circumstances creating reasonable suspicion that the vessel is liable to condemnation. Whether this seemed to be the case after preliminary examination at sea we do not know, and the point was not pressed. For the facts generally see 1 Bulletin 429-432, 457-458; Hyde, The City of Flint (1940), 34 A. J. I. L. 89-95.
After a short stop to take water they proceeded to the Arctic port of Murmansk, in the U. S. S. R. (also then neutral). There the prize crew seems to have been interned for a brief period, then released. The Murmansk authorities detained the City of Flint for five days, during which the Soviet Government apparently was considering the views expressed to it by the Governments of Germany and the United States. Then the ship was returned to the control of the prize crew and ordered to leave Murmansk. It moved southward along the Norwegian coast escorted by a Norwegian torpedo boat. At Haugesund the commander of the prize crew asked permission to stop in order to obtain medical treatment for a sick man. When it appeared that the man in question had no more serious affliction than a minor abrasion of his leg resulting from his having fallen over a barrel, the Norwegian authorities ordered the commander to proceed. Nevertheless he anchored at Haugesund on the evening of November 3. Consequently, the Norwegian Government, acting on the basis of Articles 21 and 22 of the Hague Convention (No. 13) of 1907 Concerning the Rights and Duties of Neutral States in Naval War, ordered the prize crew interned and the ship released to its American crew. It proceeded to Bergen, Norway and later returned safely to the United States.

Although the German Government sought to justify taking the City of Flint into Murmansk, first upon the ground that it lacked charts for navigation in waters adjacent to Germany, and later upon the ground that there was immediate need for repair of defective machinery, neither of these alleged difficulties seems an adequate explanation of the choice of so remote a port as Murmansk. The more probable inference is that the German Government hoped to sequestrate the prize there, pending the decision of a prize court. Provision for such sequestration was made in article 23 of the Thirteenth Hague Convention in the following terms:

207 Mr. Steinhardt, United States Ambassador at Moscow, reported that during this period he made repeated efforts to obtain information about the case from Soviet officials and to establish connections with the captain of the City of Flint, but found the government very uncooperative. Finally Assistant Commissar of Foreign Affairs Potemkin informed him that the ship entered the port of Murmansk because of damaged machinery making her unseaworthy, and had been ordered when fit to put to sea to leave on the same basis as she entered. Potemkin considered it would be an unneutral act to turn the vessel and cargo over to the American crew unless the German prize crew refused to take her out. 1 Bulletin 430-431.

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"Article 23. A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a Prize Court. It may have the prize taken to another of its ports. If the prize is convoyed by a warship, the prize crew may go on board the convoying ship. If the prize is not under convoy, the prize crew are left at liberty."

Germany, Russia, and the United States were all parties to this Convention, but the United States ratified it only under reservation that it declined to accept article 23. Consequently this provision cannot properly be invoked against a captured American vessel unless it can be established that article 23 was merely declaratory of existing international law and proposed no new rule. This quite certainly was not the case.

It is believed, therefore, that the Government of the U. S. S. R. had no right to permit sequestration of the City of Flint, and ought to have ordered its prompt release. The Norwegian Government was fully justified in refusing to permit the ship to remain in port in the absence of any showing of "inability to navigate, bad conditions at sea, or lack of anchors or supplies." No reason for anchoring at Haugesund was advanced which in any way justified disregard of Norwegian regulations. It is not

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208 Stat. at L. 2415. The purpose of the provision was humanitarian; it was designed to facilitate taking ships into port for adjudication in cases where remoteness of or difficulty in reaching the belligerents' ports would otherwise lead to destruction of the prize. See Report of Mr. Renault in behalf of the Third Commission, to the Second Hague Peace Conference, Deuxième Conférence Internationale de la Paix, Actes et Documents, I, 320-321. See Harvard Research, Neutrality, 448-458, for a survey of previous practice.


210 Harvard Research, Neutrality, loc. cit. See particularly the well-known case of The Appam, (1917) 243 U. S. 124, 37 Sup. Ct. 337, 61 L. Ed. 632 in which the right of a belligerent to sequestrate a prize in a United States neutral port pending determination by a prize court was denied.

211 Statement by Norwegian Government, November 5, 1939, in N. Y. Times, November 6, 1939, 2:3-5. It acted in accordance with its view of the requirements of the Thirteenth Hague Convention, Article 21 of which is as follows:

"Article 21. A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions. It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew."
understood that the Norwegian Government prohibited continu-
out transit through its territorial waters. Its action was founded
rather upon improper use of its ports.

The German steamer *Altmark* was a naval auxiliary flying
the German official service flag. She had taken aboard in South
Atlantic waters some three hundred British seamen from ships
destroyed by the German pocket battleship *Admiral Graf von
Spee*, had reached the northern coast of Norway safely, and
was proceeding southward through Norwegian territorial waters
in an effort to reach a German port. The *Altmark* seems to have
been stopped three times by Norwegian warships. To a question
from the first the captain falsely replied that the ship was bound
from Port Arthur, Texas to Germany. He falsely stated to the
second that there were no persons aboard belonging to the enemy
forces or merchant marine of a belligerent. He refused to permit
search by the third on the ground that his ship had already been
visited. Continuing southward under Norwegian naval escort
the *Altmark* was intercepted by the British destroyer *Cossack*,
which drove her into a fjord and removed the three hundred capt-
tives. This action was taken upon specific orders from the British
Admiralty after the Norwegian warships had once interposed.

The British position, which attracted a good deal of favorable
comment in this country, was that Norway had failed to fulfill
her neutral obligations in permitting the *Altmark* to traverse
her territorial waters with captured British seamen aboard.

212 The Norwegian admiralty announced that the "*City of Flint*, with a
German prize crew aboard, had permission to use Norwegian territorial
waters from Tromsø southward." N. Y. Times, November 4, 1939, 1:8. Two
Norwegian naval vessels escorted her.

213 As to which see p. 46 and note 233. For facts and commentary on
the *Altmark* case see Borchard, Was Norway Delinquent in the Case
of the *Altmark*? (1940) 34 A. J. I. L. 289-294; 2 Oppenheim, Intern-
ational Law, (6th ed.) sec. 325a, (554-556), 590, n. 8; Bulletin of

214 Statement by Norwegian Foreign Minister, February 25, 1940.
N. Y. Times, February 26, 1940; Borchard, Was Norway Delinquent in
the Case of the *Altmark*? (1940) 34 A. J. I. L. 289.

215 See statements of February 17, 1940 by British, Norwegian, and
German Admiralties; texts in N. Y. Times, February 18, 37:2-4.

216 See statements and letters to editor of N. Y. Times, February 19
and 25, and March 10, 1940, and summary of them in Borchard,
Was Norway Delinquent in the Case of the *Altmark*? (1940) 34 A. J. I. L.
289-290.

217 The Norwegian Government demanded the return of the liberated
captives and payment of damages for the violation of her territorial waters,
N. Y. Times, February 18, 1940. It also suggested submission of the
case to an international tribunal, ibid., February 27, 1940, p. 2. The
British rejection of these requests was brusque, being given in the first
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But the *Altmark* was a public ship, which the Norwegian authorities had no right to search either in their territorial waters or their ports. \(^{218}\) Nor was Norway under any obligation to prohibit innocent passage through her waters by the warship of a belligerent. The privilege to permit such passage is recognized by international law, \(^{219}\) and such permission is commonly given by domestic legislation. \(^{220}\) The question then remains whether the passage of the *Altmark* through territorial waters could be regarded as not innocent because of the carriage of prisoners. No support for such a case without even waiting for the official Norwegian protest. The first position assumed by Great Britain was that Norwegian officials were derelict in their duty in not searching the *Altmark* when it entered territorial waters and releasing the prisoners; thereafter it advanced the view that the character of the *Altmark*’s transit of Norwegian waters could not be considered innocent passage. See Prime Minister Churchill’s statement to Commons, N. Y. Times, February 21, 1940.

\[^{218}\text{Strictly speaking, the *Altmark* was a naval auxiliary. She flew the German official service flag (Reichsdienstflagge), the use of which is limited to vessels employed by the government for public purposes, but is distinct from the war flag. Borchard, loc. cit., citing Decree of October 31, 1935, Reichsgesetzblatt, I, 1288. As a public vessel so engaged she was immune from search by Norwegian officials. Lauterpacht, however, has raised the question “whether an auxiliary vessel, not fully converted into a man-of-war in accordance with the provisions of Hague Convention No. VII is entitled to the full immunities enjoyed by a man-of-war.” Sixth ed. of Oppenheim, 590, n. 8. But in so far as physical features of the conversion are known to the writer there would seem to have been substantial compliance with these regulations, and it would appear an unreasonably strained interpretation which would accord a prize greater immunities than an auxiliary naval vessel performing an identical function. On the point that the converted vessel must comply with the laws of war applicable to warships, the only question in this case would be whether there was a genuine innocent passage, as to which see note 221.}\]

\[^{219}\text{Cf. Hague Convention (No. 13) Concerning the Rights and Duties of Neutral Powers in Naval War, Articles 10 and 11 (2 Malloy, Treaties, 2360):}\]

\["Article 10. The neutrality of a Power is not affected by the mere passage through its territorial waters of war ships or prizes belonging to belligerents."

\["Article 11. A neutral Power may allow belligerent war ships to employ its licensed pilots.”}\]

It is pointed out in the report of Mr. Renault to the Hague Conference that Article 10 was inserted on the suggestion of Great Britain to avoid interpretation of the preceding articles in such a way “as to prohibit the mere passage through neutral waters in time of war by a warship or auxiliary ship of a belligerent.” (Italics supplied). Scott’s Reports to the Hague Conferences 847; Borchard, Was Norway Delinquent in the Case of the Altmark? (1940) 34 A. J. I. L. 291.

\[^{220}\text{Thus the United States incorporated Article 10 of the Hague Convention into the United States Naval Instructions of 1917, No. 2, p. 11. Other countries permitting passage or entrance of belligerent warships include Brazil, Ecuador, Greece, Italy, Japan, Venezuela (Dék and Jessup, Neutrality Laws, Regulations and Treaties, I, 87, 554, 675, 723, 727, 736; II, 1292, Belgium, and the Scandinavian states (15 Rev. des lois, etc., 213-214, 214-217).}\]
view has been found. On the contrary there is British and American authority against the release of prisoners brought into neutral ports by belligerent warships. It does not appear in what respect the conduct of either the Altmark or the Norwegian authorities could be called illegal, and it is further apparent that the British violation of Norwegian waters could not be justified even if there were derelictions on the part of the Altmark, so long as the Norwegian Government discharged its neutral obligations. The incident must stand as a deliberate violation by the British Government of the rights of a small neutral.

Attention may be drawn in this connection to another incident, much less dramatic in character but not dissimilar, which has received little notice. The German freighter Düsseldorf was captured in January by a British warship and sent under a prize crew through the Panama Canal. A member of the captive German crew feigned an attack of appendicitis during transit of the

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221 During the Franco-Prussian War a French warship entered the Firth of Forth carrying German prisoners. A request by the German consul at Leith for their release was rejected in the following language (Fontes Juris Gentium, Digest of Diplomatic Correspondence, 1856-1871, II, Document 2928):

"1. A French vessel-of-war having entered the Firth of Forth with German prisoners on board, and the attention of Her Majesty's Government having been called by the Consul of the North German Confederation at Leith to the circumstances, as a breach of neutrality on the part of this country, Her Majesty's Government was legally advised as follows:

"First, that the French warship had a right to enter the Firth of Forth, and remain there during such time, and for such purposes, as are allowed to belligerents in the present war under Her Majesty's Proclamation.

"Secondly, with regard to the assertion of the North German Consul, that the German prisoners on board the French warship were ipso jure, free, as the ship was in neutral waters; that there is no warrant in the law of nations for such a position. So long as the Germans remained on board the French warship they were under French jurisdiction, and the neutral authorities had no right to interfere with them. If they had been landed from the warship the question raised would have been different, as they would have passed out of French jurisdiction, and have become practically free."

In the case of the Russian vessel Sitka, (1855) 7 Ops. Atty. Gen. 122, 1 Pitt Cobbett's Leading Cases 269, Attorney General Cushing advised that a United States court could not release captives on a prize brought into San Francisco harbor during the Crimean War by a British warship. Lauterpacht suggests that the release of the ship's crew and passengers, and internment of the prize crew of the Appam were in contrast (6th ed. of Oppenheim, 590, n. 8), but the cases are scarcely comparable since the Appam was brought into port for indefinite sequestration pending a prize court determination. It does not appear that the determination to release the ship's crew and passengers was reached until more than a month after the vessel reached Hampton Roads. See review of the case in 2 Hyde, International Law, sec. 862 (734-739).

Canal and was taken off the ship for treatment. When he was found to be perfectly well the question arose whether he ought to be given his liberty or returned to British custody. He was held in the Quarantine Station while the military authorities consulted the Department of State, then turned over to the British consul at Cristobal, C. Z. The consul in turn placed him aboard a British cruiser bound for Bermuda, where he is understood to have been interned. The position taken by the United States that the British right to custody continued throughout the episode is believed to be the correct one.

Clear evidence of belligerent carelessness of neutral rights occurred in the Allied and German movements preliminary to the occupation of Norway. On April 8 the Governments of Great Britain and France issued a joint statement in which they announced that they had sown mines in the territorial waters of Norway across the route normally followed by ore-ships moving down the coast from Narvik, taking this action as a measure of reprisal against Germany. The statement is such a characteristic exposition of the present belligerent position with respect to reprisals that it deserves to be quoted in part:223

"The position is, therefore, that Germany is flagrantly violating neutral rights in order to damage Allied countries while insisting upon the strictest observance of the rules of neutrality whenever such observance would provide some advantage to herself.

"International law has always recognized the right of a belligerent when its enemy has systematically resorted to illegal practices to take action appropriate to the situation created by the illegalities of the enemy.

"Such action, even though not lawful in ordinary circumstances, becomes and is lawful in view of the other belligerent's violation of law. The Allied Governments therefore hold themselves entitled to take such action as they may deem proper in the present circumstances.

"If the successful prosecution of the war now requires them to take such measures, world opinion will not be slow to realize both the necessity under which they are constrained to act and the purpose of their action. Their purpose in this war is to establish principles which the smaller States of Europe would themselves wish to see prevail and upon which the very existence of those States ultimately depends.

"The Allies, of course, will never follow the German example

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223 Text in N. Y. Times, April 8, 1940.
of brutal violence and any action they decide to take will always be carried out in accordance with the dictates of humanity.

"His Majesty's government in the United Kingdom and the French Government have accordingly resolved to deny continued use by the enemy of stretches of territorial waters which are clearly of particular value to him and they have therefore decided to prevent the unhindered passage of vessels carrying contraband of war through Norwegian territorial waters."

Although the writer is disposed, for his part, to accept the view that the Allies are fighting for principles which lie at the foundation of liberal institutions and free governments everywhere, he is unable to appreciate in what respect that fact can affect the legal issue. Norway was entitled to its neutral status, had been guilty of no dereliction of its duty as a neutral, and invited no interference. The duty to respect neutral territory is as strong upon the state which fights for high principle as that which fights for low. If such reasoning as that which runs through this note is to prevail it is difficult to see what limits could be put upon illegal acts committed in the name of reprisal.

The mining of Norwegian waters was followed one day later by the German occupation of Denmark and invasion of Norway. The German Government of course seized upon the Allied breach of Norwegian neutrality as a ground for extending its "protection" to the unfortunate neutrals, but it has become apparent that the German expedition was prepared long before and that German troops and military equipment had been carried into Norwegian ports below the decks of merchant vessels several days previous to the invasion. Where both belligerents have committed such patent and calculated breaches of neutrality in efforts to strike at each other it is perhaps futile to inquire which illegality was prior in time. It is enough to draw from the unhappy predicament of Norway the obvious lesson that no worse fate can befall a neutral than to have its rights "protected" by a belligerent.

In a very different category are the claims of the Pan-American group of states to have a "security zone" comprising waters adjacent to the American continents and extending from 300 to 600 miles out to sea "free from the commission of any

224 Text in N. Y. Times, April 10, 1940, p. 10.
225 See Norwegian White Paper on events leading to the invasion. Text in N. Y. Times, April 21, 1940.
hostile act by any non-American belligerent nation.\textsuperscript{226} This claim was asserted in the Declaration of Panama "as of inherent right," although the document continues in milder terms with an undertaking by the American Republics to make joint representations to the belligerents, "to secure the compliance by them with the provisions of this Declaration."\textsuperscript{227} No ground is perceived upon which such a novel extension of neutral immunities as that contemplated could be made as a matter of right, although the Inter-American Neutrality Committee\textsuperscript{228} has sought to found it upon "the fundamental law of self-protection, which must take forms which are adequate to meet the new conditions presented by the present war."\textsuperscript{229} The committee recommended, and the Habana Consultative Meeting of foreign ministers accepted, certain interpretations of the legal effects resulting from the creation of the zone, according to which it was conceded that the waters of the zone are not territorial in character and that all belligerents are entitled to the use of the open sea for purposes of defense even though the war was initiated by their aggression. Yet it was in-

\textsuperscript{226} Declaration of Panamá, Resolution XIV of the Final Act (October 3, 1939) of the Panamá Consultative Meeting of Foreign Ministers. 1 Bulletin 321, at 331-333; (1940) 34 A. J. I. L., Supplement 17-18. The waters of the zone are defined as follows: "... All waters comprised within the limits set forth hereafter except the territorial waters of Canada and of the undisputed colonies and possessions of European countries within these limits:

"Beginning at the terminus of the United States-Canada boundary in Passamaquoddy Bay, in 44° 46' 36" north latitude, and 66° 54' 11" west longitude;
"Thence due east along the parallel 44° 46' 36" to a point 60° west of Greenwich;
"Thence due south to a point in 20° north latitude;
"Thence by a rhumb line to a point in 5° north latitude, 24° west longitude;
"Thence due south to a point in 20° south latitude;
"Thence by a rhumb line to a point in 58° south latitude, 57° west longitude;
"Thence due west to a point in 80° west longitude;
"Thence by a rhumb line to a point on the equator in 97° west longitude;
"Thence by a rhumb line to a point in 15° north latitude, 120° west longitude;
"Thence by a rhumb line to a point in 48° 29' 38" north latitude, 136° west longitude;
"Thence due east to the Pacific terminus of the United States-Canada boundary in the Strait of Juan de Fuca."

\textsuperscript{227} Ibid., sections 1 and 3.

\textsuperscript{228} Recommendations submitted to the Governments, Members of the Pan American Union, April 27, 1940. Text in (1941) 35 A. J. I. L., Supplement, 38-43. Quotation from par. 3 of the preliminary statement.
sisted that the American states might properly proscribe hostile acts in the zone other than those of a defensive character or those which began outside the zone and continued into it, and might penalize the state which was the aggressor in the sense of having provoked the particular encounter.\footnote{Ibid., esp. paragraphs 1 and 2 of the Resolution.}

Nor did the committee consider general consent to the Declaration a prerequisite to its legal effectiveness. Rather, its reasoning seems to hinge upon the view that an aggressor under the Kellogg Pact has no right to commit hostile acts on the high seas any more than on land; the right of defense is thus supposed to be given a preferred status in law, and the security zone is considered an appropriate application of the right of self-defense.\footnote{Cf. the statement by Willard Bunce Cowles in his Ross Prize essay, Prospective Development of International Law in the Western Hemisphere, as Affected by the Monroe Doctrine, (1941) 27 Am. B. A. J., 342-349, at 343, c. 1.}

Apart from the fact that there exists no currently effective technique for determining which belligerent is the aggressor, nor any obligatory sanction applicable to states which resort to war in violation of their covenants, it is not perceived how any collective security device could be made the criterion of legal conduct for neutrals.\footnote{On the incompatibility of the concepts of neutrality and collective security see McLaughlin, Legislative Neutrality in the United States, 22 MINNESOTA LAW REVIEW, (1938) 603-660, at 623-630; also Lauterpacht, Neutrality and Collective Security, (1936) 2 Politca 133-155.}

Nor is there any perceptible relationship between the right of self-defense and the right to have such an area free from hostile acts not directed against the adjacent states. If it be the safety of neutral commerce through such waters which is in question, then the appropriate object of collective action by the American Republics would seem to be insistence upon belligerent respect for rights already clearly defined. The tendency for neutral states to justify illegal interferences with well-recognized belligerent rights by the catch-all phrase “self-defense” is in its way quite as reprehensible as the belligerent attempt to justify all manner of interference with neutral rights on the ground of reprisal against the enemy.

Certainly there has been neither acceptance nor observance of the security zone by belligerents. Following the naval engagement on December 13, 1939 between British cruisers and the German pocket battleship \textit{Graf von Spee} off the northeastern coast of Uruguay,\footnote{The German pocket-battleship \textit{Graf von Spee} was attempting} the twenty-one American Republics lodged a formal
protest with the governments of France, Great Britain, and Germany. The British and French replies denied that the Declaration of Panama could become legally effective as a restriction upon their normal belligerent rights without their assent to it, and suggested that a condition of assent must be assurance that

"adoption of the zone proposal would not provide German warships and supply ships with a vast sanctuary from which they could emerge to attack allied and neutral shipping, to which they could return to avoid being brought to action, and in which some un-neutral service might be performed by non-German ships, for example by the use of wireless communications."

Specifically it was proposed that German warships be excluded from the zone and German shipping interned. The German Government also denied the effectiveness of the Declaration in the absence of belligerent assent. While it professed a willingness to enter into a further exchange of ideas on the subject it pointed to the difficulty of equalizing the conditions between Germany and the Allies because of territorial possessions of the latter on the American continent which might become bases of military operations, and because of the position of Canada. It also objected strongly to the Allies' suggestion that German warships be excluded from the zone as a condition of their assent to it.

A second joint protest was made to Great Britain on the occasion of the scuttling of the German freighter Wakaama about fifteen miles from the Brazilian coast to avoid capture by a British warship; and a third, also to Great Britain, when the German ship Hannover was scuttled in like circumstances near the eastern coast of the Dominican Republic. Since then, al-

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1 Bulletin 697, 723.
234 Bulletin 723.
235 The quotation is from the British note, 2 Bulletin 199-201, at 200, col. 1; but the French reply contains substantially the same points, ibid., 201-203.
236 Ibid., 203-205.
237 Ibid., 306. The incident occurred February 12, 1940; the protest was made on March 16.
238 Ibid., 568-569. The sinking occurred March 9, 1940; the protest is not dated, but was communicated about May 24, 1940.
though incidents have not been wanting, there has been no further action, and interest in enforcement of the Declaration has subsided. It seems not unfair to say that this result followed upon realization that future violations of the zone are much more likely to be by British warships than German. The Pan-American conception of "self-defense" does not involve any fear of hostile acts by Great Britain.

That neutral states may appropriately resort to joint declarations or acts designed to protect their ports and waters from violation of their neutral status is of course not open to question. The General Declaration of Neutrality of the American Republics contains resolutions expressive of standards of conduct to be observed by the several states in dealing with belligerent vessels in their port and waters.239 These include prevention of the use of neutral territory as a base of belligerent operations; restriction of the number of belligerent warships admitted into a neutral port at one time and enforcement of a twenty-four hour limit on their stay; inspection of the documents, cargo and passengers of belligerent merchant vessels, and regulation of the quantity of fuel supplied them; control of belligerent merchant vessels which have sought asylum in neutral waters, and internment of those which have declared false destinations, taken excessive time in their voyages, or adopted the distinctive signs of warships; definition of defensively armed belligerent merchantmen in terms of evidence as to their use for purely commercial purposes; exclusion of belligerent submarines from "adjacent" (territorial?) waters, or stipulation of the conditions of their admission.

The last point was elaborated further in recommendations made by the Inter-American Neutrality Committee on February 2, 1940.240 These suggest that states which exclude belligerent submarines from their ports or territorial waters should except from the prohibition cases of force majeure, but require that in the excepted cases the submarines should run on the surface with superstructure visible and flag flying, signaling the cause which forced entry and following prescribed routes or channels; further, that there should be no exclusion of submarines from waters where international freedom of passage prevails as a

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matter of right. These conditions closely approximate those laid down by President Roosevelt in his proclamation of November 4, 1939, excluding belligerent submarines pursuant to the authority given him by the Neutrality Act of the same date. On the other hand the Committee suggested that states permitting belligerent submarines to enter should require them to run on the surface in regular channels, with flags displayed, and to obtain special permission in each case from the neutral government. Further, they should be subjected to the usual rules governing the stay of belligerent warships in neutral ports.

In a separate recommendation of the same date the committee also proposed a resolution designed to prevent the use of merchant vessels as auxiliary transports of belligerent warships. This problem was an immediate one in view of the activities of German merchant vessels like the Tacoma, which had operated as an auxiliary of the Graf von Spee, and after assisting in the scuttling of the warship had returned to the port of Montevideo. The resolution begins with a declaration that "the neutral state must take the means at its disposal to prevent its ports, harbors and territorial waters from being utilized as bases of belligerent operations in violation of the rules of international law, and for this purpose it must likewise control the operation of merchant vessels, whether of belligerent or neutral nationality, so as to prevent them from using the said ports, harbors or jurisdictional waters as bases from which to give assistance to the belligerents;" then follow specific draft regulations. Except for services of a purely humanitarian character, given spontaneously or in response to a call for help, merchant vessels in neutral ports or waters are required to refrain from assistance to belligerent warships. Any assistance given would constitute the merchant ship an "auxiliary belligerent vessel of war," subject, together with its officers and crew, to the rules of internment. Such internment would be for the duration of the war in ports or roadsteads designated by the neutral state and under such surveillance as it thought necessary. It was suggested further that rigid inspections of the papers, cargoes, and proposed movements of belligerent merchant vessels be instituted by the neutral state in order to prevent them...

242 (1940) 34 A. J. I. L., Supplement, 80-82.
243 Ibid., Article I.
244 Ibid., Article II.
245 Ibid., Article III.
from leaving port with equipment, supplies, or fuel which might serve to implement belligerent warships. Declarations by the captain and agent or owner that a proposed voyage was solely for commercial purposes might be required, and in suspicious cases the posting of a bond against the return of a certificate of delivery obtained in the port of destination.\textsuperscript{246}

Such efforts to standardize the regulations employed in securing the neutral status of American ports and waters according to recognized principles of international law are useful, and might in case of need become the basis for joint measures of enforcement.

V. THE ENFORCEMENT OF NEUTRAL RIGHTS

It is to be feared that a traveler from some other world, observing the situation which has been described, would have difficulty in comprehending what we mean by neutral rights, unless, indeed, he should conclude that the right to protest is meant. Submarine warfare in disregard of the law of warning, visit and search, and without provision for the crews of torpedoed vessels; laying of mines in commercial sea lanes and along neutral coasts without notice; aërial bombing and strafing of neutral merchantmen or trawlers; contraband rules which permit the interception of all goods passing to an enemy directly or through adjacent neutral states; "blockade" by contraband control without thought of preventing access to the enemy's coast; continuous voyage applied to blockade and to conditional contraband under regulations appropriate to absolute contraband; rules of evidence before prize courts which impose an impossible burden upon neutral claimants; diversion of neutral ships into control ports without visit and search or capture; removal and examination of neutral mails, including postal correspondence; improper removal of enemy persons from neutral ships; attempted sequestration of prizes in neutral ports; above all the irresponsible attitude that no breach of neutral right is too great if only it can be labeled a reprisal against some illegal conduct of the enemy—these are the practical measure of respect for neutral rights today! True, these practices are violations of law, and have been widely denounced as such. But a law which is habitually and continuously violated cannot endure permanently upon the strength of formal protests. Candor compels the admission that certain recognized neutral rights will soon be reduced

\textsuperscript{246}Ibid., Article V.
to a condition of "innocuous desuetude" unless some method can be found for compelling belligerents to respect them.

There are several approaches to this problem. One is to recognize frankly that the old basis of compromise between belligerent and neutral interests is no longer tenable and to seek a new balance of interest which will commend itself to both as a practical compromise. This procedure has the advantage of appealing to the self-interest of both neutrals and belligerents as the guaranty of respect for the provisions of the plan. It necessarily assumes that a plan can be devised which will sufficiently reconcile the interests of both.

A draft convention on *The Rights and Duties of Neutral States in Naval and Aerial War* has been prepared for the Research in International Law of the Harvard Law School by a group of experts working along these lines. Proceeding from the assumption that no satisfactory definition of contraband is any longer possible, the Harvard draft would simply abolish the whole principle of contraband of war. The belligerent right of blockade is retained and extended somewhat in recognition "of the inevitable point of view of belligerents who will never tolerate the free shipment of essential war materials to the enemy if they have the physical power to prevent it." Apart from blockade belligerents are given the right to intercept goods having a belligerent destination and to condemn them "if they are: (i) destined by sea to a blockaded port or place; (ii) arms, ammunition or implements of war; (iii) shipped in violation of the laws of the shipping neutral; (iv) infected by other goods; (v) of belligerent ownership and in a belligerent vessel or a vessel engaged in unneutral service; (vi) the property of the owner, charterer, or master of a vessel engaged in unneutral service." Other goods having a belligerent destination may be preempted. The practical effect of these measures is to retain the belligerent right to condemn goods traditionally classified as absolute contraband, but to substitute preemption for condemnation of conditional contraband.

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247 Published in (1939) 33 A. J. I. L., Supplement to No. 3.
249 Harvard Research, Neutrality, 499-500. For proposed rules of maritime blockade see section 9.
250 Ibid., 502.
With respect to neutral trade with neutrals the draft proposes to authorize interception and condemnation if the goods "are: (i) arms, ammunition or implements of war ultimately destined for a belligerent; (ii) other goods which the shipping neutral himself has forbidden to be exported; (iii) infected by the presence of condemnable goods; (iv) of belligerent ownership and carried in a belligerent vessel or a vessel engaged in unneutral service; (v) the property of the owner, charterer, or master of a vessel engaged in unneutral service; (vi) destined by sea for a blockaded port or place; (vii) goods in excess of a quota." Other goods having a neutral destination may be preempted at the market price current in the captor's territory plus ten percent. Thus the doctrine of continuous voyage, or rather of ultimate destination, is retained in substance for absolute contraband but applied to blockade only when the last lap of the transportation to the blockaded port or coast is by sea. The right given belligerents to condemn neutral imports in excess of quotas and thus to prevent transshipment of surpluses to belligerents, necessitates the creation of administrative apparatus in the form of mixed neutral-belligerent quota boards, which would fix quotas of neutral imports in terms of the average annual peace time importation of commodities during a five year period next preceding six months prior to the outbreak of the war. Provision is also made for inspection of neutral vessels and cargoes by authorized officials of the neutral state in which the voyage begins, and issuance of certificates of neutrality when the cargo is not such as to be subject to condemnation either by reason of its character or its having been shipped in excess of the quota of the neutral receiving state. Coupled with full publicity as to the movements of such certified ships, this device gives the belligerent assurance of the legitimacy of the voyage and facilitates the exercise of its option to preempt. At the same time it is likely to eliminate many of the present abuses of the right of visit and search and the danger of sinking neutral vessels by mistake.

It is useless to quibble over details of the Harvard Draft in view of the Reporter's statement that the proposals outlined above are "designed merely to suggest the general outlines of a possible

251Ibid., 501-502.
252For preemption, ibid., Article 63(h), p. 634 et seq. For the quota system, ibid., Article 47, p. 522 et seq.; Article 63(f), pp. 632-634; Annex III., pp. 812-817.
254Ibid., Article 42, pp. 515-516.
international agreement on neutral trade which, if accepted in principle, would undoubtedly require modification in detail.\textsuperscript{255} The writer is inclined to believe that a realistic view of the present situation strongly supports the general position taken. Some compromise with the belligerents' assertion of the right to intercept enemy goods without regard to the traditional rules of blockade, contraband and continuous voyage would seem to afford the only hope of an agreed basis for neutral rights of commerce.

On the other hand there can be no compromise over destruction of neutral shipping by illegal methods of warfare, nor over the irresponsible use of the doctrine of reprisals as an omnibus justification for illegal conduct. Against such violations of their rights neutrals must find a method of effective resistance. Here it appears to the writer that the most promising approach lies in neutral collaboration or collective neutrality. Such action has been suggested frequently,\textsuperscript{256} but has been retarded by two factors. In the first place there has not hitherto been any general recognition of the right of a neutral which has not suffered a direct injury to its neutral rights to intervene on behalf of an injured neutral.\textsuperscript{257} Yet there are exceptions to this attitude in the practice of states,\textsuperscript{258} and it would seem sound in principle to regard a violation of the international law of neutrality as a breach of the rights of all neutrals, since they have a common concern in maintaining the fabric of neutral rights unimpaired.\textsuperscript{259} A recognition

\textsuperscript{255}Ibid., 487-488.

\textsuperscript{256}See Jessup's proposals in Neutrality, Its History, Economics and Law, Vol. IV: Today and Tomorrow, esp. 160ff. for review of earlier efforts to secure collaboration among neutrals; Lammasch, in Recueil de rapports sur les différents points du programme-minimum, Organisation Centrale pour une Paix Durable, 1, 303; Nippold, Die Gestaltung des Völkerrechts nach dem Weltkrieg, 53 ff.

\textsuperscript{257}It has of course been quite common to protest against violations of the neutrality of other states, but this has been put upon humanitarian grounds rather than upon a legal interest in the result. See generally, Harvard Research, Neutrality, Article 114 and comment (788-793).

\textsuperscript{258}In the \textit{Carthage} and the \textit{Manouba} cases France presented to the Tribunal of the Permanent Court of Arbitration claims for damages resulting from breach of international common law, but the court did not feel itself competent to award anything in addition to the loss actually suffered by the owners of the vessel. Scott, Hague Court Reports, 1916, p. 557. The removal by the United States of Messrs. Mason and Slidell from the \textit{Trent} evoked protests from Austria, France, Italy, Prussia and Russia. See Harvard Research Draft, 791-793. A joint declaration of the American Republics was issued May 19, 1940, protesting the invasion of Belgium, Holland, and Luxemburg by Germany. 2 Bulletin 541-542, 568.

\textsuperscript{259}Cf. statement of Root, The Outlook for International Law, Proceedings of the Am. Soc. of Int. L., 1915, pp. 8-10; quoted in Harvard Research, Neutrality, 789-790: "Up to this time breaches of international law have been treated as we treat wrongs under civil procedure, as if they
of this principle might well be incorporated into any international agreement looking to the revision of the law of neutrality. In the second place there has never been any machinery for collective action by neutrals. It is believed essential to the effectiveness of such a method that there be continuing organization as a vehicle for neutral collaboration. The first indications of such organization have appeared recently in consequence of the resolutions adopted by the Inter-American Consultative Meetings held by the foreign ministers of the American Republics in Panama in 1939 and Habana in 1940.

A foundation for collective action had been laid in earlier Pan-American conventions, for the Argentine Anti-War Treaty of 1933 contained an undertaking, on the part of the American states, in the event that any one of them should be engaged in war "to adopt in their character as neutrals a common and solidary attitude."*2 Again, the Convention to Coördinate Existing Treaties between the American States, signed at Buenos Aires in 1936, contemplated a joint neutrality designed to localize conflicts or prevent their prolongation. Agreement upon a consultative procedure was reached.*2 At the following draft declaration is proposed in the Harvard Research Draft on Neutrality: "The High Contracting Parties declare that every neutral State has a direct interest in the observance by belligerents of the law defining neutral rights, and a violation by a belligerent of a neutral right of one neutral state constitutes a violation of a neutral right of all neutral states." Additional Declaration, Article 114.

Concerned nobody except the particular nation upon which the injury was inflicted and the nation inflicting it. There has been no general recognition of the right of other nations to object... in general, states not directly affected by the particular injury complained of have not been deemed to have any right to be heard about it... If the law of nations is to be binding... there must be a change in theory, and violations of the law of such a character as to threaten the peace and order of the community of nations must be deemed to be a violation of the right of every civilized nation to have the law maintained and a legal injury to every nation... Wherever in the world the laws which should protect the independence of nations, the inviolability of their territory, the lives and property of their citizens, are violated, all other nations have a right to protest against the breaking down of the law. Such a protest would not be an interference in the quarrels of others. It would be an assertion of the protesting nation's own right against the injury done to it by the destruction of the law upon which it relies for its peace and security."

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260 The following draft declaration is proposed in the Harvard Research Draft on Neutrality: "The High Contracting Parties declare that every neutral State has a direct interest in the observance by belligerents of the law defining neutral rights, and a violation by a belligerent of a neutral right of one neutral state constitutes a violation of a neutral right of all neutral states." Additional Declaration, Article 114.

261 Article 3. This is the so-called Saavedra Lamas Treaty, of October 10, 1933. Text in U. S. Treaty Series, No. 906; (1934), 28 A. J. I. L. Supplement. 79.

American states and in no sense bound the signatories to a unified neutrality in the case of a European war. A step toward the latter end, however, was taken in 1938 at the Lima Conference, where it was agreed that the procedure of consultation previously adopted for the maintenance of peace might be applied "on the initiative of one or more Governments and with the previous agreement of the others, to any economic, cultural or other question which, by reason of its importance, justifies this procedure." The personal attendance of the ministers of foreign affairs or their specially authorized representatives could be invoked when necessary. At the same time the well known Declaration of the Principles of the Solidarity of America ("Declaration of Lima") was adopted. In it the governments of the American states declare:

"First. That they reaffirm their continental solidarity and their purpose to collaborate in the maintenance of the principles upon which the said solidarity is based.

"Second. That faithful to the above-mentioned principles and to their absolute sovereignty, they reaffirm their decision to maintain them and to defend them against all foreign intervention or activity that may threaten them.

"Third. And in case the peace, security or territorial integrity of any American Republic is thus threatened by acts of any nature that may impair them, they proclaim their common concern and their determination to make effective their solidarity, coordinating their respective sovereign wills by means of the procedure of consultation, established by conventions in force and by declarations of the Inter-American Conferences, using the measures which in each case the circumstances may make advisable. It is understood that the Governments of the American Republics will act independently in their individual capacity, recognizing fully their juridical equality as sovereign States.

"Fourth. That in order to facilitate the consultations established in this and other American peace instruments, the Ministers for Foreign Affairs of the American Republics, when deemed desirable and at the initiative of any one of them, will meet in their several capitals by rotation and without protocolary character. Each Government may, under special circumstances or for special reasons, designate a representative as a substitute for its Minister of Foreign Affairs."

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264 Ibid., No. CIX; 34 A. J. I. L. (1940), Supplement, 199-200; International Conciliation, No. 349 (April, 1939), 242-243.
On the basis of these arrangements the foreign ministers met at Panamá, September 23 to October 3, 1939, to consider the situation presented by the outbreak of the European war. The conference was notable for several steps affecting joint neutrality: the creation of the "security zone" already discussed (Declaration of Panamá); the position taken on foodstuffs and clothing as contraband; the General Declaration of Neutrality of the American Republics; and the establishment of two technical committees, the Inter-American Financial and Economic Advisory Committee, and the Inter-American Neutrality Committee.

The General Declaration of Neutrality of the American Republics is a unique document which deserves attention. According to the preamble it "presupposes common and solidary attitudes with reference to situations of force which, as in the case of the present European War, may threaten the security of the sovereign rights of the American Republics." Since the attitude assumed with reference to the war was a determination not to

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265 Supra, pp. 194-198.
266 Pan American Union, Congress and Conference Series, No. 29, p. 17; (1940) 34 A. J. I. L. Supplement, 13; supra, 45-46.
267 Final Act, Resolution V. Text in (1940) 34 A. J. I. L. Supplement, 9-12.
268 Ibid., Resolution III. Text in (1940) 34 A. J. I. L. Supplement 6-9. The Inter-American Financial and Economic Advisory Committee is a body of 21 experts, one for each state, having its headquarters in Washington, D. C. Its functions include the consideration of monetary and exchange problems referred to it by any member-state and the making of recommendations; study of the means of obtaining stability in monetary and commercial relationships between the American Republics; acting through the Pan American Union as a clearing house for exchange of information on monetary and fiscal matters, foreign trade, customs legislation, etc.; study of the most effective measures for cooperative effort in lessening dislocations caused by the war; of the possibility of tariff reductions; of the necessity for creating an inter-American institution to insure permanent financial cooperation between the treasuries and central banks of the several states; of measures to promote importation and consumption of American products, especially through lowering prices and improving transportation and credit facilities; of the need for a Commercial Institute to maintain contacts between importers and exporters and to supply data to them; of the possibility of promoting new industries and negotiating commercial treaties; of the practicability of using silver as one of the mediums for international payments. Results of these studies and recommendations of the Committee are to be communicated to all the states through the Pan American Union. On April 26, 1941 the Committee resolved to recommend to the Governments that idle foreign-flag vessels in American ports be requisitioned and put into service. Further plans to this end were announced on August 28, 1941. (1941) 35 A. J. I. L. Supplement, 198-201.
269 Final Act of Panamá Consultative Meeting, Resolution V, sec. 5; (1940), 34 A. J. I. L. Supplement, p. 12.
become involved it became "desirable to state the standards of conduct, which, in conformity with international law and their respective internal legislation, the American Republics propose to follow, in order to maintain their status as neutral states and fulfill their neutral duties, as well as require the recognition of the rights inherent in such a status." The Declaration then outlines in some detail certain standards of conduct recognized by the American states as appropriate to the status of neutrality. They include prevention of use of their terrestrial, maritime and aerial territories as bases of belligerent operations; prevention of unneutral acts by inhabitants of their territories; prevention of local enlistment or inducement to go abroad to enlist in the armed forces of a belligerent, of setting on foot military, naval or aerial expeditions in service of a belligerent, of establishment or use by belligerents of radio stations in their territories; application to warships of the rules prohibiting more than three at one time in a neutral port, or a stay of more than twenty-four hours; insistence upon respect for rules of international law governing the conduct of belligerent vessels and aircraft in areas under neutral jurisdiction and control; prohibition of flights by belligerent military aircraft over their territory, and close regulation of flights by non-military aircraft in order to prevent deviation from regular routes or improper use of radiotelegraphy. These are rather routine statements of neutral duty which in themselves call for no comment, apart from the fact of their having been jointly announced. Among neutral rights asserted in the Declaration are inspection of passengers, papers, and cargo of belligerent merchant vessels, and limitation of fuel supplied, in order to prevent auxiliary service to warships; control over belligerent merchantmen which have sought asylum in neutral waters, and internment of those whose conduct places them under suspicion of giving aid to warships or cruising as raiders; transfer of merchant vessels from the flag of one American Republic to that of another, provided the transfer is in good faith, without agreement for resale to the vendor, and completed in American territorial waters; denial of obligation to assimilate belligerent armed merchantmen to warships "if they do not carry more than four six-inch guns mounted on the stern, and their lateral decks are not reinforced, and if, in the judgment of the local authorities, there do not exist other circumstances which reveal that the merchant vessels can be used for offensive purposes;" exclusion of belligerent sub-
marines from waters adjacent to neutral territories, or admission of them upon condition of conformity to local regulations.

Having stated this general framework of regulations the drafters of the Declaration concluded it with a provision creating the Inter-American Neutrality Committee, to be composed of seven experts in international law designated by the Governing Board of the Pan-American Union before November 1, 1939. The committee was charged with "studying and formulating recommendations with respect to the problems of neutrality, in the light of experience and changing circumstances," its recommendations to be transmitted, through the Pan American Union, to the governments of the American Republics. Elsewhere in the Final Act of the Consultative Meeting was a recommendation that the several governments transmit to the Pan American Union the texts of all the decrees and regulations approved by each relative to its neutrality, so that the Union might communicate copies of these documents to the other governments. Thus a central clearing house of information was assured.

The committee established itself in Rio de Janeiro. Its work consisted in the early stages in drafting recommendations upon problems referred to it by various American states. This phase has been sufficiently indicated by the account given of its views on belligerent interception of neutral postal correspondence, on foodstuffs and clothing as contraband, on admission of submarines to neutral ports and waters, and on the legal effects of the "security zone." When the Graf von Spee incident occurred the committee inquired, through the Pan American Union, whether the various states wished it to assume jurisdiction over questions involving the "security zone," inasmuch as the Declaration of Panama, which created the zone, was an instrument separate from the General Declaration of Neutrality, from which

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The original members were the following: Luiz A. Podestá Costa, of Argentina; Afranio de Mello Franco, of Brazil; Mariano Fontecilla, of Chile; Alejandro de Aguilar Machado, of Costa Rica; Charles G. Fenwick, of the United States; Roberto Córdova, of Mexico; and Gustavo Herrera of Venezuela. Manuel F. Himenez replaced Aguilar Machado in March, 1940; Salvador Martinez Mercado replaced Córdova in May, 1940; and Eduardo Labougle replaced Podestá Costa in October, 1940. Fenwick, The Inter-American Neutrality Committee, (1941) 35 A. J. I. L. 12-40, fn. 10.


Supra, pp. 182-183.

Supra, pp. 45-46.

Supra, pp. 198-199.

Supra, pp. 195-196.
The committee derived its authority. The inquiry was answered unanimously in the affirmative. Thereafter, at the second Consultative Meeting of Foreign Ministers, held at Habana, July 21 to 30, 1940, the work of the committee was approved, and new tasks were assigned to it. It was asked, first, to draft a preliminary project of convention "dealing with the juridical effects of the security zone and the measures of international coöperation which the American states are ready to adopt to obtain respect for the said zone;" second, to draft a general inter-American convention "which will cover completely all the principles and rules generally recognized in international law in matters of neutrality, and especially those contained in the resolutions of Panamá, in the individual legislation of the different American states, and in the recommendations already presented by the same committee." Pending the completion of this project and its deposit in the Pan-American Union for signature, adhesion and ratification by the several Governments, it was recommended that they incorporate into their domestic legislation the principles contained in the resolutions of Panamá and in the recommendations of the committee.276

The task of drafting a general neutrality convention was certainly a formidable one at best, considering the controversial status of many of the problems which have been discussed in these pages. For the committee it was rendered even more difficult by the fact that some, at least, of their number believed that the institution of war had been outlawed, and doubted that neutrality as a status had any "future." Hence they were reluctant to proceed with a codification which would stand as an implied acceptance of the view that war is an institution which must be recognized and that it is a useful approach to seek mitigation of its effects by international legal restrictions.277 The attitude thus revealed sug-


277See particularly the comment by Charles G. Fenwick, the member from the United States, The Inter-American Neutrality Committee, (1941) 35 A. J. I. L. 12, 40: "... But the time had passed when war could be accepted as a legal procedure. The experience of the World War, and even more so of the present war, had shown that the institution of war, as it was understood at The Hague in 1907, could not be restrained and kept within legal bounds; that war was essentially a lawless and anarchical procedure which tended of its very nature to break through all restraints; and that neutrality was of itself no protection for the small state, no matter how careful it might be to fulfill the duties which the status of neutrality imposed upon it. There was, therefore, no 'future' for neutrality.
gests the probability that in all its work the committee may have been dominated less by the desire to develop and implement the international law of neutrality as an effective safeguard against belligerent abuses generally than to use what it considered the vestiges of an outworn law as part of a new security program against one particular belligerent. The same attitude was indicated in a covering letter transmitting to the Director of the Pan American Union the committee's recommendations on interference with neutral postal correspondence. There it observed that it had formulated these recommendations "for the purpose of contributing to a solution of the problem presented to it, without, however, failing to realize that the problem is of relatively little importance compared with the appalling violations of the law of neutrality resulting from the invasion of neutral territories by the forces of one of the belligerents." 278 This statement is not introduced for the purpose of quibbling over the committee's failure to distinguish between the refusal to admit neutral status shown by making war on the neutral and a violation of the rights of a state whose neutral status is admitted, but rather because it shows a basic difficulty which has been unusually conspicuous during the present war. That is the more or less conscious tendency to identify neutrality with a kind of discriminatory non-belligerency. This may take the form of a revival of the imperfect neutrality of the seventeenth and eighteenth centuries suggested by the dictum of Grotius: "It is the duty of neutrals to do nothing which may strengthen the side which has the worse cause, or which may impede the motions of him who is carrying on a just war." 279 Even this degree of discrimination is, however, insufficient to satisfy many of the advocates of collective security, who seem

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279 Grotius, De Jure Belli ac Pacis (1625), c. XVII, par. III, 1
unwilling to dissociate neutrality from the attitudes and obligations appropriate to collective security.\textsuperscript{250}

With such a view it is easy to feel sympathy, but there is a very real danger that in confusing neutrality with discriminatory collective action against aggressor states we may destroy the distinctive qualities and values of a status upon which many states may sometimes wish to rely. Even if the general proposition be admitted that the flowering of the international law of neutrality in the nineteenth century and the early years of the twentieth corresponded to a general belief that war as an institution was receding, and that the principal security problem of the future would be the localization of minor conflicts, it does not follow that the appropriate conditions for neutrality never recur. Local wars continue to occur, and there continue to be some states whose genuine desire to occupy a position of neutrality in great wars will be respected by the belligerents. It appears to the writer that the interest of the United States in the present war does not lie in impartial treatment of the belligerents, but that position may be perfectly appropriate for many states of Central and South America, is still appropriate for Switzerland, Sweden and Portugal, and in the view of the Department of State might be more appropriate for Finland than the status it now occupies. It would therefore seem wiser to admit that great differences exist in the interest which states will feel in a collective security program or in individual acts of partiality toward a belligerent. The status of neutrality in the traditional sense ought to continue available to genuinely disinterested states. By the same token it ought not to be appropriated by states whose intentions are not impartial. No reason is perceived why perfectly clear lines of distinction cannot be drawn between belligerency, participation in collective security, individual intervention by unneutral service, and neutrality.

The experience of the Inter-American Neutrality Committee therefore illustrates a feature of collective neutrality which may require further attention. Perhaps a way will need to be devised whereby participating states can promptly be excluded from such

\textsuperscript{250}See a careful and detailed study by Georg Cohn, Chief of the International Law Section of the Danish Foreign Office, entitled Neo-Neutrality (1939). The author traces the relationship of neutrality to collective security in the policies of recent years. His own conclusions are moderate. His Neo-Neutrality involves non-participation in war but collaboration in efforts to prevent it. On the whole, however, it may be doubted if this unnecessary use of the word “neutrality,” even in a qualifying hyphenation, has not produced a certain confusion of categories.
a group when they are no longer prepared to observe the obligations of neutrality. If there are today states of the Pan American Union which genuinely wish to be neutral the United States may do them great disservice by continuing to associate itself with inter-American neutrality. There is undoubtedly a place for both inter-American neutrality and inter-American intervention, but not under the same title and auspices.

On the other hand it seems clear that a very significant achievement in the development of machinery for collective action by neutrals has occurred. Apparatus for prompt consultation in determination of policy and for regular examination of technical problems by experts has been put into successful operation. There is the further advantage that it was built upon previously laid foundations of collaboration and that over-organization was avoided. Thus there is less of the artificial and brittle quality than ordinarily attaches to novel institutions. Were it possible at the conclusion of the war to obtain general assent to proposals of the sort contained in the Harvard Research Draft the prospect of putting them into successful operation in a future conflict would be greatly increased by the continuation and active efforts of this type of Pan American organization. It might well be expanded by the inclusion of other blocs of traditionally neutral states, such as the Scandinavian countries, Belgium, the Netherlands, and Portugal.

It is of course possible that these encouraging developments have come too late. We hardly know what international polity may emerge from the present debacle, nor whether states will come to feel again that they can afford to entrust their security to a policy of neutrality, however well implemented. Yet if the will to maintain the status of neutrality should continue, the basis and the means of doing so seem within reach.