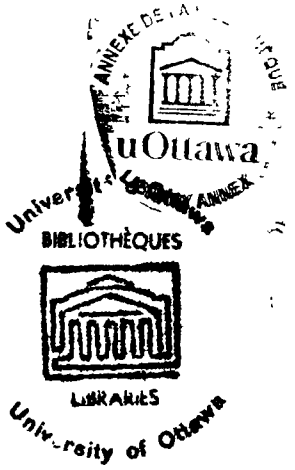
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EVOLUTION OF THE STATUS OF NON-BELLIGERENCY

IN

INTERNATIONAL LAW



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EVOLUTION DE LA POSITION DES NON-BELLIGERANTS

DANS

LE DROIT INTERNATIONAL PUBLIC

D.Ph.(Sci.Pol.)Thèse

présentée à

l'Ecole des Hautes Etudes Politiques

de

l'Université d'Ottawa

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par

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LL.B.,M.A.(Sci.Pol.),D.Ph.(Sci.Pol.)

juin 1943

EVOLUTION OF

THE STATUS OF NON-BELLIGERENCY

IN

INTERNATIONAL LAW

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School of Political Science

University of Ottawa

HWAI-CHUN LU,
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EVOLUTION OF THE STATUS OF NON-BELLIGERENCY IN INTERNATIONAL LAW

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INTRODUCTION

EVOLUTION OF

THE STATUS OF NON-BELLIGERENCY IN INTERNATIONAL LAW

INTRODUCTION

On December 15, 1941, eight days after the Japanese attack on Pearl Harbor and the United States' declaration of war on Japan, President Roosevelt in his message to the Congress frankly confirmed that "The course of events which have led directly to the present crisis began ten years ago....by the invasion of Manchuria, which was part of China" and that "This barbaric aggression of Japan in Manchuria set the example and the pattern for the course soon to be pursued by Italy and Germany in Africa and in Europe....and to bring about the ultimate enslavement of the rest of the world." #1# The significance of this enumeration, as explained by Professor S. R. Chow, the authority on international law in China, as well as many other eminent international jurists, involves that "It was Japan which actually started the Second World War ten years ago; and it was the failure of the League of Nations--and, to a lesser extent, of the United States--to curb Japanese aggression in the Far East which encouraged the European aggressors to go ahead with their audacious design for world domination." #2#

This explanation precisely can be extended to cover another reason that the failure of the peace-loving nations and

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#1# International Conciliation, No. 377, Feb. 1942, pp. 42-43.
#2# Professor S. R. Chow, "The Pacific after the War", Foreign Affairs, October, 1942.

the League of Nations in dealing with the Japanese aggression in 1931 was chiefly due to the conflict between two rival thoughts--one is"neutrality", the other is "collective security". While maintaining her traditional neutrality, and being a non-member State of the League, the United States then was urging the prosecution of a collective intervention. #3# While being a leading member-State of the League, Great Britain declared neutral in the war then raging between China and Japan through her Foreign Secretory, Sir John Simon, on February 27, 1933, by saying that "There is one great difference between 1914 and now, and it is this: in no circumstances will this Government authorize this country to be a party to the struggle." #4# This conflict of thoughts almost

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#3# Professor S. R. Chow, "New Progress In International Law", 1934, Chapters 14-19 (Sino-Japanese Conflict and the League).
Willoughby, "Sino-Japanese Controversy and the League of Nations", 1935; Chinese edition, 1936,(translated by Kwai-Chun Lu, etc..)
Borchard and Lage, "Neutrality for the United States", 1940, pp. 270, 308.
Stimson, "The Far Eastern Crisis", 1936.
Letter of the United States' Minister at Berne to the Secretary-General of the League of Nations, Official Journal, Vol. I, p. 90, 1932, (Special session of Assembly, March, 1932.
Letter of the Secretary-General of the League on June 14, 1933 to the United States and the other non-member States, Official Journal, Special Assembly Records, 1933, Vol. V, p. 1..

#4# 275 Parliamentary Deb., 5th ser., col. 59, 1933.
Borchard and Lage, "Neutrality for the United States", p. 271.
Stimson, "The Far Eastern Crisis", 1936.
Some English international jurists even urged an issuance of recognition to the puppet State "Manchukuo" by saying that "whether international law permits not to recognize a new independent civilized State is a question," (Professor Herbert Arthur Smith's Letter, London Times, Nov. 13, 1934.) and that "in the Covenant of the League of Nations or in any other conventions or treaties or in the British laws, no clause is provided with a power capable of compelling the British King to give up his right of independence."(Sir John Fischer Williams' Letter, London Times, Nov. 13, 1934.)
Member Major Beaumont Thomas in the House of Commons also argued that Great Britain should grant recognition to the so-called "Manchukuo" on account of the interest of British

repulsed the entire progress of the institution of collective security made by an international common effort before 1931 and, therefore, gave rise to a series of acts of aggression committed thereafter by Japan and her Axis partenors, such as: the unilateral denunciation of the Treaties of Versailles and Locarno (1935 & 1936), the conquest of Abyssinia (1936), the intervention in the Spanish civil war (1936-1937), the further invasion into China (the beginning of the present Sino-Japanese War, 1937), the absorption of Austria (1938), of Sudetenland (1938), of Czechoslovakia (1939), of Memel (1939),and of Albania (1939), the Russo-Finnish war (1939), a series of German invasion in Poland, Denmark, Holland Belgium, Luxemburg, Norway, France, Yugoslavia, Greece, Russia, etc.(1939-1942) and the attack on Pearl Harbor, Hongkong, the Philippines, Malaya, the Dutch Indies, etc., which completed the formation of the Second World War (1941).

But during the course of these events, even after 1939, such conflict of thoughts remained, and still remains, unsettled. In the theoretical debate, Professor Edwin Borchard of the Yale University and Mr. William Potter Lage purposely published a book entitled "Neutrality For the United States" in 1940 in support of Professor John Bassett Moore's view of neutrality #5/ with an intention to counterattack the theory of international interventionism (collective sanction) led by Professors Nicolas Politis,#6#

Trade.(London Times, Nov. 30, 1934.)
See also Kwai-Chun Lu, "The Doctrine of Recognition in International Law", 1941, Chapters I & IV.

#5# Moore, "An Appeal to Reason", Foreign Affairs, July,1933, Vol. XI, No. 4, pp. 547-588.

#6# Politis, "La Neutralité et la paix", 1935 (Carnegie translate English edition, 1935).

and George Scelle #7# of the Université de Paris, Professor William E. Rappard of the University of Geneva,#8# Professor Hersh Lauterpacht of the University of Cambridge,#9# Professor Quincy Wright of the University of Chicago,#10# Professors Charles G. Fenwick and Eagleton of the New York University #11# and Lord Robert Cecil,#12# In fact, the Covenant of the League of Nations of 1919, and the Briand-Kellogg Pact for Renunciation of War of 1928 remain with the Hague Conventions of 1907 respecting neutrality, without any change or coördination. The League sanction system was bravely tested in 1935, though in the same year the United States promulgated a Neutrality Act. Paraguay, Japan and Russia were declared aggressors separately in 1934, 1937 and 1940. Nevertheless Belgium declared her restoration of neutrality in 1936. The Argentine Anti-War Pact of 1933 was purposely concluded with due regard to neutrality; it goes without saying that the Havana Convention of 1928 includes a long code of maritime war and neutrality. On the outbreak of the European War in 1939, many States including Denmark, Latvia, Finland, Lithuania, Estonia, Yugoslavia Spain, Roumania, Bulgaria, Holland, Norway, Belgium, Sweden, Cuba, Brazil, Chile, Guatemala, Mexico, the United States, Bolivia,

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#7# Scelle's Memorandum,"Theory of International Government", New Commonwealth Quarterly, I,(1935-1936), pp. 18 et seq.. see also Bourquin, "Collective Security", pp. 25, 476.

#8# Rappard, "The Quest for Peace", 1940.

#9# Lauterpacht's Report, "The Notion of Neutrality in a System Providing for the Repression of War" in "Some British views on Collective Security", Part. II, (Feb.,1935). see also Bourquin, pp. 24, 79, 134, 412 et seq..(British Memo. #3).

#10# Wright, "The Future of Neutrality", International Conciliation No. 242, 1928.

#11# Fenwick, "American Neutrality, Trial & Failure", 1940.

#12# Cecil's Letter to London Times, Hearings on H. J. Res. 93, Committee on Foreign Relations, House of Representatives, 73rd Cong., 1st sess. (March 28, 1933)pp. 24-25. Borchard & Lage, pp. 308 & 273. see also A Message from London, on Oct. 30, 1942, reporting Cecil's statement.

Uruguay, Peru, Dominican Republic, Nicaragua, Panama, Paraguay, Argentine, Iran, Afghanistan, Thailand, and Irish Free State, issued declarations of neutrality. Hungary, Greece and Japan considered themselves neutral without such a declaration. #13#

Between these two rival trends, there arose, in addition, new events of intermediate character, such as the Declaration of Havana of October 3, 1939, and the United States' lend-lease arrangements since 1939, which are considered acts violating the traditional doctrine of neutrality on the one hand and acts improving the doctrine on the other. The most strange things seem to be the declarations of "non-belligerency" by Italy (1939), #14# Spain (June 13, 1940, after the Italy's declaration of war) #15# and Denmark (June 27, 1941, after Germany's declaration of war on Russia). #16# Though Professor Borchard describes such use of the word "non-belligerency" "as a modern excuse for violating the laws of neutrality and as a hope that warlike acts can be committed while escaping the consequences of belligerency", #17# the United States' Attorney-General, Mr. Robert H. Jackson, #18# and Professor Fenwick

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#13# Lauterpacht, in note 1, page 530, Oppenheim's International Law, vol. II, 6th ed., 1940, mentioned Bulgaria as one of the States refraining from issuing a declaration of neutrality. We may find in Deak & Jessup's "Neutrality Laws, Regulations and Treaties of Various Countries", 1939, (with supplements up to 1940), p. 553, that the proclamation of neutrality of Bulgaria in the European War was made on September 16, 1939.

#14# Oppenheim's International Law, 1940, vol. II, p. 515. Fenwick, "American Neutrality, Trial & Failure", 1940, p. 143.

#15# American Journal of International Law, Oct. 1940, pp. 718-719.

#16# American Journal of International Law, Oct. 1941, p. 678.

#17# Borchard, "War, Neutrality and Non-belligerency", American Journal of International Law, Oct. 1941, p. 624.

#18# Jackson, "Address", before the International Bar Association at Havana, Cuba, March 27, 1941, A. J. I. L., April 1941, pp. 349, 358, 348-359.

of New York#19# are obviously in support of it. In theory, for years there have been already different suggestions of such intermediate character with a view to establishing a status between neutrality and belligerency and improving the traditional doctrine of neutrality. Professor Paul de La Pradelle of the Université de Paris,#20# Professor Philip C. Jessup of the Columbia University#21# Dr. George Cohn, the Chief of the International Law Section of the Danish Foreign Office,#22# etc. are among the writers of this group. Judge Ake Hammarsjold of the Permanent Court of International Justice (1936-1937), when in the 38th session of the Conference of the International Law Association at Budapest in 1934, also declarmed that "You will have noticed that, except when the texts compelled me to use the word 'neutrality', I have been careful to use another word: the status of non-belligerency....I have chosen the other expression merely because I wanted to underline that the status of non-belligerency under the Kellogg Pact is not necessarily identical with the status of neutrality in pre-war international law".#23#

Therefore, the problems respecting the status of non-belligerency today have not only been whether the non-belligerents are going"to assist in the conservative development of the old law in harmony with modern warfare at sea, or withdraw and give over the seas to the control of the belligerents, or discard neutrality altogether and embrace the moral concept of just and unjust wars",

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#19# Fenwick, "American Neutrality, Trial & Failure", p. 143.
#20# De La Pradelle,"The Evolution of Neutrality", Collective Security,(Bourquin' ed.)pp. 408, 404 et seq. 455.
#21# Jessup, "Neutrality", Vol IV, 1936, p. 207 et seq.
#22# Cohn, "Neo-Neutrality", 1939.
#23# Report, 38th Conference, p. 31. Mr. Hammarsjold's view on the use of the word "non-belligerency" seems to be in coincidence with mine.

as Mr. L. H. Woolsey says,#24# but also whether one or more types of non-belligerency status between neutrality and belligerency can be found in the past practice and law in the society of nations and which one of them is desirable to be accepted in the future in view of justice and human common good.

But, in this connection, it should be sharply observed that the term "non-belligerency" as declared by Italy, Spain and Denmarck and explained or argued by Mr. Borchard, Jackson, etc., is misused.

In the first place, there has been no such term as "non-belligerency" of a legal character in the modern international law. In neither Professor S. R. Chow's "International Law", nor Fauchille's "Traité de Droit International Public", nor Le Fur's "Précis de Droit International Public", nor Scelle's "Précis de Droit des Gens", nor Foignet et Dupont's "Manuel élémentaire de Droit International Public", nor Cosentini's "Code International de la paix et de la guerre", nor Calvo's"Le Droit International, théorique et pratique", nor McNair and Lauterpacht's "Oppenheim's International Law"(only on page 515 of volume II of the 6th edition Professor Lauterpacht mentioned the new case of the declaration of non-belligerency of Italy), nor Liggins' "Hall's A Treatise On International Law", nor Lawrence's "The Principles of International Law", nor McNair's "The Law of Treaties", Mor Eppstein's "The Catholic Tradition of the Law of Nations", nor Ludden's "The World Court" and"World Court Reports", nor Garner's "International Law and the World War", nor Wilson's "Handbook of International Law",

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#24# Woolsey, "The Fallacies of Neutrality", merican Journal of International Law , 1936, pp. 256-262.

nor Moore's "A Digest of International Law", nor Hershey's "The Essentials of International Public Law and Organization", nor Briggs' "The Law of Nations", nor Pfankuchen's "A Documentary Textbook In International Law", nor Butler and Maccoby's "The Development of International Law" can be found the word "non-belligerency". The only word respecting the status of a non-belligerency in a legal sense is "neutrality".

In the second place, as shown in the following chapters there are many possible types of the non-belligerent status; the traditional legal concept of neutrality represents only one type of the status of a non-belligerent. In other words, the different type of the non-belligerent status as a whole shall be termed the status of"non-belligerency"; non-belligerency is not the status between neutrality and belligerency, but in general sense an antonym to "belligerency" and comprises the status of neutrality. When on the outbreak of a war, States shall be classified into such two groups as belligerents and non-belligerents, if any. The status of belligerents in International Law is called "belligerency"; the status of non-belligerents in international law shall be called "non-belligerency". Non-belligerency can be classified into such two groups as neutrality and unneutrality (or partiality). Neutrality and unneutrality separately can be further classified into groups according to practice and law. Therefore, the word "non-belligerency", if used for qualifying a particular case, would be a fallacy and meaningless. It would lead to a misunderstanding which would prevent the appearance of a logical classification of the status of non-belligerents.

As most international jurists concentrated their attention on the defence of"neutrality", or "collective security", or "qualified neutrality" and few initiated a study of the status of non-belligerency generally, including the treatment of neutrality, this paper is thus drafted and presented. On consideration of the problems involved in this field today, as stated above, the study is proceeding roughly in two parts: one is an analysis of the evolution of the non-belligerent status leading to a conclusion on the types of non-belligerency; the other is a study of the solution of the problem of non-belligerency, a theoretical discussion, leading to a suggested theory as the conclusion.

Chapter I:

THE IMPORTANCE OF THE ANCIENT AGES AND THE CHINESE TRADITIONAL DOCTRINE ON NON-BELLIGERENCY

Chapter I:

THE IMPORTANCE OF THE ANCIENT AGES AND THE CHINESE TRADITIONAL DOCTRINE ON NON-BELLIGERENCY

In regard to the discussion of the evolution of the status of non-belligerency, one can hardly not begin it with the ancient epoch.

In the first place, the international relations of modern western world can be traced to that of its classical ages. As Professor Michael I. Rostovtseff of the University of Petrograd and of Wisconsin said,"The system of the modern European States is in no way a creation of the so-called Middle Ages. Most of the modern European States are nothing but a development of the provinces of the Roman Empire. The natural frontiers of Spain, France, Italy, even Britain of today are the ancient frontiers of Italy and the Western Roman provinces during the Roman Empire. Modern Germany covers the territory of the Roman province, Germania, as it was planned by the genius of Caesar and Augustus, Austrian territory before the war coincided with the boundaries of the Roman Danube provinces. On the other hand the foundations of civilized life in modern Europe were laid during the classical period and the type of our European and American mentality was inherited by us from our classical predecessors. Thus, if we try to understand one or the other of our fundamental institutions, or if we endeaver to explain the most important features of our political, economic, social and intellectural life, we are bound to go back to the main sources, i.e., to the achievements of our classical predecessors. Internat-

ional relations and the main ideas which form the substance of our international law present no exception to this general rule. I affirm that the type of our international relations, the different tendencies existing in this domain and the most important moral and legal ideas which form the basis of our international law formed the foundation of the international relations of the ancient world as well. I cannot discover any capital difference. Modern Europe moves on the same lines on which the ancient world moved for centuries....Some of the institutions and ideas...were fully developed in the ancient world. Others may be traced at their very beginning only, and it was the destiny of later epochs to develop them more fully."#25#

In the second place, in the ancient epoch, there occured already an advanced civilization "in the centre of the world", as the Chinese people traditionally called, or "in the Far East", as the modern Western peoples call. That was the ancient part of Chinese civilization. Some historians have said that the first"League of Nations" of the civilized world is in ancient China, about three thousand years ago. At least we can safely say that there had been a distinguished development of "international relations" among the dominion-states, (the feudal states under the Emperor of Chow Dynasty, all of which were of the same nation, the Chinese, like provinces of a single nation-state,) the so-called "Chuen Chu Chan Kuo" Ages (770-221B.C.) , which brought the Chinese nation a traditional doctrine on both belligerency and non-belligerency for the following thousands years.

#25# Rostovtseff, "International Relations in the Ancient World", in Walsh,"The History and Nature of International Relations ", 1922, pp. 32-3[illegible].

having even survived the two revolutions of 1911 and 1926 and influenced China's present foreign policy.

But the ideas of the Chuen Chu Chan Kuo Ages in this field can be still traced to further ancient ages. Five thousand years ago, Great Emperor Hwang-Ti had already fought a war for justice, with a view to crushing the powerful tyrant Tse-Yu. He succeeded and, therefore, founded the Empire of China. He himself invented compass; the Empress Lo-Choo invented silk; and later explosive powder was invented and medicine science was founded. These four form the so-called Four Great Inventions of Ancient China. In the following years, the idea of justice continued to be kept and was notably expressed in the system of the succession to throne par excellence, not par sanguinis. For instance, Emperor Yao of Tang Dynasty was succeeded by Emperor Shuen of Yu Dynasty. It was only because Shuen was a good man that he was selected by Emperor Yao as his successor. Emperor Shuen of Yu Dynasty was succeeded by Emperor Yoo of Hsia Dynasty. Yoo and his father Kuen both were officials in the Court. Emperor Shuen ordered the execution of Kuen on account of his failure in regulating the then deluging Yellow River, but selected his son, Yoo, as his successor on account of the son's good behavior and great success in dealing with the deluge. It is remarkable that, while working on repulsing this River cataclysm, Yoo travelled the country for thirteen years and never entered his home, though passing there three times. The throne of Emperor Yoo was succeeded to by his son Chee; it was because Chee was the best man in his time, not because Chee was the Emperor's son. But it was taken as an example by the later Kings and thus the system of the succession to throne

par sanguinis was founded. The idea of justice was also expressed in the occurance of two famous revolutions. One is that Emperor Tang of ShangDynasty, when he was a prince in Hsia Dynasty, fought and executed the tyrant Emperor Chih (the last emperor of Hsia Dynasty). The other is that Emperor Woo of Chow Dynasty, when he was a prince in Shang Dynasty, fought and executed the tyrant Emperor Tsou (the last emperor of Shang Dynasty). All these examples were set in the age three or four thousand years ago.

Since the foundation of Chow Dynasty, through the efforts of the old Prince Wen of Chow (in Shang Dynasty, the father of Prince Woo, later the first emperor of Chow Dynasty, 1122-249 B.C.), Emperor Woo and the prime ministers Lu-San, Chou-Kung, I-ing, etc., the principle of justice was well exposed, developed and codified together with the principles of social as well as political order. Such principles of justice, notably known as peace, politeness, respect, common good, equity, generosity, fraternity, honour, loyalty, equality, co-existence, tolerance, self-sacrifice for all, rule of law, rule by virtue, lawful liberty, discipline, service to society, sanction against criminal aggressor, etc., and later the doctrines of Confucius and Mencius greatly influenced the "Chuen Chu Chan Kuo Ages" in an international sense. As a general tendency in this period (over five hundred years), the people and the dominion States would judge the cause of any war with their common idea and effect a collective or individual sanction against the wrong side. It was certainly natural to have established the institution of a "League of Nations". Only at the end of this period, occured the struggle for a strict unification as a result of the people's desire and tra-

dition; because even in this period the peoples of the dominion-states, which were the same Chinese people, were continuously and unanimously loyal to the Emperor Chow and because, legally speaking, Chow Dynasty ended in 249 B.C., only twenty-eight years before the beginning of Chin Dynasty.

The common idea prevailing in the Chuen Chu Chan Kuo Ages, after criticized and enlightened by Confucius and Menclus, has further played a considerable influence in the Chinese attitude toward war and international relations over two thousand years. That is why the Chinese people and their Emperor gave the Catholic Fathers a warm welcome since the beginning and treated them even as guest-officials in the imperial court.#26# That is

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#26# See any of the Chinese books on the history of China, history of Ming Dynasty, etc..
See also Professor E. R. Hughes of the University of Oxford, "The Invasion of China by the Western World", 1938, Chap. I, especially pp. 1,7,9,12,13,& 15, in which Professor Hughes says,""In the year 1723 there was a Chinese in Holland who was both a learned man and a merchant, two things that ought by no means to be incompatible; but which thanks to the profound respect that is shown to money, and the little regard that the human species do, and ever will, pay to merit, are become so among us". These, the opening words of Voltaire's "A Conversation With A Chinese",(see Voltaire, "Romances, Novels, and Tales", vol.1,London, 1806.) serve well as an introduction to the history of cultural relations between the west and China....nearly two thousand years, from the fifth century B.C. to the sixteenth century A.D., Europe and China were reaching out to find each other and did actually meet for purposes of trade, yet under conditions which militated against the interchange of ideas. The arrival of the Jesuits in Peking in 1601 marks the beginning of the modern period when cultural influences as well as trade began to find their way....the upshot was Marco Polo's seventeen years in China, part of the time as a high official of the Khan (Emperor Kublai Khan of Yuan Dynasty), then.... John of Monte Corvino was sent with a letter from Pope Nicholas IV to Kublai Khan (before 1305)...and...the Franciscan mission flourished...Those were the days of the Inquisition in Southern Europe and America, they had no scruples about the use of violence. Thus to the Chinese they appeared as nothing but marauding pirates...The two great cultural streams of East and West might really intermingle. The point

also why the Chinese people and their Government could not understand that the commercial interests of the British people and their Government were so important and urgent that they would have rather to achieve their expansion by a war policy, subsequent to an opium policy, even at the sacrifice of the sovereignty, independence, territorial and administrative integrity and life of another nation!

The British Government and the Governments of some other Western nations seemed to regard foreign commerce as a

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of contact was the Jesuit Mission in Peking. The missionaries were not only teachers of their religion but some of them were trained scientists and as such were welcomed by Chinese scholars. They were also the means of introducing Chinese scholars to Europe through their colleges in Italy and France. One such scholar was even found in Oxford in 1687. There were some 80 Chinese works on China. (see Andrew Clark, "The Life and Times of Anthony Wood", vol. iii, p. 236). There was here the opportunity in both Europe and China for a fertilising of mind and spirit with fresh ideas born from the older philosophies of each culture. In the West this actually happened. The Catholic missionaries and their Chinese colleagues supplied a steady stream of works on China...how widely this influence penetrated and much how the thinkers of the Enlightenment owed to Chinese humanism and natural philosophy ! ....This philosophy...should have been one of the forces which brought about the French Revolution. In the East the scientific treatises published by the Jesuits created much interest and were included in the collections of learned studies to be founded in every well-stocked library..."

#27# Hershey, "Essentials of International Law and Organisation", 1927, p. 249.

#28# Oppenheim, "International Law", vol. I, 1937, pp. 261, 262.

#29# Lauterpacht, "Boycott in International Relations", British Year Book of International Law, 1933, p. 132.

#30# Hyde & Wehle, "Boycott in Foreign Affairs", American Journal of International Law, January 1933, vol. 29, no. 1, pp. 2,3

#31# Fauchille, "Traité de Droit International Public", tome I , 1, p. 487,488; tome I, 3, p. 701.

#32# Professor S. R. Chow, "International Law", 3rd. ed. 1937, Chap. II. Professor Chow,"Lectures on International Law", 1933-34, National Wu-Han University, China. See also Kwai-Chun Lu,"Boycott In International Law", 1935, National Wu-Han University, and "World Politics"--semi-monthly of the League of Nations Association, China, vol. 3. No. 5, 1938.

right against other nations. This argument was also, and still is, a false. According to the principles of the so-called international law, Professor Amos S. Hershey of Indiana University said,

> "The right to commerce or intercourse..is..rather a necessary condition for modern progress and development than a right in the legal sense of this term...the right of intercourse is...a legal right as against third powers....A State might conceivably refuse all diplomatic and commercial intercourse with the outside world...The right of mutual commerce or intercourse is far from absolute. It is limited by other essential and fundamental rights which take precedence or restrict its application."#27#

Professor Lassa Francis Lawrence Oppenheim of the University of Cambridge said,"if the facts of international life are taken into

> consideration, it becomes at once apparent that such a fundamental right of intercourse does not exist. All the consequences which are said to follow from the right of intercourse are not at all consequences of a right, but nothing else than consequences of the fact that intercourse between the states is a condition without which a law of nations would not and could not exis ....No special right or rights of intercourse between the states exist according to the Law of Nations. It is because such special rights of intercourse do not exist that the states conclude special treaties regarding matters of post, telegraphs, telephones, railways, and commerce."#28#

Professor Hersh Lauterpacht of the University of London said,

> "Commerce between nations is but an international fact or a promise, not a legal right or obligation...That the Government of a State even tolerates the people to boycott a commercial

treaty contracting state does not necessarily constitute an act violating treaty obligations....for a state does not consider the act of concluding a commercial treaty a willingness to give up its general freedon in its commercial activities." #29#

Professor C. C. Hyde and Louis B. Wehle said, "A state may derive its liberty to denounce its foreign commercial relations from its independent sovereignty without any regard to any external influence."#30#

Professor Paul Fauchille, directeur de l'Institut des Hautes Études internationales (école international de droit international), said, "Ceux qui reconnaissent toujours une influence prépondérante à l'idée de l'indépendance des Etats neconsidèrent pas le boycottage comme un acte nécessairement illicite;...Il semble difficile d'admettre la responsabilité de l'Etat, car dans la boycottage les particuliers seuls interviennent: un Etat ne peut obliger ses nationaux ou ses habitants à commercer avec les citoyen de tel pays donné, lorsqu'ils ne le veulent pas. si par ses traités avec ce pays l'Etat permet les relations commerciales avec lui, il ne lui garantit pas qu'elles s'établiront et se continueront."#31#

Professor S. R. Chow of National Wu-han University, China, even omits the so-called right of commerce and intercourse when he deals with the fundamental rights and obligations of a state in his authoritative work,"International Law", and only referred thereto in his"Lectures on International Law" by saying that "The problem of commerce and intercourse is but a problem of policy, not of law....A State is bound not to forbid the people to trade with

a foreign country as a result of the existence of a commercial treaty; but it is also bound not to forbid the people not to trade with the treaty contracting country as a result of the people's right of liberty. In other words, a State has no right or obligation to compel its citizens to trade with any foreign nation."[32] It goes without saying that no treaty obligations existed between China and Great Britain before 1842.[33]

According to practice, no relation between the United States and Soviet Russia was established before 1933; no intercourse any longer existed between Switzerland, Holland, Belgium and Soviet Russia since 1935. On September 5, 1939, Union of South Africa severed diplomatic relations with Germany; on Sept. 19, 1939, Iraq severed diplomatic relations with Germany; on Feb. 2, 1939, the relations between Russia and Hungary were broken; on June 12,1940, the relations between Italy and Egypt were broken; the relations between Great Britain and Roumania were broken on Feb. 10, 1941; the relations between Great Britain and Bulgaria were broken on March 5, 1941; the relations between Great Britain and Hungary were broken on April 7, 1941; the relations between Greeceand Bulgaria were broken on April 23, 1941; the relations between Russia and Slovakia were broken on June 22, 1941; the relations between Russia and Hungary were broken on June 24, 1941; the relations between(Vivhy) France and Russia were broken on June 30,1941; the relations between Finland and Great Britain were broken on Aug. 1, 1941; the relations between Japan and Poland were severed on Oct. 4, 1941; the relations of Iraq with France and Japan were severed on Nov. 10, 1941; the relations between Norway and Finland were severed on Dec. 7, 1941; the rela-

tions of Colombia, Egypt, Mexico and Poland with Japan were severed on Dec. 8, 1941; the relations of Hungary and Roumania with Egypt were severed on Dec. 10, 1941; the relations of Mexico with Japan, Germany and Italy were severed on Dec. 11, 1941; the relations between Hungary and the United States were severed on Dec. 11, 1941; the relations of Colombia with Japan, Germany and Italy were severed on Dec. 19, 1941; the relations of Mexico with Bulgaria and Hungary were severed on Dec. 23, 1941; the relations of Venezuela with Japan, Germany and Italy were broken on Dec. 31, 1941; on Jan. 6, 1942, Egypt suspended her diplomatic relations with France; on Jan. 22, 1942, the Pan-American Conference adopted a resolution recommending a general severance of the Pan-American countries' relations with the Axis powers; on Jan. 22, 1942, the relations between Spain and Poland were broken; on Jan. 24, 1942, the relations of Peru and Uruguay with the three Axis powers were broken; on Jan. 26, 1942, Bolivia severed her relations with the three Axis powers; on Jan. 28, 29 and 30, 1942, Brazil, Equador and Paraguay severed their relations with the three Axis powers; on Feb. 5, 1942, Iran severed her relations with France (Vichy). On Feb. 22, 1942, the relations between Italy and Saudi-Arabia were broken. On April 14, 1942, the relations between Iran and Japan were broken; on April 23, 1942, the relations between South Africa and France (Vichy) were broken; in November 1942, the relations of France (Vichy) with Canada and the United States were eventually broken. It is also remarkable that the United States announced the abolition of her commercial treaty with Japan in November 1941.

#33# Herbert Arthur Smith, "Great Britain and the Law of Nations", Vol. I, pp. 17-18.

As for China, the Chinese relations with Soviet Russia had been severed before 1933 and in 1941 her relations with Germany and Italy were declared broken. Many other measures taken by independent States for restricting foreign trade, such as the protectionist tariff, sanitary precaution, state control of trade, etc., are also wellknown. #34#

Therefore, neither positive law nor practice nor justice could justify the British War on China in 1840. That war was no doubt an aggressive war, an instrument of the British capitalist and imperialist ~~gunboat~~ policy which set an example for the subsequent invasions by the Western States. It was, and still is, certainly in contradiction ~~to~~ to the Chinese thousands years old traditional idea of justice, an idea which began to be generally accepted by the Western nations only twenty years ago.

How inevitable the eventualities would be ? Here I should introduce one of the United States' Foreign Policy Associations's Headline Books, entitled "War In China", written by Mr. Varian Fry with maps and charts by Mr. Henry Adams Grant in 1938. In that book, Mr. Fry has given a clear and objective explanation of the facts and tendencies since that age. He says: "At first the Mings were willing to let the Europeans travel and trade anywhere they like in China. But after some unpleasant experiences with the Western merchants, they decided they did not want them running all over their empire after all. So they refused to let them travel in China or enter any harbour but Canton. And they made

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#34# American Journal of International Law, 1939-1942. Hwai-Chun Lu, "The Doctrine of Recognition in International Law", 1941, pp. 13-18, 16.

strict rules about trade with the Europeans even there....When the Manchus had established themselves at Peking (now Peiping), they opened all China to European trade (1685). But the European merchants abused the privilege so outrageously that the Manchus soon came to see the wisdom of the Ming's more cautious policy. Once again all the ports except Canton were closed, and at Canton new regulations were made which were even stricter than before (1717)....Many people think opium smoking was invented by the Chinese. That is another wrong idea about China. The truth is that the Chinese first got opium from India. They use it as we do today, for medicine. But the Dutch merchants who had settled on the island of Formosa mixed it with tobacco and smoked it, and the Chinese apparently learned to smoke it from them. By 1800 the English were doing a big business selling opium to the Chinese. The trade was forbidden by the Chinese law, but this did not prevent the merchants of the West from continuing to profit from it. In 1939 the Manchu Government decided to stamp out the opium trade once and for all. They appointed a man named Lin (His Excellency Governor-General of the Provinces of Kwangtung and Kwangsi, Tse-Hsu Lin, who was one of the most respectable and able officials of the time) as High Commissioner to end the opium traffic, and Commissioner Lin immediately ordered all the merchants at Canton to surrender their opium to him.....well, the English won the War (1840-42), and when they won it they made the Manchu Emperor's representatives sign a treaty which not only changed the status of foreign merchants in China, but set in motion a process which gradually undermined the foundations of Chinese society, drove the Manchus from their throne, and left

China divided and disorganized for many years.....The Treaty of 1842, which the Chinese officials concluded with the British, was the signal for a series of wars and treaties in which the Manchus gradually lost or signed away more than half their Empire and many of the rights which every nation considers essential to its sovereignty, or independence."#35#

The process set in motion as hinted by Mr. Fry obviously involves the Great National Renaissance Movement of China, the rise of Chinese nationalism, the First Revolution of 1911 which upset the corruptive criminal, the Manchu Government, and finished the heavy task of transforming the five thousand yearsold Empire into a republic, the Second Revolution of 1926 which upset the old/imperial bureaucracy and the former court officials including the war lords and made possible the beginning of the prosecution of the doctrines of the Leader of the Revolution and Father of the Republic, Dr. Sun Yat-Sen, the extraordinary speed of national reconstruction under the National Leader Generalissimo Chiang Kai-Shek, the Wars of 1931 and 1937 on the Aggressors, the movement of the abolition of the unequal treaties since 1842, the participation in the heavy responsibility of maintaining the world's just order, etc.. Now that the War against the Japanese Aggressor has been going on over five and one half years, the victory over the enemy is near. Now that the leading Western aggressive states since 1840 to 1926 have announced on Oct. 9, 1942 their sincere intention to immediately put into effect the abolition of the unequal treaties of the past hundred years, new equal treaties have been signed separately

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#35# Fry, "War in China", pp. 8, 10-12.

between China and Great Britain at Chungking and between China and the United States at Washington on the same ~~day~~ 11th day of January, 1943. Now that all the people of China are strongly united and mentally unified, willing to die for their country, their sacred cause and their National Leader, the revolutionary transitional age which covered more than thirty years since 1911 has been satisfactorily closed. Now that the National Leader Generalissimo Chiang Kai-Shek as the Supreme Command of the United Nations' Forces in China Theatre, including China, French Indo-China and Thailand, ~~are~~ have been sharing the heavy task with the leaders of the United States, Great Britain and Russia for the ideal of collective security and the common good of all the peoples of the world, the future of the human community seems optimistic. All these consequences, though significant, are naturally by no means strange.

But there is one thing which ~~is~~ may be really strange to many people of the world. That is the fact that, though having been suffering a long unjust oppression of hundred years from the Western States, China still holds as the basis of her present foreign policy her traditional doctrine of just peace. The present foreign policy of China, the foreign policy of her ruling party, the Nationalist Party (Kuo-Ming-Tang), is to follow what Dr. Sun Yat-Sen had instructed in his "Three Great Doctrines For Our Nation" (San Min Chu I). It had been further outlined by the Special Assembly of the Nationalist Party on April 1, 1938 and approved by the National People's Political Council in the same year. It comprehends five fundamental principles, as declared by the Special Assembly, effective both in the duration of ~~the~~ the War and after

the War: (1) "In accordance with the principles of national independence and autonomy, to unite all the other nations and states of the world who will embrace the same goal as ours for a common struggle for the world's peace and justice;" (2) "To do the best to preserve and strengthen such organizations and conventions as may maintain and guarantee international just peace"; (3) "To unite all the forces and powers for the suppression of the Japanese aggression and the establishment and guarantee of a permanent just peace of Eastern Asia"; (4) "To promote our friendship and spiritual harmony with our friendly nations and states"; (5) "To denounce and abolish all the puppet political institutions and all their internal and external acts which were, are, and may be, brought about within the territory of China by Japan".#36#

One of the basic ideas of the Chinese foreign policy is that the Western nationalism, as introduced to, and adopted by, China, must be refined and changed into a new term "Generous Nationalism" in order to be adapted to the Chinese traditional ideal of internationalism (or we may adopt another word "universalism", if it is not shared by other meaning.)---a world, in

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#36# "The Outline of the Programme For the War of Self-preservation and National Reconstruction" adopted in conformity with Dr. Sun Yat-Sen's Doctrines (San Min Chu I) by the Special Assembly of the Nationalist Party (Kuo Ming Tang) on April 1, 1938 and approved by National People's Political Council in the same year, comprises seven parts: (I) General Principles; (II) Foreign [redacted] Policy; (III) Military Plan; (IV) Political Affairs; (V) Economic Plan; (VI) Plan For People's Movement and organization; (VII) Plan For Education.

#37# In 1884, Dr. Sun Yat-Sen, being nineteen years old, began to lead the revolutionary movement, though a revolutionary and renaissance movement moved already long before that year.

which every individual, every nation and every state, if it continues to exist, on the basis of equality, live together peacefully and prosperously with a just order established by the common will of the peoples. Therefore, Dr. Sun Yat-Sen founded a plan of three steps for the prosecution of his First Doctrine, Nationalism--Generous Nationalism. The three steps are: First, to upset the corruptive criminal--Manchu Government; Second, to emancipate China from the fetters of the Western Powers--- national renaissance; Third, in accordance with the principles of national independence and autonomy, to unite all the other nations and states of the world who will embrace the same goal as ours for a common struggle for the world's permanent just peace. The work of the First Step was at least started in 1884#37/ and finished in 1911. The work of the Second Step was effectively started in 1926 and likely has been done on the eve of the 31st birthday of the Chinese Republic (October 9, 1942). The work of the Third Step seems now to have been in its beginning.

This foreign policy which reflects the Chinese traditional view of world peace and of non-belligerency was exposed by Dr. Sun Yat-Sen in his Doctrines very frankly and has been thoroughly explained and authoritatively defined by Professor S. R. Chow, the Chinese authority on International law and the supreme legal and diplomatic adviser to the National Government and the National Leader Generalissimo Chiang Kai-Shek.#38#

#38# Professor S. R. Chow, "The Chinese Foreign Policy", an authoritative explanation to Part II of the "Outline of the Progamme For the War of Self-preservation and National Reconstruction", published by the Ministry of Information, Headquarters of Nationalist Party, 1938.

Dr. Sun says in his "Three Great Doctrines for Our Nation" (San Min Chu I):

"There is another virtue possessed by the Chinese people, that is, to love peace. Among the states and nations of the modern world, only China devotes herself to the cause of peace, all others are fond of war, holding a cause of imperialism with a view to destroying and conquering other countries. Though in recent years, owing to the heavy sacrifices suffered in many terrible wars, some states have been working on a cause of the renunciation of war by means of summoning peace conferences, ...yet their motive of such efforts is passive, as a result of the fear of war, not a result of the nature of their peoples. The Chinese people have loved peace for thousands years; it is purely out of the nature of this nation....

"If China becomes strong and powerful, we must not only emancipate ourselves and restore our former position in the world, but also bear a great responsibility to the world. If China would not accept this responsibility, a powerful China would become rather a danger to the world. What responsibility is this ? In view of the fact that the way adopted by the Powers is to conquer other nations, if a powerful China wants to copy those imperialist powers' policy of conquest, China would also become the object of a world revolution. Thus we must first determine

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Chungking. Professor S. B. Chow, LL.B., M.A.(Edinburgh), D.D.(Paris), the esteemed and inspiring leader of the present generation of Chinese students of political and social sciences, born in 1889, also professor and dean of the faculties of law and political science in the distinguished leading universities, including National Peking University, National Central University and National Wu-han University, for more than twenty years, concurrently, the president of the School of Graduate Studies of National Wu-han University, director of the Department of Social Sciences of National Supreme Research Council,

a policy of 'helping the weak and the declining', the fulfilment of which must be considered a natural duty of our nation. We must help the weak nations and counterattack the oppressor-powers. If all our people are resolved to adopt this aim, China will deserve its powerful future; if not, China will be hopeless. In a word, now, when we are not yet powerful, we must hold the goal of 'helping the weak and the declining'; in the future, when we are powerful, we must remember our days of sufferings brought about by the political, economical and armed aggression and oppression of the imperialist powers; when other weak or small nations suffer the same, we must crush the imperialism for them. This is the proper way to achieve our traditional goal of 'ruling the State to perfection' and 'conducting the world into a state of just order'. If we want to enable us to rule our state to perfection and to conduct the world into a state of just order, we must first restore our

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president of National Institute of Political Sciences, Chairman of the Committee on Foreign Affairs of National People's Political Council, Editor-in-Chief of Social Sciences Quarterly of National Wuhan University, Delegate of China to the Pacific Relations Conferences, etc.. His works includes: "International Law"(1st ed. 1929, 4th ed. 1937,); "Modern Problems of International Law"(1931); "The New Progress In International Law" (1934); "Le Contrôle parlementaire de la politique étrangère, en Angleterre, en France et aux Etats-Unis" (1920, Pagot, Paris); "A History of Modern International Relations" (1st ed. 1927, 2nd ed. 1935); "Law" (1st ed. 1923, 5th ed. 1933); "Ten Lectures on the Conventional Treaties between China and Foreign Powers"(1st ed. 1928, 3rd ed. 1932); "Revolutionary Diplomacy" (1926); "A History of Modern European Diplomacy"(1st ed. 1927, 2nd ed. 1932); "A Political History of Modern Europe" (1935); "Pacific after the War" (Foreign Affairs, October 1942); "A Permanent Order For the Pacific" (an essay submitted before the Pacific Relations Conference of 1942 at Monte Tremblant); articles in Social Sciences Quarterly, National Wuhan University, etc.. His treatises on international law, modern European history and political science have been widely used in colleges and universities for the past twenty years.

own nationalism and our nation's former position. We must unite the world on the basis of our traditional virtue of loving just peace in order to realize the ideal of a peaceful world with just order. This is the great responsibility falling upon the common shoulder of our four hundred million people....This is the real spirit of our Chinese nation."#39

Professor S. R. Chow, in his "The Chinese Foreign Policy", says:

"The States of the world have separately a foreign policy of their own...The foreign policy of our Chinese Republic is based upon the spirit of Generous Nationalism,.....with an ideal of international peace,....as instructed by our Leader (Dr. Sun Yat-Sen)....Therefore,.....when we are not attacked, we will not attack. Those nations and states who sympathize with us and treat us sincerely and friendly, will be rewarded by us with the same sincereness and friendliness. Those nations and states who will fight for peace and justice, will be considered by us our comrades;and we will unite with them for the maintenance of world peace. We only aim at the preservation of China's independence and autonomy and the world peace. All the States who do not stand in the way of our independence and autonomy, are assured of our most sincere friendship....

"Our standpoint is that we must preserve our independence and autonomy first and then fight for world peace and justice. Independence and autonomy certainly form the basis of the foreign policies of all nations; world peace and justice

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#39# "San Min Chu I", Part I:"Nationalism", Lecture VI. (original ed. in Chinese; French and English ed./Lecard.) also

certainly form the ultimate ideal of international politics. These two ideas are by no means incompatible, but in support of each other. Only those states who are independent and autonomous are capable of serving the cause of world peace and justice; only a peaceful and just world is capable of guaranteeing permanently and effectively the independence and autonomy of all states and nations....as long as the fundamental change of human nature is not effected, the boundary between nations and between states always survives. But on the other hand, the co-existence of nations and states....living together on the basis of equality, mutual aid and respect and cooperation,...pursuing their common good and promoting a relation of proper solidarity, is also the way to the progress of human civilization and peace.....

"Thus, the means by which the ideal of world peace and justice is to be realized, is to unite other nations and states for a common struggle.....Not only we do not invade others, but also we prepare for helping the weak nations that is considered our duty. We love peace; we want other states and nations also to enjoy peace. We search for justice; we want others also to obtain justice....For the realization of this ideal, therefore, we would support and strengthen all international organizations and conventions that have served the cause of just peace. We consider them the bases of the institution of collective security....Collective security is the fundamental condition to international peace; only an international institution of collective security can bring about the real security of nations and guarantee the permanent peace of the international community.....The ideal of collective security is never repulsive;...it is in accordance with our Chinese traditional ideal of internationalism....All civilized peoples should not

give up it, if they remember their sufferings in the past wars and are convinced of their common interest which can be enjoyed by all under the institution of world peace and justice." #40#

As a conclusion, the Special Assembly of the Nationalist Party, in its Manifesto of 1938, solemnly declares:

#40# Professor S. R. Chow, "The Chinese Foreign Policy", pp. 25-33. seealso : Professor Chow's article "China and Collective Security" in World Politics (a semi-monthly published by the League of Nations Association of China), vol. 3, No. 1, 1938, pp. 1-10. This article was translated into English by "China Forum"(China), published on may 28, 1938, in which Professor Chow says:
"In modern international relations, the making of alliances, balance of power, and armament race have become a universal phenomenon. By these means the different nations seek to protect their own existence, independence, and power in the world....But this is not real and lasting peace. It is an armed peace that is pregnant with dangerous possibilities....The existence and independence of all countries as well as international peace must be built on the foundations of collective security.....From the positive point of view, the new order of collective security includes at least four fundamental concepts:
(1) Disputes between nations shall be submitted to arbitration or to a court of international justice or settled through other peaceful means;
(2) Nations shall mutually respect each other's political sovereignty and territorial integrity and refrain from all acts of aggression;
(3) There shall be an international organization with authority to settle international disputes and check aggression; and
(4) Collective and individual assistance shall be given to relieve the losses and damages sustained by the victim nation in case of an aggression as well as the losses borne by the nations that participate in curbing the aggressor-nation...."
see also Professor Chow, "The New Progress in International Law", chapter VIII,"The Legal Restriction on the Right of War", pp. 250-284.

#41# Chamberlain, in Foreign Affairs, July 1931. See also: H. A. L. Fisher, "La Politique Etrangère de la Grande Brêtagne", conference fait à la Fondation Universitaire de Bruxelles, 1929.

#42# Cambon, in Foreign Affairs, Jan. 1930.

#43# Kuhlma, in Foreign Affairs, Jan. 1932.

#44# Radek, in Foreign Affairs, Jan. 1934.

#45# Stimson, in Foreign Affairs, April 1933.

#46# Ishii, in Foreign Affairs, Jan. 1937.

"China, as self-convinced of her weakness and poorness, has been ever concentrating her efforts in national reconstruction, with a view to achieving her liberty and equality among nations. During this unprecedented national calamity, we have resolved to choose the same way of hard struggle by our own strength to relieve us from the brink of ruin. We will not at all depend our future upon, or even expect, any fancy luck. We will repulse any plan which might cause us to fall into a habit of dependence. But we have to remind the Great Powers of the world that world peace is indivisible. The interest of part is ipso facto the interest of all. Therefore, a nation which devotes itself to the common security of nations, is ipso facto to devote to its own security. All nations must cooperate in a united effort for the sake of guaranteeing peace and punishing aggressor. This is the only way to repress the already occurred War in the eastern Asia. This is also the only way to relieve the world from the present grave crisis. If all other nations share with this viewpoint and go into action immediately and accordingly, no doubt the result will be appreciated by both China and world peace."

This is the permanent base of the Chinese foreign policy and her fundamental idea respecting non-belligerency. It is certainly an interesting comparison that, while the Powers are devoting themselves to a self-interested foreign policy as expressed by Austen Chamberlain 's "The Permanent Bases of British Foreign Policy",#41# Jules Cambon's "The Permanent Bases of French Foreign Policy",#42# Richard Von Kuhlma's"The Permanent Basis of German Foreign Policy",#43# Karl Radek's "The Bases of Soviet Foreign Policy,#44# Stimson's "The Bases of American Foreign Policy",#45#

Kikujiro Ishii's "The Permanent Bases of Japanese Foreign Policy",#46# etc., the weak China, nevertheless, even though having been suffering an unjust oppression of hundred years from the western Powers, frankly holds a world policy of just peace! It is precisely that the modern Chinese people have derived their thought more from their thousands years old traditional belief in international relations than from the actual outside world. The peace-loving nature of the Chinese nation is really irresistable. One can not help reflecting that the powerful influence played by the Chuen Chu Chan Kuo Ages of the ancient China is immence. Therefore, China is no doubt the first internationalist state or nation of the world. She is also the first state announcing a foreign policy of just peace and the only state in the civilized world, embracing a thousands years old tradition of internationalism.

It is inconvenient here to introduce the theories in this field held by the Chinese professors and theorists since the ancient ages. However, we should not miss the distinguished international practices, in particular of the status of non-belligerency, achieved during the Chuen Chu Chan Kuo Ages,#47# before the discussion of that of the West ancient, though in a strict sense that period the institution of is at most equivalent to the German Confederation before 1866 or the British Commonwealth after 1931.

#47# This seems to be the only period in the Chinese history, or even the Eastern civilized world prior to 1840, in which there occurred "international relations" among so many civilized "states", despite that all of these states belonged to the same Chinese people of Chow Dynasty.

Chapter II:

THE STATUS OF NON-BELLIGERENCY IN THE CHUEN CHU CHAN KUO AGES OF ANCIENT CHINA

Chapter II:

THE STATUS OF NON-BELLIGERENCY IN THE CHUEN CHU CHAN KUO AGES OF ANCIENT CHINA:

In the foregoing pages we have been given a brief description of the evolution of the Chinese conception of non-belligerency through the past five thousand years since 3,000 B.C., as expressed in their traditional idea of justice and their foreign policy. Now we may make a more intensive study in the most important part of China's history, where we may find a distinguished civilization in this field of her own. The said part is the Chuen Chu Chan Kuo Ages (770-221 B.C.), the later part of Chow Dynasty (1122-249 B.C.). In that period powerful feudal states nominally under the weak Emperor of Chow were, to a certain extent, like independent states, though they were of the same cultural background, the same highly civilized Chinese nation and the same speaking and writing language. It was they who formed a civilization of international relations, including the laws of war and of non-belligerency.

Since this period occupied over five hundred years, a period which seems to be even longer than the period of the development of the present international law, it had divided itself into two parts: one earlier is called "ChuenChu Period", occupying about four hundred years (770-374 B.C.); in this period, justice is more powerful in international relations. The later is called "ChanKuo Period" (375-221 B.C.), occupying about one hundred and fifty years; in this period, justice is less powerful, as wars of conquest occurred, a result of the desire of the Chinese people

for re-unification, which was done by Prince of Chin (First Emperor of Chin Dynasty) in 221 B.C..

In 224 B.C., the 22nd year of Prince Cheng of Chin, three years before the completion of the re-unification of China, Prince Cheng of Chin asked the old Marshal Wang Chieh to command an army to attack Prince Fu-tso of Tsoo. The old Marshal, in his first estimation, requested for an army of 400,000 men, but in a later estimation, changed into 600,000 men. Prince Cheng asked for explanation with wonder. The old Marshal Wong excellently answered:

"In the ancient age, according to the customary law, the operation of war must begin to be conducted after all the belligerents have established their own fronts; the establishment of the fronts must be worked on after all the belligerents have agreed upon a date for such preparedness; the conduct of war must be subject to the principle of necessity for the accomplishment of military aims, without inflicting heavy casualties or even grave wound on enemy individual. The purpose of war should be limited to the punishment of a criminal-state or an aggressor-state, without any intention to conquer or aggrandize territory. Even the belligerents of both sides should not forget politeness and tolerance toward each other. Therefore, the Emperors and Kings of the ancient times would not establish a big army. Even the Duke Wan of Chi (circa 690 B.C.) had only a first line army of 30,000 men (military conscription system adopted by China already in her ancient times), of which only part was put in use. But in modern times (before 224 B.C.), the Great Powers have adopted war as an instrument of their own selfish policy. They attempt to use their mighty power to oppress the

weak states. They attempt to use their big armies to crush the small armies of their enemies. They would kill their enemies whomsoever, should they have met. They would attack their enemies' territories whichsoever, should they have reached. The casualties often reach the amount of hundred thousands. The siege to a city often lasts several years. Thus the system of conscription has been widely induced; farmers have to carry guns; boys and lads have to be enlisted. Under this tendency, a few countries naturally can no longer maintain a small army. Especially the State of Tsoo is situated on a territory vast and rich in the south-east; no sooner an order is proclaimed than an army of one million can be built up. I am afraid that the amount of 600,000, which I asked for, might not be sufficient to meet that enemy. How could a still smaller amount stand ?" The Prince Ching highly admired the old Marshal of his excellent view and judgement and entirely agreed to his plan. #48#

This statement of the learned old Marshal Wong Chieh can be regarded as a review of the general tendency in the Chuen Chu Chan Kuo Ages, as the subject in question is concerned.

Under this tendency, the ideas, cases and practices as the status of non-belligerency is concerned during the Ages, may be summed up as follows:

(1) In the 11th year of Emperor Yiu of Chow (771B.C.), the Chief of the barbarian state Chiu-yong, when lended troops to Marquis Shen during the latter's war with Emperor Yiu, issued the

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#48# "Tong Chow Li Kuo Chi" (A History of Eastern Chow Empire including Chuen Chu Chan Kuo Ages), edited by Professor T. M. Tsu, (Shanghai, China), Vol. IV, pp. 174-175.

following declaration: "Whereas the Emperor of China has been ruling not in accordance with the people's desire, and whereas the Marquis Shen has asked us for assistance, I hereby solemnly declare that I would devote myself to the suppression and punishment of the evil-Emperor of Chow and to help the Prince of Heir Apparent to reign.#49#

(2) In the 1st year of Emperor Ping of Chow (circa 770 B.C.), Marquis Wan of Wai despatched an army to assist Lord Kung Sung Wak who was at war with Count Tsang of Cheng, declaring that "Count Tsang of Cheng is anti-justice; I resolve to help Lord Kung Sung." But after the issue between the original belligerents had been explained to Marquis Wan by Count Tsang, Marquis Wan immediately recalled his troops, declaring that "as the injustice is on the part of Lord Kung Sung Wak, I should not help the unjust side"..50#

(3) In the 1st year of Emperor Wan of Chow (719 B.C.), the Duchy of Sung and the Marquisates of Loo, Chen and Tsai assisted the Marquisate of Wai with troops in the latter's war on the Earldom of Cheng. The motives of the four countries in giving such military assistance was not identical. Sung had private issue with Cheng; Loo had been rewarded in advance with a precious gift from Wai; Chen and Tsai were smaller countries and had to follow Wai. The Allied troops were defeated by Cheng.#51#

(4) In the 3rd year of Emperor Wan of Chow (719 B.C.),

#49# "Li Kuo Chi", Preface by T. M. Tsu, Vol. I, pp. 12, 17. From Note 49 to Note 130, consult also such Chinese Classic books on history, law, politics, philosophy, science, autograph, etc., as "Kuan-tze", "Yien-tze-Chuen-Chu", "Han-tze",

The Earldom of Cheng and the Duchy of Sung were at war; Cheng charged Sung with her impoliteness and unlawfulness against Emperor Wan of Chow. The Marquisate of Chi, while having previous treaties of alliance with both Cheng and Sung, went to assist Cheng. The Marquisate of Loo, after being assured by Cheng of a territorial reward, gave Cheng military aid. Sung also gained military assistance from the Marquisates of Tsai and Wai by precious gifts, though Wai had a previous treaty of alliance with Sung.#52#

(5) In the 3rd year of Emperor Wan of Chow (717 B.C.), the Marquisates of Tsai and Wai were at war with the Earldom of Cheng and asked the non-belligerent state Tai for the passage of troops. Tai refused and resolved to maintain her neutrality with force. #53#

(6) In the 3rd year of Emperor Wan of Chow (717 B.C.), the neutral state Tai was attacked by Tsai and Wai on account of the former's refusal to the passage of troops. The belligerent Cheng went to relieve Tai; but after Tsai and Wai's troops were driven off, Tai was occupied and annexed by Cheng. #54#

(7) In the 8th year of Emperor Wan of Chow (712 B.C.), Cheng and Hsu were at war. Chi and Loo gave Cheng military assistance in compliance with their previous treaty of alliance.#55#

\# "Tso-Chuan", "Kuo-Yu", "Kuo-Chek", "Lu's Chuen-Chu", "Kung-tze-Chia-Yu", "Shuey-Yuan", "Ley-Niu-Chuan", "Wu-Yuey-Chuen-Chu", "Shi-Gee", "Ley-Chien-Tsuan", etc..

#52# Li Kuo Chi, Vol. I, pp. 32-35.
#53# Li Kuo Chi, Vol. I, pp. 34-35.
#54# Li Kuo Chi, Vol. I, pp. 34-35.
#55# Li Kuo Chi, Vol. I, pp. 36-38.

(8) In the 8th year of Emperor Wan of Chow (712 B.C.), Chi and Tsen were at war; Cheng afforded Chi military assistance in compliance with their previous treaty of alliance. #56#

(9) In the 10th year of Emperor Wan of Chow (710 B.C.), Chi and Po-yoong were at war. Chi asked Loo, Wai and Cheng for assistance. Only Cheng gave military assistance in compliance with their previous treaty of alliance. The others maintained their neutral status. #57#

(10) In the 8th year of Emperor Wan of Chow (712 B.C.), Emperor Wan of Chow and the Earldom of Cheng were at war. Emperor Wan asked Chen, Tsai and Wai for military aid. Tsai and Wai sent troops for assistance. Chen, being a friend of Cheng and at the same time morally unable to disobey Emperor Wan, maintained a substantial neutrality. Emperor Wan was defeated. #58#

(11) In the 20th year of Emperor Wan of Chow (700 B.C.), the succession by the new Count of Cheng was effected by the assistance of Sung. Sung asked for a reward so highly precious as to violate the territorial integrity and the independent sovereignty of Cheng. The failure in seeking a compromise led to a war. Loo blamed Sung 's unjust demand and went to assist Cheng. #59#

(12) In the 22nd year of Emperor Wan of Chow (698 B.C.), Chi and Gee were at war. The Marquis of Loo, being a relative of

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#56# Li Kuo Chi, Vol. I, pp. 36-38.
#57# Li Kuo Chi, Vol. I, pp. 42-43.
#58# Li Kuo Chi, Vol. I, pp. 45-48.
#59# Li Kuo Chi, Vol. I, pp. 53-56.

the Chief of Gee, gave Gee military assistance. Cheng, being a friend of Loo, went to help Gee too. Chi asked Wai and Yen for military assistance. Wai, being a weaker state, dared not disobey Chi and therefore gave up her neutrality. Sung had a treaty of alliance with Loo and Yen, but, wishing to gain the friendship from Chi, went to assist Chi against Loo, Gee and Cheng. Yen was an enemy of Chi and her security was guaranteed by a treaty of alliance concluded with Loo and Sung. But Yen also wished to gain the friendship from Chi and, therefore, resolved to join Chi disregarding her treaty of alliance with Loo. Thus, the Marquis of Loo reproved the Count of Yen, when he met him at a battle front, by saying that: "The obligation of mutual assistance between the three parties, Sung, Loo and Yen, is precisely embodied in the Treaty of Alliance at the City of Koo Chiu. Sung's disregard of her treaty obligations has given rise to my present act of armed punishment. Now that Your Excellency want to follow what Sung did and try to gaina temporary friendship from Chi, I wonder if Your Excellency should have given up a desire for your permanent security ! " The Count of Yen felt abashed and adopted an attitude of neutrality by withdrawing his troops. The war was lost by Chi. #60#

(13) On the 1st of March, the 1st year of Emperor Li of Chow (681 B.C.), Marquis Wan of Chi summoned an "international Conference" at the City of Po-Shing. Upon the proposal of his prime minister Kwan Chung, Marquis Wan declared that this conference should be a "conference of dress", without troops accompanying the

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#60# Li Kuo Chi, Vol. I, pp. 54-57.

delegates,——a sign of mutual trust. This proposal was unanimously accepted. There were five countries attending the Conference. An"international convention" as concluded on the same day (March 1, 681 B.C.), the text of which reads:

"On this First Day of March, the First Year of His Imperial Majesty Emperor Li of Chow, Marquis Shiao-Pei of Chi, Duke Yoo-Shu of Sung, Marquis Shien-Woo of Tsai and Marquis Ke of Tsu, in compliance with the instructions of His Imperial Majesty the Holy Emperor (of Chow), meet at the City of Po-Shing, solemnly agreed to and declare that the High Contracting Parties undertake: (1) to maintain the world order; (2) to help any country which is weak or is in a danger of decline; (3) to afford effective assistance to any state as against the aggression from any powerful aggressor; and (4) to impose an immediate collective military sanction upon any party to this Covenant whomsoever, should the party violate this Covenant." #61#

This is called by some historians "the first League of Nations" of the world, the first international institution of collective security. After two thousand and five hundred years, the present Covenant of the League of Nations of 1919 came to being.

(14) In the 3rd year of Emperor Li of Chow (679 B.C.), Marquis Wan of Chi summoned the Second Assembly of the "states" at the City of Yoo. There were eight countries, Chi, Sung, Loo, Chen, Wai, Cheng, Hsu and Chow, represented on. Marquis Wan of Chi was elected the President of "the League of Nations". #62#

#61# Li Kuo Chi, Vol. I, pp. 89-91.
#62# Li Kuo Chi, Vol. I, p. 97.

(15) In the 10th year of Emperor Hwai of Chow (667 B.C.), Marquis Wan of Chi summoned the Third Assembly of the "League of Nations", at the City of Yoo. There were five countries, Chi, Sung, Loo, Chen and Cheng, represented on. #63#

(16) In the 11th year of Emperor Hwai of Chow (666 B.C.), Marquis Wan of Chi imposed a measure of military sanction upon the Marquis of Wai, because Wai had waged an aggressive war on Emperor Hwai of Chow in the 2nd year of Emperor Hwai(680 B.C.). Wai accepted a proper punishment. #64#

(17) In the 15th year of Emperor Hwai of Chow (662 B.C.), the Marquisate of Yen was invaded by Po-Yoong. Chi afforded Yen immediate military assistance and defeated the aggressor Po-Yoong. #65#

(18) In the 12th year of Emperor Hwai of Chow (665 B.C.), the Viscounty of Tsoo invaded Cheng. Tsoo was not a member-State of the "League", while Cheng was a member-State thereof. Chi led a military sanction on the non-member State Tsoo. There were eight countries joining the act of military sanction: Chi, Sung, Loo, Chen, Wai, Cheng, Tsao and Hsu. Tsoo was defeated by the armies of the eight sanctioning states and accepted a proper punishment. After the war of sanction, Chi summoned the fourth Assembly of the "League" at the City of Tsao-Lin. There were nine countries represented on: Chi, Tsoo, Sung, Loo, Chen, Wai, Cheng, Tsao and Hsu. A Declaration expressing their loyalty to world peace and their covenant obligations was proclaimed. #66# This precedent implies that the "League

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#63# Li Kuo Chi, Vol. I, p. 100.
#64# Li Kuo Chi, Vol. I, pp. 98-101.
#65# Li Kuo Chi, Vol. I, pp. 106-114.
#66# Li Kuo Chi, Vol. I, pp. 125-128.

of Nations" was not only used for the preservation of the security of member states as against external aggression from another member states, but also for the preservation of the security of all member states as against external aggression from non-member states. This principle seems, to a certain extent, complying with the spirit of the Articles 11 and 17 of the Covenant of the League of Nations of 1919 A.D.. The effectiveness and universality of the act of collective military sanction led by Marquis Wan of Chi were also admirable.

(19) In the 14th year of Emperor Hwai of Chow (663 B.C.) Marquis Wan of Chi summoned the Fifth Assembly of the "League of Nations" at Shou-Chee. Eight countries were represented thereon: Chi, Sung, Loo, Chen, Wai, Cheng, Hsu and Tsao. A Resolution expressing their loyalty to world peace and order was adopted. Unfortunately Cheng withdrew from her seat before the conclusion of the Assembly. #67#

(20) In the 15th year of Emperor Hwai of Chow(662 B.C.), Marquis Wan of Chi led an army to assist Count Tsang of Yen to counterattack the barbarian aggressor San-Yoong upon Yen's appeal. The Allied forces conquered San-Yoong and occupied a vast territory. Marquis Wan of Chi gave the conquered territory to Yen and refused to accept any reward from Yen for the military assistance. Count of Yen (Tsang) was in high appreciation of Chi's kindness and her virtue of self-sacrifice for other's good. When Marquis Wan of Chi, leading his strong army, left Yen for home, Count Tsang of Yen accompanied with him with a view to seeing him off at the boundary

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#67# Li Kuo Chi, Vol. I, pp. 129-130.

(This was an international custom of courtesy in China's tradition.). They went on and talked so intimately that they could not fell being outside the border of Yen and fifteen miles within the border of Chi. Immediately Marquis Wan of Chi stopped Count Tsang of Yen, expressing gratitude for his sincere politeness and saying, "According to the customary law of courtesy since the ancient times, a chief of feudal state shall not be allowed to see his guest, who is the chief of another feudal state, off at a place outside his own country. Now/that Your Excellency have been accompanying with me so far, it is really a special kindness of you and an impoliteness of mine. Therefore, I cordially present you this fifteen miles portion of my territory. Kindly accept it and excuse me for my impoliteness. Good-bye." Count Yen failed in refusing to accept that piece of territory and, therefore, built a city on that territory named "Yen Liu" (City of Thanksgiving) in memory of Marquis Wan of Chi's kindness and his excellent and admirable leadership in the community of "states". All the other states, when having heard that Marquis Wan of Chi saved Yen from aggression, but did not accept territorial or any other profitable reward, highly appreciated of his virtue and willingly followed him to establish and preserve the world's just order.#68#

(21) In the 7th year of Emperor Hwai of Chow (670B.C.), Marquis Min of Loo was assassinated in a civil war. Marquis Wan of Chi did not want to profit by this opportunity to conquer Loo, but helped the legitimate Heir Apparent to succeed to the throne. #69#

#68# Li Kuo Chi, Vol. I, pp. 107-114.
#69# Li Kuo Chi, Vol. I, pp. 116-118.

In the 17th year of Emperor Hwai of Chow (660 B.C.), the barbarian Pei-Ti invaded the Marquisate of Wai, killing Marquis Yi of Wai in war and robbing off everything before escaping. Marquis Wan of Chi did not want to profit by this opportunity to conquer Wai, but, instead, helped the legitimate Heir Apparent to succeed to the throne. #70#

In the 19th year of Emperor Hwai of Chow (658 B.C.), the barbarian Pei-Ti invaded the Marquisate of Shin. Though both the belligerent sides were non-member states, Marquis Wan of Chi summoned the Sixth Assembly of the "League" at the City of Ni-Po and, upon the appeal of Shin, imposed a collective military sanction on Pei-Ti. An allied force was composed of the armies from five countries: Chi, Sung, Loo, Tsao and Tsu. They drove off the aggressor and helped Marquis Hoo-Yan of Shin to rebuild his capital. The achievements of Marquis Wan of Chi in the above stated dealings were widely appreciated and honoured. That is why Marquis Wan of Chi is regarded as the greatest leader of the "international community" in the Chuen Chu Chan Kuo Ages. #71#

(22) In the 21st year of Emperor Hwai of Chow (656 B.C.), Marquis Wan of Chi summoned the Seventh Assembly of the "League" and led a collective military sanction, with the armies of seven member states, Chi Sung, Loo, Chen, Wai, Hsu and Tsao, on the covenant-breaking state Cheng; because Cheng withdrew from the Assembly held at the city of Shou-Chee, in the 14th year of Emperor Hwai of Chow. Cheng accepted a proper punishment in the next year. #72#

#70# Li Kuo Chi, Vol. I, pp. 120-124.
#71# Li Kuo Chi, Vol. I, pp. 123-124.
#72# Li Kuo Chi, Vol. I, pp. 131-132

(23) In the 22nd year of Emperor Hwai of Chow (655 B.C.), Marquis Wan of Chi summoned the Eighth Assembly of the "League" at the City of Ning-Mo. Eight countries were represented thereon: Chi, Sung, Loo, Chen Wai, Hsu Tsao and Cheng. #73#

(24) In the 25th year of Emperor Hwai of Chow (652 B.C.), Marquis Wan of Chi summoned the Nineth Assembly of the "League" at the City of Tiao. Eight countries were represented thereon: Chi, Sung, Loo, Wai, Cheng, Chen, Tsao and Hsu. This Assembly issued a collective recognition to the succession by the new Emperor Shang of Chow. #74#

(25) In the 1st year of Emperor Shang of Chow (651B.C.), Marquis Wan of Chi summoned the Tenth Assembly of the "League" at Kwei-Chiu. Nine countries were represented thereon: Chi, Sung, Loo, Wai, Cheng, Chen, Tsao, Hsu and a new member state, the Marquisate of Gine. A sacred Declaration expressing the solidity of their mutual friendship and loyalty to peace and order was proclaimed and signed by all the members of the Assembly. As a traditional custom, the parties to a treaty, when signing, must take an oath with blood in order to express their faithfulness. But this time, when signing the Declaration, Marquis Wan of Chi suggested the omission and abolition of the act of taking oath with blood so as to make known his loyalty to justice and his trust in other member states. The other member states answered with warm support. #75#

(26) After the 1st year of Emperor Shang of Chow, the Marquisate of Gine, being attacked repeatedly by the Duchy of Qua,

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#73# Li Kuo Chi, Vol. I, pp. 131-132.
#74# Li Kuo Chi, Vol. I, pp. 132-133.
#75# Li Kuo Chi. Vol. I, pp. 133.

began to plan for permanent peace and security. Once, when Qua and Gine were at war, Gine asked the non-belligerent Chiu-Yoong for military assistance. Chiu-Yoong accepted Gine's precious gift and promised. Gine also gave the non-belligerent Duchy of Yoo another precious gift and asked for a permission for the passage of Gine's troops in order to attack Chiu-Yoong from another side. Duke of Yoo promised. After having conquered Qua, Gine suddenly took the opportunity to have conquered the non-belligerent Yoo. #76#

(27) In the [redacted] years under the reign of Emperor Shang of Chow (651-618 B.C.), Duke Moo of Chin conquered all the known countries west of China. In thosewars, the countries situated east of Chin were maintaining a status of neutrality.[redacted] #77#

(28) In the 3rd year of Emperor Shang of Chow (649B.C.), when Chiu-Yoong invaded Emperor of Chow, Chin, Gine and Chin despatched armies to assist Emperor of Chow to win the war.#78#

(29) In the 3rd year of Emperor Shang of Chow, Marquis Wan of Chi summoned the Eleventh Assembly of the "League" and, upon an appeal from a non-member state, "Gee", imposed a collective military sanction on another non-member state, Wayi, who was waging an aggressive war on Gee. The armies of eight countries, Chi, Sung, Loo, Chen, Wai, Cheng, Hsu and Tsao, were participating this war of sanction.#79# The result certainly was satisfactory. This is an example of the application of the covenanty obligations of the "League" to aggressive wars waged between two [redacted] non-member states, in compliance with the cause of the world's just peace.

(30) In the 10th year of Emperor Chang of Chow (642 B. C.), Duke Shang of Sung failed to become a new leader of the"international"community, on account of his poor virtue; but he had summoned an "international" conference to accord recognition to the new Marquis Chao of Chi, who succeeded Marquis Wan. Four countries were represented thereon: Sung, Wai, Tsao and Tsu.#80#

(31) In the 13th year of Emperor Shang of Chow (639 B.C.), Viscount Sen of Tsoo summoned an "international " conference at Poo-Doo, with a view to re-establishing an institution of world order. Eight countries were represented thereon: Tsoo, Loo, Chen, Tsai, Cheng, Hsu, Tsao and Sung. Viscount Sen of Tsoo was elected President of the Assembly. #81#

(32) In the 14th year of Emperor Shang of Chow (638 B.C.), Cheng was invaded by Sung and obtained military assistance from Tsoo. Sung was defeated.#82#

(33) In the years under the reign of Emperor Shang of Chow (651-617 B.C.), Cheng invaded the Earldom of Wa. Wai and the Chief of the"state" Tze afforded Wa military assistance and defeated the aggressor Cheng. #83#

(34) In the 19th year of Emperor Shang of Chow (633 B.C.), Gine declared war on Tsao and asked the neutral Wai to

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#76# Li Kuo Chi, Vol. I, pp. 136-138.
#77# Li Kuo Chi, Vol. I, p. 145.
#78# Li Kuo Chi, Vol. II, p. 10.
#79# Li Kuo Chi, Vol. II, p. 11.
#80# Li Kuo Chi, Vol. II, pp. 31-32.
#82# Li Kuo Chi, Vol. II, p. 36.
#82# Li Kuo Chi, Vol.II, pp. 37-38.
#83# Li Kuo Chi, Vol. II, pp. 57-58

allow the passage of Gine's troops. Wai rejected this demand. Gine attacked Wai first. #84#

(35) In May of the 20th year of Emperor Shang of Chow (632 B.C.), Marquis Ven of Gine summoned a Congress of "states" to form a new "League of Nations" (First Assembly) at the City of Chien-Tu. Ten countries were represented thereon: Gine, Sung, Chi, Cheng, Loo, Chen, Tsai, Tsu, Geu and Wai. Marquis Ven of Gine was elected President of the"League". They signed a covenant which reads:

"The High Contracting Parties solemnly undertake to maintain the world peace and order and to preserve the territorial integrity and independent sovereignty of all the Members of the League. In case any Member-state should violate this Covenant, it shall be subject to the severest sanction." #85#

(36) In October of the 20th year of Emperor Shang of Chow (632 B.C.), Marquis Ven of Gine summoned the Second Assembly of the "League" at the City of Wen. Ten countries were represented thereon: Gine, Chi, Sung, Loo, Tsai, Chin, Cheng, Chen, Tsu and Geu. This Assembly imposed a military sanction on the criminal Count Kong of Tsao and instituted a special court of law for punishing the criminal Marquis Tseng of Wai through judicial procedure. Both the chiefs of Tsao and Wai were interned for a long time in addition to certain other measures of punishment. This Assembly also imposed a collective

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#84# Li Kuo Chi, Vol. II, pp. 67-83.
#85# Li Kuo Chi, Vol. II, pp. 83-85.

military sanction on the covenant-Breaking State Hsu. Nine countries despatched troops to participate in this operation: Gine, Chi, Sung, Loo, Tsai, Chen, Chin, Gsu and Tsu. Hsu accepted proper punishment. Cheng unfaithfully withdrew from the collective action of military sanction. #86#

(37) In the 22nd year of Emperor Shang of Chow (630 B.C.), because of Cheng's withdrawal from the collective military sanction on Hsu two years ago (632 B.C.), a military sanction was imposed by the "League" upon Cheng. Cheng accepted proper punishment. In the meantime, the Viscounty of Tsoo joined the "League of Nations". #87#

(38) In the 25th year of Emperor Shang of Chow (627 B.C.), Marquis Shang of Gine imposed a military sanction on the Duchy of Chin and defeated Chin in a fierce battle at Monte Shiao-Shan. Because Chin, being a member-state of the "League", assisted Cheng to resist the military sanction imposed upon by Gine on behalf of the League three years ago (630 B.C.). #88#

(39) In the 25th year of Emperor Shang of Chow (627 B.C.), Marquis Shang of Gine imposed a military sanction upon Hsu and Tsai on account of the latter's violation of the "League" Covenant. #89#

(40) In the 2nd year of Emperor Ching of Chow (617 B.C.), Cheng and Chen were invaded by Tsoo. Gine summoned a "League's army" composed of the troops from Gine, Sung, Loo, Wai and Hsu for assistance against the aggressor Tsoo. But too late. #90#

#86# Li Kuo Chi, Vol. II, pp. 88-92, 84, 70-72.
#87# Li Kuo Chi, Vol. II, pp. 95-98.
#88# Li Kuo Chi, Vol. II, pp. 99-106.
#89# Li Kuo Chi, Vol. II, pp. 110-111.
#90# Li Kuo Chi, Vol. II, pp. 124.

(41) In the 1st year of Emperor Kwon of Chow (612 B.C.), Gine summoned the Third Assembly of the "League" at the City of Sin-Tsen. Six countries were represented thereon: Gine, Sung, Loo, Chen, Wai and Cheng. After imposed upon by Gine a military sanction, Tsai was present too. #91#

(42) In the 1st year of Emperor Kwon of Chow (612 B.C.), Loo was attacked by Chi after a dispute and made an appeal to the "League". Gine summoned the Fourth Assembly of the "League" at the City of Hu-Ti. Eight countries were represented thereon: Gine, Sung, Tsai, Wai, Chen, Cheng, Tsao and Hsu. Chi accepted proper punishment after being imposed upon a collective military sanction. #92#

(43) In the 14th year of Emperor Chien of Chow (572 B.C.), Marquis Dow of Gine summoned the Fifth Assembly of the "League" and imposed a collective military sanction on the aggressor-states Tsoo, who was invading Sung, and Cheng, who was a Covenant-breaking state. An army of 200,000 men of the "League" was composed of the troops from eight countries: Gine, Sung, Loo, Wai, Tsao, Geu, Tsu and Teng, and defeated Tsoo and Cheng. #93#

(44) In the 1st year of Emperor Ling of Chow (571 B.C.), Marquis Dow of Gine summoned the Sixth Assembly of the "League" at the City of Chi-Ti and imposed a collective military sanction on the Covenant-breaking State Cheng. Nine countries participated in this operation: Gine, Sung, Loo, Wai, Tsao, Geu, Tsu, Teng and Wu. ###

#91# Li Kuo Chi, Vol. II, 127-128.
#92# Li Kuo Chi, Vol. II, pp. 128-129.
#93# Li Kuo Chi, Vol. III, pp. 31-32.

Cheng and her ally, Tsoo, were beated and forced to terms.#94#

(45) In the 1st year of Emperor Ling of Chow(571 B.C.), Marquis Dow of Cine summoned the Seventh Assembly of the "League" at the City of Chi-Tsek. #95#

(46) In the 1st year of Emperor Ling of Chow (571 B.C.), Marquis Dow of Cine summoned the Eighth Assembly of the "League" at the City of Chih. #96#

(47) After the 1st year of Emperor Ling of Chow (after 571 B.C.), the barbarian Po-Yoong was permitted to join the "League". Marquis Dow of Cine, on behalf of the League, signed a Protocmol with Po-Yoong, which reads:

"The State Po-Yoong is hereby recognized to enter into the "League of Nations" within the Empire of China and/solemnly undertakes to observe the Covenant obligations, to defend the northern border of the Empire of China, and to preserve the territorial integrity of all the Member-states of the League. In case any party should violate the Covenant, it shall be subject to the severest sanction." #97#

(48) In the 9th year of Emperor Ling of Chow (563 B.C.) Marquis Dow of Cine led a collective military sanction on Tsoo who was attacking Sung. Five countries participated in the operation of this sanction: Cine, Sung, Loo, Tsao and Tsu. Tsoo was defeated. #98#

#94# Li Kuo Chi, Vol. III, p. 33.
#95# Li Kuo Chi, Vol. III, pp. 34-37.
#96# Li Kuo Chi, Vol. III, pp. 34-37.
#97# Li Kuo Chi, Vol. III, p. 34.
#98# Li Kuo Chi, Vol. III, pp. 37-39.

(49) In the 10th year of Emperor Ling of Chow (562 B.C. Marquis Dow of Gine led a collective military sanction on the Covenant-breaking state Cheng. Cheng was defeated. #99#

(50) In the 10th year of Emperor Ling of Chow (562 B.C.), Marquis Dow of Gine summoned the Nineth Assembly of the "League" at the District of Tong-Men. Twelve countries were represented thereon and participated in a collective military sanction upon Tsoo. These twelve countries were: Gine, Sung , Loo, Wai, Chi, Tsao, Geu, Tsu, Teng, Sik, Gee and Shao-Tsu. Tsoo was forced to terms and Cheng sincerely came back to cooperate in the"League". In the meantime, Chin despatched troops to help Tsoo, but without result. #100#

(51) In the 12th year of Emperor Ling of Chow (560 B.C.) Marquis Dow of Gine led the other eleven Member-states of the "League" to impose a collective military sanction on Chin who helped Tsoo to resist the "League's" sanction. Chin made peace with Gine./ #101#

(52) In the 15th year of Emperor Ling of Chow (557 B.C.) Marquis Ping of Gine summoned the Tenth Assembly of the "League" at the City of Shu-Lian. Twelve countries were represented thereon: Gine, Sung, Loo, Wai, Cheng, Tsao, Geu, Tsu, Teng, Sik, Gee and Shao-Tsu. Chi was not only absent, but also invaded Loo. Therefore, a collective military sanction was applied and brought Chi to terms./ #102#

(53) In the 15th year of Emperor Ling of Chow (557B.C.), Marquis Ping of Gine summoned the Eleventh Assembly of the "League"

#99# Li Kuo Chi, Vol. III, p. 39.
#100# Li Kuo Chi, Vol. III, pp. 39-41.
#101# Li Kuo Chi, Vol. III, pp. 42-43.
#102# Li Kuo Chi, Vol. III, pp. 46-50.

at the City of Tan-Yuan. Chi was among those represented thereon./#103#

(54) In the 22nd year of Emperor Ling of Chow (550 B.C.), Marquis Ping of Gine summoned the Twelfth Assembly of the "League " at the City of Yi-Yi. Chi was among those represented thereon.#104#

(55) In the 25th year of Empwror Ling of Chow (547B.C.), Marquis Ping of Gine summoned the Thirteenth Assembly of the "League" at the City of Tan-Yuan. Chi and Cheng were among those represented thereon. A Covenant-breaking state, Wai, voluntarily came to the Assembly and asked for proper punishment; upon this good behavior, Wai was excused. #105#

(56) In the 26th year of Emperor Ling of Chow (546 B.C.), the prime ministers, Rt. Hon. Chao-Wu of Gine, Rt. Hon. Shan-Su of Sung and Rt. Hon. Chu-Kien of Tsoo, were intimate friends and, therefore, made a joint proposal for an anti-war pact in order to mediate the ever-lasting conflict between Tsoo and Gine, two great powers. The proposal was widely accepted. Thus a Peace Conference was summoned and a Pact For the Renunciation of War was signed at the City of Si-Men by seventeen countries: Gine, Tsoo, Sung, Loo, Wai, Cheng, Chen, Hsu, Tsai, Tsu Ceu, Teng, Sik Duen, Hoo, Sen and Lee. According to this Pact: (A) The Parties undertake not to resort to war as an instrument of national policy; (B) The Parties undertake to adopt the measure of collective military sanction against the aggressor; and (C) The term "Aggressor" shall be defined as the party who attacks first. Some provisions relating to the measures

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#103# Li Kuo Chi, Vol. III, pp. 46-50.
#104# Li Kuo Chi, Vol. III, p. 67.
#105# Li Kuo Chi, Vol. III, pp. 70-72.

to be adopted for the peaceful settlement of disputes were also embodied in the Anti-War Pact. #106#

(57) In the 4th year of Emperor Jin of Chow (541 B.C.), a second Peace Conference was summoned at the City of Kwa. Ten countries were represented thereon: Gine, Tsoo, Sung, Loo, Chi, Wai, Chen, Tsai, Cheng and Hsu. They signed a Protocol stating the renewal of the Pact For The Renunciation Of War concluded in the 26th year of Emperor Ling of Chow (546 B.C.). #107#

(58) In the 14th year of Emperor Jin of Chow (531 B.C.), Viscount Ling of Tsoo invaded and conquered Tsai and Chen in disregard of her treaty obligations and world peace. In the meantime, the other parties to the Pact for the Renunciation of War concluded in the 26th year of Emperor Ling of Chow (546 B.C.) and the Member-states of the"League of Nations" were militarily weak. Therefore, all the prime ministers of/the countries concerned were summoned by The Right Honourable Han-Chi, Prime Minister of Gine, to meet at the City of Chu-Sow and resolved to send a joint note to Viscount Ling of Tsoo, reminding him of the treaty obligations and the maintenance of world peace and justice. The Note reads:

"As in compliance with the sacred obligations stipulated in the Pact For The Renunciation Of War concluded at Si-Men and renewed at Kwa, the Marquisate of Gine and the other contracting parties have been adopting strictly a peace policy. It is understood to be excusable that the present military operations in Chen and Tsai conducted by Your Excellency are given rise to by a crime on the part of those two countries. Yet, after the

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#106# Li Kuo Chi, Vol. III, pp. 72-74, 92.
#107# Li Kuo Chi, Vol. III, p. 82.

execution of a proper punishment which has been made already by the forces of Your Excellency, it seems doubtful that there still exists any more necessity to continue the station there of the forces of Your Excellency. In view of the Treaty obligations to help the weak states which comply with justice and to adopt the principle of peaceful settlement of disputes, we cannot but feel great regret. Being afraid that the mobilization of forces might be in violation of the Covenants, we are, therefore, directed by Their Excellencies to remind Your Excellency hereby of our previous friendship and to make an appeal to you for those States under your military occupation. Our appreciation should be the same as of those States, if Your Excellency would be so good enough as to preserve their existence."

This Note was answered orally by Viscount Ling of Tsoo, who said,"Chen and Tsai are my dependencies. All of you just keep neutrality. No intervention here is required or justified.....My military conquest of those States will be finished soon."

After a few years, when Tsoo was defeated by Wu, Tsai and Chen were restored. #108#

(59) In the years under the reign of Emperor Jin of Chow (544-520 B.C.), Marquis Tsao of Gine summoned the Fourteenth Assembly of the "League" at the City of Pin-Chiu. Thirteen countries were represented thereon: Gine, Chi, Sung, Loo, Wai, Cheng, Tsao, Gau, Tsu, Teng, Sik, Gee and Shau-Tsu. The Assembly adopted a Resolution expressing the constant loyalty of all the Member-states to the Covenant

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#108# Li Kuo Chi, Vol. III, pp. 89-92, 97.

of Chien-Tu concluded in May of the 20th year of Emperor Shang of Chow (632 B.C.). This Assembly also ordered to intern the Representative of Loo on account of Loo's invasion in Tsu and Geu. Loo accepted a proper punishment. #109#

(60) In the years under the reign of Emperor Jin of Chow (544-520 B.C.), Marquis Gen of Chi summoned an"international" conference at the City of Ya-Ling to deal with the revolution in Loo. #110#

(61) In the 1st year of Emperor Geen of Chow (519 B.C.), Wu and Tsoo were at war. Chen, Tsai, Hu, Shen and Hsu went to help Tsoo. The other countries were maintaining neutrality. #111#

(62) In the 14th year of Emperor Geen of Chow (506 B.C.) Gine summoned the Fifteenth Assembly of the "League of Nations" at the City of Tzao-Ling. Seventeen countries were represented thereon: Gine, Sung, Chi, Loo, Wai, Chen, Cheng, Hsu, Tsao, Geu, Tsu, Ten-Hu, Teng, Sik, Gee, Shao-Tsu and Tsai. Tsai made an appeal to this Assembly charging Tsoo with acts of aggression. The Assembly failed to adopt effectual measures to deal with it. #112#

(63) In the 14th year of Emperor Geen of Chow (506 B.C.) Tsai and Tsoo were at war. Wu went to help Tsai upon the latter's request. The most famous and learned Marshal Sun Woo of the time, also one of the most distinguished founders of China's tradition on military administration, tactics and strategy, commanded Wu's army

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#109# Li Kuo Chi, Vol. III, pp. 103-104.
#110# Li Kuo Chi, Vol. III, p. 108.
#111# Li Kuo Chi, Vol. III, pp. 122-123.
#112# Li Kuo Chi, Vol. III, pp. 138 et seq.

of 60,000 men defeated Tsoo's powerful army and conquered Tsoo. Viscount Tzao of Tsoo escaped into his friendly neighbouring country, Marquisate of Suey. Wu's army was pursuing him into the neutral Suey too, but retreated soon after being assured by Suey that Viscount Tzao of Tsoo had passed already through there into elsewhere (a practice on the principle of "continuous voyage" on land). Wu's army went further into another neutral Chengm and also retreated without result. Eventually Wu promised to preserve the existence of Tsoo upon the request of Chin, which made an armed intervention and mediation. #113#

(64) In the 24th year of Emperor Geen of Chow (496 B.C.) Marquis Jin of Chi invited Marquis Ting of Loo to meet at Monte Chaco. At first, Marquis Jin of Chi intended to intern Marquis Ting of Loo for the sake of making profit. But as soon as he discovered that it was Confucius, then Prime Minister of Loo, who accompanied with Marquis Ting of Loo, he immediately changed his mind and cordially returned Loo three cities, which were seized by Chi, with a view to expressing sincere friendship. A Treaty of Comity was signed. This example shows how the "States" in the Chuen Chu Chan Kuo Ages were forced and directed by an idea of justice, though relatively occasional wars of conquest occurred in the meantime. #114#

(65) After the 31st year of Emperor Geen of Chow (489B.C.), when Loo invaded Tsu, Chi signed a Treaty of Alliance with Wu and conducted a joint military operation against Loo.

#113# Li Kuo Chi, Vol. III, pp. 138-153.
#114# Li Kuo Chi, Vol. III, pp. 158-159.

Loo expressed her desire for peace to Chi and succeeded in concluding a separate peace with Chi. Wu was angry at Chi's unfaithfulness and violation of her treaty obligations and, therefore, attacked Chi. Loo turned to join Wu. Chi surrendered to Wu. #115#

(66) In the 38th year of Emperor Geen of Chow (482 B.C.) Wu summoned a successful "international" conference at the City of Hwan-Tze with a view to re-establishing a "League of Nations". #116#

(67) In the 42nd year of Emperor Geen of Chow (478B.C.), the State Yuey declared a just war on Wu. The Prime Minister of Yuey, Rt. Hon. Wen-Chung, issued a statement accusing Prince of Wu of unjust acts by six points: "(A) Killing Marshall and Prime Minister Wou-Tze-Shu of Wu, who was a loyal statesman. (B) Killing the Court Official Hon. Kong Sen Sun, who was persuading the Prince of Wu to serve the common good. (C) Adopting the proposals of dishonest officials. (D) Repeatedly attacking Chi and Gine, who had committed no crime. (E) Invading neighbouring countries without just cause. (F) ruling the country without the intention to serve the common good of the people and without sufficient intelligence and wisdom." #117#

(68) In the 1st year of Emperor Yuen of Chow (475 B.C.) Prince Kou-Chien of Yuey summoned a successful "international" conference at the City of Shoo-Chu and formed a "League of Nations". Chi, Gine, Sung and Loo were participating therein. Prince Kou-Chien of Yuey was elected the President of the "League". #118#

#115# Li Kuo Chi, Vol. III, pp. 179-180.
#116# Li Kuo Chi, Vol. IV, pp. 6-7.
#117# Li Kuo Chi, Vol. IV, pp. 11-14.
#118# Li Kuo Chi, Vol. IV, pp. 11-14.

(69) In the 17th year of Emperor Hsien of Chow (352B.C. Wey and Chao were at war. Chi helped Chao on the latter's request. The other countries were maintaining neutrality. #119#

(70) In the 28th year of Emperor Hsien of Chow (341 B.C.), Wey and Han were at war. Chi helped Han upon the latter's request. The other countries were maintaining neutrality. #120#

(71) In the 36th year of Emperor Hsien of Chow (333 B.C.), Prince of Chao summoned an "international "conference at Yuan-Suey, with a view to establishing a "League of Nations" for collective security. The Princes of Tsoo, Chi, Wey, Yen and Han unanimously agreed to the plan. A Covenant was signed by the six states. It reads:

"The High Contracting Parties solemnly undertake: (A) to treat each other as brothers; (B) to help each other in case of suffering a calamity or an external aggression; and (C) to impose a collective military sanction on the party who violates the Covenant."

This Covenant was written in seven identical copies, six of which were to be kept by the six contracting parties and the seventh one was to be sent to Prince of Chin together with a joint Note of the "League". The First Assembly elected Prince of Chao the President and Rt. Hon. Soo Chun, Prime Minister of Chao, the Secretary General. The five Princes other than Prince of Chao also appointed Soo Chun their prime minister separately. Therefore, Soo Chun became the Secretary General of the "League" and at the same time the Prime Minister of the six Princes. #121#

#119# Li Kuo Chi, Vol. IV, pp. 49-51.
#120# Li Kuo Chi, Vol. IV, pp. 51-54.
#121# Li Kuo Chi, Vol. IV, pp. 63-65.

(72) In the years after the 36th year of Emperor Hsien of Chow (333 B.C.), Prince of Tsoo summoned the Second and Third Assemblies of the "League". Prince of Tsoo was elected successively the President. Because Chin repeatedly invaded Wey, a collective military sanction led by Prince of Tsoo was applied to the non-member state aggressor Chin. #122#

(73) In the years under the reign of Emperor Nan of Chow (314-256 B.C.), wars occurred between Chin and Yen, Tsoo and Chin, Chin and Han, Chi and Sung, Tsoo and Chi, Chi and Wey, Chin and Chao, etc.. In those wars, most of the other non-belligerent countries were maintaining neutrality. #123#

(74) After the 17th year of Emperor Nan of Chow (298 B.C.), Princes of Chi, Tsoo and Wey declared war on Prince of Sung and accused him of the following unjust acts:"(A) to come to power by an unjust way; (B) to conquer weak and small countries by force; (C) to adopt war as an instrument of policy and for pleasure; (D) to invade other countries in disregard of world peace and justice; (E) to enjoy personal life at the sacrifice of the common good of the people; (F) to infringe the rights of people; (G) to ill-treat and kill loyal court officials; (H) to disregard the co-existence and equal status of all the States; (I) to flatter the powerful Chin by way of sacrificing the security of the other states; (J) to rule the country without the virtue of a ruler; that is, not to rule under the guide of people's interest." (ten points of crime)#124#

(75) In the 31st year of Emperor Nan of Chow (284 B.C.),

#122# Li Kuo Chi, Vol IV, pp. 66-68.
#123# Li Kuo Chi, Vol. IV, pp. 69-131.
#124# Li Kuo Chi, Vol. IV, pp. 89-90.

Yen and Chi were at war. Chao, Han, Wey and Chin went to help Yen. Tsoo maintained neutrality and shared the profits, after the war, with Yen and her allies as a reward to neutrality. 125#

(76) In the 53rd year of Emperor Nan of Chow (262 B.C.), Prince of Chin, after having obtained Chi and Tsoo's promise to maintain neutrality, declared war on Han. Han surrendered the country to Prince of Chao and made an appeal for punishing the aggressor. Chao despatched a powerful army of 450,000 men under the commander-in-Chief Tsao-Kua, son of the famous Marshal Chao-Tuen, to meet the forces of Chin. In the Battle of Chan-Ping, the famous Marshal Pei-Chi of Chin led a smaller army defeated Chao's troops decisively. More than 400,000 men of Chao's army became prisoners of war, with their commander-in-chief Tsao-Kua killed on duty. The prisoners of war were unexpectedly so many that the smaller army of Chin could hardly guard them at the front or send them into the camp in a nearby city. Therefore, for the sake of the security of Chin's smaller army and owing to the technical difficulties in dealing with the prisoners, the Chin's famous commander Marshal Pei-Chi, after due consideration, was compelled to issue a confident order to kill all the Chao's prisoners of war, an amount of circa 450,000 men, on one night, except 240 youngest soldiers who were allowed to return to Chao ! The heads of the dead prisoners formed a hill, later called "Pei-Chi Tai Hill" and the valley, on which the stream became red with the dead's blood, beside the "hill" was later called "Valley of Grievance". Five years later, in the 58th year of Emperor Nan of Chow (257 B.C.), Marshal Pei-Chi of Chin was ordered by Prince of Chin to commit suicide on account of his coll-

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#125# Li Kuo Chi, Vol.IV, pp. 92-93.

eague's trick, a result of the jealousy of his military talent, distinguished achievement and "international"prestige. But,before going to death, Marshal Pei-Chi confessed: "I had been doing my best to serve my country. What real crime I had committed ?" After a while, he sighed again with regret: "According to justice, it is right to put me to death. In the Battle of Chan-Ping, more than 400,000 men of Chao's army surrendered themselves/to me; I played a trick, though not without reason, to put all of them to death on one night. What crime had those 450,000 men committed ? I should die, no doubt, according to justice." He willingly died with his neck on sword, though he was ordered to die not on a proper crime. This historical story proves that the idea of justice still operates even through the wars of conquest. #126#

(77) In the years between the 53rd and 58th years of Emperor Nan of Chow (262-257 B.C.), Chin attacked Chao again. Tsoo and Wey helped Chao to defend upon the latter's request. Chin's troops retreated. #127#

(78) In the 60th year of Emperor Nan of Chow, that is, the 52nd year of Prince Tsao-Shan of Chin,(255 B.C.), the allied forces of Tsoo, Han, Chao, Wey, Yen and Emperor Nan of Chow waged a counterattack on Chin, but were defeated. Emperor Nan of Chow was made Duke of Lian by Prince of Chin. #128#

(79) After the 56th year of Prince Tsao-Shan of Chin, that is, also/the 1st year of Prince Tsang-Shang of Chin, (249 B.C.),

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#126# Li Kuo Chi, Vol. IV, pp. 115-121.
#127# Li Kuo Chi, Vol. IV, pp. 120-131.
#128# Li Kuo Chi, Vol. IV, pp. 134-135.

Chin continued to conquer Han, Chao and Wey. Yen and Tsoo went to help them to resist Chin and defeated Chin's troops. #129#

(80) In the 5th year of Prince Cheng of Chin (242 B.C.) Chao, Yen, Han, Wey and Tsoo despatched an allied army, under the command of the famous Prime Minister Chuen Jen of Tsoo, to counterattack Chin, but lost the war. In the 26th year of Prince Cheng of Chin (221 B.C.), Chin's army conquered the last surviving country Chi of the Chuen Chu Chan Kuo Ages under the command of Marshal Wang Pun, son of the famous old Marshal Wang Chieh. #130#

After this re-unification of the Chinese people into a single State, Chin dynasty deban with the new titled "First Emperor of Chin", that is, formerly Prince Cheng of Chin (221 B.C.-- and the vast China was divided into thirty-six provinces. Many other good reformation and new systems were also adopted. It was not until after more than two thousand years, 1842A.D., the conclusion of the Treaty of Nanking with Great Britain, the recognition by China of the existence of another advanced civilization in the Western World, that China began to meet other civilized states and to renew her international life in a European type real society of nations. As Professor Gaetano Mosca of the University of Palermo and of Rome, the distinguished modern political philosopher who founded the famous "Théorie de la classe dirigeante politique", says in his "Histoire des Doctrines Politiques, Depuis l'Antiquité jusqu'à nos jours" (Paris, 1936) : "Entre le XVIIe et le XVIIIe siècle, il se produisit une grande transformation dans la conception de l'univers.

#129# Li Kuo Chi, Vol. IV, pp. 139-141.
#130# Li Kuo Chi, Vol. IV, pp. 146-179.

Cela fut le résultat des grands progrès effectués dans les sciences naturelles qui tirent leurs premières origines des découvertes de Copernic, complétées ensuite par celles de tycho-Brahé, de Galilée et de Newton. Peu à peu ces découvertes s'imposèrent à tous les penseurs et donnèrent naissance à l'astronomie et à la physique scientifique. A cette renaissance intellectuelle contribuèrent aussi les découvertes de terres nouvelles survenues dans les deux siècles précédents. A la suite de ces découvertes l'opinion se répandit (à tort ou à raison) que certaines nations, jusqu' alors considérées comme barbares, possédaient une civilization plus ancienne et sur certains point même, supérieurs à cette de l'Europe. La Chine notamment fut considérée comme telle."#131# Professor H. A. Smith of the University of London further says in his "Great Britain and the Law of Nations": "to the case of China....Great Britain attempted to establish diplomatic relations with China by despatching of Lord Macartney's mission in 1793....expected China to conform to the general principles of international law....The decisive defeat of the Chinese in the so-called "Opium War" of 1840 led to the Treaty of Nanking in 1842 and the establishment of formal diplomatic intercourse."#132#

The above stated eighty cases, drawn from an original research in the about one hundred and eighty wars during the Chuen Chu Chan Kuo Ages, have shown clearly the essential phases of the civilization of ancient China respecting international relations, war, non-belligerency, etc.. One might well find it interesting

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#131# Mosca, "Histoire des Doctrines Politiques", pp. 200-201.
#132# Smith, "Great Britain and the Law of Nations", 1932, Vol. I, pp. 17-18.

to compare that ancient period with the rise and characteristics of the modern international community under the European type international law. In that ancient age of China, the "States" almost never claimed or argued for absolute sovereignty, though they are actually sovereign states; they fought, as a tendency, for two things: Unification of China and Justice(including the people's common good). They had succeeded in both. It is no doubt that the racial, historical, cultural, philosophical, political and other possible different backgrounds made an inevitable distinction between the ways followed by the Chinese and the Western peoples. But it can be safely said that the struggles for absolute sovereignty by the modern Western States which brought about the modern doctrines of international neutrality and war constitutes one of the most important factors counterattacking the world tide of internationalism since 1910 A.D.. We may be more interested in another comparative study between that ancient age of China and the Middle Ages of the Western World, which will be dealt with a little later than the analysis of the cases concerning non-belligerency of the European ancient ages.

Chapter III:

THE STATUS OF NON-BELLIGERENCY IN THE WESTERN ANCIENT AND MIDDLE AGES

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The Chuen Chum Chan Kuo Ages in the Ancient China (770-221 B.C.) was roughly equivalent to the ages of the Ancient Greece (7th—3rd century B.C.). While Professor Mosca briefly referred to this Chinese ancient period by saying that "Probablement vers la même époque, d'autre royaux importants d'humanité, qui créèront chacun une civilisation originale, au moins en partie, s'organisèrent politiquement dans le centre et le nord-ouest de la Chine. A l'époque où vécut Confucius, c'est-à-dire dans le 7e siècle avant Jésus-Christ, les peuples qui avaient adopté la civilisation chinoise étaient divisés en divers royaumes locaux," #133# Professor Rostovtseff says in his "International Relations In the Ancient World" that "in the ancient world, generally, the natural attitude of one state towards another was that of potential and actual enmity. Hence,war, not peace, was the foundation of international relations....The modern world considers the natural condition of life in our society to be the state of peace. War is nothing but a temporary suspending of this natural condition and is regarded as an abnormal state...In the ancient world the foreigner, from the political point of view, is an enemy....Civilized life formed for a long time small islands in the ocean of barbarism. Thus for anancient civilized state, neighbour was equivalent to foe. The ancient state evolved through

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#133# Mosca, "Histoire des Doctrines Politiques", 1936, Chapitre III "Les Grands Empires Orientaux"; see also Chpitres V, VI, VII and VIII.

the process of integration of petty political formations and this process assumed the form of ever-renewed wars. To this is due the constant state of war between the different civilized states, even of the same nationality. The general idea of war as the natural status influenced the forms of international relations and shifted from one focus of civilization to another.....in the modern world...the family of European nations grewup not from conditions war of all against all; modern European nations were children of the mighty and united Roman Empire, whose main foundation was general peace for the whole united civilized world...outside of it was barbarism,---no law, no right. The natural condition of this Roman world-state was peace---pax Romana".#134# The terms "ancient world" and "modern world" as indicated by Professor Rostovtseff here imply obviously "ancient Western world and "modern Western world". Otherwise his entire statement would be a false, because what about the rise and characteristics of the "modern world" as is described by Professor Rostovtseff is quite similar to what already occurred in a period of the Eastern ancient world, that is, the Chuen Chu Chan Kuo Ages of ancient China, the beginning of which (770 B.C.) was even more than two hundred years earlier than that of the flourishing Ancient Greece (559 B.C.---).

Thus, speaking of the world generally, one may properly discuss the evolution of the status of non-belligerency by dividing the world's history into four great periods:

(1) ANCIENT AGES (before 476 A.D.): This period shall

#134# Rostovtseff, in Walsh, "The History and Nature of International Relations", 1922, pp. 35-36.

be treated on two phases:

(A) The Chuen Chu Chan Kuo Ages of the ancient China (770--221 B.C.)---in the long ending age of the 873 years old Empire of China's Chow Dynasty and before the Empire of China's Chin Dynasty. ---The international tendency in this period was toward just peace and collective security (internationalism). There was a common concept of justice among the "states". There was an almost continuously operating system of "the League of Nations". The war as an instrument of national policy was condemned and renunciated openly either by unilateral declarations or by "international" conventions. The non-belligerents, though sometimes maintaining a status of alliance or of neutrality, but, as a general tendency, naturally made judgement on the cause of a war and decided to help the just side either individually or collectively. The states would not follow the leading states that were merely powerful, but that were respectable by virtue. The eighty cases cited in the preceding chapter have well explained to us.

(B) The Western Ancient Ages (before 476 A.D.)---including Ancient Greece (before 27 B.C.) and Ancient Rome (27 B.C.--476 A.D.) ---The international tendency in this period was toward the balance of power or imperialistic conquest which aimed at a general and lasting peace, but not a universal and just peace. "The Hellenistic epoch was by no means a triumph of right over might... but the triumph of force over right....Force and fortune were the watchwords of this epoch....The fundamental point in Roman international practice and theory was that Rome, in her estimate of justice or injustice, of legality or illegality, of all acts of an international character, took not an international but exclusively the Roman point of view.

The sole question for Rome is always: Does one or another act correspond to the political and judicial standards prevailing in Rome ? Does it or does it not fulfill the requirements of Roman morals and religion ?....Rome never modified the essence of Greek international principles and never adopted the fundamental ideas of Greek international law....By force of arms, Rome secured for herself a unique position in the family of civilized nations....She ordered and expected to be obeyed." #135#

In view of the theoretical base of this period, we may quote the Corinthians speeches on the old principles of Greek morals on the eve of the great Peloponnesian War (431-404 B.C.) in 433 B.C., as transmitted by Thucydides :- "Do not say to yourselves that one thing is just, but that [redacted] in the event of war another thing is expedient; for the true path of expediency is the path of right.... To do no wrong to a neighbor is a more certain source of [redacted] power than to gain a perilous advantage under the influence of a momentary illusion." #136# In 432 B.C. the Athenian ambassador in reply to arguments of the Spartan Magistrates expressed the similar view: "An Empire was offered to us, can you wonder that, acting as human nature always will, we accepted it and refused to give it up again, constrained by three all-powerful motives---ambition, fear, interest ? We are not the first who have aspired to rule; the world has ever held that the weaker must be kept down by the stronger. And we think that we are worthy of power, and there was a time when you thought so too; but now, when you mean expediency, you talk about justice. Did justice ever deter anyone from taking by force whatever he could?#137#

#[redacted]# Rostovtseff in Walsh, pp. 37, 38, 55, 60, 62, 63.
#136# Thucydides, I, 42; Rostovtseff in Walsh, pp. 55,56.
#137# Thucydides, I, 76; Rostovtseff in Walsh, p. 56.

This Sophistical principle of the predominance of the interests of the State over the interests of law and justice, right as to yield to force, reminds us on one hand of the discussion of the same problem by the sophist Thrasymachus and Socrates in one of the dialogues of Plato (the Republic, I), and on the other hand of so many proclamations and pamphlets published during the World War of 1914-1918 by the Germans. That seems why the development of the Western world was conducted on a way so different from that of the ancient China, where a traditional principle of justice and peace had already been formed through the successive efforts of the different philosophers and rulers in the past thousands years before 770 B.C..

Therefore, the wars in the Western ancient ages were constantly like these: (1) In the Trojan War of 1184 B.C., King Menelaus of Greek Lacedoe monia conquered the State of Troy (Ilium) in Minor Asia. (2) In 750 B.C., Phoenicia was invaded by Assyria and then absorbed by Persia. (3) In the First Messenian War of 743-724 B.C., Sparta conquered Messenians and the whole of Peloponnesus. (4) In 720 B.C., Assyria attacked Israel and Egypt. (5) In the Second Messenian War of 687-670 B.C., Sparta attacked Messenians again but without great success. (6) In 560 B.C., Persia conquered Lydia. (7) In 538 B.C., Persia conquered Babylon, Syria, Palestine and Phoenicia. (8) In 529 B.C., Persia invaded Egypt. (9) In 490 B.C., Persia attoked the Athens and was defeated. (10) In the Peloponnesian War of 431-404 B.C., Sparta led her allies to attack the Athens and her allies with great success. (11) In 387 B.C., Sparta attacked Persia and brought about the conquest of Greece by Persia. (12) In 342 B.C., the Romans attacked the Semnites and Latins with success. (13) In 338 B.C., Macedonia defeated the

Thebans and conquered Greece. (14) In 334 B.C., Macedonian King Alexander (a student of Aristotle) conquered Persia and absorbed the other parts of Greece. (15) In the years between 333--330 B.C., Macedonian King Alexander conquered Sicily, Palestine, Phoenicia, Tyre, Egypt, Abylon and Indian caucasus. (16) In 317 B.C., the Carthaginnians defeated Syracusans and conquered Sicily. (17) In 295 B.C., the Romans defeated the Samnites. (18) In 275 B.C., the Pyrrhus defeated the Romans. (19) In the First Punic War of 263-241 B.C., the Romans defeated the Carthaginians. (20) In the Second Punic War of 218-202 B.C., the Romans eventually defeated the Carthaginians again. (21) In 168 B.C., Macedonia attacked the Romans and was defeated by the Romans. (22) In the Jugurthine War of 112-106 B.E., the Romans defeated the King of Numidia, Jugurtha. (23) In 102 B.C., the Romans defeated the Teutons. (24) In the First Mithridatic War of 88 B.C., the Romans defeated the King of Pontus, Mithridates. (25) In 69 B.C., the Romans under Coesar conquered Armenia. (26) In 49 B.C., the Romans under Coesar conquered Egypt. (27) In 403 A.D., the Romans defeated the West Goths King Alaric. (28) In 436 A.D., the Franks conquered the Rhine State Alemanni. (29) In 451 A.D., the Romans defeated the Hungarians. #138#

In the Western ancient wars like these, the status of non-belligerency seemed to be exactly such as Professors Oppenheim, McNair and Lauterpacht say in "International Law": "If war broke out between two nations, third parties had to choose between the belligerents, and become allies or enemies of one or the other. This does not mean that third parties had actually to take part in the fighting.

#138# George Weber, "Outlines of Universal History", translated from German edition into English by E. Behr. 1851, London. pp. 28-122.

Nothing of the kind was the case. But they had, if necessary, to render assistance: for example, to allow the passage of belligerent forces through their country, to supply provisions and the like to the party they favoured and to deny all such assistance to the enemy. Several instances are known of efforts on the part of third parties to take up an attitude of impartiality; but belligerents never recognized such impartiality." #139# It goes without saying that no non-belligerent was embracing an idea of justice and went to assist the just side as those did in the above said ancient China and those tried to do after the World War of 1914-1918. #140#

#139# Oppenheim, "International Law", 6th ed. 1940, Vol. II, p. 488.

#140# Though in the Western ancient ages, some thoughts on the distinction between just and unjust war began to tend to take place: Thucydides himself considered war " a most lawful act when men take vengence upon an enemy and an aggressor." Platon considered war a" necessity to enlarge our borders...The original healthy state is no longer sufficient...The country which was enough to support the original inhabitants will be too small now." Aristotle referred to "art of war" and held that war ought to be practised "against men who, though intended by nature to be governed, will not submit, for war of such kind is naturally just;...The object of war must be the establishment of peace." Such are loosely-stated set of political and philosophical ideas which could not make competition with the sophistical ideas.
There was a concept of Justum Bellum of the Romans which made a distinction between the institution of war as an element of the ratio naturalis or natural world order, and individual wars. The former is accepted as part of the unwritten laws of nature which men may not alter; recourse to arms in a given case, however, may be had only for an injury suffered and after the refusal of the wrongdoer to atone for it....A war commenced in accordance with the rules of the fetial proceedings was "justum," which means legally correct,...sanctioned by religion and, consequently, could be expected to receive divine blessings". Joachim Von Elbe, "The Evolution of the Concept of the Just War in International Law", merican Journal of International Law, October 1939, pp. 665-667.
This primitive idea of justice alsocould not influence the very nature of the Roman practice.

But on the other hand, under this tendency, there had been some occasional cases which are remarkable:

(1) Professors Oppenheim, McNair and Lauterpacht have already admitted that "This does not mean that third parties had actually to take part in the fighting," and that "several instances are known of efforts on the part of third parties to take up an attitude of impartiality." This statement, as also described by Geffchen in his "Holtzendorff" (iv, pp. 614-615), should imply that the concept and practice of neutrality had already existed in the Western ancient ages as that today. In the wars of today, the so-called Laws of Neutrality have never been strictly observed either by the parties who consider themselves just or by those who are considered unjust, as will be shown in the subsequent pages. Some of the so-called Laws of Neutrality have not even yet been legally established. Some have not yet been universally signed or ratified. In the modern practice, a neutral can stay as a neutral without a declaration of neutrality; and the neutrals, either declared or undeclared, are by no means safe from rxternal violation. The cases arising from the two great world wars of 1914-1918 and 1937---to date have strongly proved this view. Yet many modern writers treat the modern neutrality as neutrality in disregard of the possibility of its external violation, while the ancient neutrality as unneutrality, because of the possibility of its external violation ! Such treatment is certainly unfair. Thus we can say that in the Western ancient ages, the general tendency of the status of non-belligerency was partial and that there was no international law of neutrality. We cannot say that in the said ages there was neither the idea nor the practice of neutrality. Therefore, such conclusion as held by Professors Oppenheim, McNair and Lauterpacht, etc. that "neutrality didnot exist even in practice,

for belligerents never recognized an attitude of impartiality on the part of other states", is a false. #141#

(2) Professor Westlake in his "International Law" (II, 1st ed. 161.) observed with the conclusion that "the fact of neutrality must be as old as war itself."

(3) Professor Politis further says in his "Neutrality and Peace" (1935, p. 11) that "Neutrality is as old as war itself. There have always been some states which would take no part in the quarrels of others; moreover, there have been always certain relations between belligerents and non-belligerents governed by variable customs and rudimentary rules. Traces of what was to be called during the past three centuries the "law of neutrality", have been occasionally found in ancient history, for instance, in India and Greece. But there was hardly any room for neutrality in the practise of Rome, whose rule was that in its wars third states must declare themselves for or against it----must be its allies or its enemies."

(4) In the 13 century B. C. (in the ending age of Shang Dynasty of China), a series of civilized and independent states such as Egypt, Hittites, Cretan, Mitanni, Assyria, Babylonia, Elam, Palestine, Phoenicians, etc. effected various political combinations, different defensive and offensive alliances, treaties and lively diplomatic activities. The illustrative case is the quite elaborate threaty of alliance concluded between King Rameses of Egypt and Hattusili II of the Hittites in 1280 B.C.. #142#

(5) In 447 B.C., treaties in Greece had usually been leading to a restoration of conditions of peace between two or more states. The

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#141# Oppenheim, Vol. II, p. 488. such statement as of Professor Hershey that "the very idea of neutrality as a principle of public law or conduct appears to have been almost unknown to the nations of Antiquity and the peoples of the

most eloquent testimony for the common recognition of a national unity by all the Greeks is the regular clause in many treaties which usually appears at the bigginning of the document, forming a kind of introduction. This is the clause about the mutual guarding of common Greek sanctuaries. The first point in the statutes of the projected league of Greek states proposed by Pericles dealt with this common guardian-ship and a common reconstruction of Greek sanctuaries destroyed by the Persians. Just at the beginning of the treaty between Athens and Sparta of April 12, 421 B.C., which stipulated a peace for fifty years, such clause can be also found. In addition, treaties respecting the guarantee of inviolability of different Greek cities were no doubt frequently concluded. #143#

(6) When Rome came in close contact with Greek world Antiochus IV, King of Syria, attempted to conquer Egypt. He was with his army in Egypt and was moving towards Alexandra. Suddenly his way was barred by the Roman praetor, Popillius, with his staff, but without an army. The King of Syria immediately ended the war against Egypt as a result of the Roman intervention.#144#

(7) In the 4th century A.D., the Saxons drove the Salian Franks into the border of the Roman Empire. The Roman Emperor Julian considered it an invasion and offered armed resistance in order to maintain the security and neutrality of the Empire. The Franks were only allowed to remain under pledges of fidelity.#145#

Middle Ages, at least prior to the publication of the Consolato del Mare in 1494", is much safer. see Hershey, "Essentials of International Law and Organization", 1927, p. 665.

#142# Rostovtseff in Walsh, pp. 40-43.

#143# Rostovtseff in Walsh, pp. 48-49.

#144# Rostovtseff in Walsh, pp. 63-64.

#145# Dr. David Jayne Hill, "A History of Diplomacy in the International Development of Europe", Vol .I, 1905, p. 28.

(8) In 376 A.D., the West Goths (Visigoths) were driven by the Huns to the border of the Roman Empire and were allowed to enter in and stay with the arms surrendered. #146#

(9) In 452 A.D., the Huns established a confederation in North Italy under Attila, Chief of the Huns.#147#

Therefore, even in the Ancient Ages of the Western world, can be found some different types of non-belligerent status in time of war. The different types of non-belligerent status in the Chuen Chu Chan Kuo Ages of Ancient China are certainly understood to be possibly found in the above stated eighty cases.

(2) MIDDLE AGES (5th---15th centuries A.D.): The so-called Middle Age is usually considered to cover ten centuries, from the fall of the Western Roman Empire (476 A.D.) to the discovery of America (1492 A.D.). According to Professor Mosca's observation, this period can be divided into two sub-periods: (A) From 5th century A.D. to 11th century A.D.----in this period, the Catholic Church effected great influence upon the politics of the time; (B) From 11th century A.D. to 15th century A.D.----in this period, there were repeated unjust attacks from the ambitious political heads on the Church and a conflict between aristocrats and mass. #148#

The general tendency in the Middle Ages was the struggle for just peace,---a tendency, to a certain extent, similar to that of the thousand years earlier Chuen Chu Chan Kuo Ages of Ancient China. The contributions offered by the Catholic Church in this period are admirable and ever memorable:-

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#146# Hill, Vol.I 1905, p. 29.
#147# Hill, Vol. I, 1905, pp. 30-31.
#148# Mosca, "Histoire des Doctrines Politiques", 1936, Chap. XI-XIV.

In the first place, the Roman Emperors exercised direct political sway over so many nations that they could recognize no international law in its modern meaning. In their time there was hardly an international society; though the Roman and Parthian Empires between them divided the civilised world in which international relations on anything like an equal footing were possible. And the justly celebrated Roman jurists, who conferred upon posterity the heritage of the Roman civil law, never worked out a system of international law. To be sure, the jurists expounded the ius gentium (the "law of nations"), but it was common law based on the ius naturale (the "law of nature"), for the benefit of foreigners living within the Empire, rather than international law in its modern significance. On the other hand, the Catholic Church of the Middle Ages exercised universal political dominion so indirectly and with so many qualifications that it could not and would not arrest the growth of theoretically equal and sovereign states throughout Europe. Such state constituted potentially an international society within which real international law could develop. Therefore, as Professor Carlton J. H. Hayes of Columbia University says, "It was, in fact, the Catholic Church which laid and blessed the corner-stone of modern international law".#149. This is the first contribution of the Catholic Church to the modern society of nations.

The second contribution of the Catholic Church in this period is the definition of "ius gentium" as the"law of nations" and the distinction between "natural law" (ius naturale) and the

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#149# Hayes, "Medieval Diplomacy", in Walsh, "The History and Nature of International Relations", 1922, pp. 75-76.

"law of nations". A famous Spanish Churchman early in the 7th century A.D., Saint Isidore, Archbishop of Seville, in his great encyclopedia work popularly called "The Etymologies" reserves the term "ius gentium" for what we should now describe as international law, so that here for the first time we find that term fairly translatable by "law of nations". All the remaining matter of the "ius gentium" of the Roman jurists, namely, the law common to all nations (ius commune omnium nationum), he incorporates in "ius naturale". In other words, Isidore of Seville distinguishes clearly between "ius naturale" and "ius gentium". The latter, he says, has to do with "occupation of territory, the building and fortification of cities and castles, wars, captivities, enslavements, the recovery of rights of postliminy, treaties of peace and others, the scruple which protects ambassadors from violence, and prohibitions of marriage between persons of different nationality." This contribution is of lasting importance; because the Isidore's definition of ius gentium and his distinction between "natural law" and the "law of nations" were accepted by his numerous later commentators and in the 12th century A.D. were incorporated in Gratian's great code of canon law. Henceforth they were truisms of ecclesiastical jurisprudence.#150#

The third contribution of the Catholic Church in this period is their efforts in establishing peace and order. The Church performed a peculiarly significant service by her constant efforts to curb private warfare and to impress upon the minds of her children the value of law and of peaceful methods of settling disputes. The pax ecclesiae, which as a definite institution is first heard of at three ecclesiastical synods held in different parts of southern

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#150# Hayes, in Dalsa, p. 76.

and central France in 990 A.D., was intended to lessen the evils of private warfare by placing non-combatants under the special protection of the Church; it forbade, under pain of excommunication, every act of private warfare or violence against ecclesiastical buildings and their environs, and against certain classes of persons, such as clerics, pilgrims, merchants, women and peasants and against cattle and agricultural implements. The pax acclesiae speedily spread throughout France and Burgundy, and diocesan leagues began to be organized for its maintenance. The bishop or count on whose lands peace was violated was vested with judicial authority, and was directed, in case he was himself unable to execute sentence, to summon to his assistance the laymen and even the clerics of the diocese, all of whom were required to take a solemn oath to observe and enforce the peace.

Another instrument for establishing and enforcing peace and order contributed by the Catholic Church is the system of Truce of God which was created in the 11th century A.D. as a supplementary sytem to the pax acclesiae. In 1027 A.D. at the call of their bishop a synod of local clergy and laity met in the country of Roussillon, in the Pyrenees, and agreed that no man should assail another on the Lord's Day. In 1040 A.D. and 1095 A.D. this system was enlightened by an assembly under the presidency of the Archbishop of Narbonne and by Pope Urban II's decree. In 1063, 1082 and 1089 A.D.,it was adopted in Flanders, Germany and Southern Italy. In 1119, 1123, 1139 and 1179 A.D. it was reaffirmed by the Rheims Council and Lateran Counsils. The means employed for enforcing the Truce of God remained essentially the same: spiritual penalties, such as excommunication, special acclesiastical tribunals,

sworn leagues of peace, and assistance from the temporal power.

Of the pax ecclesiae in general, and of the Truce of God in particular, the indirect results are significant. "Ecclesiastical peace" proved to be the forerunner and prerequisitem to "royal peace". The provisions of the Truce of God were often incorporated verbatim in municipal and district statutes, such as the laws of Barcelona (1067 A.D.), the imperial laws of the Holy Roman Empire under Henry IV (1085 A.D.) and the laws of France under Saint Louis (Louis IX, 1257A.D.). In the ecclesiastical courts, justice was determined by the methods and prescriptions of the canon law, which always relied upon reason and equity. And prior to the revival of Roman law in Western Europe, the canon law of the Catholic Church must be credited with inspiring and fostering the growth of royal justice and royal law. #151#

In the fourth place, the Catholic teaching of chivalry and the Catholic preaching of the Crusades brought about important consequences. The Church was elevating and consecrating the power of the sword by means of the crusades and the spirit of chivalry. The crusades which made war a weapon of common defense rather than an instrument of mutual destruction, tended in conjunction with the operation of the Canon law and the pax ecclesiae to supplant the reign of force by a reign of law. As Dr. Hill says in his "History of Diplomacy"; "by its protection of the helpless and innocent, which was made the ambition of the Christian Knight, Chivalry was at the same time ennobling the practice of arms and preparing the forces which were to overthrow feudalism as a social institution. ##

#151# Hayes in Walsh, pp. 76-79.

The recognition of the rights of the humble, the association of the crusades in a common cause, the formation of codes of honour, the emancipation of men from feudal obligations as a reward for their heroic deeds, the return to their places of origin of a new class of free men, were all to constitute a new leaven for the reorganization of society. A new spirit, more refined and more enlightened, was borne back to feudal Europe from the battlefields of Asia."#152#

In the fifth place, diplomacy, too, owes much to the Church, especially to the Papacy. From early times it became customary for the Pope to despatch special envoys (legati) from Rome to attend ecclesiastical councils or to investigate conditions in outlying provinces, and as time went on and the Papacy found itself compelled to assume certain political and judicial powers, its legates discharged political, as well as strictly ecclesiastical, functions. In view of the special importance attaching to the relations between the Papacy and the Byzantine Empire, particularly after the Teutonic invasions, the Popes maintained more or less permanent ambassadors at the imperial court at Constantinople, who were called "apocrisiarii or "responsales". The first of these "apocrisiarii" seems to be Julian, Bishop of Cos, accredited by Saint Leo the Great to Emperor Marcian (450-457 A.D.). Throughout the later Middle Ages the Popes frequently sent special ambassadors ("legati a latere," if they were cardinals; "legati missi", if they were below Cardinaliitial rank) to the Holy Roman Emperor and to the kings of England, France, Castile, Aragon, Naples, Hungary, etc.. Although

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#152# Hayes in Walsh, p. 79.
Hill, "History of Diplomacy", Vol. I, 1905, p. 272.

these ambassadors were sent for particular ecclesiastical purposes, the monarchs to whom they were accredited gradually adopted the practice to their own ends. Thus, "in diplomacy, as in the establishment of law and the suppression of private war, the European states profited by the example of the Catholic Church."#153#

The sixth contribution of the Catholic Church is the establishment of a foundation for universal peace. In the 12th century A.D., "a most promising international society was taking form under the auspices of the Catholic Church Christian. Tribes were becoming crystallized into nations. Nations were becoming consolidated as independent and sovereign states under kings. The kings, in concert with the ecclesiastical authorities, were building up, within their respective dominions, a system of law and justice, and were curbing private warfare. Among the new states, moreover, commercial and diplomatic intercourse was developing, and already there existed the embryo of an international federation, a league of free Christian nations. For such a league the ground-work was prepared in the community of national interests provided by the common Catholic faith and by the universal similarity of institutions and methods throughout Christendom, in the great co-operative enterprise of the Crusades, and in the growing practice of submitting international disputes to papal arbitration.

It is of course a tragedy of the Middle Ages that on this groundwork no superstructure of an effective international league was reared. It is traceable to three major factors: First (1), the Catholic Church of the Middle Ages, as of Antiquity or of modern

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#153# Hayes in Walsh, pp. 79-80.

times, was primarily a spiritualand moral teacher. Only incidentally did it concern itself with political and economic and international questions. If it had devoted itself as insistently to political science and public law as to moral and dogmatic theology, it might conceivably have accomplished as much in fashioning as effective League of Nations as in christianizing and civilizing barbarous Teutonic tribesmen. Second (2), the tendency of the Teutonic tribes to become national independent states, theoretically equal,and the contemporaneous tendency of the Catholic Church to serve as a cement holding these national states together,, werealike impeded by the surviving concept of universla secular dominion, especially by the pretensions and ambitions of the Holy Roman Emperors. In particular after the revived study of the Roman law in the 12th century A.D., the old imperial notions were resuscitated and exploited by persons who were seeking to undermine the popular foundations of national monarchy or to abridge the customary rights of the Church. Dante (1265-1321 A.D.), Marsilius of Padua (C. 1270-C. 1342 A.D.), and William of Ockham (C.1280-C.1349 A.D.) were among the writers for the new imperial claims of the national monarchs. Thanks to ecclesiastical opposition, Europe was saved from a return to Caesarism, from the ambitious dreams of Henry VI, Frederick II and Louis IV. Third (3), the intensification of nationalism and national exclusiveness in the 14th and 15th centuries A.D. brought about national absolutism, fierce nationalism, and rampant imperialism. #154# Only after the World War of 1914-1918 A.D., the world's renewal of the Catholic Church's efforts in the Middle Ages seemed [redacted] to have been commencing.

#154# Hayes in Walsh, pp. 81-85.

The seventh and the greatest contribution of the Catholic Church in this Age, as in particular concern of non-belligerent status, is the formal concept of "just war." She gave material content to the formal concept of justum bellum of the Romans. The institution of war is at first challenged by the early Church; her adherents boldly predict that the conversion of the world will lead to the establishment of perpetual peace. War is held to be a consequence of original sin; no Christian may, therefore, enlist as a soldier. When, after Constantine's conversion, state and army ceased to be instruments of persecution against the Christian subjects of the Roman Empire, the stigma which the originally pacific spirit of the Church had attached to war gradually disappeared. War, under certain conditions, was recognized as a necessity; the Christian concept of the just war furnishes rules for limiting and guarding it in accordance with the precepts of the new religion.#155# Saint Augustine (354-430 A.D.) is credited with having first molded it into the form of a scientific system. As he considered, "Theologically, the institution of war is explained as a means of punishment which God inflicts upon the sinful world; it appears as a sort of "police action" taken by the sovereign Judge to restore order and to lead the people back to the obedience of the law....A war must be just in the substantive sense of the term. Just wars are...waged to redress a wrong suffered. Thus, wars must always be preceded by an injury....Just war...is either a punitive action or in the nature of a civil suit for damages. Punishment and measures of damages are determined by the purpose

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#155# Joachim Von Elbe, "The Evolution of the Concept of the Just War In International Law", American Journal of International Law, October 1939, p. 667.

of the just war; its aim is not primarily victory, but the establishment of peace....or ordered harmony, where all things have their allotted peace. Thus, the concept of <u>just peace</u> is from the outset closely associated with the idea of the just war. No specific rules, however, are as yet laid down with respect to the content of the peace; it must, in general, restore the injured rights and lead to a well-ordered concord among men." #156#

The Scholastic doctrine of the just war as expounded by the greatest moralist of the Middle Ages, Saint Thomas Aquinas (1226-1274 A.D.), is built upon the principles of Augustine whose teachings are reduced to three fundamental rules: A war in order to be just, must (1) be waged under the authority of a prince as the responsible leader of a nation,...(2) it must have a just cause, and (3) the belligerents must be animated by the right intention, namely, to advance the good or to avoid the evil". While to Augustine the injury itself provides the just cause for war, Thomas Aquinas demands some fault on the part of the wrongdoer: his culpability which deserves punishment is the justifying reason for going to war. The just war is primarily in the nature of a punitive action against the wrong doer for his subjective guilt rather than his objectively wrongful act. Again, its aim must be peace in the Augustinian sense of the term, viz., the maintenance of justice in the interest of the common good. #157#

A climax in the evolution of the Medieval doctrine of

#156# Elbe, in American Journal of International Law, Oct. 1939, pp. 667-669.
John Eppstein, "The Catholic Tradition of the Law of Nations", 1935, pp. 68-79, 92-93.

#157# Elbe, in American Journal of International Law, Oct.1939,p.669
Eppstein, pp. 92-93, 83-87.

just war is reached by Franciscus de Vittoria (1480-1546 A.D.) who in his "De Indis et de Iure Belli Relectionés"(1532 A.D.) expressed the Neo-Scholastic Doctrine of War by saying that: "The State's right to wage defensive war is required by the order of society... The Prince's personal belief in the justice of his cause is insufficient. Soldiers and citizens are bound to examine the justice of a war and to refuse service in one which they are convinced to be unjust....all those having political responsibility...are bound to examine into the cause of an unjust war...The interests of Christendom or International Society as a whole may themselves invalidate an otherwise just cause of war....The prince engaged in a just war in entitled, after victory, to demand damages, restoration and guarantees, and to inflict punishment which, however, may 'not exceed degree and nature of the offence.' What goes beyond those limits is unjust."#158#

Among other theorists in this field, supporting the view of just war, are St. John Chrysostem, St.Ambrose, Ayala and Gentilis. #159# And the great practical movements towards this end were likely represented by the seven Crusades: (1) First Crusade,(1096-1099 A.D.), led by the Pope Urban II who opened a conference in Clermon in France, (2) Second Crusade, (1149 A.D.), led by St. Bernhard, Abbot of Clairvaux, in Burgundy, upon the approval of the Pope; (3) Third Crusade, (1192 A.D.), led by France, upon the approval of the Pope; (4) Fourth Crusade, (1203-1204 A.D.), led by France, upon the approval of the Pope; (5) Fifth Crusade, (1228 A.D.), led by German Emperor Frederick II, but not recognized by the Pope (GregoryIX); (6) Sixth

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#158# Elbe, in American Journal of International Law, Oct. 1939, pp. 674-676.
Eppstein, pp. 99-107, 122-123.

#159# Eppstein, pp. 65-123.
Elbe, in American Journal of International Law, Oct. 1939, pp. 667-678.

Crusade, (1244 A.D.), led by the French King Louis IX upon the approval of the Pope; and (7) Seventh Crusade, (1270 A.D.), led by French King Louis IX again, following which a treaty was signed with/the Turks/respecting Jerusalem. #160#

While in the Middle Ages the Catholic Church devoted herself to the ideal of world order and just war. Wars of conquest and aggression were, on the other hand, waged from time to time in practice, as a result of the above stated three factors which destroyed the precious foundation paved by the Church for an ideal internationalist world institution. Among such wars are: (1) In 486 A.D. the Franks conquered the country between the Seine and the Loire. (2) In 537A.D. the Goths began to conquer Rome. (3) In 640 A.D. the Arabia Mohammedans conquered Palestine, Syria, Antioch, Damascus, Jerusalem, Persia and Upper [redacted] Indus and marched onto Egypt, Rome and Spain. (4) In 772 A.D. the Franks' King Charlemagne waged war on the Saxon Confederation for thirty-[redacted]one years. (5) In 933 A.D. Saxony attacked and defeated the Hungarians. (6) In 1075 A.D. the German-Roman Emperor Henry IV conquered the Saxons. (7) In 1083 A.D. the German-Roman Emperor Henry IV waged an aggressive war on the Pope Gregory VII. (8) In the years between 1158 and 1176 A.D. the German Roman Emperor Frederick Barbarossa and the Italians in Milan and Lombard were at war frequently. (9) In 1273 A.D. the German Roman Emperor Rudolf conquered the King of Bohemia, Moravia and Austria Ottacar. (10) In 1298 A.D. Thuringia defeated the

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#160# Weber, "Outlines of Universal History", pp. 142-143, 145-149. Edward Gibbon, "The Decline and Fall of the Roman Empire", Vol. I, (180-476 A.D.), Vol. II, (476-1461 A.D.), pp. 1074--1079, 995--1082.
Though Hayes claimed that "the federation of nations and the Crusades themselves were to be taken for the greater glory of France," Walsh, pp. 84--85.

German Roman Emperor Adolf. (11) In 1299 A.D. the Osmans attacked Greece. (12) In 1310 A.D. the German Roman Emperor Henry VII attacked Italy. (13) In 1315 A.D. Austria attacked, and was defeated by, the Swiss. (14) In 1402 A.D. the Osmans Empire defeated an allied army of Hungary, Burgundy, France, Germany and Bohemia, but was crushed by the Monguls (Tatars). (15) In 1415 A.D. England declared war on France and France was relieved from peril by Joan d'Arc. Between 1338-1444 A.D. England and France were at the so-called "Hundred Years' War". (16) In the years between 1451-1481 A.D. the Ottoman Empire conquered the Eastern Roman Empire and attacked Greece. (17) In 1476 A.D. Burgundy attacked, and was defeated by, the Swiss. (18) In 1500 A.D. France conquered Milan. #161#

In this state of affairs in the Middle Ages the status of non-belligerents, therefore, was, generally speaking, hardly to be impartial. Those non-belligerents in the wars in the Age either had to declare themselves for or against one side as those did in the Roman Age, or, being members of the political and religious Empire, could neither be disinterested in a conflict which disturbed the harmony and general interest of the community, nor indifference to the struggles of the Church, nor remain neutral in the wars of christianity against the infidels or in those of orthodoxy against heresy. #162#

But still some remarkable facts, including the practice on the concept of neutrality, deserve to be mentioned:

(1) In 859 A.D., when the French-German War was at conclusion, the Catholic Church in France had summoned a conference at

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#161# Weber, "Outlines of Universal History", p. 124-191.
#162# Politis, "Neutrality and Peace", p. 11.

Metz (in May) which adopted, and submitted to the German King Lewis, a peace proposal for the French King Charles, as an act of intervention in the conflict between Germany and France. This act of intervention successfully effected the peace of Coblenz of June 1, 860 A.D. by which Germany gave up her gains secured from France during the war. The Lotharingia Proper's King Lothair was also a mediator. #163#

(2) On July 1, 869 A.D., Pope Adrian II, wishing to pursue a middle course in the controversy on the marriage of King Lothair of Lotharingia Proper, which agitated the three kingdoms, France, Germany and Lotharingia Proper, declared his neutrality.#164# This is supposed to be the first case, in which a third party makes a declaration of neutrality. And one can hardly say that in the Middle Ages no concept or pratice of neutrality took place.

(3) In 1159 A.D., after the death of Pope Adrian IV, Alexander III was elected the Pope by the Cardinals and supported by France, Spain, England and all other christian states except Germany. The Western Roman Emperor Frederick I set up Victor IV as the Pope (Antipope), but was condemned by most states. Then Frederick I "invited" Pope Alexander III to leave Rome; The Romans were angry at this violent act. In December 1167 A.D. a confederation, named Lombard League, was formed by fifteen North Italian city-states under the leadership of Pope Alexander III and the King of Milan. The fifteen North Italian city-states were: Bergamo, Bologna, Brescia, Cremona, Ferrara, Lodi, Milan, Modena, Padna, Parma, Piacenza, Treviso, Venice, Verona and Vicenza. According to this League

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#163# Hill, "A History of European Diplomacy", Vol. I, 1905, pp. 142-144.

#164# Hill, Vol. I, 1905, pp. 142, 144.

covenant, the parties bound themselves by a solemn oath to resist the aggression of any one who should attempt to deprive them of the rights they had acquired under the emperors from Charles the Great to the accession of Frederick I. Frederick I, therefore, escaped to Germany. Later, some more states joined the League, Frederick I was defeated by the allied army of Lombard League and Sicily .#165#

(4) On June 25, 1183 A.D., as Frederick I was willingly to join the Lombard League in order to achieve a permanent peace, the Peace of Constance was concluded and ratified by the Diet of Constance in the form of an imperial Concession signed by the Emperor and the other parties. According to this Act, the city-states secured the rights they wished, such as the right of association, the right to fortify and to possess munitions of war, the right to choose their consuls, the ratification of all concessions made by preceding emperors, the enjoyment of all usages and customs exercised ab antiquo, etc.; on the other hand, the Lombard communes became vassals of the crown, with extensive rights of local jurisdiction and administration; they became free and independent political communities---city-states within the Empire----soon to ripen into full-pledged republics with all the accessories of war and diplomacy belonging to independent powers. #166#

(5) In 1255 A.D. the Consolato del Mare was promulgated at Constantinople by Venice for the convenience of maritime trade and adopted by Pisans, Genoese, Neapolitans, Aragonese and some other states. This Act, though effective only in the Mediteranean region,

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#165# Hill, Vol. I, 1905, pp. 291-292.
#166# Hill, Vol. I, 1905, pp 304.

is the "first example of law international among the nations of Europe," in particular [redacted] of the concern of non-belligerent status in time of maritime war. According to this Act: (1) When an enemy cargo is taken in an enemy's vessel, both are good prize; (2) A neutral Cargo in an enemy's vessel is subject to ransom; (3) An enemy's [redacted] cargo in a neutral vessel is good prize and must be delivered by the neutral vessel in a port available for the captor. Later the principles as embodied in the Act were further enlightened and adopted by the Dutch in the Hundred Years' War in 1438, by England in her maritime wars, and by a number of treaties in the 17th century. They were also supported by Grotius, Bynkershoek and Loccenius and transplanted to France and to the shores of the Baltic, serving as the foundation for the"Jugemens d'Oléron" and the "Laws of Wisby". Thus "began upon the sea a law of nations which later times extended to intercourse upon land, and raised to the dignity of international jurisprudence." Therefore, "it is untrue to say that the conception of neutrality was unknown throughout the Middle Ages." #167#

(6) In 1255A.D. some German local princes, Mainz, Köln, Worms, Speyer, Strasburg, Basel, etc., later more than sixty city-states, formed the League of the Rhine with a view to safeguarding their common security and commercial rights. #168#

(7) In 1259 A.D. the Hanseatic League was formed by the North German States, with a view to adopting acommon policy in commerce as well as in diplomacy. #169#

#167# Hill, Vol. I, 1905,pp. 362-363. Charles Calvo, "le Droit International, Théorique et Pratique," 3rd ed. 1880, tome III, Sec. 2206. Geoffrey Butler and Simon Maccoby, "The Development of International Law", 1928, p. 229. Hershey, "Essentials of International Law and Organization", 1927, p.665.
#168# Hill, Vol. I, 1905, p. 353.
#169# Hill, Vol. I, 1905, p. 353.

(8) In 1199 A.D. France conquered England. England then secured assistance, by new treaties of alliance, from Germany and Flanders. France also secured external assistance by way of treaty of alliance with Western Roman Emperor. In the famous Battle of Bouvines on July 27, 1214 France defeated her enemy troops decisively. Flanders, Normandy, Touraine, Anjou, Maine and Poitou all became allies of France. #170#

(9) In the War of 1327 A.D. between France and England, the Pope mediated a peace with success. #171#

(10) In 1337 A.D. King Edward III of England, pursuing a policy of alliance-net against France, formed the League of Valenciennes (England, Counts of Hainault, Brabaut, Berg, Zeeland, Gelderland, Juliers, Limburg, Cleve, Mark and Palatine of the Rhine were the members.)and signed treaties of alliance with Germany, Republic of Genoa, the Kings of Castile and Sicily, the Counts of Geneva and Savoy, the Barons of Franche-comté, the Cities of Ghent, Bruges and Ypres, the Duke of Hainault and Gelderland and the Duke of Brabaut. The War on France was waged by England on July 16, 1338.#172#

(11) In the War of 1338 A.D. The Republic of Venice, being a non-belligerent, landed England forty galleys on August 27, 1340, upon the latter's request, in order to recruit the English fleet. #173#

(12) In the War of 1338 A.D., when having acknowledged that France asked Genoa, an English ally, for aid, England immediately invited Venice "to exercise her good offices to induce Genoa to

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#170# Hill, Vol. I, p. 388. #171# Hill, Vol. II, 1906, pp. 9-10. #172# Hill, Vol. II, pp. 18-21. #173# Hill, Vol. II, p. 25.

maintain at least a strict neutrality."#174#

(13) In the War of 1338 A.D. the English allies, such as Germany, failed to strictly observe their treaty obligations. On March 19, 1340 A.D., Flanders signed a treaty of alliance with England and joined the war. #175#

(14) On December 13, 1431 A.D., the Pope mediated a truce for six years between Burgundy and France with success.#176#

(15) On September 21, 1435 A.D., the Peace of Arras was signed by France and Burgundy. The latter promised to maintain neutrality in the Anglo-French War. #177#

(16) On November 22, 1494 A.D. Charles VIII, King of France, issued a Manifesto at Florence, declaring that he gave solemn assurances that he intended no harm to the City of Rome or the Papal State and that he only demanded free passage and the right to purchase supplies for his army in her war on Turkey.#178#

The different types of the status of non-belligerency as shown in the above cases are interesting.

#174# Hill, Vol. II, 1906, pp. 25-26.
#175# Hill, Vol. II, 1906, p. 26.
#176# Hill, Vol. II, 1906, pp. 70-71.
#177# Hill, Vol. II, 1906, p. 71.
#178# Hill, Vol. II, 1906, p. 186.

Chapter IV:

THE STATUS OF NON-BELLIGERENCY IN THE WESTERN MODERN AGES PRIOR TO 1914 A.D.

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The Third Period is the Modern Ages prior to 1914 A.D.. The so-called Modern Age is usually considered to commence with the formation of the modern states (16th century). In view of the general tendency respecting the status of non-belligerency, this period can be divided into two parts: (1) From the 16th century to the 19th century A.D. , which ended politically in 1914 A.D., #179#----The world was making efforts to bring about a principle, or a law, of neutrality; (2) Since the 20th century, the World War of 1914-1918 A.D., ---- The tide of anti-neutrality has been arising with a movement of internationalism. Therefore, we may call the Modern Ages prior to 1914 A.D. the Third Period of the evolution of the status of non-belligerency, and the Modern Ages subsequent to 1914 A.D. the Fourth Period of the evolution of the status of non-belligerency.

With respect to the Third Period, Le Consulat de la Mer, as above said, had paved the way to an international principle or law of neutrality. Many other countries than Venice and some treaties had adopted the principles therein embodied. Many theorists were impressed by it too. But in the years of 1538, 1543 and 1584 A.D., France issued ordonnances to have adopted a more strict system:

#179# Professor Mosca explained in his "Histoire des Doctrines Politiques"(1936, Chapitre XXVIII) that: The cultural or political division of history by century is not exactly in accordance with that by the calendar year. For instance, the so-called 18th century in political history of cultural

(1) An enemy's cargoin a neutral vessel shall be confiscated; (2) A neutral cargo in an enemy's vessel shall be confiscated.

The Ligne Hanséatique, being usually to have possessed some exceptional privileges in this connection, granted by France as shown in the years of 1464, 1484, 1536, 1554 and 1604 A.D., had concluded a treaty with France on May 10, 1615 A.D., in which the vessels of the Ligne Hanséatique can navigate freely at any time in any case and can protect the enemy's cargo therein. Such clauses were also embodied in the French-Dutch Treaty of 1646 A.D. and the French-Spanish Treaty of 1650 A.D.. The prize courts followed the Ordonnances accordingly. #180#

In the War of 1522 A.D., between England and Germany on one hand and France on the other, Pope Clement VII had long been neutral; and in the Spring of 1524 A.D., he had sent Nicolas Schomberg, Bishop of Capua, on a mission to France and Spain, in the hope of effecting a general peace. #181#

During the Thirty Years' War (1618-1648 A.D.), "Contarini, whose experience as ambassador of Venice at the Hague, in England, in France and at Constantinople had won for him a great reputation as a cool, subtle and capable negotiator, had also to protect the interests of his Republic by maintaining as far as possible the

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history or the like is considered to cover the years between 1715 A.D. (the death of Louis XIV) and 1789 A.D.(the French Revolution) or 1815 A.D.(the conclusion of Napoleonic Wars), not to cover exactly 1701-1800 A.D.. The so-called 19th century in the same cases is considered to cover the years between 1815 A.D.(the conclusion of Napoleonic Wars) and 1914 A.D.(the eve of the World War of 1914-1918 A.D.). Since 1914 A.D. or 1918 A.D.(after the World War I), the 20th century is considered to commence.

#180# Calvo, "Le Droit International", tome III, Sec. 2207 & 2208.
#181# Hill, Vol. II, 1906, p. 373.

equilibrium of the powers. Apart from this, no just complaint could be brought against his perfect neutrality, although the French at first flattered themselves that he was favourable to France and afterward complained, when they found that he was not subject to their wishes." #182#

The Pope, too, during the Thirty Years' War, maintained a status of neutrality. #183#

After the Peace of Westphalia, the War between Spain and France was still going on. Portugal and England (1657 A.D.) joined the French side. The anxiety for peace in Germany enforced upon the Emperor Ferdinand III the pledge of neutrality by which he was bound not to afford assistance to the Spanish branch of the House of Hapsburg. #184#

In the same war of 1657 A.D. between Spain on one hand and France, England and Portugal on the other, France intended to force Holland to join the French side by means of frequent seizures of Dutch vessels carrying Spanish goods. The States-General of Holland (The United Provinces of the Netherlands and Brandenburg-Prussia) had vainly striven to renew their treaties with France on the principle that the neutral flag covers the merchandise. But, determined not to be thus forced into an unnecessary war with Spain, the Republic resolved, on the contrary, to meet the imperious insistence of France with increased armaments for the protection of its commerce. #185#

#182# Bougeant,"Histoire", III, p. 11.
Hill, Vol. II, 1906, p. 598.
#183# Hill, Vol. II, 1906, p. 598.
#184# Hill, Vol. III, 1914, p. 18.
#185# Hill, Vol. III, 1914, p. 18.

On July 11, 1671, as part of the achievement of Louis XIV's policy of alliance-net against Holland, the Elector of Köhn signed a secret treaty with France in which he promised to maintain neutrality and gave permission to the passage of French army through his territories. The Declarations of War on Holland were issued by England on March 29, 1672 and by France on April 6, 1672. Some other states joined later. #186#

In the same year of 1672, England made a separate peace with Holland on February 9, 1674. Therefore, while fully realizing the immense value of neutrality of England, Louis XIV's next best advantage was in possessing its neutrality. As the King and the Parliament were in perpetual conflict, King Charles II of England kept England neutral through the King's prerogative of proroguing or dissolving Parliament. #187#

In the same War of 1672, France made a separate peace with Holland on August 10, 1678, in which France accorded full liberty of trade to the Dutch ships, even with the enemies of France (rights of neutral). #188#

In 1681, Louis XIV promulgated a maritime law re-stating the French traditional principle of the confiscation of neutral cargo in enemy's vessel, with a view to inflicting damage on the English sea trade. #189#

In 1683, contemplating still further inroads upon both

#186# Hill, Vol. III, 1914, pp. 99-102.
#187# Hill, Vol. III, 1914, pp. 141-144.
#188# Hill, Vol. III, 1914, pp. 151-152.
#189# Calvo, "Le Droit International", tome III, Sec. 2208.

the Empire (Germany) and the Spanish Netherlands, Louis XIV was desirous of securing at least the neutrality of the United Provinces (Holland). Holland refused. #190#

In the Treaty of Peace of September 20, 1690, between France and Holland (the United Provinces), France promised to permit"a free ship discharges its cargo, in case of war, if it did not consist of contraband of war". #191#

In the years between 1654 and 1780, the principles as embodied in the Consulat de la mer were widely rejected; and France concluded treaties with thirty-six countries, establishing a new principle: "vaisseau libre, marchandise libre, et vaisseau ennemi, marchandise ennemi." Among the thirty-six treaties, only fifteen can be found; the notable ones are: The French-Spanish Treaty of Nov. 7, 1659, the French-Denmarck Treaty of Feb. 14, 1663, the French-Portuguese Treaty of March 31, 1667, the French-Sweden Treaty April 14, 1672, the French-English Treaty of April 11, 1713, the French-Dutch Treaty of April 11, 1713, etc.. #192#

In the Polish, Russian and Danish attempt to attack Sweden in 1699, Frederick III of Prussia decided to maintain his neutrality. #193#

In the Sweden War of 1715, England warned the belligerents for their disregarding the preservation of neutral commerce. Sweden continued her attitude of indifference to the British complaints regarding the injury to neutral commerce. #194#

#190# Hill, Vol. III, 1914, pp. 162-163.
#191# Hill, Vol. III, pp. 242-244.
#192# Calvo, tome III, Sec. 2209. #193# Hill, Vol. III, p. 293.
#194# Hill, Vol. III, pp. 348-349.

In the War of Polish Succession of 1733, France was dissatisfied with the neutrality of England. According to the famous Walpole's policy utilitarianistid of peace and neutrality, which has become one of the traditional policies of England, it was an advantage for English commercial and colonial progress to avoid as far as possible a waste of life and money while England's rivals were draining their resources and ~~mmm~~ exhausting their energies in making a few territorial conquests of doubtful permanence; the aim of England should be to grow rich and strong by building up commerce and developing colonies. This policy can be changed only at the moment when a world-struggle for commerce and colonies was to begin in earnest ! #195#

In the 18th century, the conflict between England and Spain, in which France had gradually permitted herself to become involved, had its origin in questions concerning contraband trade. #196#

In the Treaty of Versailles concluded between France and Austria on May 1, 1756, Austria promised to maintain neutrality in the War in America; France promised to maintain neutrality in the War in Holland. #197#

On Jan. 16, 1756, the so-called "treaty of neutralization"---the Treaty of Westminster---was concluded between Prussia and England with a confidential view to preventing France from invading Hanover and preventing Russia from invading Prussia and Silesia. #198#

#195# Hill, Vol. III, pp. 441-442, 446-447.
#196# Hill, Vol. III, p. 447.
#197# Hill, Vol. III, pp. 523-524.
#198# Hill, Vol. III, p. 519.

In 1768, Russia's army pursued Polish troops into Turkey, a neutral non-belligerent; Turkey resisted Russian aggressive troops with armed forces and a declaration of war.#199#

England, while formerly following the principlem as embodied in the Consulat de la mer --- the non-confiscation of the non-military cargo in an enemy's vessel, began to adopt a new principle in her War of 1756 with France too. The new principle was that a neutral vessel can be confiscated "par adoption"---when it serves enemy (a belligerent). With this principle, England confiscated a Dutch vessel in 1756. The purpose of this principle was precisely to cut the transportation and trade between the neutrals and French colonies in order to strengthen the English blockade. Therefore, many writers deemed this principle aggressive. In 1780, the First Armed Neutrality was thus brought about. #200#

The First Armed Neutrality of 1780 was brought about by the cause of the seizure of two Russian vessels loaded with wheat and bound likely for Gibralrar. On Feb. 28, 1780, Empress Catherine of Russia, upon her Prime Minister Panin's proposal, issued a Declaration with five points: (1) "Il est permis aux navires neutres de naviguer de port en port, et le long des côtes appartenant aux Etats belligérents sans être détenus;" (2) "Les marchandises ennemies sont libres sous pavillon neutre, à l'exception de la contrebande de guerre;" (3) "Pour déterminer ce qui doit être considéré comme contrebande de guerre la Russie s'en tient aux articles 10 et 11 de son traité avec l'Angleterre en date du 20 juin 1766, auquel elle accorde force obligatoire à l'égard de tous les belligérents;" (4)

#199# Weber, "Outlines of Universal History", pp. 341-342.
#200# Calvo, "Le Droit International", tome III, sec. 2. 10.

"On ne considérera pas un port comme bloqué tant qu'il n'y aura point de danger réel et effetif à son entrée, c'est-à-dire tant qu'il ne sera point cerné par l'ennemi," and (5) "ces principes serviront de régle dans les procédures et les jugements des tribunaux des prises maritimes." The Russian Government further declared the Baltic Sea the Mare Clausum, mer fermée ou intérieure, where no conduct of war was permitted. The States who joined this Declaration were: Denmarck (July 9, 1780), Sweden (Aug. 1, 1780), Holland (Jan. 3, 1781), Prussia (May 8, 1781), Austria (Oct. 9, 1781), Portugal (July 13, 1782), les Deux Sicilles (Feb. 10, 1783), France, Spain and the United States of America. All these States agreed to the obligation to maintain this principle of neutrality with armed force. Facing so many States, England had to yield. On Sept. 20, 1786, after the paix de Versailles (1783) which concluded the American War of Independence, a treaty was signed by France and the United States supporting the general principle of armed neutrality.

Not long after the Russian principle of neutrality was widely accepted, in the French Revolutionary War, the Allies arbitrarily extended the contents of contraband of war in order to bloakade France. As a reprisal, the French Convention Nationale issued a decree on May 9, 1793, declaring the prohibition of neutral vessel transporting corn and meat to the enemies and the abolition of the principle of "le pavillon couvre la marchandise."

This decree offered a long waited for opportunity to the restoration of English traditional principle since 1756. On June 8, 1793, the English Government issued a decree to order the English fleets to seize all neutral vessels bound for the enemy so

as to strengthen the blockade against France !

Though England and all the pther countries following the restored English principle explained that this new step was provisional and exceptional, Russia refused to participate and issued a Declaration in 1800, insisting upon her principle of neutrality: (1) Only in case blockade is effective and made known and violated by force or attempt of a neutral, the seizure of a neutral vessel may be justified, as this cause is concerned; (2) Neutral merchantmen "en convoi sous l'escorte d'un navire de guerre", shall [redacted] be exempted from visit provided that the chief of the convoy shall make a statement, which should be considered authoritative, certifying the non-existence of any contraband of war in the ships convoyed. But in 1801, after the Russian Emperor Paul's death, the alliance of the neutral states, who wished to guarantee their commercial interests, led by Russia was broken. #201#

Denmarck was one of the states supporting Russia's principle of neutrality, but soon attacked by England with a declaration of war as the most effective way to settle the arguments concerning neutrality ! #202#

On June 17, 1801, England had succeeded in gaining a compromise with Russia resolving the problem of neutrality. That was the conclusion of the Anglo-Russia Maritime Convention which mostly adopted Russia's principle by agreeing to the confiscation of the contraband of war and enemy property and a modification on the system of visit to convoy. On Oct. 23, 1801, and March 30, 1802,

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#201# Calvo, "Le Droit International", tome III, Sec. 2212-2215.
#202# Calvo, tome III, Sec. 2215.

Denmarck and Sweden adhered thereto separately.

However, this compromise, being not completely favourable to neutrals and incompatible to English traditional doctrine of superiority over seas, was soon given up. In 1801, English House of Lords expressed an open objection. In 1807 Russia declared it abolished and the principle of armed neutrality of 1801 restored. England would negotiate no more treaty of neutrality with any state in order to avoid any external restriction on her freedom of action ! #203#

Following the controversy between France and England and between England and Russia, there arose a new country participating in this struggle. It was the United States of America, who wished to have her security and independence preserved by a policy of neutrality. In the War during the French Revolution, France enjoyed some military privileges in the United States as a result of her Treaty of 1778 with the latter. England protested such status of unneutrality. President Washington, therefore, issued a proclamation of neutrality on April 22, 1793, calling for an "impartial and amicable" attitude of the Americans toward all the belligerents. On June 5, 1793, the American Government sent identical notes to France and England demanding their respecting her neutrality and observing certain regulations; though France insisted upon her previous treaty privileges, the American attitude was firm. The American tradition of neutrality was thus founded and later supplemented by the Act of June 14, 1797, the Act of March 3, 1817 (when in case of South American Revolutions), the First American neutrality code of April 20, 1818, a combination of the Acts of 1794 and 1817, the Act of March 10, 1838

#203# Calvo, tome,III, Sec. 2216-2218.

(after the Caroline Case), the judicial decisions and interpretations of the American courts of law during the years between 1884 and 1895 (when in case of the Rebellion of Cuba), the regulations of the Justice Department brought about in the years after 1910 (when in case of Mexico Revolution), the Act of April 22, 1898, the Act of March 14, 1912 (when in case of some civil wars), the Act of March 4, 1915 (during the European War) and the Act of June 15, 1917.#204# After the World War of 1914-1918, there still have been more such Acts which will be dealt with later.

In the Napoleonic Wars, General Bernadotte of Sweden, an ally of France, in 1805, disregarding Prussia's neutrality, pressed forward through the Brandenburg Margravate of Anspach-Bayreuth upon the Isar. This violation of neutrality irritated the King, Frederick William III, to such a degree that he entered into closer relationship with the allies, and assumed a threatening aspect without, however, actually declaring war. #205# On the other hand, England declared some principles of neutrality in some of her treaties concluded around 1806. These principles are: (1) Neutral vessel can not protect enemy cargo; (2) No exemption from visit is granted to convoy; (3) Blockade begins with a declaration of such act. Counter-principles were declared by Napoleon in his Décret de Berlin of Nov. 21, 1806, in which he ordered a drastic blockade against England and which was further supplemented by his Décret de Milan of Dec. 17, 1807, which considered neutral vessels enemy vessels should the former tolerate the visit or taxation by the latter.

#204# Calvo, tome III, Sec. 2219-2226, 2227, 2240.
American Journal of International Law, 1935, ("Neutrality Laws of the United States.)
#205# Weber, "Outlines of Universal History", pp. 384-385.

England adopted similar acts in violation of customary international law of neutrality. Such acts were embodied in the Orders in Council of May 16, 1806, Jan. 7, 1807 and Nov. 11, 1807.#206#

After the Congress of Vienne, England adopted the "Foreign Enlistment Act" in 1819, purporting to maintain her neutrality in the Revolution of South America. But England soon violated her own law of neubrality after 1819, when she furnished Greece with munitions of war and volunteers in the Greek Rebellion against Turkey. And this Act was not applicable in case England was at war or an alliance of a belligerent in a war. In 1870 this Act was modified. #207#

Besides the Swiss perpetual neutrality re-affirmed in the Treaty of Vienne and the Belgian perpetual neutrality recognized in the London Conference of 1830, the Declaration of Paris of April 16, 1856 opened a new age of the development of the principle of neutrality and is regarded as the first international written law of neutrality, according to which: (1) "La course est et demeure abolie;" (2) "La pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre;" (3) "La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi;" (4) "Les blocus, pour être obligatoires, doivent être effectif, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi." The purposes of this Declaration were:(1) "que le droit maritime en temps de guerre a été pendant longtemps l'objet de contestations regretables; (2) que l'incertitude des droits et des devoits en cette

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#206# Calvo, tome III, Sec. 2241—2244.
#207# Calvo, tome III, Sec. 2245—2250, 2277. The New Foreign Enlistment Act, adopted on Aug. 3, 1870, is called the British Neutrality Charter.

matière donne lieu entre les neutres et les belligérents à des divergences d'opinion qui peuvent faire naître des difficultés sérieuses et même des conflits;"(3) "que il y a par conséquent avantage à établir une doctrine uniforme sur un point aussi important...., à introduire dans les rapports internationaux des principes fixes à cet égard." There were thirty-two countries having adhered to this Declaration, including all the countries other than Spain in Europe and all the American States other than Mexico and the United States. Spain and Mexico were following the United States to insist upon the right of arming and using privateer and the inviolability of private property in time of maritime war which were strongly expressed in the Note sent by the United States' Secretary of State Marcy as a reply to the invitation of the parties to the Declaration. Therefore, the United States, Mexico and Spain adhered thereto with reservation. #208#

This Declaration had been applied and observed in some

#208# The original signatories of the Declaration of Paris in the Congress of Paris were seven: France, England, Russia, Turkey, Austria, Sardinia and Prussia.
The thirty-two States who adhered to the Declaration were: Bade Bavière, Belgique, Brême, Bolivie, Brésil, Brunswick, Chili, Confédération Argentine, Denemark, Equateur, Etats-Romains, Grèce, Guatemala, Hambourg, Haiti, Hesse, Lubeck, Mecklembourg-Schwerin, Mecklembourg-Strelitz, Nouvelle-Grenade, Oldenbourg, Pays-Bas, Pérou, Portugal, Salvador, Sax (trois duchés), Sax Royale, Suède et Norvége, Suisse, Uruguay, Wurtemberg.
The states who adhered to the Declaration with reservation were three: the United States, Spain and Mexico.
See Professor S. R. Chow, "A History of Modern European Diplomacy", 1932, pp. 163-164, 166. Calvo, tome III, Sec. 2256-59.
There were twelve treaties, concluded between 1858 and 1885, embodying this Declaration.
See J. B. Moore, "Digest of International Law", Vol. VII, p. 565 et suiv..
Jessup & Deak, "Treaty Provisions Defining Neutral Rights and Duties", Senate Document No. 84, 75th Congress, 1st session, pp. 100-101.

of the wars subsequent to 1856, such as the Italo-French-Austrian War of 1859, the Prussian-Austrian-Danish War of 1864, the Prussian-/Italian-Austrian War of 1866, the Prussian-French War of 1870, and the Russo-Turkish War of 1877. #209#

During the Civil War of the United States (1861-1868), there had been a famous award of arbitration concerning the controversy of the so-called Alabama Claims between the United States and Great Britain. This award was brought about by five arbitrators: Sir Alexander Cockburn on behalf of the English King, Mr. Charles Francis Adams on behalf of the President of the United States, Comte Selopis on behalf of the Italian King, Mr. Jacques Staempfli on behalf of the President of Switzerland and Baron d'Itajuba on behalf of the Brazilian Emperor. On September 14, 1872, at Genève, and accepted by the parties to the controversy. According to this award, not only England was required to submit a fund of US$15,500,000.00 in compensation for the loss suffered by the United States in the three cases of Alabama (1862), Florida (1862) and Shenandoah (1864), but also a series of three principles of neutrality was adopted and previously agreed to by the Anglo-American Treaty of Washington on May 8, 1871. The three principles were: (1) The Government of a neutral state has a right within its jurisdiction to prohibit on its territory the act of arming any vessel of either belligerent and prohibit any suspected vessel to sail off in order to prevent it from participating in the war operations of other countries; (2) All belligerents shall not make use of neutral ports and territorial waters for military bases; and (3) A neutral government shall adopt such measures as necessary to strictly prevent its citizens from

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#209# Calvo, tome III, Sec. 2261, 2262, 2293-2295, 2297.

violating neutral obligations. The Calvo Doctrine of state responsibility and compensation was also a result given rise to by this award as described in his "Le Droit International, Théorique et Pratique",(tome III, Sec. 2285-2286), though the award itself had already adopted part of this Calvo Doctrine. #210#

The second international convention concerning neutrality is the first Hague Conventions of July 29, 1899 (Convention With Respect to the Laws and Customs of War on Land), in Section IV of which regulations were stipulated for the internment of belligerents and the care of the wounded in neutral countries (Articles 57-60). Twenty-six states were represented on the Conference and signed the Convention. #211# The purposes of this Convention were declared to be that "tout en recherchant les moyens de sauvegarder la paix et de prévenir les conflits armés entre les nations, il importe de se préoccuper également du cas ou l'appel aux armes serait amené par des événements que Leur sollicitude n'aurait pu détourner;" and that the High Contracting Parties were "animés du désir de servir encore, dans cette hypothèse extrême, les intérêts de l'humanité et les exigences progressives de la civilization." #212#

The third, the most important, international convention, containing an international code of neutrality, is the second Hague Conventions of 1907 (Final Act and Conventions of the second International Peace Conference). In Part IV of these Conventions the

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#210# Calvo, tome III, Sec. 2263--2289; re the three principles & the award, see Sec. 2279, 2288-2289; re Calvo Doctrine, see Sec. 2285-2286.

#211# These twenty-six states are: China, Germany, Austro-Hungary, Belgium, Denmarek, Spain, the United States, Mexico, France, Great Britain, Greece, Italy, Japan, Luxemburg, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Servia,

neutral rights and duties in case of a war on land are regulated# (Chapters I—V). In Part VII of these Conventions the neutral rights and duties inpase of a maritime war are regulated. Forty-four states were represented on the Conference and signed the Conventions.#213# The purposes of these Conventions were declared to be that the High Contracting Parties were "en vue de mieux préciser les droits et les devoirs des Puissances neutres en cas de guerre sur terre et de régler la situation des belligérants réfugiés en territoire neutre, désirant également définir la qualité de neutre en attendant qu'il soit possible de régler dans son ensemble la situation des particuliers neutres dans leurs rapports avec les belligérants;" and that the High Contracting Parties were further "en vue de diminuer les divergences d'opinion qui, en cas de guerre maritime, existent encore au sujet des rapports entre les Puissances neutres et les Puissances belligérantes, et de prévenir les difficultés auxquelles ces divergences pourraient donner lieu; considérant que.....il y a.... une utilité incontestable à établir, dans la mesure du possible,

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Siam, Turkey, Bulgaria, Sweden and Norway (personal union). The Conference was held from May 18 to June 29, 1899. see R. B. Mowat, "A History of European Diplomacy", Vol. I, 1815--1914, (1933), p. 289.
"Conventions des Première et Deuxième Conférences Internationales de la Paix à La Haye, Actes et Donuments",---Yellow Book published in 1910 by the Foreign Office of His Majesty's Imperial Government, The Empire of China, at Pékin, Part I, Conférence de la Paix de 1899, p.1-7.

#212# Chinese Yellow Book, 1910, p. 2. Préambule.

#213# The forty-four states are: China, Germany, the United States, Argentine, Austro-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Cuba, Denmarck, Dominican Republic, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, The Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Switzerland, Turkey, Uruguay and Venezuela. The Conference was held from June 15, to October 18, 1907.
See Chinese Yellow Book, 1910, Part II, Conférence de la paix de 1907, pp. 36-71.
Mowat, Vol. II, 1815-1925, p. 289.

des règles communes pour le cas où malheureusement la guerre viendrait à éclater; considérant que, pour les cas non-prévus par la présente convention, il y a lieu de tenir compte des principes généraux du droit des gens;...considérant que c'est, pour les Puissances neutres, un devoir reconnu d'appliquer impartialement aux divers belligérants les règles adoptées par elles; considérant que, dans cet ordre d'idées, ces règles ne devraient pas, en principe, être changées au cours de la guerre, par une Puissance neutre, sauf dans le cas où l'expérience acquise en démontrerait la nécessité pour la sauvegarde de ses droits." #214#

The fourth international convention with respect to neutrality is the Declaration of London of 1909 February 26, ("Declaration concerning the Laws of Naval War", the official text of which is in French). This Declaration confirms and regulates the general rules concerning the relations between belligerents and neutrals in case of a maritime war (Chapter I-IX). Ten states were represented on the London Conference of 1909 and signed the Declaration. They are: Germany, the United States, Austro-Hungary, Spain, France, Great Britain, Italy, Japan, the Netherlands and Russia. The purposes of this Declaration were declared to be that the High Contracting Parties were "considering....what are the generally recognised rules of international law within the meaning of Article 7 of the Convention of 18th October 1907, relative to the establishment of an international prize court; recognizing all the advantages

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#214# Chinese Yellow Book, 1910, pp. 132, 174. Préambule, Convention concernant les droits et les devoirs des puissances et des personnes neutres en cas de guerre sur terre; Préambule, Convention concernant les droits et les devoirs des puissances neutres en cas de guerre maritime.

which, in the unfortunate event of a naval war, an agreement as to said rules would present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral Governments; considering that general the principles of international law are often in their practical application the subject of divergent procedure, animated by the desire to insure henceforward a greater measure of uniformity in this respect; hoping that a work so important to the common welfare will meet with general approval." Though the Declaration has not been ratified, "the signatory powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law."#215# Some attempts had been made to apply this Declaration of 1909 to the world war of 1914-1918, and some countries had spontaneously and unilaterally declared to observe the provisions of the Declaration of 1909 in their proclamations of neutrality, [redacted] #216#

A third Hague Conference was planned to be summoned in 1917, but was interrupted by the World War. #217#

#215# Professor Llewellyn Pfankuchen of Wisconsin, "A Documentary Textbook in International Law", 1940, pp. 894--911.
Professor Herbert Briggs of Cornell, "The Law of Nations, Cases, Documents, and Notes." 1938, pp. 908--916.
Jessup, "Neutrality", Vol. III, 1936, p. IX.

#216# Professor James Wilford Garner of Illinois, "International Law and the World War", 1920, Vol. I, pp. 29-35.
Briggs, pp. 910-916.
Deák and Jessup, "Neutrality Laws, Regulations and Treaties", 1939, p. 357 et seq.

#217# Dr. James Brown Scott, "Development of Diplomacy in Modern Times", in Walsh, "The History and Nature of International Relations", 1922, p. 131.
Chinese Yellow Book, 1910, ("Conventions des Première et Deuxième Conférences internationales de la Paix à la Haye, Actes et Documents."), p. 69.

During the years between the 16th and 19th centuries there wasm no doubt that many theorists persuaded and supported the principle of neutrality. Such theorists were led by Wolff, Vattel Bynkershoek, Heineccius, De Martens, Gessner, Wheaton, Hubner, Phillimore, Massé, etc.. Their theories will be dealt with later.

Under this general tendency to the formation of an international law of neutrality, nevertheless, there were also counter-movements against the pure positivist wiew and neutrality.

(1) In the first place, the thought of justice was remaining active among jurists. Neutrality was regarded as unjust. The Father of International Law, M. Hugo Grotius, though referred to the status and rights of neutrality by using such terms as "medii", "non hostes", "De belli statu inter non hostes" (De l' état de guerre entre les non-ennemis"), etc. and saying that "J' appelle "non ennemis" ceux qui ne sont ni de l'un ni de L'autre partim et ne doivent rien en vertu d'une alliance à celui-ci ou à celui-là; s'ils doivent quelque chose, ils sont alliés et non simplement amis",#218# carried the notion of the just war from the Middle Ages into modern times and made of it an issue of modern international law. He was seeking a legal distinction between "righteous wars" and "unrighteous wars". He said, "the distinction between just and unjust causes has a definite legal effect with respect to those who are on neither side in war, they must refrain from lending assistance to the one who supports a wicked cause and from placing obstacles in the way of the party which wages a just war....There is no state so powerful that it may not sometime need the help of others outside itself, either for purposes of trade, or even to ward off the forces of many foreign nations united against

it.....All things are uncertain the moment when men depart from law....This maintenance of the social order....is the source of law properly so called. To this sphere of law belong the abstaining from that which is anothers, the restoration to another of anything of his which we may have, together with any gain which we may have received from it; the obligation to fulfill promises, the making ~~a~~ and good of a loss incurred through our fault, and the inflicting of penalties upon men according to their deserts.....Law, even though without a sanction, is not entirely void of effect. For justice brings peace of conscience, while injustice causes torments and anguish, such as Plato describes, in the breast of tyrants. Justice is approved, and injustice condemned, by the common agreement of good men. But, most important of all, in God injustice finds an enemy, justice a protector.... One has justice on his side; they often attribute victory chiefly to this cause." In the dedication of his great work, "De jure Belli ac Pacis", published in 1625, to Louis XIII of France, Grotius addresses the King as "everywhere known by the name Just no less than that of Louis....Just, when call back to life laws that are on the verge of burial, and with all your strength set yourself against the trend of an age which is rushing headlong to destruction;...when you offer no violence to souls that hold views different from your own in matter of religion;...when by the exercise of your authority you lighten the burden of oppressed peoples." #219#

#218# Grotius, in Calvo, "Le Droit International", tome III, Sec. 2186.

#219# Grotius, "Law of War and Peace", Prolegomena, (Extract from the translation of Hugo Grotius' De Jure Belli ac Pacis Libri Tres, published in 1925 by the Carnegie Endowment for International Peace) and Introductory Note by Professor G.G. Wilson of Harvard, American Journal of International Law, April, 1941, pp. 205, 209-210, 213-214, 216.

Bynkershoek, in his book published in 1737, though held that "neutral behavior is an absolute duty unconnected with the justice of the war", also followed Grotius by saying that "If two nations with which a third state is allied are waging war with each other, the latter is obliged to side with the party that was unjustly attacked." #220#

(2) In the second place, the thought of justice was remaining active among States. States always attempted to justify their wars with cogent reasons of law or equity, in obvious response to a deep-seated spiritual need of human nature to base political actions on just and equitable grounds. #221# For instance, (A) In the Declaration of Sept. 4, 1427, the Duke of Milan declares that he takes up arms against the Duke of Savoy "confident in the Divine mercy which always favours the just cause."#222# (B) In 1672, King Charles II of England's Declaration of War against the Netherlands ends on the same note of"confidence which we have in God that he will assist us in our just enterprise."#223# (C) In 1689 England declared war on France with the reason that "English subject had been persecuted in France Contrary to the law of nations because of their religion." #224# (D) In the English War of Jenkin's Ear of 1739 against

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Joachim Von Elbe of Yale, "Evolution of the Concept of the Just War in International Law", American Journal of International Law, Oct. 1939, pp. 678-680.
Oppenheim, 6th ed. 1940, Vol. II, p. 489.

#220# Bynkershoek in Elbe, in American Journal of International Law, Oct. 1939, pp. 680-681.

#221# Elbe, in A. J. I. L., Oct. 1939, p. 685. "The Josef L. Kung of the University of Toledo, "Problem of Revision in International Law", A. J. I. L., Jan. 1939, p. 45.

#222# Du Mont, "Corps Universel Diplomatique du Droit des Gens", Vol. II, 2, p. 193.

#223# Du Mont, Vol. VII, 1, p. 163.

#224# British Declaration of war against France, May 17, 1689. Du Mont, Vol.VII, 2, p. 230.

against Spain and France, English Foreign Secretary Robert Walpole declared that "The war was unjust, impolitic and dishonourable", though his this statement was made in view of that "in case of war France would unite with Spain and that England could not hope for aid from Holland, Sweden or the Emperor." #225# (E) In his famous and respectable Declaration of 1764 concerning the problem of Poland, King Louis XV of France declared: "he considered upon that occasion only the advantages of the Republic; that he entertained no other wish or desire than to see the Polish nation maintained in all its rights, in all its possessions, in all its liberties, and especially in the most precious of its prerogatives; that of giving itself a King by a free election and a voluntary choice....It is for the nation itself to determine its choice by consulting its own advantage, without regard to foreign influences; and His Majesty will recognize as King of Poland and as an ally of his crown, and will even sustain and protect, whoever shall be elected by the free choice of the nation and conformably to the laws and constitutions of the country." #226# (F) In 1812 the King of England entered the War against the United States "under the favour of Providence, relying on the justice of his cause."#227# (G) The Proclamation of the King of Prussia of March 13, 1813 against France declares a cause of justice.#228# (H) In 1828, Russia declared war on Turkey with the reasons of"the protection of her rights in the Levant" and "the maintenance of respect for treaties." #229#

#225# Hill, Vol. III, 1914, p. 447.
#226# Marsangy, "Le Chevalier de Vergennes", II, p. 254.
Hill, Vol. III, 1914, pp. 628-629.
#227# British and Foreign State Papers, Vol. I, 2, p. 1508.
#228# British and Foreign State Papers, Vol. 76, p. 1295.
#229# Manifesto of the Emperor of Russia, April 14-26, 1828.
British and Foreign State Papers, Vol. 15, p. 665.

(I) Uruguay speaks of "injured rights" in her war against Buenos Ayres.#230# (J) In 1846, the United States declared war on Mexico with the reasons that "they feel they wrongs which have forced on them the last resort of injured nations" and that "they exert themselves in preserving order". #231# (K) In 1853 the Russian occupation of the Danubian principalities was considered by Turkey"a violation of treaties and consequently a casus belli.....our arms in the holy and just cause..." The Crimean War, then, broke out. #232# (L) In 1859, the Emperor of Austria considered that "the indisputable fights of my crown....and the integrity of the realm placed by God under my care... both are threatened by Sardinia's inimical acts in 1859" the casus belli of her war on Sardinia.#233# (M) In 1859, the Circular addressed to Austrian Representatives at Foreign courts declares a cause of justice too.#234# (N) In 1866 the Italian Manifesto of War with Austria reads: "You may rely more firmly upon the sacredness of your rights."#235# (O) In 1879 the Declaration of war by Chile against Péroa contains about the same speech. #236# (P) In 1885 the Proclamation of War by Serbia against Bulgaria reads, "the just cause of serbia...the sacred cause of Serbia". #237# (Q) In 1885 the Proclamation of the Prince of Bulgaria reads about the same.#238# (R)"During the 17th and 18th centuries, the political principles of the maintenance of the European balance of power frequently furnished a just cause for war".#239# (S) "The

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#230# British and Foreign State Papers, Vol. 27, p. 1214.
#231# Proclamation of May 13, 1846; Br. & For. State Papers, Vol.34 p. 1137.
#232# Russian Declaration of War of Oct. 20--Nov. 1, 1853. Br. & For. State Papers, Vol. 61, p. 1056.
#233# Manifesto of Austria, April 28, 1859, Br.&For.State Papers, Vol. 57, p. 228.
#234# Circular of April 29, 1859. Br.&For. State Papers,Vol.57,p.230
#235# Italian Manifesto of June 18, 1866. Br. & For. State Papers, Vol. 63, p. 585.

conviction, as evidenced in the practice of states, that wars are fought for just causes, was strong enough to raise at the end of the World War (1914-1918) once more the question as to the guilty party." #240#

(3) In the third place, a movement towards the establishment of an international institution of collective security and intervention remained going on: (A) In the Treaty of Osnabruck (also in the Treaty of Münster), brought about by the Peace of Westphalia of October 24, 1648, #241# Paragraph V of Article XVII reads: "All and each of the Contracting Parties of this Treaty shall be held to defend and maintain all and each of the dispositions of this peace, against whomsoever it may be, without distinction of religion." "As a guarantee of faithful execution, the treaties of Westphalia were accepted as a fundamental law by all the contractants, who were empowered and bound to defend their provisions. Thus, for the first time, Europe received what may be fairly described as an international constitution, which gave to all its adherents the right of intervention to enforce its arrangements.....The Treaties of Westphalia were accepted by Catholics and Protestants alike as forming the fundamental law of Europe." #242# (B) On March 10, 1814,

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#236# Br. & For. State Papers, Vol. 70, p. 184.
#237# Proclamation of Nov. 2-14, 1885, Br. & For. State Papers, Vol. 76, p. 1291.
#238# British & Foreign State Papers, Vol. 76, p. 1295.
#239# Elbe, "Evolution of the Concept of the Just War in International Law", American Journal of International Law, Oct. 1939, p. 687.
#240# Elbe, in A. J. I. L., Oct. 1939, p. 687, 685-687.
In the Franco-Russian Treaty of Alliance of 1894, the word "aggression" seemed for the first time to be used in a treaty. see Dickinson, "The International Anarchy, 1904-1914", (1926) pp. 108-109.
#241# The scope of the Peace of Westphalia is shown in the 10th and 11th paragraphs of Article XVII of the Treaty of Osnabruck as follows:
"On the part of the Most Serene Emperor (Germany) are

the Pact de Chaumont was concluded by England, Russia, Prussia and Austria with a view to guaranteeing the peace established by the Traité de Vienne. (C) On September 26, 1815, the Traité de la Saint-Alliance was declared by the Emperor of Russia to have been concluded by Russia, Prussia and Austria. In this Treaty the High Contracting Parties undertook to preserve justice, peace and religion (Article I), to treat all and each of the Parties as brothers (Article II) and to welcome all the states other than the parties, who embrace the same wish and desire, to adhere to this Treaty (Article III). (D) On November 20, 1815, the Pacte de garantie was concluded by Great Britain, Russia, Austria and Prussia, with a view to preserving the peace established by the Traité de Vienne and to establishing a system of consultation, according to which they would consult with one another immediately on matters of general concern when occasion calls for. (E) On March 21, 1816,

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included in this Peace all His Majesty's allies and adherents, namely the Catholic King (Spain), the House of Austria, the Electors of the Holy Roman Empire, and with them the Duke of Savoy and the other states including the free and immediate Nobility of the said Empire and the Hanseatic cities, also the King of England, the King anf Kingdoms of Denmark and Norway with the annexed provinces together with the Duke of Schleswig, the King of Poland, the Duke of Lorraine and all the [redacted] Princes and Republics of Italy, the states of the United Provinces (Holland, etc.) and the Swiss Cantons, the Grisons, and the Prince of Transylvania.

"On the part of the Most Serene Queen and Kingdom of Sweden all their allies and adherents, namely, the Most Christian King [redacted] (France), the Electors, Princes and States including the free and immediate Nobility of the Empire and the Hanseatic cities, also the King of England, the King and Kingdoms of Denmark and Norway with the annexed provinces together with the Duke of Schleswig, the King of Poland, the King and Kingdom of Lusitania (Portugal), the Grand Duke of Moscovy (Russia), the Republic of Venice, the United Provinces (Holland, etc.), the Swiss, the Grisons, and the Princes of Transylvania."

Thus practically the whole of Europe was included in the Peace, except the Ottoman Empire.

see also Hill, "A History of European Diplomacy", Vol. III, 1914, p. 604, note: 2.

Emperor Alexender I of Russia made a proposal for general disarmament, declaring that the nations, being brothers, no longer needed armament. (F) In October of 1818 the Congrès d'Aix-la-Chapelle was held. In the Congress Great Britain, Russia, Prussia and Austria agreed to the return of France to European concert under the basis of equality. (G) In the Congrès de Troppau of October, 1820, England, Russia, Austria, Prussia and France brought about by majority vote (England objected) a protocol declaring that the countries arising through revolution were to be treated with non-recognition and no legal guarantee on their safety and that either peaceful measure or coercive force was justified to be resorted to, when intervention is called for by the threat of revolution in any other country. (H) In the Conference de Laybach of December, 1820, England, Russia, Austria, Prussia, France, Naples and some other states of Italy adopted, by majority vote, resolutions that the Revolution of Naples shall be suppressed and that the Conference entrusted Austria with this mission. (I) In the Congrès de Véron of 1822 England, Austria, Russia and France, by majority vote, adopted resolutions that the Revolution of Spain shall be suppressed and that the Congress entrusted France with this mission. (J) In 1810 Mr. Bolivar, one of the leaders of the Revolution in Spanish America, began to have an idea of Pan-Americanism. On September 22, 1825, the Government of Bolivia sent identical notes to the South American countries, proposing to summon a Pan-American conference at Panama, with a view to forming a confederation as an institution of collective security. On June 19, 1826, the Traité d'Union et de Confédération perpetuelle was concluded by Bolivia, Peru, Mexico and the

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re text of the Treaties of Westphalia: see Vast, "Les grands traité du règne de Louis XIV", 1893-1899, Paris.
Philippi, "Der Westphälische Friede, Münster", 1898.

Central American states. By this Treaty, a system of collective army under the confederation was brought about; an Assemblée général de Plénipotentiaires was formed and regulated to meet annually. The first Assembly was determined to be held in Mexico. The United States failed to join in because of the objection from the Senate; though President Adams declared in his Message of Dec. 6, 1825 his intention to adhere thereto. It was certainly a tragedy that the Treaty of Union and of perpetual confederation was ratified only by one [redacted] party, Bolivia. #243# Yet the successful development of this system after the World War of 1914-1918 also certainly reminds us of the memorable contribution of Mr. Bolivar. #244#

(4) In the fourth place, there were many facts such as the individual intervention or collective intervention of non-belligerents during the years between 16th and 19th centuries: (A) In 1538, the Pope mediated a peace between France anf Germany with success. #245# (B) In 1609 King Henry IV of France mediated a peace between Spain and the Netherlands with success. #246# (C) In the War of 1632 between Sweden and Austria, Heilborn, the non-belligerent, became an ally of Sweden and France also afforded [redacted] financial assistance to Sweden. #247# (D) In the War of 1658 between

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#242# Hill, Vol. II, pp. 602-604.

#243# Professor P. Renouvin de l'Université de Paris, "Histoire Diplomatique", (1815-1914) 1930. (published by Centre Européen de la Donation Carnegie Pour la paix internationale). leçon IIe, IIIe, IVe, p. 18--51.

#244# In October 1518, a treaty was concluded between King Henry VIII of England and King Francis I of France, accepting the principle of a universal peace, as a result of Thomas Wolsey's pacific policy of balance of power. This Treaty was made open to the adherence by other states. On Jan. 14, 1519, King Charles of Spain adhered to the universal peace. See Hill, Vol. II, p. 307.

#245# Weber, "Outlines of Universal History", p. 224.

#246# Weber, p. 251.

#247# Weber, p. 269.

Sweden on the one hand and Denmark/Austria, Poland and Prussia on the other, a collective intervention of England, Holland and France, the so-called "First Hague Concert", was led by England, as chiefly a result of one of English traditional policies, Thomas Wolsey's pacific policy of balance of power, "making England the arbiter of Europe by holding the balance of power between the Continental monarchies," founded in 1513 under the reign of King Henry VIII. Though France disagreed/later in an armed intervention, an allied naval force of England and Holland was formed in accordance with the Anglo-Dutch Treaty of July 24, 1659, the so-called "Second Hague Concert". Thanks to this intervention, the war between Sweden and the Danish allies ended with the Peace of Oliva on May 3, 1660. #248# (E) In the War of 1660 between Sweden and Poland, Denmark intervened by attacking Sweden. #249# (F) In the undeclared English War of 1664 on Holland, France, an ally of Holland by their Treaty of Alliance of 1662, was not pleased to fulfill her treaty obligations as an ally, on account of the impoliteness of the attitude of the Dutch representative; instead, France mediated a peace between the belligerents with success. #250# (G) In the "War of Devolution" of 1667 between

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#248# Hill, Vol. III, pp. 45-49. In regard to this Sweden War of 1658 against Denmark, Austria, Poland and Brandenburg, The Chevalier de Terlon, French Ambassador to Sweden, thus reports in his Mémoires the intentions of Charles X confided to himself: "I shall destroy Copenhagen;...then I shall transfer the privileges of that city to Malmö, or to Landscrona in Scania, and make my residence in that province, which will become the centre of the State. After that, I shall render myself absolute master of the Baltic, and for that purpose I shall have a fleet of a hundred war-ships..... The conquest of Norway will follow that of Denmark....Finally, I wish to go to Italy with a powerful army and navy, like a second Alaric, to place the City of Rome once more under the power of the Goths." (Hill, Vol. III, p. 47 note.)

#249# Weber, "Outlines of Universal History", pp. 272-273.

#250# Hill, Vol. III, pp. 71-73.

France and Spain, the Triple Alliance of England, Holland and Sweden, formed in 1668, mediated a peace with success (Peace Treaty of Aix-la-Chapelle, 1668), by which French ambition in Spain was checked. #251# (H) In the war of 1672 between France and England on the one hand and Holland, and Germany (Austria), on the other, Brandenburg-Prussia, a non-belligerent, concluded treaties of alliance with Holland and Germany (Emperor Leopold I) "for the maintenance of the Peace of Westphalia, the protection of the Empire, and the defense of the peace treaties of the Pyrenees (concluding the French-Spanish War of 1659) and Aix-la-Chapelle." In 1673 Brandenburg-Prussia, a co-belligerent of Holland, being dissatisfied with Holland's failing in the fulfilment of her obligation to finance Brandenburg's army in the common war, turned to conclude the Treaty of Vossem with France in which Brandenburg promised not to aid France's enemy and, in reply, France promised to afford help to Brandenburg's demands against Holland. #252# (I) In the same war of 1672, England, France's ally and co-belligerent, after having defeated the Dutch navy, made a separate peace with Holland through the good offices of Spain. Instead, King Charles II of England attempted to mediate a peace between France and Holland. #253# (J) In the same war of 1672, England, France's ally and co-belligerent, after having made a separate peace with Holland, further concluded a Treaty of Alliance on December 31, 1677, and forced France to terms ! #254# (K) In the Dutch War of 1679, England, the non-belligerent and an ally of France, mediated a peace between France and the Netherlands with success by saying to King Louis XIV of France that, had France refused the mediation, England would have to renounce her treaty of alliance with

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#251# Hill, Vol. III, pp. 78-79. #252# Hill, Vol. III, pp. 113-4, 133. #253# Hill, Vol. III, pp. 134-5, 141. #254# Hill, Vol. III, p. 150.

France and help the Netherlands #255# (L) In the French-Spanish War of 1683, Holland mediated a peace with success.#256# (M) In the War of 1688 between France on the one hand and England, Holand, Germany, etc. onthe other, Sweden mediated a peace with success. In the Peace Treaty of Ryswick of October 30, 1697, between France and Germany, France recognized the independence of the Duchy of Lorraine on the condition of a right of passage.#257# (N) In the Anglo-Spanish War of 1727, Austria, an ally of Spain, seeing no profit obtainable from joining it, only severed her diplomatic relations with England, #258# (O) In the Austro-Prussian War of 1740, France afforded armed assistance to Prussia. #259# (P) In the Bavarian War of Succession of 1778 between Prussia and Austria, Russia and France mediated a peace with success. #260# (Q) In the War of Independence between England and the United States, France intervened by affording the United States armed assistance and rendered a war of reprisal from England. #261# (R) In the Second Turkish War of 1787-1792 between Russia and Turkey, England and Prussia intervened; Sweden took the opportunity to attack Russia. Russia lost the War. #262# (S) In the War of Revolution of 1821 in Italy between Naples and Austria, Prussia and Russia intervened by helping Austria (as a result of the Resolution of the Congrès de Laybach in 1820). #263# (T) In the War of Revolution of 1822 in Spain between Spain and France, the Congrès de Verona intervened by helping France. #264# (U) In the war of Revolution of 1827 between Greece and Turkey, England, Russia and France intervened by helping Greece. It was strange that England, declaring a principle of non-intervention toward the Revolution of Spanish America, adopted a policy of intervention toward

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#255# Weber, p. 891. #256# Hill, Vol. III, pp. 165-6. #257# Hill, Vol. III, pp. 224-6, 242-4, 244-246. #258# Hill, Vol. III, p. 430.

the Revolution of Greece, while Russia and Prussia, having maintained the principle of intervention toward the revolutions in Naples and Spain, adopted a policy of armed assistance in favour of the revolution in Greece ! The intervention of the Powers in the Revolution of Greece was [illegible] probably, at least so declared, being carried on with a goal of humanitarianism infavour of the freedom and independence of the Greek nation; yet the London Conference of 1830 accorded recognition to the independence of Greece on such prerequisites as the limitation of Greece's boundary to a small State and the limitation of Greece's constitution to a monarchy in despite of the free will and desire of the Greek people ! In 1832, the President of the [illegible] Provisional Government of the revolutionary Greece was forced to have abdicated in favour of a foreign man called Prince Othon as the King of Greece, selected by the friendly Powers of the Greek people ! Therefore, after this tragedy of the Greek revolution of independence, M. Ypsilanti, the poor and sympathy-worthy leader of the Greek Revolution, impressed us with the following words: "La Grèce sera un jour délivrée des Turcs, mais jamais elle ne sera délivrée des grandes puissances !" #265# (V) In the War of Revolution in Spanish America, the United States intervened in the conflicts between the European Powers and the Spanish Americas by declaring the Monroe Doctrine, backed by the British principle of non-intervention in domestic affairs. #266# (W) In the Belgian War of Independence of 1830, France aided Belgium and England attempted to intervene with France. In the London Conference of 1830, the Powers accorded Belgium

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#259# Hill, Vol. III, pp. 448, 459. #260# Weber, p. 322.
#261# Weber, p. 332-3. #262# Weber, pp. 342-343. #263# Weber, p. 416.
#264# Weber, p. 417.
#265# Professor Renouvin, "Histoire Diplomatique", leçon Ve.
#266# Professor Renouvin, "Histoire Diplomatique", IVe leçon.

recognition and Belgium promised to maintain a status of perpetual neutrality. #267# (X) In the Turkish-Egyptian War of 1832, the navy of England, a non-belligerent, bombarded the Egyptian forces at Constantinople ; #268# (Y) In the Turkish-Egyptian War of 1839, England and Russia intervened by declaring their objection to Egypt's absorbing Syria. In 1840 England allied with Russia, Austria and Prussia to oppress Egypt again. In 1841 the Powers turned to agree with the absorption of Syria by Egypt ; #269# (Z) In the War of 1844 between France and Morocco, England intervened by declaring her objection to any indemnity or territorial demand against Morocco by France when peace was to be made. #270# (ZA) In the Mexico-Texas War of 1846-1848, the United States afforded assistance to Texas, while England afforded assistance to Mexico. #271# (ZB) In the conflict between Piédment and Austria in 1848, England and France helped Austria to force Piédmont to terms. #272# (ZC) In the Crimean War of 1854 between Russia and Turkey, England and France carried on an intervention favourable to Turkey. After the declaration of war on Russia by England and France in 1854, Sardinia joined the allies. Austria and Prussia intervened too. After Russia surrendered Moldavia and Wallachia to Austria without an armed conflict, Austria intended to maintain a status of non-belligerent, but was forced by England and France to join the allies. #273# (ZD) In the Crimean War of 1854, Sweden, a non-belligerent, promised to afford bases to England and France for attacking Russia's Capital (Treaty of Mutual Assistance in November of 1855, during the War). #274# (ZE) In the

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#267# Renouvin, VIe leçon. #268# Renouvin, VIIe leçon.
#269# Renouvin, VIIe leçon. #270# Renouvin, VIIIe leçon.
#271# Renouvin, IXe leçon.
#272# Renouvin, XIIe et XIIIe leçons.
#273# Renouvin, XIVe et XVe leçons.
#274# Renouvin, XIVe et XVe leçons.

War of 1859 between Sardinia and France on the one hand and Austria on the other, England mediated a peace ; and Prussia intervened by massing 400,000 men at the French border on Rhine. #275# (ZF) In the War of 1861 between Mexico on the one hand and England, France and Spain on the other, the United States declared her Monroe Doctrine again. #276# (ZG) In the War of Succession of 1850 between Denmark and Prussia, Russia mediated successfully a peace with the cooperation of the London Conference attended by England, France, Sweden and Austria. #277# (ZH) In the Prussian-Austrian War of 1866, France mediated a peace with success. #278# (ZI) In the Russo-Turkish War of 1877, England, France, Germany and Austria intervened by forcing Russia to terms. #279# (ZJ) In the Sino-Japanese War of 1894, England, France and Russia intervened by preventing Japan from seizing Mukden-Peninsula (Official name: Liao-Tong Peninsula) from China. #280# (ZK) In the Italo-Turkish War of 1911, Germany mediated a peace with success. #281# (ZL) In the First Balkan War of 1912, a conference at London led by England and France intervened. Roumania, being a neutral, demanded compensation from Bulgaria without success. #282# (ZM) In the Second Balkan War, Roumania joined to attack Bulgaria, who was receiving assistance from Germany. #283# (ZN) In the third Balkan War (Austro-Serbian War, an introduction to the World War) of 1914, the Triple Alliance and the Triple Entente were drawing the interested states and nations to take sides, while

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#275# Renouvin, "Histoire Diplomatique", XVIe et XVIIe leçons.
#276# Renouvin, XIXe leçons
#277# Renouvin, XXe et XXIe leçons.
#278# Renouvin, XXIe leçon.
#279# Professor S. R. Chow, "A History of Modern European Diplomacy", 1932, pp. 280-303.
#280# Professor, S. R. Chow, "Ten Lectures on the Unequal Treaties of China", 3rd. ed. 1932, p. 21.
#281# Professor Chow, "A History of Modern European Diplomacy", pp. 375-383.

some of the neutral states were maintaining a neutrality favourable to the Entente Cordiale. Some states, who were allies of one or the other side, declared themselves neutral or departed from the status of ally or turned to the other simde. #284#

(5) In the fifth place, there were some cases in which belligerents disregarded the principle of neutrality. (A) In 1631 A.D. Brandenburg and Saxony were menaced by Sweden and Austria with a coercive passage of troops. Saxony joined Sweden to fight Austria. #285# (B) In 1675 France forced Sweden, a neutral non-belligerent, to have become an ally and a co-belligerent; Russia forced Denmark, a neutral non-belligerent, to afford military aid against France too. #286# (C) In the War of 1702, France forced Turkey, a neutral, to join in the War against Russia and/forced Sweden, also a neutral, to join in the War against Germany. Thus Russia was attacked by Sweden. #287# (D) Before the first Turkish War of 1768-1774, Russia's army pursuited Poland's troops into Turkey, a neutral non-belligerent, and rendered the War. #288# (E) In 1780 a league of armed neutrality was led by Russia. Holland was then a great sea power. England prevented Holland from adopting a policy of neutrality by declaring war on Holland ! Holland, therefore, could not maintain her neutrality. #289#

#282# Professor S. P. Chow, "A History of Modern European Diplomacy", pp. 384-396.
#283# Professor S. P. Chow, "A History of Modern European Diplomacy", pp. 397-408.
#284# Professor S. P. Chow, "A History of Modern European Diplomacy", pp. 409-425.
see also Lowat, "A History of European Diplomacy", Vol. 1815--1914.
#285# Weber, "Outlines of Universla History", pp. 267-268.
#286# Hill, "A History of European Diplomacy", Vol.III, pp. 138-139.
#287# Hill, Vol. III, pp. 298-299.
#288# Weber, pp. 341-342.
#289# Weber, pp. 332-333.

(F) In the Napoleonic Wars, England and Sweden asked Denmark for alliance. Denmark refused. England and Sweden attacked Denmark without respect to the latter's neutrality. #290# (G) In the Napoleonic Wars, France demanded Portugal's giving up her alliance with England and joining the continental blockade. Portugal refused. France attacked and conquered her. #291# (H) In 1832, the Polish troops were defeated and driven by Russia into Italy. The Polish army attempted to upset the King of Sardinia and raise a revolution in the entire Italy. #292#

(6) In the sixth place, it is strange that under the tendency of neutrality, that is, impartiality and abstention, there occurred cases of so-called"qualified neutrality", which, strictly speaking, certainly fall into the category of unneutrality (one type of non-belligerency). (A) By a Treaty of Amity and Commerce concluded in 1778 between the United States and France, the United States granted French privateers and their prizes the right of admission into American ports during war and undertook not to grant such admission to the privateers of the enemies of France. During the War between Great Britain and France in 1793, Great Britain complained of the admission of French privateers to American ports, the United States met the complaint by advancing their treaty obligations.#293# (B) Denmark had by several treaties, especially by a treaty of 1781, undertaken to furnish Russia with a certain number of men-of-war and troops. In 1778,

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#290# Weber, "Outlines of Universal History", pp. 390-391.
#291# Weber, p. 392.
#292# Weber, p. 394.
#293# Oppenheim, "International Law" (Vol. II, 6th ed. 1940, by Lauterpacht, pp. 526-527.)
Phillimore, Vol. III, Sec. 139.
Wheaton, Sec. 425.
In respect to opinions concerning the neutral status as such not as neutrality, see Fauchille, "Traité de Droit International Public", tome II (Vol. IV), 1921, p. 640.

during the War between Russia and Sweden, Denmark fulfilled her treaty obligations towards Russia, and, nevertheless, declared herself neutral. Although Sweden protested against the possibility of such qualified neutrality, she acquiesced, and did not consider herself at war with Denmark. #294# (C) In 1848, during the War between Germany and Denmark, Great Britain, fulfilling a treaty obligations towards Denmark, prohibited the exportation of arms to Germany, but permitted exportation to Denmark. #295# (D) In 1900, during the South African War, Portugal, to comply with a treaty obligation towards Great Britain regarding the passage of British troops through Portuguese territory in South Africa, allowed the passage of a British force which had landed at Beira and was destined for Rhodesia. #296# (E) In 1915, during the World War, British and French troops landed at Salonika, part of the Territory of Greece, then a neutral, in order to aid Serbia, which was also an ally of Greece. Greece protested, but did not oppose the landing. #297# (F) In April 1917, Costa Rica offered her ports and waters for them use of the navy of the United States (who at that time had become a belligerent). Guatemala followed suit, and Brasil, Uruguay, Salvador and Peru expressly modified their territory regulations in this direction. Uruguay, for instance, issued a decree announcing that she would refrain from applying the rules of neutrality against

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#294# Oppenheim, Vol. II, 1940, p. 527. Phillimore, III, Sec. 140.
#295# Oppenheim, Vol. II, 1940, p. 527. Rivier, II, p. 379.
#296# Oppenheim, Vol. II, 1940, pp. 527, 549 et seq.
Baty, "International Law in South Africa", 1900, p.75.
"'The Times' History of the War in South Africa", IV, p. 366.
Martens, N.R.G., 2nd. ser., XVIII, p. 185.
#297# Garner, "International Law and the World War", Vol .II, Sec.466.
Oppenheim, Vol. II, 1940, pp. 527, 549 et seq.
#298# Hyde, "International Law as interpreted by the United States", pp. 765, 766.
Oppenheim, Vol. II, 1940, pp. 527, 528.
Harvard Research, 1939, pp. 880-883.

any American state engaged, in the defense of its rights, in a war with states in other continents. #298# (G) In the Austro-German Treaty of Alliance of Oct. 7, 1879, the High Contracting Parites undertook that "in case either party were attacked by some state other than Russia, the other party should observe at least a benevolent neutrality." #299# (H) In the Treaty of Triple Alliance of May 20, 1882, Article IV runs: "In case a Great Power non-signatory to the present treaty should threaten the security of the states of one of the High Contracting Parties, and the threatened party should find itself forced on that account to make war against it, the two others bind themselves to observe towards their ally a benevolent neutrality." #300# (I) In the Treaty of the Three Emperors (German, Austrian and Russian) of June 18, 1881, Article I runs: "In case one of the High Contracting Parties should find itself at war with a fourth Great Power, the two others shall maintain towards it a benevolent neutrality, and shall devote their efforts to the localization of the conflict. This stipulation shall apply likewise to a war between one of the three Powers and Turkey, but only in the case where a previous agreement shall have been reached between the three Courts as to the results of the War." #301# (J) In the "Reinsurance Treaty" of 1887 between Germany and Russia, Germany promised that whereas, by the Austro-German Treaty, Germany was bound to defend Austria against attack by Russia, by this new treaty she would observe a benevolent neutrality if Russia were attacked by Austria. Reciprocally, Russia

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#299# G. Lowes Dickinson, "The International Anarchy, 1904-1914", (1926), London, p. 74.
#300# Dickinson, p. 84.
#301# Dickinson, p. 77.

would observe benevolent neutrality if Germany were attacked by France. In an additional protocol, Germany promises "her benevolent neutrality and her moral and diplomatic support", "in case the Emperor of Russia should find himself under the necessity of defending the entrance of the Black Sea in order to safeguard the interests of Russia."#302# These cases prove not only that the concept of a status other than neutrality exists, but also that a previous treaty can protect a status of unneutrality.

(7) In the seventh place, a universal and exclusive international law of neutrality itself had not been either actually or nominally brought about. It was only a principle enacted in some treaties promised to be observed by some of the nations of the world. Not all the nations of the world signed or ratified the treaties, such as the Declaration of Paris of 1856, the Hague Conventions of 1899 and 1907 and the Declaration of London of 1909. The last one was not even ratified by a single state. Some parties signed or ratified these treaties with reservation or later denounced.#303# Article 20 of the Hague Convention respecting the Rights and Duties of Neutral Powers and Persons in case of war on Land of 1907 runs:

"Les disposition de la présente convention ne sont applicables qu' entre les Puissance contractantes et seulement si les belligerents font tous parties à la Convention." #304# Article 28 of the Hague Convention concerning the Rights and Duties of Neutral Powers in naval War of 1907 runs: "Les disposition de la présente convention ne sont applicables qu'entre les Puissances contractantes et seulement si les belligerents font tous parties à la Convention.#305#

#302# Dickinson, pp. 79-80.

#303# Chinese Yellow Book, 1910, pp. 196-209. Oppenheim, II, p. 739-42. Jessup, "Neutrality", Vol. III, 1936, Preface.(by Jessup).

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It goes without saying that this seven years old so-called international law of neutrality was already torn in pieces during the World War of 1914-1918. #306#

#304# Chinese Yellow Book, 1910, p. 140.
#305# Chinese Yellow Book, 1910, p. 186.
#306# Garner, "International Law and the World War", 2 Vols. 1920.
Jessup, "Neutrality", Vol. III, (The World War Period, by Turlington), 1936.
Borchard and Lage, "Neutrality For the United States", 1940. Part II.
Morrissey, "The American Defence of Neutral Rights, 1914-17." (1939).
Fenwick, "American Neutrality, Trial and Failure", 1940.
etc..

Chapter V:

THE PRINCIPLES OF THE SO-CALLED INTERNATIONAL LAW OF NEUTRALITY

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THE PRINCIPLES OF THE SO-CALLED INTERNATIONAL LAW OF NEUTRALITY

In the preceding chapter, we have seen the efforts devoted to the formation of an international law of neutrality during the years between 16th and 19th centuries, the third period of the evolution of the status of non-belligerency, with certain success. As this so-called law of neutrality was composed of treaty-laws as well as customary laws, we have better now to make a brief survey of it, in particular of its nature, scope and contents, as had been generally agreed upon before 1914 A.D..

I. Definition:

The modern legal status of neutrality implies the impartiality of one state toward two or more belligerent states. In popular thought, it means keeping out of war; it is the condition of those who remain at peace while others are fighting. From a more technical point of view, neutrality is a legal status involving certain rights and duties possessed by belligerents and neutrals against each other. #307# This definition is approved of by the Hague Conventions and many leading international jurists. In the Hague Convention Concerning the Rights and Duties of Neutral Powers in Naval War, the Préambule says: "C'est,pour les puissances neutres,

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#307# Philip C. Jessup, "Neutrality", in Encyclopedia of the Social Sciences, Vol. XI.
Jessup, "Neutrality", Vol. IV, (To-day and Tomorrow), 1936. p. 3.
Pfankuchen, "Documentary Textbook In International Law", 1940, p. 847.

un devoir reconnu d'appliquer impartialement aux divers belligérants les règles adoptées par elles." #308# Professor Francesco Cosentini de l'Université de Turin, in his work, "Code International de la Paix et de la Guerre"(Essai d'une codification intégrale du Droit des Gens en 2089 Articles, 1937, ~~MM~~ Ouvrage proposé pour le Prix Nobel, 1937), agrees: "La neutralité consiste dans l'abstention de tout acte d'hostilité contre l'un ou l'autre des belligérants, ainsi que de toute mesure pouvant constituer un avantage au profit de l'un d'eux et contribuer à son succès." #309# Professor Nicolas Politis, in his "Neutrality and Peace", (1935) says: "Neutrality designates the condition of that state which, while war is being carried on between two or more other states, remains outside of the struggle and strives to preserve with each of the belligerents, so far as is possible, the normal relations which it maintained with them before." #310# Professor Paul Fauchille says in his "Traité de Droit International Public"(1921): "La neutralité est la situation de tout Etat qui reste étranger à la guerre survenue entre deux ou plusieurs autres Etats. C'est l'existence de l'état pacifique impartial d'une puissance envers chacun des belligérants."#311# M. Charles Calvo, in his "Le Droit International, Théorique et Pratique"(1880), concluded that "la neutralité est la non-participation à une lutte engagé entre deux ou plusieurs autres nations." #312#

Still further classic definitions and theories of neutrality can be found in M. Hugo Grotius' "De Jure Belli ac Pacis (1625), in which he considers that "J'appelle 'non ennemis' ceux qui ne sont

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#308# Chinese Yellow Book, 1910, p. 174.
#309# Cosentini, Livre XII, Sec. 1947, p. 321.
#310# Politis, "La Neutralité et La Paix", Carnegie Endowment English edition, p. 3.
#311# Fauchille, tome 2, (Vol. IV), pp. 635-636.
#312# Calvo. Tome III, Sec. [illegible] 362.

nim de l'un ni de l'autre parti et ne doivent rien envertu d'une alliance à celui-ci ou à celui-là; s'ils doivent quelque chose, ils sont alliés et non simplement amis." #313# Later, Gessner said, "a neutral state should not be partial to any belligerent and may only continue its old friendly and commercial relations with them." Caliani said, "la position d'un prince qui, se trouvant en état de paix, d'amité ou d'alliance avec d'autres souverains qui étaient en paix entre eux, continue à rester dans le même état à leur égard, quoiqu' une rupture soit survenue ou que la guerre ait éclaté entre eux." De Martens said, "A moins qu'un Etat ne soit tenu de prendre part à la guerre entre deux puissances en vertu du lieu particulier qui l'unit à l'une d'entre elles, soit en qualité de membre d'un système d'Etats confédérés ou d'un Etat composé qui entre en guerre, soit pour avoir contracté avec elle une alliance égale ou inégale, il est parfaitement en droit de continuer ses relations amicales envers chacune des deux puissances belligérantes, c'est-à-dire de rester neutre." Hautefeuille said, "la nation qui, faisant usage de sa liberté naturelle, de son indépendance, reste en paix lorsque d'autres nations se font la guerre, qui continue à entretenir avec les deux parties belligérantes les relations d'amité,de commerce, ou simplement de socialité, d'humanité, existant avant l'ouverture des hostilités." Pradier-Fodéré considered that "indifférente abstention ne suffit pas." Vattel, in his "Le Droit des Gens"(livre 3, Sec.104), held that a neutral state,"demeurant amis communs des deux parties, ne favorisent point les armes de l'une au préjudice de l'autre.... La véritable impartialité consiste à refuser des secours aux deux

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#313# Calvo, "Le Droit International", tome III, Sec. 2186, p. 363.

combatants, et non à leur en donner dans la même mesure; d'ailleurs, il serait impossible de la fair avec égalité; les mêmes choses, le même nombre de troupes, la même quantité d'armes, de munitions, etc., fournies dans des circumstances différentes, ne forment plus des secours équivalents." Wheaton and Halleck followed Vattel's opinion. Hubner expounded Vattel's theory by saying that "La neutralité consiste dans un inaction entière relativement à la guerre, et dans une impartialité exacte et parfaite manifestée par des faits à l'égard des belligérents, en tant que cette impartialité a rapport à cette guerre et aux moyens directs et immédiats de la faire." Phillimore adopts the principle of "impartiality and abstention" by saying that a nation, who furnishes with men or money to belligerents of both sides, can be considered impartial, but not neutral. Neutrality does not ineffect involve the doing of a favour equally to belligerents of both sides. It requires complete abstention from participation either directly or indirectly in the war. Garden and Fiore also referred to "impartiality". Klüber, in his "Droit"(Sec. 284), says, "On appelle neutre, celui qui dans une guerre ne prête assistance à aucune des puissances belligérantes. La neutralité est la condition qui en résulte pour lui par rapport à ces puissances....il ne doit se permettre à lui-même ni à ses sujets la moindre action qui pourrait favoriser ou aider dans les opérations de guerre l'une des parties belligérantes.... En vertu des lois de neutralité il ne peut par conséquent prêter secours de guerre à l'un des deux ennemis, ni permettre à ses sujets d'en prêter, notamment en qualité d'armateurs." Azuni said, "la neutralité est la continuation exacte de l'état pacifique d'une puissance qui, lorsqu'il s'allume une guerre entre deux ou plusieurs nations, s'abstient absolument de prendré part à leur querelle."

Massé supplemented Azuni's opinion by saying that "la neutralité n'est parfaite qu'autant que cette même puissance ne change rien à sa conduite pacifique envers les parties belligérentes et conserve à leur égard une scrupuleuse impartialité." Heffer also said,"On peut définir la neutralité comme étant la continuation impartiale de l'état pacifique d'une puissance, ou son abstention de tout acte d' hostilité directe ou indirecte envers les belligérants." Bynkershoek says in his "Quoest",(lib. I, cap. 9,) "Il est du devoir des neutres de faire en sorte de ne pas intervenir dans la guerre et de rendre égale et exacte justice aux deux parties, c'est-à-dire pour ce qui a rapport à la guerre qu'ils ne préférent pas une partie à l'autre. Un neutre n'a rien à faire avec la justice ou l'injustice de la guerre ; il ne lui appartient pas de tenir la balance entre ses amis qui se font la guerre ni d'accorder ou de refuser plus ou moins à l'une ou à l'autre partie, selon qu'il croit sa cause plus ou moins juste ou injuste. Si je suis neutre, je ne puis pas servir l'un afin de faire du tort à l'autre....celui qui connaît ces devoirs et qui prend une part à la lutte cesse [redacted] d'être neutre; il intervient entre les deux combattants, devient l'allié de l'un et l'ennemi de l'autre, et ne peut plus prétendre à jouir des bienfaits de la paix. Si l'un des combattants était son ami, l'état ne peut pas même lui accorder ces faveurs que les relations d'amité conseillent en temps de paix; tout acte de partialité toléré et permis avant la guerre devient offensif une fois que la guerre a éclaté, et le neutre ne peut pas accorder ou refuser du secours plus ou moins à l'un qu'à l'autre sans perdre l'avantage de la neutralité," Blüntschli said, "La neutralité consiste à ne point participer à la guerre engagée entre les tiers et à maintenir la paix sur son propre territoire.

Les états neutres sont ceux qui ne sont pas parties belligérantes et ne prennent part aux opérations militaires ni en faveur de l'un des belligérants ni au détriment de l'autre." Sir Alexander Cockburn said, "neutralité est l'état qu'occupe par rapport à deux nations qui se font la guerre une troisième, qui reste en paix avec toutes les deux et s'abstient de secourir l'un ou l'autre combattant." Manning said, "Ainsi, les nations neutres, comme le terme l'indique, sont celles qui en temps de guerre ne sont engagées ni d'un côté ni de l'autre de la lutte." Funck Brentano and Sorel expressed the same view; they said, "les états neutres sont ceux qui ne prennent aucune part à une guerre soutenue par d'autre états, bien que leurs intérêts y soient directement ou indirectement engagés;par conséquent, la neutralité consiste dans l'abstention de tout acte de guerre." #314#

In a word, it seems undisputed that, from the end of the 17th century to 1914, international jurists generally considered non-participation in war the essential condition to neutrality. The only point in dispute seemed to be the "complete impartiality" towards belligerents. Some writers maintained a theory of absolute impartiality; some writers insisted upon the reservation for the fulfilment of previous treaty obligations. #315# Its solution seems possibly and obviously to be found in the Hague Convention Concerning the Rights and Duties of Neutral Powers in Naval War of 1907, in which the Préambule says: "it is, for neutral powers, an admitted duty to apply these rules impartially to the several belligerents.... the following common rules...can not,however, modify provisions laid down in existing general treaties."#316# In practice, when in

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#314# Calvo, tome III, Sec. 2187--2202, et 2320.
#315# Calvo, tome III, Sec. 2186, p. 264.

1795, during war between Great Britain and France, Great Britain complained of the admission of French privateers to American ports, the United States met the complaint by advancing their treaty obligations as stipulated in the Treaty of Amity and Commerce of 1778. In 1788, during war between Russia and Sweden, Denmark fulfilled her previous treaty obligations by furnishing Russia with a certain number of men of war and troops and nevertheless declared herself neutral. In 1848, during war between Germany and Denmark, Great Britain fulfilled her previous treaty obligations by prohibiting the exportation of arms to Germany, but permitted such exportation to Denmark. In 1900, during the South African War, Portugal fulfilled her previous treaty obligations by allowing the passage of British troops. In 1915, during the World War, Greece allowed the passage of British and French troops. In 1917, Costa Rica offered her ports and waters for the use of the navy of the United States. Guatemala, Brazil, Uruguay, Salvador and Peru followed suit. #317#

Therefore, as Proffesor Fauchille says, "En principe, la neutralité est l'exercise du droit à la liberté et à l'indépendance appartenant à chaque Etat. En principe, chaque Etat est libre de participer à la guerre existant entre d'autres nations, ou d'y rester absolument étranger.----mais cette liberté d'option peut, exceptionnellement, être enlevée à un Etat, soit à raison d'un traité d'alliance antérieurement conclu avec l'un des belligérents, soit à raison d'une neutralisation conventionnelle, consentie à perpétuité dans un

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#316# Chinese Yellow Book, 1910, pp. 174,175. "les règles communes suivantes...ne sauraient, d'ailleurs, porter aucune atteinte aux stipulations des traité généraux existants,..."

#317# See the preceding notes Nos. 293-298.
Oppenheim, "International Law", Vol. II, 1940, 6th edition, pp. 526-528.

intérêt général," though he himself considers that "dans le premier cas, l'Etat, se trouvant l'alliéé d'un belligérant, ne peut pas être neutre; dans le second cas, il doit demeurer étranger à la guerre et rester neutre." #318#

II. Nature And Source:

A combination of impartiality and abstention with exception, as above stated, is probably the first characteristics of neutrality.

The exercise of the sovereign right of liberty of independent state seems to be the second characteristics of neutrality. Unless a previous treaty stipulates it expressly, no duty exists for a state, according to International Law, to remain neutral when war breaks out. It is, in principle, a matter of policy, not of law. It, thus, may be also said that, in principle, a state has a right to remain neutral in a war. All states which do not expressly declare the contrary by word or action are supposed to be neutral, and the rights and duties arising from neutrality come into existence, and remain in existence, through the mere fact of a state taking up an attitude of impartiality, and not being drawn into the war by the belligerents. A special ascertain of intention to remain neutral is not, therefore, legally necessary on the part of neutral states, although they often expressly and formally proclaim their neutrality. #319# The Hague Convention concerning the Rights and Duties of Neutral Powers in Naval War of 1907 reads: "pour les cas non prévus par la présente convention, il y a lieu

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#318# Fauchille, tome 2, (Vol. IV), p. 640.
#319# Oppenheim, Vol. I, 1940, p. 515.

de tenir compte des principes généraux du droit des gens....dans cet ordre d'idées, ces règles ne devraient pas, en principe, être changées au cours de la guerre,par une puissance neutre, sauf dans le cas où l'expérience acquise en démontrerait la nécessité pour la sauvegarde de ses droits."#320# The said "droits" certainly may be considered to involve the right of liberty of a sovereign and independent state and leaves a door widely open to a status of unneutrality for the unlimited cases of "necessity" and safeguarding "rights".

The third characteristics of neutrality seems to be the coördinated compromise brought about between belligerent and neutral rights. As belligerents and neutrals both wish to exercise their sovereign rights of liberty, a compromise is necessary. Professors Philip C. Jessup and Francis Deák of Columbia University say in their "Neutrality" (Vol. I, "the Origins", 1935), "The problem (of neutrality) has always been the reconciliation of the incompatible interests of neutrals and belligerents, or, rather, a compromise between these irreconcilable interests. The neutral has sought to maintain his freedom of trade; the belligerent has sought to cut off all supplies from his enemy. The desire to seize goods of the enemy may be ascribed to either or both of two purposes: (1) weakening the enemy by striking at both his import and export trade and thus contributing to his defeat; (2) obtaining supplies of which the capturing state is in need."#321# Professor Borchard of Yale University says in his

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#320# Chinese Yellow Book, 1910, pp. 174,175.
#321# Jessup & Deák, "Neutrality", Vol. I, p. Xii.
#322# Borchard & Lage, "Neutrality for the United States", pp. Vi, 7,9,8, 15.

"Neutrality For the United States",(1940) "Neutrality....finds its source in candor, in the obligation [redacted] to hold the scales even, to remain a friend of both belligerents, to lend support to neither, to avoid passing judgement on the merits of their war. It assures both belligerents that they are dealing with a friend, not a disguised enemy. The belligerents must know who is in the war and who is not. In return for obligations assumed by a neutral, the belligerents undertake to respect his rights as a neutral, including the right to remain out of other people's wars... a [redacted] coördinated compromise was brought about between belligerent and neutral rights....This system has rightly been called a compromise between two otherwise irreconcilable claims---the claim of the belligerent to stop all trade with his enemy, and the claim of the neutral to continue all trade with both belligerents." #322# Therefore, for instance, while international rules forbid a neutral government, under penalty of being considered hostile, to supply arms, ammunition, and implements of war to either belligerent or to lend him money or to supply any commodities to a belligerent, the private citizen or corporation, deemed the natural agent of trade, was restricted by international rules only to the extent necessary to insure that he would not supply militarily goods to the belligerents. While the neutral government does not assume the responsibility of policing shipments, enforcement on normal freedom of private trade was left to the visit and search of belligerent cruisers. In return for a concession to permit trade in nonmilitary goods, the neutral government agrees to permit the belligerent to capture--if it can---its citizens' military goods destined for the enemy. In return for the neutrals' attempt to avoid the prohibition of trading between

a belligerent country and its colony, a trade at that time closed to them even in time of peace, by breaking the voyage into two parts---from the colonies to a neutral port and then from the neutral port to the parent country, belligerents developed a body of rules, known as the Doctrine of"Continuous Voyage."

These characteristics indicate both the nature and source of the international traditional doctrine of neutrality.

The term of "neutrality" is derived from the Latin "neuter". The Romans spoke of neutrals as "medii", "amici", or "pacati"; and their vocabulary remained in use all through the Middle Ages. Grotius (1625) in the one short chapter which he gives to the matter refers to "medii" and his theory of neutrality is imperfect. Bynkershoek (1727) is obliged to coin the awkward phrase "non-hostes" when he wishes to be exact. It seems that the international jurists who first used the word neutrality are Botero, who, in 1598, added one chapter entitled "Della neutralità" to his book "Della ragion di stato", and Neumayer de Ramsla, who, in 1620, before the publication of Grotius' "De Jus Belli ac Pacis", published a book entitled "Von der Neutralitat und Assistenz oder Unpartheniigkeit in Kriegszeiten." In the 16th century, Machiavelli, Guicciardini and Varchi referred to "neutralità". At the end of 15th century, the word "neutralité" was inserted into treaties in French language. King Charles VIII of France (1483-),in his lettre patente, undertook to regard Liégeois "neutres". King François I of France despatched a lettre de neutrality to l'évêché de Cambrai in 1542. Since the 18th century, when Vattel, writing in 1758, spoke of neutre and neutralité; in 1759, Hübner published his "De la Saisie

des Bâtements Neutres;" the words became technical terms and were used by all writers and speakers who had occasion to refer to the subject. #323#

III. Division:

In view of its precise definition and nature as stated above---abstention and impartiality, a classification of neutrality seems to be superfluous. Yet international jurists, for the sake of study, usually make its classification in different ways. Hubner held that there can be, on the one handp a "neutralité générale", which applies to all wars, and, on the other hand, a "neutralité particulière", which only applies to a particular war or is beneficial to either or both of belligerents. Klüber distinguished it into such two categories as: neutralité naturelle and conventionnelle; or neutralité volontaire and forcée; or neutralité complète and limitée; or neutralité général and partialle; or neutralité armée and non-armée; or neutralité continentale and maritime. Heffter distinguished neutralité stricte from incomplète; général from partielle. Azuni distinguished neutralité conventionnelle, neutralité active from passive.#324# Fauchille distinguished extraordinaire et permanente ou perpetuelle, et une neutralité volotaire, ordinaire et temporaire." #325# Oppenheim referred to also perpetual neutrality, general neutrality, partial neutrality, voluntary neutrality, conventional neutrality, armed neutrality,

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#323# Lawrence, "The Principles of International Law"(1910)./pp. 588-589.
Grotius, "De Jure Belli ac Pacis", Book III, Ch. XVII, 3.
Bynkershoek, "Quoestiones Juris Publici", Book I, ch. 9.
Holland, "International Position of the Suez Canal", Fortnightly Review, July 1883.
Vattel, "Droit des Gens", book III, ch. VII.
Fauchille, tome 2,(Vol. IV), p. 639.
Nys in Revue de Droit International, tome XXVII, p. 592.
Nys, "Le Droit International", 1912, tome III, pp. 536, 538.
#324# Calvo, tome III, sec. 2299. #325# Fauchille, tome 2, p.640.

benevolent neutrality, perfect neutrality and qualified neutrality. #326# But both Professors Fauchille and Oppenheim as well as Professors S. R. Chow, Calvo, Ullmann, Despagnet, Rivier, Taylor, Fiore, Kleen, Hall, Phillimore (with slight reservation), etc.,#327# the majority of modern writers, maintained that its different ways of classification as stated above are of little significance and instead disturb the very nature of neutrality, that "a state was either neutral or not", that "it violated its neutrality if it rendered any assistance whatever to a belligerent from any motive whatever", that " a state which had entered into such obligations as those just mentioned (previous treaty obligations) would in time of war frequently have conflicting duties; in fulfilling its treaty obligations, it would frequently be obliged to violate its duty of neutrality, and vice versa", that "a qualified neutrality has no longer any raison d'être", that "neutrality must in every case be perfect" and that, therefore,"Elle doit être rejectée comme contraire à la notion même de neutralité: dans celui-ci, on s'abstient ou on ne s'anstient pas; si on fournit une assistance, m on n'est pas neutre, quels que soient les motifs qui expliquent cette assistance; si on s'abstient, on est neutre, quelles que soient les circonstances qui entourent cette abstention." #328#

#326# Oppenheim, Vol. II, 1940, pp. 522-528.

#327# Fauchille, tome 2, p. 842. Oppenheim, Vol. II, 1940,p. 525-6. Professor S. R. Chow, "International Law", 1937 ed. p. 318. Ullmann, sec. 190. Despagnet, no. 686. Rivier, ii, p.378. Calvo, tome IV, sec. 2594. Taylor, sec. 618. Kleen, i, #21. Fiore, iii, no. 1541. Hall, sec. 215, 219. Phillimore,iii, sec. 138. (in sec. 139, he thinks that it would be too rigid to consider acts of "minor" partiality which are the result of conventions previous to the war acts violating neutrality). A few writers, who maintained that a fulfilment of treaty obligations would not constitute a violation of neutrality, are Heffter (sec. 144), Manning (p. 225), Wheaton (Sec. 425-7) Bluntschli (sec. 746), Halleck (ii, p. 162), etc..

Theoretically speaking, the above common view of the majority of modern writers is certainly sound, though in practice the word "neutrality" has long been misused in many ways and some obscure stipulations in conventional laws have been leaving the way open to the possibility of different attitudes as might be adopted by either wrongly or rightly by neutrals. #329#

The only preferable classification, if one desires to follow one, in view of the very nature of neutrality, seems, as Calvo suggested,#330# to be the distinction between "neutralité naturelle" and "neutralité conventionnelle". Natural neutrality is the neutrality of a state which is not bound by a general or special treaty to remain neutral in a war. Conventional neutrality is the neutrality of a state by treaty bound to remain neutral in a war. In other words, natural neutrality is a condition in which the adoption of the policy of neutrality is an absolutely free act as a result of states' sovereign right of liberty; while conventional neutrality is a condition in which the adoption of the policy of neutrality is subject to a treaty obligation as a result of international contract. The legal effects of both of these two kinds of neutrality, so far as neutrality itself is concerned, are the same. #331#

In most cases neutrality is natural. Conventional neutrality is usually brought about by either bilateral or multilateral treaties. In the Austro-German Treaty of Alliance of Oct. 7, 1879,

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#328# Calvo, tome III, sec. 2299. Oppenheim, Vol. II,1940,pp.525-6. Rauchille, tome 2 (Vol. IV), p. 642.
#329# See Notes nos. 316, 317.
#330# Calvo, tome III, sec. 2299.
#331# No account is made of the treaties of neutrality that contain stipulations concerning not real neutrality.

a clause of neutrality is contained. In the Reinsurance Treaty of 1887 between Russia and Germany, a clause of neutrality is also embodied. As regards multilateral treaties concerning neutrality, the Treaty of Triple Alliance of 1882 and the Treaty of the Three Emperors (German, Austrian and Russian) of June 18, 1881, embodied clauses of this concern. Such treaty provisions are the usual way by which conventional neutrality is expressed. But all the examples as shown above are conventional provisional neutrality, applying to a particular case of war. There is also conventional perpetual neutrality. For instance, the Traité de Vienne of 1815 affirmed the status of perpetual neutrality of Switzerland. In the Treaty of London of 1831, Article VII reads: 'la Belgique, dans les limites qui lui sont reconnues, formera un Etat indépendant et perpétuellement neutre. Elle sera tenue d'observer cette neutralité à l'égard de tous les autres Etats." In the Treaty of London of 1839, the same clause was inserted,as a result of Holland's recognition. The Traité de Vienne of June 9, 1815 (Articles 6,8,9), conferred a status of perpetual neutrality on another state, the République de Cracovie. The Treaty of London of April 19, 1839, brought about one more state perfaitement neutre, Luxemburg. Twenty years later, the Treaty of London of November 14, 1863, required Greece to be a perpetual neutral state(Article II). The Treaty of London of March 29, 1864, further confirmed the Treaty of London of November 14, 1863.#332#

#332# See Notes Nos. 289-302. Calvo, tome III, sec. 2304-2314. On August 1, 1885, Circular Note was despatched by Congo Free State, declaring its status of perpetual neutrality, as a result of the provisions in Chapter III of the General Act of the Conference of Berlin, signed on February 26, 1885. See British and Foreign State Papers, Vol. 76, p. 4. Déák and Jessup, "Neutrality Laws, Regulations and Treaties", 1939, pp. 70-71. re the problem of "Congo Free State" as a real"state"? see Hwai-Chun Lu, "The Doctrine of Recognition in International Law", 1941, University of Ottawa.

IV. Commencement, Mode, and End:

Since neutrality is an attitude of impartiality and abstention, deliberately taken up by a state and acquiesced in by the belligerents, it cannot begin before the outbreak of war becomes known. It is only then that third states can make up their minds whether or not they intend to remain neutral. As soon as they determined to adopt an attitude of impartiality, and the belligerents acquiesce in their choice, the duties deriving from neutrality are incumbant upon them. A declaration of neutrality is not indispensable to the commencement of the status of neutrality. It has long been the usual practice of belligerents to notify the outbreak of war to third states so as to enable them to make their decision, but formerly this was not in strict law necessary. Knowledge of the outbreak of war, however obtained, gave a third state an opportunity of coming to a decision, and, if it remained neutral, its neutrality dated from the time when it first knew of the outbreak of war. But it is apparent that an immediate notification of war by belligerents is of great importance, as excluding all doubt and controversy regarding knowledge of the outbreak of war. For a neutral state may in no way be made responsible for acts of its own or of its subjects which have been performed before it knew of war, although the outbreak of war might have been expected. For this reason Article II of Hague Convention III enacted that belligerents must without delay send a notification of the outbreak of war to neutral powers, and that the condition of war should not take effect in regard to neutral Powers until after receipt of a notification, unless it was established beyond doubt that they were in fact aware of its outbreak.

As civil war becomes real war through recognition of the insurgents as a belligerent powers, neutrality during a civil war begins for every foreign state from the moment recoghition is granted. #333#

When a status of neutrality has commenced, either with or without a declaration of neutrality against the belligerents, the neutral state usually makes another kind of declaration of neutrality against its citizens, proclaiming and promulgating regulations concerning the enforcement of the principles of neutrality,or perhaps establishes some organs entrusted with the work for ensuring neutrality, as did the United States and China in the earlier part of the World War of 1914-1918. Many states enacted already so-called "neutrality laws" within their domestic codes or separately. Some states have to follow their treaty obligations concerning neutrality embodied in political or commercial treaties. Except treaty obligations, International Law leaves it to the discretion of each state to take the measures necessary to ensure neutrality. #334#

For instance, up to date, (1) States that enacted municipal neutrality laws within constitution or civil or penal code or consular code or code of military or naval justice or other domestic codes, are: Argentine, Austria, Belgium, Bolivia, Brazil, Chili, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, France, Germany, Greece, Guatemala, Haiti, Honduras, Italy, Liberia, Luxemburg, Mexico, The Netherlands,Nicaragua, Norway, Panama, Paraguay, Peru, Poland,,Portugal, Spain, Switzerland, Turkey, U. S. S. R., Uruguay, and Venezuela. (37 states)

(2) States that enacted separate permanent laws or acts respecting neutrality, are: Austria, Belgium, Brazil, United Kingdom,

Australia, Canada, Irish Free State, New Zealand, Chile, Colombia, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Equador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Iceland, Iraq, Italy, Latvia, Liberia, Lithuania, Mexico, The Netherlands, Nicaragua, Norway, Panama, Peru, Rumania, Siam, Spain, Sweden, Switzerland, Turkey, U. S. A., Uruguay, Venezuela and Yugoslavia. (45 states and nations)

(3) States that had enacted separate temporary neutrality decrees, are: Argentine, Austria, Belgium, Bolivia, Brazil, United Kingdom, Australia, Canada, Irish Free State, New Zealand, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Haiti, Hawaii, Honduras, Iran, Iraq, Italy, Japan, Latvia, Liberia, Luxemburg, Mexico, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Portugal, Rumania, Siam, Spain, Sweden, Switzerland, Turkey, U.S.S.R., U.S.A., Uruguay, Venezuela and Yugoslavia. (56 states and nations)

(4) States that had promulgated rules respecting neutrality within their proclamations of neutrality, are: Argentine, Austria, Australia, Canada, Union of South Africa, China, Denmark, Japan, Liberia and Peru. (10 states and nations)

(5) States that had proclaimed formal declarations of neutrality against belligerents, are: Argentine, Belgium, Bolivia, Brazil, United Kingdom, Australia, Bulgaria, Chile, China, Colombia,

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#333# Oppenheim, Vol. II, 1940, pp. 529-530.
#334# Fauchille, tome 2 (Vol. IV), pp. 644, 646.

Cuba, Denmark, Dominican Republic, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Haiti, Hawaii, Honduras, Latvia, Lithuania, Iran, Italy, Japan, Mexico, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Portugal, Rumania, Siam, Spain, Sweden, Switzerland, U.S.S.R., U.S.A., Uruguay, Venezuela, and Yugoslavia. (46 states and nations)

(6) States that, in time of war, are guided solely by the general principles of the international law of neutrality without domestic legislation, are: Albania, Ethiopia and Hungary. (3 states)

(7) Treaties concerning neutrality are numerous: China had concluded at least eight such treaties with the United States of America (Treaty of Peace, Amity, and Commerce of July 3, 1844, and of June 18, 1858), France (Treaty of Amity, Commerce, and Navigation of Oct. 24, 1844, and of June 27, 1858), Sweden and Norway (Treaty of Peace, Amity, and Commerce of March 20, 1847; Treaty of Commerce and Navigation with Sweden alone on July 2, 1908), Italy (Treaty of Amity, Commerce, and Navigation of Oct. 26, 1866) and Japan (Treaty of Peace and Amity of 1872). The United States had concluded at least forty-seven such treaties with France (1778, 1800), The Netherlands (1782), Sweden (1783), Prussia (1785, 1828, 1799), Morocco (1786, 1836), Great Britain (1794, 1871), Algiers (1795, 1815), Spain (1795, 1819), Tripoli (1796, 1805) Tunis (1797), Sweden and Norway (1816, 1827), Colombia (1824), Central American Federation (1825), Brazil (1828), Mexico (1831), Chile (1832), Venezuela (1836, 1860), Greece (1837), Peru and Bolivian Confederation (1836), Sardinia (1838), Ecuador (1839), China (1844, 1858), New Granada (1846), Guatemala (1849), El Salvador (1850, 1870), Peru (1851, 1856, 1887), Russia (1854), Sicily (1855), Bolivia (1858), Japan (1858), Haiti (1864), Dominican Republic (1867) and Italy (1871). France had concluded at least thirty-one such treaties with U.S.A. (1778, 1800),

Mecklenburg Schwerin (1779), the Netherlands (1785), England (1786), Russia (1786), Hamburg (1789), Spain (1795), Portugal (1797)[1801]//, Sicily (1805), Brazil (1826), Tunis (1830), Tripoli (1830), Mexico (1831), Chile (1832, 1846), Bolivia (1834), Texas (1839), Venezuela (1843), Ecuador (1843), China (1844, 1858), New Granada (1844, 1857), Guatemala, (1848), Costa Rica (1848), Dominican Republic (1852), Honduras (1857), El Salvador (1858), Nicaragua (1859), Peru (1861), and Turkey (1930). England had concluded at least twelve such treaties with France (1786), Russia (1793, 1797), Spain (1793), Portugal, (1810), Empire (1793), U.S.A. (1794, 1871), Sweden (1803), Brazil (1827) and Tunis (1875). There are some multilateral treaties also embodying clauses of neutrality, such as: the Hague Conventions of 1899 and 1907, Convention concerning Air Navigation of 1919, Convention concerning Freedom of Transit of 1921, Convention concerning Régime of Navigable Waterways of International Concern of 1921, Convention Concerning Principles and Policies to be Followed in Matters Concerning China of 1922, Convention concerning Navigation of the Elbe of 1922, Convention Concerning Freedom of Transit and Navigation of the Straits of 1923, Convention Concerning the Development of Hydraulic Power Affecting More Than One State of 1923, Convention Concerning Transmission in Transit of Electric Power of 1923, Convention concerning International Régime of Maritime Ports of 1923, Convention concerning International Régime of Railways of 1923, the Havana Convention concerning Maritime Neutrality of 1928 (U.S.A. ratified in 1932), Convention concerning Commercial Aviation of 1928, Convention concerning Limitation and Reduction of Naval Armaments of 1930, the Argentine Convention concerning Anti-War,Non-aggression, and Conciliation of 1933 (which contains neutrality clauses and was

ratified by some member-states of the League of Nations), Convention concerning Freedom of Transit and Navigation of the Straits of 1936, Procès-verbal concerning Submarine Warfare of 1936, Nyon Agreement against Submarine Attack of 1937, Declaration regarding Rules of Neutrality of 1938, etc.. In many of these conventions, Dominions are the signatories. From 1778 to 1938, two hundred and seventy-two treaties respecting neutrality are possibly to be collected. Their influence on the discretion of each state to take the measures necessary to ensure neutrality is significant. #335#

Neutrality ends with the cessation of war, or through a hitherto neutral state beginning war against one of the belligerents , or through one of the belligerents commencing war against a hitherto neutral state. Duties of neutrality exist only so long as state remains neutral. A mere violation does not ipso facto bring neutrality to an end. That war breaks out between one of the belligerents and a hitherto neutral state simply because it does not suit the belligerent any longer to recognize its impartial attitude, or because it does not suit the neutral to remain neutral any longer, constitutes ipso facto a violation of neutrality; for a neutral ought not, in principle, to abandon it except for a reason not connected with the cause of the war in progress, nor ought a belligerent to draw the neutral into the war. #336#

V. Sanction:

Any act violating the general principles and laws of

#335# Deák and Jessup, "Neutrality Laws, Regulations, and Treaties", 1515 pp. Borchard & Lage, p. 276.

#336# Oppenheim, "International Law", Vol. II, (1940, 6th ed. by Lauterpacht) pp. 533-534.

neutrality will [illegible] give rise to legitimate reprisals including war and compensation. #337#

VI. Neutral Rights and Duties:

(1) Duties of belligerents:- (A) Belligerents shall not apply the law of war to the nationals of neutral states who live in the belligerent states without any act of hostility. (B) Belligerents shall not seize on enemy ships the neutral goods which are not contraband of war. (C) Belligerents shall not [illegible] commit any act of hostility against all neutral ships and shall not seize enemy goods on neutral ships. (D) Belligerents shall not capture enemy ships in the territorial waters of neutral states and shall not make any modofication to the rules applying to pacific commerce. (E) The property on high seas is inviolable. The merchant ships of belligerents as well as of neutrals shall not be subject to confiscation or destruction by belligerent navy except in the case of [illegible] carrying contraband of war.

(2) Rights of belligerents:- (A) A belligerent has a right to resort to coercive measures to prevent its enemy from [illegible]

#337# Professor S. R. Chow, "International Law", 1937 ed., Ch.3 & 21
Declaration of London, 1909, Arts. 52 & 64.
Calvo, tome III, sec. 2285-2289.
Bonfils & Lapradelle, pp. 5-6.
Cosentini, "Code International de la Paix et de la Guerre", 1937, art. 1966, p. 324.
On Jan. 3, 1941, Irish Free State protested that German planes had bombarded Irish territory. On Jan. 7, 1941, Germany replied by saying that Germany would pay compensation, if the Irish Free State could prove that the bombardment was [illegible] committed by German planes. (A. J. I. L., April, 1941, pp. 372-378. On June 13, 1942, Irish Free State demanded indemnity [illegible] of Germany for the sinking of the ship "City of Bremen. On July 7, 1942, Argentine declared that Germany had expressed apology and paid compensation for the sinking of the boat "Victoria". (A.J.I.L., Oct. 1942, pp. 122-130). On

receiving aid from a neutral. (B) Belligerents may apply the law of war to all the neutral ships which participate in hostilities or espionage. (C) Belligerents may repress the transportation of all contraband goods of war by applying the law of war to ships that disregard this prohibition. (D) Belligerents have a right to repress the violation of an effective blockade. (E) Belligerents have a right to visit ships on high seas and in the territorial waters of belligerents, with a view to assuring their legal status and the nature of their cargo.

(3) Neutral rights:- (A) Neutral states may legitimately continue to exercise the rights which an independent state exercises in time of peace. (B) Neutral states may adopt all their military forces to defend their neutrality. (C) A neutral state may unite all other neutral states to defend their common neutral rights.

(4) Neutral duties:- (A) Neutral states shall refrain from participating in war and shall not directly or indirectly increase the forces of either belligerent or afford any assistance, such as the passage of troops of belligerents, aid in the materials of war, public loan, etc., except perhaps in pursuance of a prior treaty obligations. (B) Neutral states shall not tolerate on their territories (land domain, territorial waters, aerial domain) any act of war. (C) Neutral states shall not permit their citizens or inhabitants within their jurisdiction to aid the enemy of either belligerent party as in accordance with strict neutral obligations . The citizens of a neutral state who aid a belligerent must take the consequences and will not be protected by their own government

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Sept. 16, 1941, Panama demanded indemnity of Germany for the sinking of two Panama ships (Sessa & Montana), (A.J.I.L., Jan. 1942. p.122- . see also the following note no. 355. re cases.

from the penalties which the aggrieved belligerent may inflict.

(5) Acts of neutral states considered hostile:- (A) to succour either belligerent by sending troops or warships or by subsidies in any form. (B) to permit or tolerate the passage of the arms of either belligerent on neutral land. (C) to permit the warships of a belligerent state to obtain war supplies or equipment in neutral ports or neutral territorial waters, except in the case of urgent necessity. (D) to facilitate the formation of either belligerent army. (E) to permit a belligerent war ship to sell its prizes in neutral ports or neutral territorial waters, except in case of taking refuge provided that such permit to refuge does not facilitate the military operations of either belligerent. (F) to permit the citizens of a neutral state to be volunteers in belligerent armies or to participate in any hostile act.

(6) Acts of neutral states/reconcilable with neutrality:- (A) The passage of belligerent troops on neutral territory without the permission of the neutral state. (B) The citizens of a neutral state as volunteers in either belligerent army without the permission of their own neutral government. (C) Impartial trade of arms and munitions of war made by neutral citizens at own risk without the protection of their government. (D) All acts favourable to either belligerent not prohibited by domestic law. (E) The aid afforded to belligerents for transporting the wounded and sick across the neutral territory. #338#

#338# Cosentini, "Code International de la Paix et de la Guerre", 1937, pp. 321--329: Articles: 1954, 1963-1967, 1996-1998.
Encyclopedia of the Social Sciences, Vol. XI, "Neutrality", by Professor Jessup.
Pfankuchen, "A Documentary Textbook in International Law", 1940, p. 849. Foignet & Dupont, IIe & IVe section. p. 597-612, 634-670.

In regard to the fundamental principles of neutral rights in maritime war, the following seven rules may be taken as a good summary:

(1) "Paper" blockade are illegal. A blockade to be binding must be effectively maintained by an "adequate" naval force.

(2) Even enemy goods are safe on a neutral ship, if they are not contraband and if they are not destined for a blockaded port; "free ships make free goods".

(3) Neutral goods are safe even on an enemy ship, if they are not contraband and if they are not destined for a blockaded port.

(4) A fortiori, neutral goods are safe on a neutral ship but only if they are not contraband and if they are not destined for a blockaded port.

(5) Contraband goods are divided into two categories; absolute and conditional.

(6) Absolute contraband consists of goods exclusively used for war and destined for an enemy country, even if passing through a neutral country en route; the rule of"continuous voyage" applies.

(7) Conditional contraband consists of goods which may have a peaceful use but which are also susceptible of use in war and which are destined for the armed forces or a government department of a belligerent state. The rule of "continuous voyage" does not apply. #339#

#339# Jessup, "Neutrality, Its History, Economics and Law", Vol. III, (the World War Period", by Burlington) 1936, Preface, p. X. Borchard & Lage, pp. 16-17.
S.F. Bemis, "A Diplomatic History of the United States", 1938, p. 591.

Chapter VI:

THE STATUS OF NON-BELLIGERENCY FROM WORLD WAR I TO WORLD WAR II.(1)

Chapter VI:

THE STATUS OF NON-BELLIGERENCY FROM WORLD WAR I TO WORLD WAR II. (1)

Notwithstanding that the hardly developed principles and laws of neutrality, through the four hundred years between 16th and 19th centuries, had gained ground in 1907, a new universal movement toward internationalism and collective security has characterized the 20th century, the Fourth Period of the evolution of the status of non-belligerency. It goes without saying that, during the World War of 1914-1918, only seven years after their formal establishment, those hardly developed rules had already been destroyed in various cases, in particular of the violation of Belgium's neutrality, the unlawful destruction of neutral trade and the partial attitudes of many American Republics in favour of the United States since April,1917 (see Note 298).

In the Introductory Note for the Extract of Grotius' "Law of War and Peace", Professor George Grafton Wilson of Harvard purposely reminds the world that "In the dedication of his great work, De Jure Belli ac Pacis, to Louis XIII of France, Grotius addresses the King as "everywhere known by the name Just no less than of Louis....Just, when you call back to life laws that are on the verge of burial, and with all your strength set yourself against the trend of an age which is rushing headlong to destruction ;.....when you offer no violence to souls that hold views different from your own in matter of religion;...when by the exercise of your authority you lighten the burden of oppressed peoples."....

....History in the more than three centuries since Grotius wrote seems to have demonstrated the correctness of his view in spite of the fact that many a state has not yet realized that the state is "truly fortunate which has justice for its boundary line". In 1625 Grotius significantly said "there is no state so powerful that it may not sometime need the help of others outside itself either for purposes of trade, or even to ward off the forces of many foreign nations united against it." To those desirous of understanding the fundamental principles which have motivated some of the greatest statesmen of modern time and the bases upon which a state which is to remain essentially sound must rest, a reading of Grotius' Prolegomena to the Law of War and Peace is commended." #340#

This is a correct demonstration of the said general tendency of the world in this new period since 1914 A.D.. That is to say, the world has been devoting its efforts no longer to the regulation of the natural fact of war and the coördination of the customary rules of neutrality, but to the critic on, and the solution of, the fundamental problems of the raison d'être of war and/of neutrality, with an idea of just peace. This fundamental change is significant, because, on the one hand, it represents a new progress in International Law and, on the other hand, because it endorses the memorable efforts and achievements rendered during the Middle Ages. #341#

#340# Wilson in American Journal of International Law, April 1941, p. 205.
Borchard rightly explained, so far as the status of non-belligerency is concerned, in his book "Neutrality For the United States" (p. 279), by saying that "the way to peace lay in taking the right side. This was called internationalism."

#341# Mowat says in his "A History of European Diplomacy" (Vol. II, 1914-1925, p. 179) that "In the United States the great

The first fact, serving the new tendency, is no doubt the "Fourteen Points For A Peace Acceptable to the United States" pronounced on January 8, 1918 to the United States' Congress by President Woodrow Wilson, one of the greatest statesmen of modern time. The text of the Fourteen points of the Wilsonian principlem reads:- "The program of the world's peace , therefore, is our program, and that program, the only possible program, as we see it, is this;

1. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view.

2. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

3. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

4. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

5. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight

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contest took place...over...the Covenant of the League of Nations. It is impossible to say who was the originator of the League: Wilson, Smuts, Cecil, Bourgeois had their part. But the idea was not new. Dante's "De Monarchia", the Grand Dessein of

with the equitable claims of the government whose title is to be determined.

6. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her m of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

7. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations, with one another. Without this healing act the whole structure and validity of international law is forever impaired.

8. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of

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Henri Quatre, were reasoned schemes for a League. The War, naturally, brought the old idea powerfully to the fore."

#812# Bemis, "A Diplomatic History of the United States", pp. 618-621. As regards the United States' public and governmental opinions that the Allies' cause was "right," see Mowat, "A History of European Diplomacy", Vol. II, (1931) pp. 86 et suiv.

the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

9. A readjustment of the frontiers of Italy should be effected along clearly recognisable lines of nationality.

10. The peoples of Austro-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity of autonomous development.

11. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the seven Balkan states should be entered into.

12. The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantee.

13. An independent Polish State should be erected, which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

14. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of

political independence and territorial integrity to great and small states alike." #348#

The second fact is the so-called "War-Guilt"and "War Criminals" clauses in the Traité de Versailles of June 28, 1919 (Articles 231, 227-230) which, for the first time in modern history, pronounced war as a crime and imposed responsibility and penalty on war criminals. Article 231 of the Treaty reads: "The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the allied and associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies." This article rankled most with the Germans. Part VII, "Penalties", Articles 227-230, may be quoted as follows: "The Allied and Associated Powers publicly arraign William II of Hohenzollern, formally German Emperor, for a supreme offence against international morality and the sanctity of treaties." A special tribual of five judges, one appointed by each of the Principal Allied and Associated States (American, British, French, Italian and Japanese), was to be constituted to try the accused and to "fix the punishment", "thereby assuring him the guarantees essential to the right of defence." An address was to be presented to the Government of the Netherlands for the surrender of the ex-Kaiser (Article 227). It is regrettable that the Government of the Netherlands refused to extradite the accused; because, replied the Dutch Government, it would be contrary to international usage for them to surrender a "political refugee."The German Government (Article 228) also recognized the right of the Allied and Associated Powers to bring before military tribunals persons accused

of having committed acts in violation of the laws and customs of war; it undertook to hand over such accused persons as the Allied and Associated Powers should specify by name; the lists prepared by the Allies included the names of the Crown Prince, of Hindenburg, of Ludendorff, and of almost every prominent figure on the German side during the war. After a compromise was reached, the German Government agreed to bring twelve of the accused (against whom definite and flagrant breaches of the laws of war were alleged) before the German Supreme Court at Leipzig, the Allied Governments acting as prosecutors. The trials took place in 1921. Six of the accused were convicted, and sentenced to terms of imprisonment. Yet as Professor Mowat says: "The trial of William II of Hohenzollern, with the best legal brains of all the great states probing the facts and documents, and defending their views, would, whatever the verdict, have been the most striking exposition of international law and morality which it is possible to conceive. It is really regrettable that the cause of good international relations lost a great chance." #343#

The third fact, the most important, is the conclusion of the Covenant of the League of Nations, Part I of the Peace Treaties of 1919 and the constitution of the League of Nations (effective on January 10, 1920).

#343# Mowat, Vol. II, 1914-1925, pp. 168-169, 150-154.
G. M. Gathorne-Hardy, "A Short History of International Affairs, 1920-1938", 1939, pp. 26-27.
E.H. Carr, "International Relations Since the Peace Treaties", 1938, pp. 45-48.
The moral delinquencies of Germany, stressed in Great Britain and France, were, in particular, the violation of Belgian neutrality, the wanton devastation of the occupied territories, and the killing of civilians by bombing from the air and by unrestricted submarine warfare against merchant ships." (Carr, p. 45.

The "Preamble" of the League Covenant reads: "The High Contracting Parties, In order to promote international cooperation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, agree to this Covenant of the League of Nations."

Article I reads: "Any fully self-governing state, Dominion or colony....may become a member of the League...."

Article 2 reads: "The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat."

Article 3 reads: "(#1) the Assembly shall consist of Representatives of the members of the League....(#2) the Assembly shall meet at stated intervals and from time to time as occasion may require....(#3) the Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world. (#4) At meetings of the Assembly, each member of the League shall have one vote, and may have not more than three Representatives."

Article 4 reads: "(#1) The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives/selected by the Assembly from time to time in its discretion....(#3) The Council shall meet from time to

time as occasion may require, and at least once a year,...(#4) The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world...(#6) At meetings of the Council, each member of the League represented on the Council shall have one vote, and may have not more than one Representative."

Article 5 reads: "Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council, shall require the agreement of all the members of the League represented at the meeting...."

Article 8 reads: "The members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations..."

Article 10 reads: "The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League...."

Article 6 reads: "...(#5) the expenses of the League shall be borne by the members of the League in the proportion decided by the Assembly...."

Article 7 reads: "(#1) The seat of the League is established at Geneva...(#4) Representatives of the members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities. (#5) The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable."

Article 11 reads: "Any war or threat of war, whether

immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of xx nations...."

Article 12 reads: "The members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement ot to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.."

Article 13 reads: "...The members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto."

Article 14 reads: "The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

Article 15 reads:"...(##6,9,10) the members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report (made by the Council or by the Assembly)....(#7) If the Council (or the

Assembly) fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice...(#8) If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

Article 16 reads: "(#1) Should any member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking state, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking state and the nationals of any other state, whether a member of the League or not. (#2) It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League. (#3) The members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will

mutually support one another in resisting any special measures aimed at one of their number by the Covenant-breaking state, and that they will take the necessary steps to afford passage through their territory to the forces of any of the members of the League which are cooperating to protect the covenants of the League. (#4) Any member of the League which has violated any covenant of the League may be declared to be no longer a member of the League by a vote of the Council concurred in by the Representatives of all the other members of the League represented thereon."

Article 17 reads: "(#1) In the event of a dispute between a member of the League and a state which is not a member of the League, or between states not members of the League, the state or states not members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council. (#2) Upon such invitation being given, the Council shall immediately institute an enquiry into the circumstances of the dispute and recommend such action as may deem best and most effectual in the circumstances. (#3) If a state so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a member of the League, the provisions of Article 16 shall be applicable as against the state taking such action. (#4) If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such

recommendations as will prevent hostilities and will result in the settlement of the dispute."

Article 18 reads: "Every treaty or international engagement entered into hereafter by any member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered."

Article 19 reads: "The Assembly may from time to time advise the reconsideration by members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."

Article 20 reads: "(#1) The members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings inter se which are inconsistent with the terms thereof and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof. (#2) In case any member of the League shall, before becoming a member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such member to take immediate steps to procure its release from such obligations."

Article 21 reads: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace."

Article 22 reads: "(#1) To those colonies and territories

which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant. (#2) The best method of giving pratical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League...."

Articles 23 to 25 deal with the matters of international coöperation and the unification of international organizations.

Article 26 reads: "(#1) Amendments to this Covenant will take effect when ratified by the members of the League whose Representatives compose the Council and by a majority of the members of the League whose Representatives compose the Assembly. (#2) No such amendments shall bind any member of the league which signifies its dissent therefrom, but in that case it shall cease to be a member of the League." #344#

#344# With regard to the full text of the Covenant of the League of Nations, its various voted amendments, but not yet in force, and the proposals for its amendment, see:
"Essential Facts About the League of Nations", 10th ed. 1939, published by the League (in French and English editions), Part I.
S. Engel, "League Reform"(an Analysis of Official Proposals and Discussions), Geneva Research Centre, 1940.
The Statute of the Permanent Court of International Justice was passed by the League Assembly on Dec. 13, 1920. ■

The League of Nations began to function in 1920. The Assembly meet annually. Special Assemblies were summoned in 1926 (for the admission of Germany into the League) and in 1933 (for dealing with the Sino-Japanese Conflict of 1931). At the conclusion of the 15th ordinary Assembly in 1934 (after the admission of U.S.S.R. into the League), the number of the member of the League reached 60: Afghanistan, Union of South Africa, Albania, Argentine, Australia, Austria, Belgium, Bolivia, United Kingdom, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Estonia, Ethiopia, Finland, France, Germany (withdrawal notified but not yet effective), Greece, Guatemala, Haiti, Hungary, Honduras, India, Iran, Iraq, Ireland, Italy, Japan(withdrawal notified but not yet effective), Latvia, Liberia, Lithuania, Luxemburg, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Portugal, Roumania, Salvador, Siam, Spain, Sweden, Switzerland, Turkey, U.S.S.R., Uruguay, Venezuela and Yugoslavia. The states

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A Protocol of Signature of the Statute of the Permanent Court of International Justice was signed on Dec. 16, 1920, including the"Optional Clause" for accepting the compulsory jurisdiction of the said Court.
Professor Hans Kelsen says in his "Law And Peace In International Relations"(1942), "...experience teaches that states submit more easily to an international court than to an international government. Treaties of arbitration have proved up to now to be the most effective. Seldom has a state refused to execute the decision of a court which it has recognized in a treaty...The idea of law, in spite of everything, seems still to be stronger than any other ideology of power....Let us rather concentrate and mobilize the energies of those who are wedded to the idea of peace for the establishment of an international court with compulsory jurisdiction, thus preparing the indispensable prerequisite for the achievement of any further progress..."(pp. 169-170).

#345# Professor S.R. Chow, "Development of the Organization of the League of Nations", Social Sciences Quarterly, National Wu-Han University, The Republic of China, Vol. IV, No. 4, 1934, pp. 755-774. A list of states Members of the League for 1938

not members of the League (in Oct. 1934) were the United States of America, Egypt (entered into the League in 1937), Hedjaz (called Kingdom of Saudi Arabia since 1932) and a few minor states such as Omen (in Eastern Arabia Pennisula), the Republic of Andorra (between France and Spain), Duchy of Monaco (in South Eastern France near Italy), the Republic of San Marino (in North-Eastern Italy) and Marquisate of Lichtenstein (between Austria and Switzerland). The applications for membership of the last three were refused by the First Assembly of the League of Nations in 1920 on account of the extraordinarily small size of their territory. #345# After the outbreak of the European War in 1939, the Twentieth Assembly of the League took place as usual. It was only after the Armistice of June 22, 1940, between France and Germany and of June 24, 1940, between France and Italy, that the Secretary-General of the League, M. Avenol, resigned (on July 26, 1940) and left the Secretariat to three other senior League officials. The League's activities, therefore, was thence suspended.

Apart from its certain success in the promotion of economic and technical coöperation and of the systems of arbitration and judicial settlement, the League of Nations contributed much, through the settlement of political disputes, to the internationalist institution of collective security. The League of Nations settled, or help to have settled, the Dispute concerning Vilna between Poland and Lithuania in 1920; the Dispute concerning Upper-

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is embodied in "Essentialm Facts about the League of Nations", 1939. With regard to the difficulty in treating these extraordinarily small states, see Hudson in American Journal of International Law, 1924, pp. 443-450.

Silesia between Germany and Poland in 1921; the Dispute concerning Aaland Islands between Sweden and Finland in 1921; the Corfu Incident in 1923 (between Italy and Greece); the Bulgarian-Creek Dispute in 1925; the Bolivian-Peruvian Dispute in 1929; the Peru-Colombian Dispute in 1933; the Incident of Saar in 1935; the Dispute concerning the Incident of Marseille between Hungary and Yugoslavia in 1935; and the re-adjustment of some disputed boundaries such as between Poland and Czechoslovakia, between Czechoslovakia and Hungary, and between Hungary and Yugoslavia. The problems of Albania and Memel were also settled with the assistance of the League. #346#

The League's most significant contributions in this field, in particular of the concern of the status of non-belligereney, seem to be represented by its grossly successful dealings with (1) the Sino-Japanese Conflict of 1931, (2) the Bolivia-Paraguayan War of (the first declared war after the World War I) 1933, (3) the Italo-Ethiopian undeclared war of 1935, (4) the Sino-Japanese undeclared war of 1937 and (5) the Russo-[redacted]Finnish undeclared war of 1939.

(1) The Sino-Japanese Conflict of 1931:---in the case of which, for the first time, Article XV of the League Covenant was invoked and applied, though the failure to automatically invoke Article XVI of the Covenant prevented the conflict from an effective settlement. The origin of this conflict is called "Mukden Incident" (Should be called "Shenyang Incident"), or "Nine-One-Eight Incident". It is that, on the night of September 18th, 1931, Japan began a

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#346# consult: Official Journal, published by the League of Nations.
Foreign Affairs, published in New York,
American Journal of International Law, published in Washington,
Survey of, & Documents on, International Affairs, London.

systematic armed attack on Mukden (Shenyang), Capital of the Province of Liao-Ning, one of the Eastern Three Provinces of China. On September 22, 1931, the Chinese Government made an appeal to the League by invoking Article XI of the Covenant. The Council of the League ordered, on October 24, 1931, the withdrawal of the Japanese forces from China within two weeks and resolved to despatch a Commission of Enquiry on December 10, 1931. After Japan, in disregard of the League's order, extended her armed invasion to Shanghai, a port in Central China, on the night of January 28, 1932, the Chinese Government made another appeal to the League by invoking Articles X and XV of the Covenant on Jan. 29, 1932, and requested to refer the case to the League's Assembly on Feb. 12, 1932. The League, upon the approval of the Chinese Government, summoned a special Assembly on March 11, 1932, by invoking Articles III and XV (#9), and adopted the Stimson Doctrine of Non-recognition of January 7, 1932, which reads: "The Assembly....declares that it is incumbent upon the members of the League of Nations not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris." It is remarkable that Japan, after having occupied the supposed larger part of China's Eastern Three Provinces (Liao-Ning, Ki-Rin and Hei-Lung-Kiang), had made her puppet-state "Manchukuo" declared to have been established on Feb. 18, 1932, and accorded it recognition on Sept. 15, 1932. On Feb. 24, 1933, a final Resolution was adopted by the League Assembly (Special) based upon the provisions of Article XV (#4), the Report of the Lytton Commission of Enquiry and the Four Reports by the Consular Commission in Shanghai. According to the conclusions of the

League Assembly's Resolution of Feb. 24, 1933, (A) All the disputes between China and Japan are deemed possible to be solved by means of arbitration; (B) There is no responsibility on the part of China for the situations since and subsequent to the Mukden Incident of September 18, 1931; (C) The military operations in China performed by the Japanese forces are deemed not an act of self-defence, nor an act not inconsistent with Article XII of the League Covenant; (D) The so-called "Manchukuo" came to being not from a spontaneous movement of autonomy and independence by the people; (E) The Chinese boycott movement subsequent to the Mukden Incident of September 18, 1931, falls into the categoty of reprisal. The League Assembly's Resolution of Feb. 24, 1933, further recommends, in view of the proper way to the settlement of the Dispute, (A) Japan shall forthwith withdraw her armed forces from China and restore the sovereignty and territorial and administrative integrity of China; (B) China, after having resumed her sovereignty and administration in her Eastern Three Provinces, shall pay due regard to the legitimate interests of Japan as well as of other states in those provinces provided that such measures shall by no means violate the sovereignty and territorial and administrative integrity of China; (C) The Doctrine of Non-recognition applies to all the situations, facts and agreements in, and concerning, China brought about by the armed forces of Japan; (D) After these recommendations having been accepted by both parties, the enforcement of them shall be effected through direct negotiation between China and Japan with the assistance of a Committee for Negotiation composed of fourteen states including Russia and the United States, appointed by the Assembly. On the same day, following the adoption of the Assembly' Resolution,

China, after criticized the Recommendations, declared to accept the Resolution, while Japan refused to accept.

The League Assembly, also on the same day, in accordance with Article III (#3) of the Covenant, resolved to institute a Far East Advisory Committee of Twenty-one for the supervision of the development of the Far Eastern situations. The United States despatched an observer to the Committee upon the League's invitation. On March 27, 1933, Japan notified the League of her intention to withdraw from the League of Nations; this withdrawal was effective on March 27, 1935, though, legally speaking, the League should not admit Japan's withdrawal before she complies with the League's Resolutions and Covenant obligations (Art. I, (#3)). On the other hand, Japan continued her armed invasion in China by Attacking the Province of Jehol. Precisely Japan had not only, as a matter of fact, broken her engagements under the Kellogg Pact of 1928 and the Nine Power Treaty of 1922, but resorted to war in violation of Articles XII and XV of the League Covenant, thereby the members of the League were certainly thrown upon the obligation to automatically apply the sanctions to the Japanese Aggressor as provided in Article XVI. Yet nothing more had been done by the League, apart from a temporary and unsuccessful effort on the part of Great Britain to apply a limited arms embargo. "The shock, therefore," as Mr. G. M. Cathorne-Hardy says, "which the incident administered to the whole system of collective security was tremendous...It is, however, arguable that in such circumstances the intervention of the league, and its expression of an impotent disapproval, was worse than useless, since it tended to consolidate public opinion in Japan behind the militarist aggressors. The "moral sanction" of an adverse foreign opinion

generally produce this result." It was this universal moral and legal support which enabled China to have reserved her legal right to recover those lost territories. #347#

(2) The Bolivian-Paraguayan War of 1932:---in which case a formally declared war was intervened in by the League in disregard of the Hague Cenventions. On June 15, 1932, an armed conflict began already between these two member-states of the League for the Gran Chaco Dispute. On May 10, 1933, the Paraguayan Government issued a decree declaring that a state of war existed between Bolivia and Paraguay. The Secretariat of the League of Nations had received notification of the fighting in the Chaco from both Bolivia and Paraguay, before the end of July of 1932; the League Council decided in September of 1932 to appoint a Committee of Three to follow the development of events and despatched a telegram to the two parties reminding them that they were "legally and honourably bound" by their obligations under the Covenant "not to have recourse to armed force" for the settlement of their dispute. In February of 1933 the British Government, with the support of the French Government, proposed that the Council of the League should take action under Article XI of the Covenant in order to prevent the supply of arms to Bolivia and Paraguay. The Council viewed this proposal with favour, and in order to furnish a legal basis for action the Chaco dispute was formally submitted to the Council, under

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#347# Professor S. R. Chow, "New Progress In International Law", Chapters XIV-XIX, ("The Incident of Eastern Provinces and the League of Nations'), 1934.
W. W. Willoughby, "Sino-Japanese Controversy and the League of Nations", 1935. (Chinese edition translated by Kwai-Chun Lu, etc., 1936).
Gathorne-Hardy, "A Short History of International Affairs", 1920-1938, (1939), pp. 320, 301-334.
League's Official Journal, Special Assembly Records, 1933, Vol.V.

Article XI of the Covenant, by the Committee of Three on March 6, 1933. After the declaration of war formally issued by Paraguay on May 10, the Council considered that, though Paraguay might have put herself technically in the wrong, she had in fact done nothing more than given formal recognition to the state of war which had been in existence for ten months, so that it would be unreasonable to treat her as if she, and she alone, had just committed a breach of the Covenant. This view was supported by the British Government in opposition to the French view that it was in the general interests of world peace that Paraguay should be declared the aggressor. On May 20, 1933, the Council unanimously resolved, upon the proposal of the Committee of Three, as a result of the invocation of Article XI, that (1) the settlement of the conflict should be entrusted to the League, that (2) hostilites should be suspended, that (3) Paraguay should withdraw her declaration of war, and that (4) the Council would despatch a commission to the Chaco to negotiate, if desirable, an agreement for effecting the cessation of hostilities and to prepare an agreement for arbitration. When the Paraguayan delegate had virtually rejected the proposal for an arbitral settlement, the representative of Bolivia requested the Council to take action in accordance with Article XV of the Covenant. In the middle of June of 1934 Bolivia took the further step of asking the League to refer the dispute to Assembly under Article XV. The Secretariat of the League placed this question on the agenda for the 15th Ordinary Assembly which was convoked on September 10, 1934.

As a matter of fact, the Council did not decide to suspend the attempt which had already been initiated to secure a general agreement among arms-exporting countries to prohibit the supply of

arms to the disputants. For the Committee of Three had pointed out in a report to the Council at the end of November, 1932, that neither Bolivia nor Paraguay manufactured armaments, so that they were entirely dependent for the maintenance of their armed strength upon supplies from abroad. By the end of May, 1933, the United States had prohibited the export of arms to Bolivia and Paraguay, and favourable replies to the Committee of Three's inquiry regarding a general embargo had been received from 23 of 31 countries to which telegrams had been despatched on the 20th of May. The question whether it was possible to proceed with the embargo after Bolivia had appealed under Article XV was examined by legal experts, who decided that, as the embargo was a separate and independent measure which would be taken by Governments in their individual capacity and not by the Council of the League as a body, the invocation of Article XV did not affect the situation. By the middle of August of 1934, the Committee of Three despatched another circular communication to the Governments, and received affirmative replies from about 12 Governments. Nearly all members of the League as well as the United States imposed an embargo in supplies of war material to both belligerents. The war ended in 1935, with a new American effort at mediation. #348#

(3) The Italo-Ethiopian undeclared War of 1935:---in which case, for the first time, Article XVI of the Covenant of the

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#348# Arnold Joseph Toynbee, "Survey of International Affairs, 1933" (1934) pp. 398, 400, 405, 411, 412, 417-421, 434, 438, 393-438.
E.H. Carr, "International Relations Since the Peace Treaties", 1938, p. 174.
Borchard and Lage, "Neutrality for the United States", 1940, pp. 272-273.
League of Nations, C.185, M. 75, 1934, VII, (May 12, 1934), p. 12.

League was invoked and applied, though a failure to continue the sanction by adopting the military measures, provided in Sections 2 of the Article, prevented the aggrieved party from relief. The origins of the war were the Italian armed occupation of the Abyssinian city, Walwal, in 1934 and a further large-scale invasion into Abyssinia by Italy's armed forces since October 3, 1935. The Abyssinian Government made appeals to the League by invoking Article XI (#2) of the Covenant on Jan. 1, 1935, Article XV on May 20, 1935, Article X and Article XV (#3) on September 5, 1935, and Article XVI on October 5, 1935. On October 7, 1935, the League Council resolved that (1) the responsibility for the failure to reach a compromise by mediation fell upon Italy, on account of her unlawful free action in disregard of the Covenant, that (2) war had actually occurred between Italy and Abyssinia, that (3) such military operations were precisely inconsistent with Article 12 of the League Covenant, that (4) the obligations under Article XVI of the Covenant incumbant upon the member-states are obvious and clear, so that the member-states could not neglect their obligations, if they would not violate the Covenant and that (5) it is desirable to refer this case to the Assembly for adopting coordinated common steps.

The Assembly (16th Ordinary continued) accepted the communication and report submitted by the Council under Article III of the Covenant on Oct. 9, 1935. On Oct. 10, 1935, a Coördination Committee (Committee for Coördination of the Measures taken under Article XVI of the Covenant) was appointed by the Assembly, composed of all the members of the League (52 of 58; the others, 6, were either parties to the case or refraining from participation on

account of their weakness (Austria, Hungary, Albania and Paraguay). At the midnight of November 18, 1935, the League's collective economic sanction against Italy began. It went on through eight months. On July 4, 1936, the League Assembly resolved to raise the sanction and declared that the doctrine of non-recognition applied to the situations in Abyssinia brought about by Italy's armed forces. Abyssinia, while singly lost the war, was declared to be absorbed into the Italian Empire on May 9, 1936; but its legal status as a state, also a member-state of the League, remained without change. Emperor Sellassie of Abyssinia went to have stayed in London, waiting for his expectable future.

The failure in this first sanctions experiment was chiefly due to political obstacles----failure to adopt collective military measures. As Dr. Albert E. Highley says in his "The First Sanctions Experiment, a Study of League Procedures", "Speaking broadly, few difficulties of a purely technical nature were encountered in the application of sanctions against Italy. The obstables which caused the most trouble and which in the end destroyed the system were predominately political in nature....it certainly seems that the obstacles in their way are gigantic---particularly if they are not supplemented by military sanctions or, at least, by a known willingness to use military sanctions if necessary. The real key to the successful application of ~~xxxx~~ sanctions is loyal and vigorous leadership by the great powers applying them plus a determination to make them succeed. Otherwise there is no hope of obtaining and refaining the essential cooperation of the lesser powers and of bringing the aggressor to terms."

Yet it seems also certain that the first sanctions expe-

riment itself ought to be considered significant; it opened a new age for internationalism and the international rule of law; it proves that an international collective sanction is not impossible; it has shown the way to improvement. Above all, that most people have been attacking nothing but the weakness and insufficiency of the operation of sanction, just reflects a common desire for a more satisfactory sanction system; it is this common desire which represents the general tendency of human efforts in this century and is keeping the door open to an advanced development of internationalism. It goes without saying that the sanction, either morally or substantially, had inflicted heavy losses and grave sufferings upon the aggressor. #349#

(4) The Sino-Japanese undeclared War of 1937:---in the case of which, for the first time, Article XVII of the League Covenant was invoked and applied----the League's common action of defence against the aggression of a non-member-state. The undeclared War on China by Japan began with the Lukouchiao Incident on the night of July 7, 1937, when the Japanese troops began to attack the Chinese troops at the City of Wan-Ping near LuKouChiao Bridge. By this time China was resolved to yield no longer, but to begin her long expected war of resistence. The National Supreme Leader, Generalissimo Chiang Kai-Shek, President of the Executive Yuan, in a speech made on July 17, 1937, emphasized that "national existence

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#349# Royal Institute of International Affairs, "Documents on International Affairs", 1936, Vol. II. Hwai-Chun Lu, "Italo-Ethiopian Conflict and the League of Nations", 1936, Social Sciences Quarterly, National Wu-Han University, China, Vol. VI, No. 4. Highley, "The First Sanctions Experiment", Geneva Research Centre, 1938, pp. 122, 127. Rappard, "The Quest For Peace", pp. 277-278. After Italy declared to join Germany in the European War on June 10, 1940, Emperor Sellassie of Abyssinia, with the aid from Great Britain, defeated

and international co-existence were the twin aims of the foreign policy of the Chinese National Government.....China was not seeking war; she was merely meeting attacks on her very existence. On the other hand, she was still seeking peace. Whether it would be peace or war depended entirely on the movements and activities of the Japanese troops." #350# The movements and activities of the Japanese troops were conducted to war; therefore, a large-scale war has been being carried on for more than five years and entered into its sixth year, while the ultimate victory of Japan is still extremely doubtful and certainly unprofitable.

Being a loyal member-state of the League of Nations, China made an appeal to the League, on September 12, 1937, by invoking Articles X, XI and XVII of the Covenant. The League, upon the approval of China, referred the case first to the Far East Avvisoby Committee set up by the Assembly on Feb. 24, 1933. On the other hand, the Assembly, on September 28, 1937, condemned the aerial bombardment of open towns in China by Japanese aircraft. On Oct. 6, 1937, the League Assembly adopted the Reports submitted by the Far East Advisory Committee and declared: (1) that the Assembly requests its President to take the necessary action with regard to the proposed meeting of the members of the League which are parties to the Nine

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Italian troops and restored his country. On July 12, 1940, Great Britain declared the withdrawal of her recognition of Italian annexation of Abyssinia in November of 1938 and recognized Abyssinia as a full ally.

#350# The speech of Generalissimo Chiang Kai-Shek is referred to by the First Report of the Sub-Committee of Far East Advisory Committee, adopted by the Assembly of the League of Nations on October 6, 1937.
Official Journal of the League of Nations, 1937, Records of Assembly Meetings.
Chinese White Book, No. 56, July 1938, published by Ministry of Foreign Affairs, National Government, the Republic of China, (Chungking), pp. 8, 2-3.
For facts concerning the outbreak of the War, see also the First Report. See also Official Journal, 1937---.

Power Treaty signed at Washington on February 6, 1922; (2) that" the military operations carried on by Japan against China by land, sea and air/are out of all proportion to the incident that occasioned the conflict; (3) that they/can be justified neither on the basis of existing legal instruments nor on that of the right of self-defence; (4) that they are in contravention of Japan's obligation under the Nine Power Treaty of Feb. 6, 1922, and under the Pact of Paris of August 27, 1928; (5) that the establishment of the understandings of international law as the actual rule of conduct among Governments and the maintenance of respect of treaty obligations in the dealings of organised peoples one with another are matters of vital interest to all nations; (6) that"the present situation in China is a matter of concern not only to the two/states in conflict but, to a greater or lesser degree, to all states; the restoration and maintenance of peace is the fundamental purpose for which the League exists. It has thus the duty as well as the right to attempt to bring about a speedy restoration of peace in the Far East, in accordance with existing obligations under the Covenant and the treaties;"(7) that the wide terms of Article III (#3) of the Covenant authorise the Asembly to deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world; (8) that Article XI provides that the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations; and (9) that"the Assembly expresses its moral support for China, and recommends that members of the League should refrain from taking an action which might have the effect of weakening China's power of resistence and thus of increasing her difficulties in the present conflict, and should also consider how far they can individually extend aid to China."

On Feb. 2, 1938, the Council recalled the Assembly Resolution of Oct. 6, 1937, and encouraged the members represented on the Council to carry on the measure of consultation with other similarly interested powers in order to bring about a just settlement of the conflict. On May 14, 1938, the Council expressed again "its sympathy with China in her heroic struggle for the maintenance of her independence and territorial integrity, threatened by the Japanese invasion, and in the suffering which is thereby inflicted on her people."

On September 30, 1938, the League Council declared the application of Articles XVI and XVII of the Covenant and recalled the Assembly Resolution of Oct. 6, 1937. The Council's Resolutions says, (1) "The Japanese Government, having been invited, under Article XVII paragraph 1 of the Covenant, to comply with the obligations devolving upon the members of the League for the settlement of their disputes, has declined this invitation;" (2) "The military operations in which Japan is engaged in China have already been found by the Assembly to be illicit,...and the Assembly's findings retains its full force;" (3) "In view of Japan's refusal of the invitation extended to her, the provisions of Article XVI are, under Article XVII, paragraph 3, applicable in present conditions and the members of the League are entitled not only to act as before on the basis of the said finding, but also to adopt individually the measures provided for in Article XVI;" (4) "Although the coordination of the measures that have been or may be taken by Governments cannot yet be considered, the fact none the less remains that China, in her heroic struggle against the invader, has a right to the sympathy and aid of the other members of the League. The grave international tension that has developed in

another part of the world cannot make them forget either the sufferings of the Chinese people, or their duty of doing nothing that might weaken China's power of resistance, or their undertaking to consider how far they can individually extend aid to China." #351#

While the League could have done so far the favour to China, the Europpan War broke out in September of 1939. On December 7, 1941, the United States declared war on Japan, following the Incident of Pearl [redacted] Harbour. On December 9, 1941, China formally declared war on Japan, Germany and Italy. On December 10, 1941, both the United States and Germany declared war on each other. On Dec. 11, 1941, both the United States and Italy declared war on each other. A collective war has taken the place of a collective sanction, with a view to restoring the [redacted] world peace once for all. #352#

[redacted] In this connection, some cases respecting the enforcement of the League' resolutions concerning Article XVII are remarkable, notably, the close of Burma Road and the French-Japanese coöperation in Indo-China.

(A) The close of Burma Road:---Burma Road, generally speaking, is the road between Rangoon, a large sea port of Burma (a dependency of China before 1885, with 300,000 Chinese residents), and Kunmin, Capital of the Province of Yunnan of China; strictly speaking, it is the road between Kunmin and Lashimo, a city of Burma bordering the Province of Yunnan of China. Since her important sea ports fell into the Japanese hands in the war, China's interna-

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#351# Chinese White Book, Nos. 56 & 57, published in July & October of 1938, Chungking, Official Journal, 1937-1938.

#352# For the series of events, see American Journal of International Law, 1938---.

tional communication and the transportation of war supplies from abroad began to depend, to a large extent, upon this road. According to the League's Resolutions of September 30, 1938, China has a legal right to demand the opening of that road for the passage of war supplies to China; and Great Britain has an legal obligation to accept such demand. It is regrettable that, on June 17, 1940, an agreement was reached between Great Britain and Japan, in which Great Britain promised to close Burma Road for three months, since July 18, 1940. Fortunately, this surprising fact ended on Oct. 17, 1940; the Road was re-opened as usual. After Dec. 7, 1941, the outbreak of the war between Japan on the one hand and Great Britain, the United States, etc. on the other, Prime Minister Winston Churchill of Great Britain repeatedly expressed, on some public occasions, regret and apology for this act of delinquency. #353#

(B) The French-Japanese coöperation in Indo-China:---- There is a railway between Haiphong, a large sea port of French Indo-China (a dependency of China before 1862, with 300,000 Chinese residents), and Kunmin, the Capital of the Province of Yunnan of China. There are some international highways in that district too. Since the war of 1937, up to 1940, Indo-China became even more important than Burma Road, in view of China's outlet. The legal aspects of the relations between China and France are the same as that between China and Great Britain. On June 19, 1940, Japan demanded a cessation of arms traffic to China of France. From the legal point of view, this demand was strange, because the war between China and Japan was not declared. According to International Law, no neutral

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#353# American Journal of International Law, 1940-1941. see speeches delivered before the Parliament by Prime Minister Churchill after Japan joined the European War by taking Germany's side. see also: Fry, "War in China", 1938, p. 14.

and belligerent legal rights against each other can be claimed before a declaration of war. #354# The Japanese demands, therefore, were legally baseless. That is to say, France had a legal right to reject it. Yet the French Ambassador at Tokyo on the same day issued a declaration indicating the general principles on arms traffic; on September 1 and 17, 1940, Japan further demanded a right of passage through and on the territory of Indo-China; on September 22, 1940, an agreement was signed by France and Japan to grant the latter such a right, in despite of the United States' warning and declaration of non-recognition. Thus French Indo-China began to become a military base of Japan for attacking China, a fellow-member state of France in the League. On Jan. 31, 1941, another agreement was signed by France and Japan to grant the latter the right of monopoly over rice and some kinds of war materials in Indo-China. On May 6, 1941, another agreement was signed by France and Japan on economic coöperation in Indo-China. On Dec. 10, 1941, an agreement was signed by France and Japan for the defence of Indo-China. On July 18, 1942, a further agreement was signed by France and Japan for economic affairs. All of these agreements and facts, brought about after the outbreak of the Sino-Japanese War and the adoption of the League's Resolution, could be rejected by France lawfully. But France chose the worst, despite her "duty of doing nothing that might weaken China'a power of resistence" and her "undertaking to consider how far they can individually extend aid to China." Therefore, France, while having had a legal right to refuse the demand of Japan and a legal obligation to afford

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#354# Oppenheim, Vol. II, 1940, p. 529. Hague Convention, III, 1907, Article 2. For the series of events, see American Journal of International Law, 1940-1942. Fry, "War in China", 1938, published by the Foreign Policy Association, U.S., p. 14.

partial assistance to China, had chosen to give up that right and to violate that obligation. France not only refused a voluntary armed aid offered by her fellow-member state in the League for the defence of her security (China suggested to offer an army of 400,000 men to help France in defending Indo-China against a possible Japanese invasion), but even disregarded her friendship with her neighbouring fellow-member state China. France had chosen to openly help the declared aggressor to attack the aggrieved ! It goes without saying that France, being a member-state of the League, unlawfully failed " to adopt individually the measures provided for in Article XVI."

The consequences of such acts of delinquency were no doubt extremely grave and intolerable. Not only China's large quantity of war supplies stocked in Indo-China were thereby seized by Japan, but also the lives and property of the 300,000 Chinese residents in Indo China were, and still are, thereby subject to heavy losses and ill-treatment. Not only no more war supplies might be received by China therethrough, but also a constant menace to the back of China from the Japanese forces stationed there began to take place. Seventy-eight years ago, the imperialistic Government of France lost the war with China, but took from China Indo-China. China, by her traditional spirit of peace, tolerated the case and maintained friendly relations with France. Now France chose to use that territory, which formerly belonged to China, as a base of China's enemy for invading China, even at the sacrifice of the Covenant and Resolutions of the League of Nations, of which France had been for twenty years, since the beginning of that institution, a leading supporter !

What an honourable or just thought can make it justified ?

In the Alabama, Florida and Shenandoah cases (1862), the United States

losses eventually rendered for indemnity an amount of US$15,500,000, excluding interest, from England. In the case of Panay Incident (1937), a United States' sunk gun boat rendered for compensation an amount of/US$2,400,000 from Japan. In the case of the British mistake in dropping several bombs on the territory of Switzerland on June 11-12, 1940, Great Britain paid for compensation an amount of 1,110,000 Swiss Francs, on September 17, 1941. Many other similar cases can be found too. #355# Yet one can hardly imagin the material and spiritual losses suffered by China in the case of Indo-China; though she reserves her right to demand indemnity and compensation from France. Thus no wonder the National [redacted] Supreme Leader, Generalissimo Chiang Kai-Shek, [redacted] soon after the Japanese troops landed on the territory of Indo-China as a result of the conclusion of the French-Japanese Treaty, solemnly declared: "Such acts of unfriendliness and delinquency as committed by France and thereby the material and spiritual losses suffered by us will make a deep impression always on the people of China and will be endlessly kept in memoby by our sons and grandsons."

(5) The Finnish-Russian undeclared war of 1939:--in which case Article XVI (#4) of the League Covenant was, for the first time, invoked and applied. The immediate origin of the war is the Russian desire of a rectification of frontiers which were within twenty miles of Leningrad. After [redacted] Finland's refusal, Russia started, on November 29, 1939, bombing the Finnish Capital and attacking at various points along the Finnish-Russian border. Finland immediately launched upon a heroic resistance. The war was an undeclared war, like the Sino-Japanese War of July 7, 1937, till Dec. 9, 1941. On

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#355# Calvo, tome III, Sec. 2288, A.J.I.L., Jan. 1942. Gathorne-Hardy, p. 331. Borchard & Lage, [illegible]. 372-3, 215, 223-5, 142, 150, 156.

Dec. 3, 1939, Finland made an appeal to the League. Russia made a puppet Finnish Goverument and then declared that the League should not make any intervention, because Russia did not recognize the Finnish Government which made the appeal to the League. Yet the League Council accepted Finland's appeal and referred it to the Assembly on Dec. 9, 1939. The Assembly declared Russia the Aggressor on Dec. 14, 1939. On the same day, the Council adopted a resolution declaring Russia to be lo longer a member of the League, in view of her invasion in Finland in violation of the League Covenant. No other effectual measures of sanction were to be taken, except the Council's request for aid to Finland. In the vote of the Council for this resolution, the vote of the either party was not counted, while Yugoslavia and China refrained from voting. #356#

The above five cases, though the settlment of which was far from satisfaction, represent the tendency of the League of Nations' efforts toward internationalism. Such efforts were never possibly tried before the World War I of 1914-1918. Only the experiment itself deserves admiration. All such achievements as the legal and moral support of the victim, the judgement of an aggressor, the adoption of the system of collective,and individual, sanction, the suppression of war, even declared, the expulsion of the aggressor, even a great power, from the Society, etc., has been leading to a fruitful development of the League system, which fundamentally distinguishes this century from Before, especially in view of the status of non-belligerency.

#356# American Journal of International Law, 1940.
Borchard and Lage, "Neutrality For the United States", 1940, pp. 396, 414--421.

The significance of the institution of the League of Nations in this period lies not only on its own achievements during the twenty years after the World War I, as in the preceding pages said, but also on its constant encouragement and assistance afforded to the birth of many other instruments of the same category, the influence of which is far-reaching.

Therefore, the fourth fact, under the general tendency, following the formation of the League of Nations, is the Draft Treaty of Mutual Assistance of 1923. It was the fruit of long labours undertaken by the Temporary Mixed Commission for the Reduction of Armaments and regarded as a "prolongation" of the Covenant. Had it been accepted, it might have necessitated amendments to the latter (Covenant). #357#

The fifth is the Geneva Protocol for the Pacific Settlement of International Dispute of 1924. #358# According to Article I of that Protocol, the signatory states were to make every effort to secure the amendment of the Covenant along the lines of the Protocol, and the Assembly requested the Council to appoint a committee for the drafting of those amendments.#359# Such a "harmonisation" of the

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#357# Records of the Assembly, Meetings of the Committees, Minutes of the IIIrd Committee, p. 199.
Text of the Draft Treaty, see ibid, pp. 203-206.

#358# Text in Records of the 5th Assembly, Plenary Meetings, pp. 498-502. The Assembly had requested its First Committee "to consider, in view of possible amendments, the articles in the Covenant relating to the settlement of disputes" and its Third Committee "to examine the obligations contained in the Covenant in relation to the guarantees of security which a resort to arbitration and a reduction of armaments may require. ibid, p. 77. The two Committees thereupon drafted the Protocol.

#359# Ibid,,p. 225. The Council did so in October 1924; Official Journal, 1924, p. 1657. In view of the new British Government's refusal of the Protocol, however, this preparatory work was postponed; ibid., 1925, p. 461.

Covenant with the Geneva Protocol, if effected, would have required far-reaching alterations in the provisions of the former regarding the reduction of armaments, the pacific settlement of disputes, and sanctions. #360#

The sixth is the Locarno Treaties and the Draft Model Treaties. After and owing to the failure of the Geneva Protocol the Locarno Treaties were concluded. They were regarded as an application of the principles of the Protocol on regional lines. They were approved by the Council and the Assembly and on this basis model treaties relating to security and the pacific settlement of disputes were drawn up. (1928).#361#

It is also remarkable that there are definitions of self-defence and aggression stipulated in the Treaty of Mutual Guarantee of October 16, 1925, which was concluded by Germany, Belgium, France, Great Britain and Italy (effective since September 14, 1926, when Germany became a member state of the League of Nations) for the purpose of satisfying their "desire for security and protection which animates the peoples upon whom fell the scourge of the war of 1914-1918", for "the abrogation of the treaties for the neutralisation of Belgium" and for "the sincere desire of giving to all the signatory powers concerned supplementary guarantees within the framework of the Covenant of the League of Nations". Article 2 of the Treaty reads: "Germany and Belgium, and also Germany and France, mutually undertake that they will in no case

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#360# D. H. Miller, "The Geneva Protocol," 1925, pp. 106---& 271---.
S. Engel, "League Reform", 1940, pp. 23-24.

#361# Official Journal, 1926, pp. 991, 994.
Records of the 7th Assembly, Plenary meetings, p. 120.
Records of the 9th Assembly, Plenary Meetings, pp. 490 et seq.

attack or invade each other. This stipulation shall not, however, apply in the case of : (1) The exercise of the right of legitimate defence, that is to say, resistence to a violation of the undertaking contained in the previous paragraph or to a flagrant breach of articles 42 or 43 of the said Treaty of Versailles, if such breach constitutes an unprovoked act of aggression and by reason of the assembly of armed forces in the demilitarised zone immediate action is necessary..." Article 4 reads: "(3) In case of a flagrant violation of Article 2 of the present treaty or of a flagrant breach of Articles 42 or 43 of the Treaty of Versailles by one of the high contracting parties, each of the omther contracting parties hereby undertakes immediately to come to the help of the party against whom such a violation or breach has been directed as soon as the said Power has been able to satisfy itself that this violation constitutes an unprovoked act of aggression and that by reason either of the crossing of the frontier or of the outbreak of hostilities or of the assembly of armed forces in the demilitarized zone immediate action is necessary...." #362#

The seventh is the General Act for the Pacific Settlement of International Disputes of 1928, adopted by the Assembly of the League of Nations and acceeded to by twenty-three League members. It provided a completed system for the pacific settlement of international disputes and thus supplemented Articles 12 to 15 of the

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#362# Manley O. Hudson, "International Legislation", Vol. III, 1925-1927, (1931), pp. 1690-1695.
Article 9 reads: "The present treaty shall impose no obligation upon any of the British dominions, or upon India, unless the Government of such Dominion, or of India, signifies its acceptance thereof."
(Hudson, "International Legislation", Vol. III, pp. 1694-1695).

League Covenant. #363#

The eighth is the Briad-Kellogg Pact of 1928 (General Treaty For the Renunciation of War), the parties to which condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy, whereas the members of the League, according to the Preamble of the Covenant, agreed only to"the acceptance of (certain) obligations not to resort to war". #364# It is remarkable that the League Assembly had already expressed on several occasions its support of the prohibition of aggressive wars. On September 19, 1927, the Assembly unanimously adopted a resolution declaring (1) that all wars of aggression shall

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#363# Records of the 9th Assembly , Plenary Meetings, pp. 182, 492-497. Text also in the League of Nations' Treaty Series, Vol. 93, pp. 343 et seq. and Hudson, "International Legislation", Vol. IV, pp. 2529-2544.
Official Journal, Special Supplement, No. 192, pp. 58 et seq.
Official Journal, 1939, pp. 200, 201.

#364# Text of the Kellogg Pact in Hudson, "International Legislation", Vol. IV, pp. 2523-2526. It was ratified or acceded to by 64 states.
Engel, "League Reform", 1940, p. 25.
Professor S. R. Chow, in his "New Progress In International Law"(1934), has already held that the phrase "the acceptance of obligations not to resort to war "in the Preamble of the League Covenant shall be replaced by the phrase "acceptmeaning the obligation not to resort to war". (Chapter VIII, "the Legal Restriction on the Right of War", p. 283.)
Professor Quincy Wright and the International Law Association claimed"(A) that the Pact recognized in each ratifying state the right to determine for itself when the Pact had been violated, and thus a right to discriminate against such violator as an aggressor; (B) that each ratifying state had thus a treaty right to deny to a violator the rights of a belligerent and to co-operate in measures of discrimination against a violator;...(3) that it established a legal basis upon which each ratifying state might refuse to recognize as valid in law (a) de facto situations brought about in violation of the Pact, such as those arising from military conquest, (b) treaties brought about by means which were in violation of the Pact."
Wright, "Meaning of the Pact of Paris", American Journal of International Law, 1933, p. 59.
Budapest Articles of Interpretation", 38th Report, International Law Association, 1934, pp. 4-6. Pfankuchen, p. 549.
A.J.I.L., April 1941, p. 355.

be forbidden, and (2) that all disputes between states shall be subject to a peaceful settlement; further earlier, in 1925, the Assembly had declared that "a war of aggression should be regarded as an international crime"; though these resolutions are without legal binding force yet. Another remarkable point is that, as Professor Shotwell says, the Pact has "defined aggression and defense without a definition", that is to say, the settlement of disputes by recourse to war in disregard of Article II of the Pact (obligation to peaceful settlement) is aggression, not self-defence.#365# The "harmonization" of the Covenant with the Paris Pact had already been proposed at the 1928 Assembly, but was decided upon only at the following session. The Committee of Eleven set up by the Council for that purpose confined itself to the dfaft amendments which it considered to be strictly necessary. It proposed the modofication of the Preamble and of the Articles 12 (#1), 13 (#4), and 15 (#6 & #7) of the Covenant. With the exception of those relating to Article 15 (#6 & #7bis), these proposals were in the main accepted by the First Committee of the 1930 Assembly. The latter transmitted the drafts of the two committees to the member-states for their observations. As many members made the ratification of the proposed extension of their obligations "conditional on the entry into force of the Convention for the Reduction of Armaments and, as the Disarmament Conference failed, the question of bringing the Covenant into harmony with the Pact of Paris remained unsettled.#366#

#365# Records of the 6th Assembly, Plenary Meetings, p. 130.
A.B. Keith, "Wheaton's Elements of International Law", 6th English edition, Vol. I, p. 608.
Karl Strupp, "Eléments du Droit International Public", tome II, pp. 492-493.
Myers, "Origin and Conclusion of the Paris Pact", pp. 25-26.
Professor S. H. Chow, "New Progress in International Law", Chapter VIII, pp. 265-272.

The nineth is the Briand's Plan for European Union of 1929, which purported to secure the "close cooperation between the Governments of Europe...for the preservation of peace....within the framework of the League," A Commission of Enquiry had been formed to follow the proposal in 1930 and met in 1931, but has since remained, in fact, adjourned. #367#

The tenth is the draft Disarmament Convention of Sept. 22, 1933, in which there are a European Security Pact and three Acts on the Definition of the Aggressor and on the Establishment of Facts constituting Aggression. The main objects of the European Pact were"to prevent states from resorting to war, with or without declaration" and to "increase the efficiency of the mutual assistance obligations"(established by other treaties). The first part of the Disarmament Convention deals with the above-mentioned possibility

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Shotwell, "War as an Instrument of National Policy", pp. 209-219.
Brierly, "Some Implications of the Pact of Paris", British Year Book of International Law, 1929, p. 209.

#366# Records of the 9th Assembly, Plenary Meetings, pp. 70, 91,(by the Lithuanian Delegation).
Records of the 10th Assembly, Plenary Meetings, pp. 168-169.
Official Journal 1930, pp. 77-80, 101.
Report of the Committee of Eleven to the Council, Official Journal, pp. 354, 361.
Minutes of the Committee of Eleven, Doc. C. 160, M. 69, 1930 V.
Records of the 11th Assembly, Meetings of First Committee, pp. 163-169; Plenary Meetings, pp. 223-227.
Records of the 12th Assembly, Plenary Meetings, p. 224.
The question was referred later on to the Committee of Twenty eight.
Engel, "League Reform", 1940, pp. 25-26, 37.

#367# Records of the 11th Assembly , Plenary Meetings, p. 126.
Records of the 12th Assembly, Plenary Meetings,.
Engel, "League Reform", p. 26.

#368# Disarmament Conference, D./C. G. 38; D./C. P. 12; D. 171(1). p. 37 (Henderson Report). D./C. G. 108, et 108(a), D. 163(1).
Conference Documents, Vol. II, pp. 679 et seq., 685-686, 602-607, 601-602.
Engel, "League Reform", pp. 27-28.

of consultation in the event of a breach or threat of breach of the Paris Pact. #368#

The Eleventh is the Argentine Anti-War Treaty of Non-aggression and Conciliation of October 10, 1933, the conclusion of which was outside the framework of the League, as a contribution of the institution of Pan-American Union, but largely in response to the Assembly Resolution of September 26, 1928. It was characterized as an "effort to adapt the special spirit and traditions of South America to the conceptions of Geneva." The League Council complied with the proposal of the Argentine Government to place the Treaty before the Committee set up to bring the Covenant into harmony with the Pact of Paris. #369#

After an examination of the Treaty, two points are remarkable: (1) Article 3 of the Treaty provides that, in case of noncompliance with the obligations of nonaggression and pacific settlement contained in the preceding articles, the contracting states undertake to "adopt in their character as neutrals a common and solidary attitude," and undertake to " exercise the political, juridical, or economic means authorized by international law". The final clause of the same article carried the proviso that this was "subject to the attitude that may be incumbant on them by virtue of other collective treaties (clearly including, if not confined to, the Covenant of the League of Nations) to which such states are signatories." (2) One of the principles of the Argentine Treaty, namely, the non-recognition of territorial arrangements not obtained by

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#369# Hudson, "International Legislation", Vol. VI, p. 448. Official Journal, 1934, pp. 134-136. The question of "harmony" was referred to the Committee of Twenty-eight. Engel, "League Reform", p. 37, 28-29, 25-26.

pacific means, has been affirmed already by the Assembly Resolution of March 11, 1932, adopted in the dealing with the Sino-Japanese Conflict. That Resolution reads: "it is incumbant upon the members of the League of Nations not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant." This interpretative resolution is but a logical consequence of Article 10 of the Covenant, although it is not entirely covered by the text of this provision. #370#

At the Inter-American Conference for the Maintenance of Peace, held at Buenos Aires in 1936, the same purpose of maintaining a "common and solidary" neutral attitude is affirmed in the terms of Article 6 of the Convention to Coordinate, Extend, and Assure the Fulfilment of the Existing Treaties between the American states by the clause that this shall be "without prejudice to the universal principles of neutrality provided for in the case of an international war outside of America and without affecting the duties contracted by those American states members of the League of Nations." #371#

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21 countries have ratified or acceeded to the treaty. European states that ratified or adhered are Bulgaria, Czechoslovakia, Norway et Roumania. American states that ratified or adhered are Argentine, Brazil, Chile, Colombia, Cuba, Dominican Republic, El Salvador, Ecuador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Peru, the United States, Uruguay, et Venezuela.
Borchard and Lage, "Neutrality For the United States", p.332.
M. de Madariaga, (Spain), before the Council, Official Journal, 1934, p. 134.

#370# Fenwick, "American Neutrality, Trial and Failure", 1940, pp. 21, 126.
Hans Kelsen, "Legal Technique In International Law", Geneva Research Centre, 1939, p. 80.
Official Journal, Special Supplement, No. 101, pp. 87-88.

#371# Fenwick, "American Neutrality", p. 22.
Text, in American Journal of International Law, XXXI(1937), Supplement, 55 et seq. Pan-American Union, Congress and Conferences Series, No. 22, p. 37.

The twelfth is the general condemnation of the Italian proposal for a Four Power Pact in 1933. In that proposal, Mussolili suggested a close cooperation of the four Powers (France, Germany, Great Britain and Italy) in all political and non-political questions by means of the creation of a super-council or a "directory of the Great Powers laying down the law for the smaller nations", within the framework of the League at the sacrifice of the principle of the equality of states. Mussolini also held that "the continued collaboration of Italy with the League of Nations shall be conditional upon a racial reform of the League in its constitution, organisation, and objectives within the shortest possible time. Secretary-General Avenol, the highest League official, in his speech before the House of Commons of Dec. 11, 1933, replied to the Italian proposal by saying that "it is essential to realize that the alternative before the world is not a choice between the League and some better system of international relations, but between the League and complete anarchy." The only Governmental statement made at that time by the League member, in reply to the Italian proposal, was the Dutch Memorandum of Jan. 13, 1934, in which the Dutch Government emphasizes that it saw "no necessity for modifying the Covenant" and that it "would protest against any proposal calculated to infringe the principle of the legal equality of members." #372#

#372# Engel, "League Reform", p. 29-31. Text, in "The Monthly Summary of the League of Nations", 1933, pp. 295-300. "Documents on International Affairs, 1933",(1934) pp. 242-248, 235 et seq. "Survey of International Affairs", 1933, pp. 207---, 283; 1935, Vol. I, p. 14, note 1. London Times, Dec. 7, 1933. Shotwell, "On the Rim of the Abyss", 1936, pp. 305-6. Official Journal, 1934, pp. 288-9. Shotwell, in New York Times, May 6, 1934, Sec.8, p. 3. G. Kidd, "Reform of the League of Nations, Changes in the League, Past and Proposed", introduction by . Wright, (Geneva Special Studies, Vol. V, Nos. 7-8)1934, pp. 27-28. L'Esprit International, 1934, pp. 274-276. Bastin "L'affaire d'Ethiopie et les diplomates", Paris, 1937, p. 33.

Chapter VII:

THE STATUS OF NON-BELLIGERENCY FROM WORLD WAR I TO WORLD WAR II (2)

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It has been stated in the preceding chapter that the number of the members of the League of Nations had reached 60 at the end of 1934, when only the United States and Egypt were non-member-states. After the admission of Egypt as a member state on May 26, 1937, the only state, at least important state, which, embracing the principle of traditional neutrality, has not yet had the membership of the League of Nations, is the United States, though the facts are generally acknowledged that the League of Nations was founded by the assistance of the United States, that the non-political activities of the League have been long joined by the United States, #373# and that even in political affairs the United States had participated as an observer in the League's meetings and committees since 1931, for the settlement of the Sino-Japanese conflicts. Also notwithstanding that the United States had, through her Secretary of State Hull, on October 26, 1935, expressed to the President of the Coordination Committee of the League her sympathy with the actions taken by the League's sanctioning states, #374# that, on November 16, 1935, she even proposed to participate in an intervention for enforcing the peaceful settlement of disputes, #375# and that, on November 15, 1935, she resolutely classed copper, trucks and tractors as

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#373# See "The United States and World Organisation" in International Conciliation, New York, every year.
#374# New York Times, October 27, 1935.
#375# Press Releases XIII, November 9, 1935, pp. 337, 339.

essential war materials so to encourage the League's action of sanction against Italy,#376# the League's prestige seemed depressing since the withdrawal of Japan and of Germany effective separately on March 27, and October 14, 1935. The teens old internationalist institution and framework were at stake. The anti-internationalism movement seemed to have gained ground.

Yet not more than four years later, the Second World War arose, beginning with the Sino-Japanese undeclared War of 1937, and has been undertaking to clear up the obstacles in the way of the continuous progress of the internationalist institution.

In the first place, President Roosevelt made what has become known as his "quarantine"speech in Chicago on the same day, October 5, 1937, when the League's Far East Advisory Committee pronounced Japan the Aggressor and treaty-breaker and invited the signatories of the Nine-Power-Treaty to assemble, in company with some non-members. #377# He denounced the war-makers and persuaded the peace-loving nations to make a concerted effort to quarantine the one tenth who were intent upon war. In this effort he pledged the United States to take a part. Although the United States was not a party to the League Covenant, he deplored "definite violations of agreements especially the Covenant of the League of Nations, the Briand-Kellogg Pact, and the Nine-Power Treaty." Arousing the shades of Wilsonian idealism, the President invoked "international morality", "Principles of the Prince of Peace", "World humanity", "Moral consciousness", and the "heart of mankind". As he says in that speech:

#376# Report of the New York Times correspondent from Geneva on November 30, 1935.

#377# The New York Times, October 6, 1937.

"...let no one imagine that America will escape, that it may expect mercy, that this Western Hemisphere will not be attacked and that it will continue tranquilly and peacefully to carry on the ethics and the arts of civilization....the peace-loving nations must make a concerted effort tp uphold laws and principles on which alone peace can rest secure. The peace-loving nations must make a concerted effort in opposition to those violations of treaties and those ingnorings of humane instincts which to-day are creating a state of international anarchy and instability from which there is no escape through mere isolation or neutrality.....There is a solidarity and interdependence about the modern world, both technically and morally, which makes it impossible for any nation to completely isolate itself from economic and political upheavals in the rest of the world.....It is, therefore, a matter of vital interest and concern to the people of the United States that the sanctity of international treaties and the maintenance of international morality be restored.....It seems to be unfortunately true that the epidemic of world lawlessness is spreading, When an epidemic of physical disease starts to spread, the community approves and joins in a quarantine of the patients in order to protect the health of the community against the spread of the disease...America hates war. America hopes for peace. Therefore, America actively engages in the search for peace." #378#

In the second place, the State Department of the United States promptly issued its judgement that Japan had violated the Nine-Power Treaty and the Kellogg Pact, and thus found itself "in

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#378# Press Releases XVII, pp. 275 et seq.

general accord" with the Assembly of the League of Nations. Prime Minister Chamberlain of Great Britain forthwith promised to back the United States in its effort to stop aggression. Senator Pittman, Chairman of the Committee For Foreign Affairs of the U.S.A. Senate, also denounced Japan's "unlawful, immoral, and brutal conduct in China", and called on the world to boycott Japan. #379#

In the third place, the United States accepted the invitation from the League for the summoning of the Brussels Conference which opened on November 3, 1937. Eighteen of the nineteen Powers (Japan refused to join) were represented thereon and pledged, on November 24,1937, their allegiance to peace, cooperation, and the sanctity of treaties. The State Department of the United States issued a statement, through the address on "Our Foreign Policy" by Secretary of State Hull, in National Press Club, on March 17, 1938, referring to the contribution made by the Brussels Conference that "The Conference made a substantial contribution toward keeping alive the principles of world order and of respect for the pledged word. Its declarations placed a new emphasis upon the deep concern of peaceful nations over any developments that threaten the preservation of peace." #380#

In the four place, on January 3, 1938, President Roosevelt says again about the guarantee of collective security in his address to Congress: "....In spite of the determination of this nation for peace, it has become clear that acts and policies of nations in

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#379# Press Releases, XVII, pp. 284-285.
Borchard and Lage, "Neutrality For the United States", p. 369.

#380# see Records of Brussels Conference, 1937, published by the League of Nations.
Department of State of U.S.A. Publications No. 1146.

other parts of the world have far-reaching effects not only upon their immediate neighbours but also on us.....But in a world of high tension and disorder, in a world where stable civilization is actually threatened, it becomes the responsibility of each nation which strives for peace at home and peace with and among others to be strong enough to assure the observance of those fundamentals of peaceful solution of conflicts which are the only ultimate basis for orderly existence.....There is a trend in the world away from the observance both of the letter and the spirit of treaties. We propose to observe, as we have in the past, our own treaty obligations; but we cannot be certain of reciprocity on the part of others. Disregard for treaty obligations seem to have followed the surface trend away from the democratic representative form of government. It would seem, therefore, that world peace through international agreements is most safe in the hands of democratic representative governments——or, in other words, peace is most greatly jeopardized in and by those nations where democracy has been discarded or has never developed." "381#

In the fifth place, Secretary of State Hull of the United States and some other officials on several occasions repeatedly made declarations attacking neutrality and supporting justice and order. On August 16, 1938, Mr. Hull said: "the World War left a legacy of deepseated maladjustments within and among nations. But out of it also emerged a passionate desire among peoples everywhere for enduring peace, order and progress." #382# On March 17, 1938, he more deliberately said, "In common with all other nations

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#381# Press Releases, XVIII, (Jan. 8, 1938), pp. 31-32.
#382# Department of State, Publication No. 1225.

we have, since the end of the World War, assumed a solemn obligation noy to resort to force as an instrument of national policy. All this gives us a moral right to express our deep concern over the rising tide of lawlessness, the growing disregard of treaties, the increasing reversion to the use of force, and the numerous other ominous tendencies which are emerging in the sphere of international relations....The maintenance of these principles that are of concern to all nations alike cannot and should not be undertaken by any one nation alone. Prudence and common sense dictate that, where this and other nations have common interests and common objectives, we should not hesitate to exchange information and to confer with the Governments of such other nations and, in dealing with the problems confronting each alike, to proceed along parallel lines-----this Government retaining at all times its independence of judgement and freedom of action. For nations which seek peace to assume with respect to each other attitudes of complete aloofness would serve only to encourage, and virtually invite, on the part of other nations lawlessly inclined, policies and actions most likely to endanger peace.....We have affirmed on every possible occasion and have urged upon all nations the supreme need for keeping alive and for practicing sound fundamental principles of relations among civilized nations. We have never entertained and we have not the slightest intention to entertain any such notion as the use of American armed forces for "policing the world". But we equally have nót the slightest intention of reversing a tradition of a century and a half by abandoning our deep concern for, and our advocacy of, the establishment everywhere of international order under law, based upon the well-recognized principles to which I

have referred....The momentous question---let me repeat---is whether the doctrine of force shall become enthroned once more and bring in its wake, inexorably, international anarchy and a relapse into barbarism; or whether this and other peaceful nations, fervently attached to the principles which underlie international order, shall work unceasingly---singly or in cooperation with each other, as circumstances, their traditional policies and practices, and their enlightened self-interest may dictate---to promote and preserve law, order, morality, and justice as the unshakable bases of civilized international relations....."#383#

In his letter to Vice-President Garner of Jan. 6, 1938, Secretary of State Hull also said: "The United States was deeply interested in supporting by peaceful means influences contributing to preservation and encouragement of orderly processes. This interest far transcends in importance the value of American trade with China or American investments in China. It transcends even the question of safeguarding the immediate welfare of American citizens in China." #384# His expressions of official dissatisfaction with the neutrality laws followed. He criticized isolationism as an attempt "to confine all activities of our people within our own frontiers, with incalculable injury to the standard of living and the general welfare of our people, or else expose our nationals and our legitimate interests abroad to injustice or outrage wherever lawless conditions arise." #385# In his speech on May 28, 1939, Secretary of State Hull

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#383# Department of State, Publication No. 1146.
#384# New York Times, Jan 11, 1938.
#385# Report of Press Conference, April 22, 1938, New York Times, April 23, 1938. Department of State, Publication No. 1146.

further says: "There is no more disastrous illusion than the thought that a policy of national isolation would make it easier for us to solve our great domestic problems. The exact reverse is true... ...Some argue in favour of national isolation from another point of view---namely, that by withdrawing from normal relations with other nations we can insure for ourselves freedom from risk of embroilment in war. Here again the exact reverse is true. It is not through a policy of isolation but rather through supplementing our domestic efforts by playing our appropriate role as a member of the family of nations that we can hope to solve the problems which confront us to-day within our own frontiers."#386# On June 3, 1938, Secretary of State Hull, addressing the Tennessee Bar Association, repudiated national isolation as a means of security, but considered it a "fruitful source of insecurity." #387# On June 6, 1938, Assistant Secretary of State Sayre remarked: "the United States cannot afford to be a cipher in this crucial period of the world's history. We must be resolute and prepared if necessary to withstand the aggression of the lawless." #388# Not long afterwards, Senator Pittman issued his personal declaration of war against Germany, Italy, and Japan. He said, "1. The people of the United States do not like the Government of Japan. 2. The people of the United States do not like the [illegible] Government of Germany. 3. The people of the United States, in my opinion, are against any form of dictatorial government, communistic or fascistic. 4. The people of the United States have the right and power to enforce morality and justice in accordance with peace treaties with us. And they will. Our

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#386# The New York Times, May 29, 1939.
#387# Department of State, Publication No. 1190, p. 14.
#388# Department of State, Publication No. 1186, p. 3.

government does not have to use military force and will not unless necessary." #389# On Jan. 4, 1939, in his address to Congress, a proposed crusade against aggressors on behalf of religion, democracy, and good faith was declared by President Roosevelt; as he says: "To save one we must now make up our minds to save all.". #390# All these expressions of official opinion are devoted to the cause of internationalism.

#389# The New York Times, December 23, 1938.
It is remarkable that Mr. Pittman seemed to have overlooked the traditional principle of non-intervention in the domestic affairs of foreign countries. A sovereign and independent nation has a right of liberty to choose whatever form of its own government. In a society of nations under the rule of law, supplemented with a system of effective sanctions, it is not necessary and is even impossible to change the brain or thought of an individual nation in view of maintaining the social order and general peace. On the other hand, it seems hardly to conclude on behalf of the interest of a nation in a particular age of its development that a particular political institution is the most perfect and can be well applied to all nations at the same time in disregard of their different tradition, different taste, different need, different background, etc.. The value of political institution is provisional, regional, and historical, and depends on particular conditions. Professor Mosca has explained this point very well in his distinguished work "Histoire des Doctrines Politiques", though one can also hardly deny to that a democratic control of foreign policy is, to a certain extent, more favourable to the preservation of the world's just peace, in despite of the fact that the isolationistic democratic control of foreign policy had helped the activities of the aggressors and the arising of wars of aggression, since 1931 or even since 1919. (re discussions on the democratic control of foreign policy, read: Professor S. R. Chow, "Le Contrôl Parlementaire de la Politique Etrangère", (1921, Sagot, Paris) and "Progress In International Law", Chap. X, (1934, Commercial Press, Shanghai). see also Buell, "International Relations", p. 733.
On August 27, 1938, the 34th Session of the Interparliamentary Union at Hague adopted a Resolution that, as a way to promoting international good will and cooperation, every nation has a right to determine the form of its own government against any intervention by foreign government or people. see: American Journal of International Law, Jan. 1939, pp. 165-179. The third point of the Atlantic Charter of 1941 also referred to the freedom of a nation to choose the form of its own government. Anyone may not fail to find something admirable in foreign countries.

#390# House Document No. I, 76th Congress, 1st session.

In the sixth place, since 1937, the United States had already started a program for big navy and army with a view to backing her above stated policy. The "extravagant" increases in army and navy appropriations in the eight budgets of 1933-1941 are shown as the following: 1933-1934---$640,356,000; 1934-1935---$739,931,000; 1935-1936---$921,684,000; 1936-1937---$935,114,000; 1937-1938---$1,027,841,000; 1938-1939---$1,119,810,000; 1939-1940---$1,734,342,253; 1940-1941---$2,116,169,000. The 20 % increase in the navy in 1938, the plan for an army of 4-5 millions, the plan for industrial mobilization and the 25 % increase in the 1940 appropriations for army and navy are consistent only with adventures abroad. Admiral Stark, Chief of Naval Operations, supported his demand before the Naval Affairs Committee by political-moral arguments concerning treaty-breakers and international faithlessness and then stated that the United States would have to have a Navy large enough to protect everything on this continent plus outlying possessions against a combination of "our potential enemies in both oceans", referring to Japan, Germany, Italy and Russia as a coalition.#391#

In the seventh place, though the War between China and Japan was undeclared and, therefore, not subject to the application of the Hague Conventions on neutrality, the fact that the United States adopted some anti-Japanese measures before Dec. 7, 1941, was no doubt based upon a faith in, and a movement of, internationalism and just peace. On July 1, 1938, a circular letter was issued by the Department of State to arms manufacturers and exporters registered

#391# John T. Flynn, "Whom Are We Getting Ready to Fight ?" in the New Republic, Jan. 22, 1940, p. 115. Stone, in Foreign Policy Association, Bulletin XIX, No. 13 (Jan. 19, 1940), p. 4. The New York Times, Jan. 12, 1940. Borchard and Lage, "Neutrality For the United States", pp. 384-386.

under the Neutrality Act, informing them that the Department of of State "would with great regret issue any licenses authorizing exportation, direct or indirect, of any aircraft, aircraft armaments, aircraft engines, aircraft parts, aircraft accessories," etc., "to countries the armed forces of which are making use of airplanes for attack upon civilian populations." #392# On August 27, 1938, Secretary of State Hull declared that the signatory-states of the Kellogg Pact were requested to adopt peaceful measures for the settlement of their disputes. #393# In August 1939m the Department of State announced a policy of discouraging the sale of airplanes, equipment, etc., to countries "which are engaged in unprovoked bombing or machine-gunning of civilian populations from the air."#394# On July 26, 1939, Notice was given to Japan by the United States Government that the American-Japanese Treaty of Commerce would be terminated as of Jan. 26, 1940. Afterwards a government loan of US$25,000,000 to China was made.#395# On April 25, 1941, the United States made another government loan of US$50,000,000 to China. (On April 26, 1941, Great Britain also signed a loan agreement with China.#396#) On March 21, 1942, the United States made another government loan of US$500,000,000 to China.#397# On June 2, 1942, China and the United States signed a lease-lend agreement. #398#(On June 11, 1942, Russia and the United States signed a lease-lend agreement.)

In the eighth place, on the occasions of the German absorption of Austria, of Czechoslovakia, and of Memel and the Italian

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#392# Department of State, Bulletin I, p. 121.
#393# American Journal of International law, Jan. 1939, pp. 165-179.
#394# Department of State, Bulletin I, 714.
#395# Borchard and Lage, p. 391.
#396# A. J. I. L., July 1941, pp. 542-554.
#397# A.J.I.L., July 1942, pp. 480-488.
#398# A. J. I. L., October 1942, pp. 686-694.

absorption of Albania, in 1938 and in 1939, the United States Under-secretary of State announced that "It is manifest that acts of wanton lawlessness and [redacted] of arbitrary force are threatening world peace and the very structure of modern civilization. The [redacted] imperative need for the [redacted] observance of the principles advocated by this Government has been clearly demonstrated by the [redacted] developments which have taken place during the past three days."#399#

In the nineth place, after the outbreak of the European War in 1939, the United States adopted a new Neutrality Act on Nov. 4, 1939, replacing the Neutrality Act of 1937 (on the arms embargo basis) by putting all trade on a cash-and-carry basis, in order to facilitate the purchases of the United States implements of war by Great Britain and France and prevent that by Germany, etc.. This fact was inconsistent with the traditional principle of neutrality, the Hague Convention of 1907, that to alter the rules of neutrality during warfare on the basis of aiding the inefficiency of one belligerent to protect its purchases of arms by forbidding all exportation of arms to the other belligerents is an absolute violation of neutrality. On April 27, 1940, a supplemental bill to bestow upon the President power to embargo exports and imports to and from any states violating the Nine Power Treaty. On March 29, 1939, the United States Government issued an order to embargo export of essential raw materials to Japan. #400# On March 2, 1940, another Act was adopted to extend the lending facilities of the Export-Import Bank for non-military purposes from one hundred to two hundred millions. Of this 100-million-dollar increase in the lending

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#399# Press Releases, XX, pp. 199-200.
#400# Borchard and Lage, pp. 399-404.

facilities of the Bank, 65 millions were promptly allocated to favoured countries at war or in danger of war: 20 millions to Finland, 15 millions to Sweden, 10 millions to Norway, and 20 millions to China. The so-called non-military supplies were said that they would include fuel, pil, and gasoline. Such materials, considered non-military here, were considered military against Japan and Germany, the unjust side. #401# Besides these perhaps called unneutral measures, the United States, in addition, permitted finished bombing planes to be supplied to Great Britain and France, even letting the Allies have 2,100 planes originally ordered for the United States army. The British Government was reported to have supplied funds for the enlargement of American powder and aircraft plants under contract to supply Britain and France with their entire output. That is to say, the funds of a belligerent are used to make the United States a base of military supplies. On June 23, 1939, the United States signed an agreement with Great Britain providing for exchange of British rubber for American cotton. This agreement was effective since September 3, 1939, after the outbreak of the European War. #402# On Oct. 3, 1939, the Declaration of Panama was brought about by the Pan-American Conference claiming a 300-600 mile immunity zone against belligerent action "from land, sea, or air" around the American continents, excluding Canada. Precisely no belligerent accepted it. Great Britain condemned it as impracticable on October 13, 1939, and declared to reserve her belligerent rights on January 15, 1940. France and Germany did

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#401# Borchard and Lage, pp. 402-403, 410-411.
#402# Borchard and Lage, pp. 411-413.
Press Releases, XX, pp. 547-549. 28, 1940.
New York Times, Nov. 18, 1939. Kluckholn in N.Y.Times, March/
Associated Press dispatch, New Haven Register, March 15 & 27, 1940.

the same on February 15, 1940. #403# It is notable that in the famous battle between the Kearsarge and the Alabama off Cherbourg, 1864, in which France sought to have the ships conduct their fight seven or eight miles out, Secretary of State Seward said: "the United States do not admit a right of France to interfere with their ships of war at any distance exceeding three miles." #404# This time the United States, leading her American fellow-countries, probably based her policy of the so-called "safety zone" upon helping the shipping and the safety of cargo of the Allies. That is perhaps why it was supplemented with the policy of "shoot on sight" on Sept. 11, 1941.#405# Furthermore, On Sept. 2, 1940, an Anglo-American exchange of Notes allowed Great Britain , a belligerent, to take over 50 destroyers from the United States, a neutral, and the United States to lease, in return, seven strategic bases near the Atlantic coast of America from Great Britain. #406# On Dec. 3, 1940, the United States, while having declared neutrality on Nov. 15, 1940, after the outbreak of the Italo-Greek War, assured Greece of partial assistance. #407# On Dec. 16, 1940, a plan for joint defence was agreed upon between Canada, a belligerent, and the United States, a neutral. #408# On April 6, and 8, 1941, the United States declared her promise to afford all possible aid to Greece and Yugoslavia. #409# On August 2, 1941, after the outbreak of the Russo-German War of June 22, 1941, the United States promised to afford partial economic aid to Russia. #410# On Oct. 30, 1941, the United States and Russia exchanged Notes on lease-land arrangements for one billion. #411#

#403# Department of State, Bulletin I, No. 15 (Oct. 7, 1939), pp. 321 --333; Bulletin II No. 35, (Feb. 24, 1940), pp. 199-205. American Journal of International Law, April, 1940. The Declaration of Panama contains a reservation that it is

In the tenth place, after the outbreak of the undeclared war between Russia and Finland on Nov. 29, 1939, President Roosevelt, on Dec. 1, 1939, declared that "all peace-loving peoples still hope for relations throughout the world on the basis of law and order, and unanimously condemn resort to military force....by virtue of an attack by a neighbor many times stronger they have been compelled to yield territory....the ending of this war does not yet clarify the inherent right of small nations to the maintenance of their integrity against attack by superior force." Therefore, the United States made a loan of US$20,000,000 to Finland and permitted the supply of fighting planes to, and recruiting for, Finland. On Dec. 14, 1939, Secretary of State Hull personally notified every manufacturer of airplanes and airplane parts of the adopted policy of "moral embargo" against Russia, enclosing a copy of the President's statement of the same nature. The Navy Department had yielded priority to the Government of Finland in the acquisition of some forty-four American naval fighting planes. #412#

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to apply only "so long as (the signatories) maintain their neutrality".
Borchard and Lage, "Neutrality For the United States", pp.413-4.
Fenwick, "American Neutrality", pp. 129, 134-136m 181-183.

#404# J. B. Moore, "Digest of International Law", Vol. I, p. 724.

#405# On Sept. 11, 1941, the United States Government ordered its navy to shoot on sight any Axis submarine which entered the United States "defence waters". On Nov. 1, 1941, the United States warships Greer and Kearney fired at German navy. Germany ordered her navy to reply since then. c. J. I. L. Jan. 1942, pp. 122-130.

#406# American Journal of International Law, Jan. 1941, pp. 146-153. July 1941, pp. 542-554.

#407# American Journal of International Law, April 1941, pp. 372-378.

#408# A. J. I. L., April 1941, pp. 372-378.

#409# A. J. I. L., July 1941, pp. 542-554.

#410# A. J. I. L., Oct. 1941, pp. 674-685.

#411# A. J. I. L., Jan. 1942, pp. 122-130.

#412# The New York Times, Dec. 19, 1939; March 14, 1940.
Department of State, Bulletin II, [illegible] p. 295. Bulletin I, pp. 685-686.
Borchard and Lage, "Neutrality For the United States", pp. 414--421.

In the eleventh place, since 1939, the United States political leaders still went on to develop the ideas of international justice and the international rule of law. On Feb. 20, 1939, Senator Pittman declared in his radio speech that "the American peoplem, while they hate war, they are not afriad to die for christianity, morality, justice and liberty". On Sept. 21, 1939, the opening day of an extraordinary session of Congress, President Roosevelt said in his address that "...the attempt to legislate neutrality....may operate unevenly and unfairly---may actually give aid to an aggressor and deny it to the victim."#413# The best explanation of the United States policy seems to be the address delivered before the 35th Annual Meeting of the American Society of International Law on April 24, 1941, by Secretary of State Cordell Hull, the President of that Society. In that address, Hull says: "Too many people assume that the present struggle is merely an ordinary regional war, and that when it comes to an end the side which is victorious will collect indemnities but otherwise leave the defeated nations more or less as they were before the conflict began. This assumption would prove entirely erroneous should the aggressor Powers be the winners. As waged by them this is not an ordinary war. It is a war of assault by these would-be conquerors, employing every method of barbarism, upon nations which cling to their right to live in freedom and which are resisting in self-defence.....No nation anywhere has the slightest reason to feel that it will be exempted from attack by the invader, any more than, in a town overrun by bandits, the wealthiest citizen might expect to be immune from attack....So it is in Austria, Czechoslovakia, Poland, Norway, Denmark, Holland, Belgium, Albania, Luxemburg, France, Rumania, Hungary, Bulgaria, Yugoslavia. Many right-

#413# Key Pittman, "Our Foreign Policy", Congress Record, Sept. 21, 1939, LXXXV. pp. 8-10.

thinking people have not been able to conceive that this would happen. To them it has seemed incredible.....The conclusion is plain. Now, after some fifteen nations have lost everything that makes life worth living, it is high time that the remaining free ~~xx~~ countries should arm to the fullest extent and in the briefest time humanly possible and act for their self-preservation....aid must be supplied without hesitation to Great Britain and those other countries that are resisting the sweep of the general conflagration.....Every new conquest makes available to the aggressor greater resources for use against the remaining free peoples....every free nation anywhere is a bastion of strength to all the remaining free peoples everywhere.....there is no possible safeguarding our security, except by solid strength, placed when and where it is most effective.....I have absolute faith in the ultimate triumph of the principles of humanity, translated into law and order, by which freedom and justice and security will again prevail." #414#

Therefore, in the twelfth place, another great achievement was brought about bt the United States' active participation in the world's efforts in the development of internationalism. That is the so-called "Atlantic Charter"----the "Joint Declaration of the President of the United States (Franklin D. Roosevelt) and the Prime Minister of the United Kingdom (Winston S. Churchill)" on August 14, 1941. It reads: "The President of the United States and the Prime Minister, Mr. Churchill, representing His Majesty's Government in the United Kingdom, have met at sea....have had several

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#414# Proceedings of the American Society of International Law at its 35th Annual Meeting, held at Washington, D.C., April 24-26, 1941, pp. 9-13 ("The United States and the World Situation", by Cordell Hull).

conferences....have considered the dangers to world civilization arising from the policies of military domination by conquest upon which the Hitlerite Government of Germany and other governments associated therewith have embarked,.....deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.

First, their countries seek no aggrandizement, territorial or other;

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them;

Fourth, they will endeavour, with due respect for their existing obligations, to further the enjoyment by all states, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world whichm are needed for their economic prosperity;

Fifth, they desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labour standards, economic advancement, and social security;

Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want;

Seventh, such a peace should enable all men to traverse the high seas and oceans without hinderance;

Eighth, they believe that all of the nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea, or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments." #415#

Following that step, in the thirteenth place, one other important instrument was achieved. That is the so-called "Declaration of United Nations"——"A Joint Declaration by the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialistic Republics, the Republic of China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa, Yugoslavia" (26 Nations), on January 1, 1942, at Washington. It reads: "The Governments signatory hereto, having subscribed to a common program of purposes and principles embodied in the Joint Declaration of the President of the United States of America and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland dated August 14, 1941, known as

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#415# Department of State Bulletin Vol. V, No. 112, p. 125, Aug. 16, 1941. A. J. I. L. Oct. 1941, pp. 191-192.

the Atlantic Charter, being convinced that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands, and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world, declare: (1) Each Government pledges itself to employ its full resources, military or economic, against those members of the Tripartite Pact (Germany, Italy, Japan) and its adherents with which such government is at war. (2) Each Government pledges itself to coöperate with the Governments signatory hereto and not to make separate armistice or peace with the enemies. The foregoing declaration may be adhered to by other nations which are, or which may be, rendering material assistance and contributions in the struggle for victory over Hitlerism." On Jan. 5, 1942, the following statement was released to the press by the Department of State of the United States : "In order that liberty-loving peoples silenced by military force may have an opportunity to support the principles of the Declaration by the United Nations, the [redacted] Government of the United States, as the depositary for that Declaration, will receive statements of adherence to its principles from appropriate authorities which are not governments." Mexico joined it by the note of her minister for foreign affairs to the Secretary of State of the United States on June 5, 1942. (after Mexico declared war on the three Axis powers). The Commonwealth of the Philippines joined it by the note of its President Manuel Quezon to the Secretary of State of the United States on June 10, 1942. #416#

#416# U.S. Executive Agreement Series, No. 236.
Department of State Bulletin, Jan. 10, 1942, Vol. VI, No. 133,

In the fourteenth place, the ideas of just peace and internationalism are also expressed in the leading mutual-aid-agreements between the so-called United Nations. In the Mutual Aid Agreement signed by the United States and Great Britain on Feb. 23, 1942, the preamble reads: "Whereas the Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland declare that they are engaged in a coöperative undertaking together with every other nation or people of like mind, to the end of laying the bases of a just and enduring world peace securing order under law to themselves and all nations;.... that the defenses of the United Kingdom against aggression is vital to the defense of the United States of America.....And whereas the United States has extended and is continuing to extend to the United Kingdom aid in resisting aggression...." #417# In the Mutual Aid

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p. 44; June 20, 1942, Vol. VI, No. 156, pp. 546, 547.
American Journal of International Law, July 1942, pp. 191-192.
Soon after having returned from a visit to the Middle East, Russia and China, Windell Wilkiem the representative of President Roosevelt of the United States, made a radio speech asking President Roosevelt to confirm that the Atlantic Charter applies to all parts of the world including Asia and the Far East. Several days later, the President, in reply, confirmed it. In view of the provisions of the Atlantic Charter and of the Joint Declaration of the United Nations, this appeal for confirmation seems superfluous. U.S.S.R. adhered to this Atlantic Charter on September 24, 1941. See: Department of State Bulletin, September 27, 1941, p. 233.
Resolution adopted by the Inter-Allied Council at London, Sept. 24, 1941.

#417# Department of State Bulletin, Feb. 28, 1942, Vol. VI, No. 140, p. 190.
American Journal of International Law, July, 1942, pp. 170-173.

#418# Department of State Bulletin, June 6, 1942, Vol. VI, No. 154, p. 507.
American Journal of International Law, July 1942, pp. 165-167.
The contents of this Agreement are about the same as that between U. S. A. and Great Britain.

#419# Department of State Press Releases, No. 285, June 11, 1942.
A. J. I. L., July 1942, pp. 187-190.
The contents of the Russo-American Mutual Aid Agreement are about the same as that of the Anglo-American and Sino-American ones.

Agreement signed by the United States and China on June 2, 1942, the Preamble reads: "Whereas the Governments of the United States of America and the Republic of China declare that they are engaged in a coöperative undertaking, together with every other nation or people of like mind, to the end of laying the bases of a just and enduring world peace securing order under law to themselves and all nations. And whereas the Governments of the United States of America and the Republic of China, as signatories of the Declaration by United Nations of January 1, 1942, have subscribed to a common program of purposes and principles embodied in the Joint Declaration made by oh August 14, 1941, by the President of the United States of America and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, known as the Atlantic Charter; And whereas the President of the United States of America has determined .....that the defense of the Republic of China against aggression is vital to the defense of the United States of America; And whereas the United States of America has extended and is continuing to extend to the Republic of China aid in resisting aggression;....."#418# In the Mutual Aid Agreement signed by the United States and Russia on June 11, 1942, the preamble reads about the same as that of the Sino-American Mutual Aid Agreement, referring to the "Atlantic Charter", "Declaration of United Nations", "just and enduring world peace securing order under law to themselves and all nations" and "against aggression". #419# The world-wide aggressive, on the one hand, and, on the other hand, anti-aggression war is still going on. The goal of the war, as from the most nations' point of view, is precisely the further development of the two decades old/internation-conceptions of alism and just peace.

Yet it must not be overlooked that, same as the earlier periods, under the above stated general tendency of the status of non-belligerency in this period since World War I (1914-1918), counter-movements in favour of the preservation of the idea of neutrality had taken place and have been remaining.

(1) First, the Covenant of the League of Nations of 1919 itself reserves occasions for not unlegitimate war and, therefore, reserves the possibility of the status of neutrality and of the application of the Hague Conventions on neutrality. (A) The Preamble reads: "the acceptance of (certain) obligations not to resort to war." (B) Article XV (#7) reads: "If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice." (C) According to Article XV (#6), the members of the League may go to war with any party to the dispute which does not comply with the recommendations of the Council's report. (D) As no definite procedure and compulsory measures are stipulated in either Article XII (#1) or XIII (#4) or XV, to meet the case of any failure to carry out the award or decision or report therein referred to, the parties to a dispute may resort to war after three months after the award by the arbitrators or the judicial decision or the report by the Council (Art. XII (#2). (E) According to Art. XI(#1 & #2) and Art. XV(#1 & #9), when no "request" is made by either party to a dispute or when neither parties nor the members other than parties to a dispute submit the dispute to the League, it is certainly that the war between the parties can be carried on. (F)

According to Article XII(#1) and Article XV (#1), if there should arise a dispute likely or declared by either party not to lead to a rupture, the League's intervention and the procedure stipulated in the Covenant are not applicable and, therefore, war can be safely carried on. (G) According to Article XV (#6), if no party to a dispute accepts the Council's report, war is allowed to be carried on. (H) According to Art. XV (#10), if the Assembly failed to reach a report, or if the report failed to be accepted by either party or by both parties, war is allowed to take place. (I) Article XV (#8) reads: "If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement." War is here allowed to be waged. (J) According to Article XVII, when a member state carries on an aggressive war of conquest on a non-member state without a dispute, the war is legally free. (K) According to Art. XVII, when a non-member state wages an aggressive war of conquest on another non-member state without a dispute, the war is legally free. (L) A civil war which has led to the recognition as real war by foreign states remains to be subject to the Hague Conventions on war and on neutrality. (M) Article X which reads: "The members of the League undertake.... to preserve as against external aggression the territorial integrity and existing political independence..", gives ground to a war of self-defence. The war so waged as in the eyes of non-member states is an ordinary war where the Hague laws of neutrality applies. (N) The armed conflict carried on by the"armed forces to be used for protecting the Covenant of the League" as stipulated in Article XVI

(#2) is certainly not "war" but legal sanction (punishment) as in the eyes of member-states; but it is also certainly "war" as in the eyes of non-member-states as soon as the League declares that armed conflict a "war against all the other members of the League"(Art. XVI (#1)). The non-member-state outside the conflict has a legal right to make claims on the observance of neutral rights, if the Hague Conventions are here applicable (if all the belligerents and non-belligerents are parties to the Hague Conventions or any other conventions on neutral rights.). (O) When military measures are to be taken by the Council in accordance with Article X (#2) or Article XI (#1), the consequences and the legal aspects are the same as that said in above (N). The Covenant says nothing yet precisely and obviously concerning the renunciation of the traditional principles of neutrality and the application of treaties only between parties. The Covenant neither regulates the relations between the militarily sanctioning states and the non-member-states outside the "war"; though the League has already created a precedent by applying the Covenant to a non-member-state in 1937, and though it is doubtful whether the Covenant is legally of right to regulate obligations incumbant upon non-member states. The theory that the old conventional laws of neutrality, while certainly being applicable to the cases of war as implicitly tolerated by the Covenant of the League, is inapplicable, under the stipulations of Article 20, to the cases of the League's war of military sanction, is, therefore, open to question; it is a fact that the League never denounced or modified such treaties as the Hague Conventions of 1907, but implicitly recognized them; there are many states members of the League which enacted domestic neutrality laws and declared neutrality in cases of war in the past two decades by invoking the Hague Conventions of 1907. A distinction

or a discrimination made between the applications of the Hague Conventions would constitute an act violating the Conventions.#420#

(2) Second, the status of perpetual neutrality of Switzerland was recognized by the Council of the League of Nations when, after considerable negotiations and a referendum to the Swiss electorate, she was admitted, on March 8, 1920, as an original member state on the understanding that she "shall not be forced to participate in a military action or to permit the passage of foreign troops or the preparation of military enterprises upon her territory". In February 1921, the Swiss Government declined to afford passage through Swiss territory for an international police force to be composed of troops to be supplied by several members of the League, which it was proposed to send to Vilna under the authority of the Council of the League for the purpose of superintending the taking of a plebiscite. During the application of sanctions against Italy in 1935 and 1936, Switzerland interpreted the above quoted condition of her admission as meaning that the participation on her part in economic measures was conditioned upon their not endangering her military neutrality. In May 1938, the Council of the League adopted a resolution in which it took note of the intention of Switzerland not to participate in any way in the future in the execution of the

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#420# see also opinions of: Professor S. R. Chow, "New Progress In International Law", 1934, Chap. VIII, pp. 250-284. Professor Hans Kelson, "Legal Technique In International Law", A Textual Critique of the League Covenant, Geneva Research Centre, 1939, pp. 66-135. Professor John B. Whitton of the University of Princeton, "La Neutralité et la Societé des Nations", Recueil des Cours, Académie de Droit International de la Haye, 1927, II, tome 17 de la collection (1928), p. 479 et seq.. Professor Fauchille, "Traité de Droit International Public", tome 2, (Vol. IV), p. 552-655. Oppenheim, "International Law" (by McNair and Lauterpacht), Vol. II, 6th ed. 1940, pp. 506-511. Engel, "League Reform", 1940. Deák and Jessup, "Neutrality Laws, Regulations and Treaties", 1939 (--1940).

provisions of the Covenant relating to sanctions whether military or economic. [421]

(3) Third, since the conclusion of the World War of 1914-1918, Canada has beem successively claiming its sovereign right of maintaining neutrality in case of a war between Great Britain and other countries. In 1919, Britain desired that the Paris Peace Treaty should be ratified for Canada on the advice of the British ministers; but Canada objected and the retification was delayed on the demand of Canada until the Canadian Parliament could be called to consider it and until a Canadian Order in Council was adopted"that His Majesty be humbly moved to approve, accept, confirm and ratify the said Treaty of Peace for and in respect of the Dominion of Canada." During the peace negotiations, arrangements were tentatively made for a treaty between the United Kingdom and France and the clause that "the present treaty shall impose no obligation upon any of the Dominions of the British Empire, unless and untill it is approved by the Parliament of the Dominion concerned" was inserted. The Locarno Treaty of Mutual Guarantee of Oct. 16, 1925, contained the same clause (Art. 9). The Peace Treaty of Lausanne with Turkey did not contain the clause and Canada refused to ratify chiefly because she had not been consulted in the negotiations. The great significance of this clause is that by a war treaty the United Kingdom would be under a war obligation to a foreign state and Canada would or would not as she pleased. And

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[421] Mémorandum de la Suisse du 8 février 1919.
Message from the Federal Council of Switzerland to the Federal Assembly, August 4, 1919, pp. 198-210 (English ed.).
Message of the Swiss Federal Council of Dec. 2, 1935.
Memorandum submitted by Switzerland to the Council of the League on April 29, 1938.
Official Journal, 1938, pp. 368, 385.

the logical conclusion is that, if, in pursuance of such a treaty, the United Kingdom should become at war, Canada, who was not a party to the treaty, would remain at peace---would be neutral. The Imperial and Constitutional Conferences of 1923, 1926 and 1929 also referred to this question by the following points: (A) A treaty affecting one part of the Empire should be stated to be made by the King on behalf of that part. The Canadian-American Treaty of 1924 on preventing smuggling referred to one of the parties as "His Britannic Majesty, in respect of the Dominion of Canada". (B) Full powers are to be issued by the King on the advice by the government concerned indicating the part of the Empire for which they are to sign. (C) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a Representative of the Government of that part. Such treaty will affect one part only. (D) It is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. In 1939, the fact that Canada declared war on Germany (Sept. 10) seven days later than Great Britain (Sept. 3) is considered to further prove Canada's possession of the right of maintaining neutrality .

Therefore, one Canadian leading jurist, the Honourable John S. Ewart, LL.D., K.C., says in his "Canada and British Wars" that "Canada's status with reference to foreign affairs is in process of rapid development. Recent practice indicates that the

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Declaration made by Switzerland before the Assembly on Oct. 10, 1935.
Official Journal, Special Supplement, No. 138, p. 106.
Borgeaud, "La Neutralité suisse au centre de la Société des Nations", 1922, 2nd ed..
Rappard, "L'entrée de la Suisse dans la Société des Nations", 1924, pp. 68-136.

statement 'when the United Kingdom is at war, Canada is at war' is not now unqualifiedly true. Canada is situated in the North American Continent. Her foreign policy ought to be based upon that indisputable fact. She ought to abstain from engulfment in the affairs ——now more than ever perturbed——of Europe and the Near East. She ought to give no pledges with reference to future actions". His son, Mr. T. S. Ewart, in his pamphlet "Has Canada the Right to Declare Neutrality" (1936) and his letter of May 7th, 1935, to the Honourable P. [redacted], K.C., discussing the problem of "Canada and [redacted]", says more substantially that," Considering the practice relative to treaties, which is not confined to commercial treaties but includes those of all kinds, and the conclusions stated by the Imperial Conferences, and considering, too, that by the Statute of Westminster Canada has full and complete legislative powers, there is no doubt whatever, that the United Kingdom may be at war, while Canada is at peace with the consequent corollary that Canada might properly declare neutrality.....The obligation that the Crown is indivisible is not sound as it has already been divided.... The Crown would therefore act x constitutionally in giving assent to declaration of neutrality on behalf of Canada." Lord Tweedsmuir, Governor-General of Canada before 1939, also said, "Canada is a sovereign nation and cannot take her attitude to the world docilely from Britain or from the United States or from any body else." Another leading Canadian, Mr. B. K. Sandwell, Editor of "Saturday Night Weekly", though waging attack on North American [redacted]

Mowat, in British Year Book of International Law, 1923-1924, pp. 90-94.
Oppenheim, Vol. I, 5th ed. 1937, p. 204. Vol. II, 6th ed. 1940, pp. 510-511.
Fauchille, tome 2 (Vol. IV), p. 653.
Whitton, dans Recueil des Cours, tome 17, 1927, p. 522.

Continentalism, and though supporting the continuance of "close but indefinable relationship between Canada and the other British countries", says [illegible] in his "Canada and the United States Neutrality" (1939) that "....Eire...has not only asserted the right to maintain neutrality but has actually done so. The procedure adopted in Canada for entering the war demonstrated that the constitutional position of the Dominion of Canada on this subject is identical with that of Eire; for Canada continued to be neutral, and was accorded the privileges of neutrality by the United States, for several days after the declaration of war by Great Britain. The constitutional point of the complete freedom of Canada to go to war and to abstain from war by her own decision, without any reference to that of Great Britain is therefore definitely established." Thus the conclusive answer, fundamentally solving this question, seems to be that given by the authority on constitutional law in Canada, the Honourable P. Maurice Ollivier, LL.D., K.C. (House of Commons), Professor of Constitutional Law at the University of Ottawa, who, in his "Le Canada, Pays Souverain ?", says: "Nous possédons, en effet, tous les attributs de l'Etat souverain, droit de légiférer sans restriction, droit de conclure des traités, droit de représentation diplomatique à l'étranger, droit d'abolir les appels au Conseil privé, droit d'extraterritorialité et, enfin, droit de décider quelles modifications devraient être apportées à notre constitution....le Canada est devenu un "royaume indépendant", en "union personnelle" avec l'Angleterre, par l'adoption du Statut de Westminster en 1931." The Honourable Paul Fontaine, K.C. (Department of Justice) of l'Université de Paris et l'Ecole libre des Sciences Politiques de Paris, President of Canadian National Institute of Law, Professor of International Law at the University

of Ottawa, and the Reverend Dr. Desiré Bergeron, Professor of International Law and Vice-Director of L'Ecole des Sciences Politiques de l'Université d'Ottawa, also endorsed this conclusion. #422#

(4) Fourth, since the conclusion of the World War of 1914-1918, still many treaties concerning neutrality have been concluded as shown in Chapter V. #423#

#422# See Note No. 362. John S. Ewart, p. 88. T. S. Ewart, pp. 25, 27 and supplement; his letter, in Ollivier's book, p. 225-227. B. K. Sandwell, pp. 2, 31.
Ollivier, "Le Canada, Pays Souverain?", 1935, pp. 9-10, 214-215, 225-227. see also his book "L'Avenir Constitutionnal du Canada", 1935; "Cours de Droit Constitutionnal", 1939-1940, Ecole des Sciences Politiques, Université d'Ottawa.
Fontaine, "Cours de Droit International Public", Ecole des Sciences Politiques, Université d'Ottawa, 1939-1940.
Bergeron, "Cours de Droit des Gens", Ecole des Sciences Politiques, Université d'Ottawa, 1939-1940.
Dr. W.P.M. Kennedy, K.C., Professor of Constitutional Law at the University of Toronto, a colleague of Professor Ollivier in the Royal Commission on Dominion-Provincial Relations (Siroy Commission) of 1937, in his book "The Constitution of Canada, 1534-1937", (1938) expressed the same view by saying that "Without doubt Canada is a nation, and beyond question Canada owns a sovereignty. The situation creates both new problems and new visions.... bsolute sovereignty in the last resort proves to be an illusory by most perilous claim in face of the facts of interdependence."(p. X)
see also: R. M. Dawson, "The Development of Dominion Status, 1900-1936", (1937); " Constitutional Issues In Canada", 1900-1931, (1933).
Mr. H. Noël Fieldhouse, in his "Canada's Foreign Policy", (The Fortnightly, July 1939) demonstrates that there are two fundamental principles of Canada's foreign policy: (1) one is the independence of Canada's foreign policy from the control of Great Britain. Canada will decide by itself matters on foreign relations. Great Britain can not do anything concerning Canada without Canada's consent. In September of 1936, Prime Minister MacKenzie King of Canada delivered a speech in Geneva, declaring that Canadian Parliament has a right to decide how far Canada will participate in a war waged by Great Britain on a foreign country. (2) The other is to avoid the involvement in a League's war or a British war.
Prime Minister MacKenzie King of Canada announced on February 19, 1937, that "Our renunciation of the Monroe Doctrine afforded Canada an additional reason for increasing her armaments. Perhaps our repudiation of neutrality and the danger to Canada in having to choose between Great Britain and an independent neutrality in the event of a British-Latin-American war justify-

(5) Fifth, the General Treaty For the Renunciation of War (Briand Kellogg Pact) of August 27, 1928, was born under certain conditions, though about sixty nations had adhered thereto, and though it generally condemns recourse to war for the solution of international controversies and renounces war as an instrument of national policy in their relations with one another. In a Note of August 31, 1928, the Russian Government, though expressing its willingness to adhere to the Treaty, vigorously criticised it because of its silence in regard to disarmament, because of its indefiniteness, and because of its "reservations". The Egyptian, Persian and Turkish Governments, though willing to adhere, declared that they could not accept the reservations to the treaty, particularly in regard to the British Monroe Doctrine. The British Monroe Doctrine as explained in the British reservation to the Kellogg Pact was very far-reaching: "...there are certain regions of the world (unspecified) the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence. It must clearly be understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect."

By July 1929, neither Argentine nor Brazil had signified their intention in regard to the anti-war pact apparently because of uncertainty as to its relation to the Monroe Doctrine.

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this further increase in Canadian armament. It is not without significance that practically every measure for the so-called maintenance of peace adopted under the specious and resounding

Secretary of State Kellogg, in his statement of June 23, 1928, declares that the Pact did not preclude a war of self-defence; that each power was the sole judge of what constituted self-defence, and that the Treaty could not be construed to impair existing treaty obligations, like the European Locarno Treaties and the Covenant of the League of Nations. The Committee of Foreign Relations had reported that "the United States regards the Monroe Doctrine as a part of its national security and self-defence." The use of force by the United States under the Monroe Doctrine is conceivable under at least three circumstances: (A) To repel the military invasion of a Latin-American state by a non-American power. (B) To intervene in Latin-American countries where disorders threaten foreign interests. (C) To prevent the execution of agreements between Latin-American and non-American powers providing for the establishment of naval bases, etc., which in the opinion of the United States might endanger its security. The French Government, which had stood out for limiting its anti-war agreement to a pledge not to fight a war of "aggression", was not willing to accept the formula of the multilateral treaty until it was clear that it alone could construe its own necessities of self-defence. As a result of the interpretative notes, the leading parties to the anti-war pact made it clear that the renunciation of war as an instrument of national policy did not apply in the following cases: (A) In self-defence, which may include acts taken to enforce the Monroe Doctrine or the British Monroe Doctrine. (B) Against any state which breaks the treaty. (C) In execution of

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phrases of recent years has had as its first effect an great increase in the armaments of all countries."
The New York Times, February 20, 1937.
Borchard and Lage, "Neutrality For the United States", 1940, pp. 340.

obligations under the League Covenant. (D) In execution of obligations under the Locarno agreements. (E) In execution of obligations under treaties guaranteeing neutrality which probably covers the international agreement of 1815 guaranteeing the neutrality of Switzerland and conceivably the French alliances. (F) In the wars of "self-defence" or "cooperative defence" as so judged solely by any party to this Pact waging such war.

In addition to these unlimited reservations for the wars of "self-defence", there is no clause referring to "undeclared wars" and "military coercive measures"; there is no clause renouncing the Hague Conventions on war and on neutrality of 1907 (because of the abolition of war); there is no clause stipulating measures and procedure for sanction. Therefore, in the case of any declared war, either allowed or not by the Pact, while therein no procedure can be invoked and no obligation to impose sanction is regulated, the well provided stipulations in the Hague Conventions of 1907 would naturally thereto apply. In practice, Japan had waged two undeclared wars on China in 1931 and 1937 and has detached great areas of her territory. Italy had waged undeclared war on Ethiopia in 1935 and had conquered the latter. Russia had waged undeclared wars on China in 1929 and Finland in 1939. Italy adopted military coercive measures aginst Greece in 1923 (Corfu Incident). Japan adopted military coercive measures against China in 1928 by landing troops on the Chinese province of Shangtung and occupying Tsi-Nan, the Capital of Shangtung, after bombardment. On the occasions of the Sino-Japanese

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#423# See Note No. 335.
Deák and Jessup, "Neutrality Laws, Regulations and Treaties of Various Countries", 1939 (1943).

Russian Conflict of 1929, the Sino-Japanese Conflict of 1931 and the Peru-Colombian Conflict of 1933 (Leticia), the United States had consulted and cooperated with other states on the basis of the Pact, but without success. Thus as Professor Oppenheim, as well as Mc Nair and Lauterpacht, says in his "International Law", "the Treaty has provided the starting point for important changes in the law of neutrality. These changes, however, must be effected by common action of states themselves, and not by jurists engaged in drawing logical consequences from the Treaty. Neither can they be brought about by unilateral action of any single state....The Treaty as such has not altered the law of neutrality." #424#

#424# Professor S. R. Chow, "New Progress In International Law", Chapter VIII. Oppenheim, Vol.II, 1940, pp. 512-514.
R. L. Bemis, "A Diplomatic History of the United States", 1938, pp. 723-725. R. L. Buell, "International Relations", 1930, pp. 660-662.
Pfankuchen, "A Documentary Textbook in International Law", 1940, pp. 549-551.
W. E. Rappard, "The Quest For Peace Since the World War", 1940, pp. 168-172.
The American Secretary of State's Note of June 23, 1928, to all the prospective parties to the "Treaty" reads: "There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defence. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defence."
James T. Shotwell, "War as an Instrument of National Policy", 1929, p. 41.

#425# Manley O. Hudson, "The World Court", 1921-1938, (1938) pp. 84-86.
Manley O. Hudson, "World Court Reports", Vol. I, 1922-1926 (1934), pp. 168-189, 179, 181.

#426# Deak and Jessup, "Neutrality Laws, Regulations and Treaties of Various Countries", 1939 (1943).
Borchard and Lage, "Neutrality For the United States", 1940, p. 276.
G. G. Wilson, "War and Neutrality", American Journal of International Law, July 1933, pp. 724-725.

#427# Borchard and Lage, "Neutrality For the United States", 1940, pp. 276-277.

(6) Sixth, in 1923 the Permanent Court of International Justice decided the famous S. S. Wimbledon Case, involving Germany's power to close the Kiel Canal at the time of the Polish-Russian War of 1920, on the authority of the established rules of neutrality. The Court found in its decision of August 17, 1923, that, in accordance with Article 380 of the Treaty of Versailles of June 28, 1919, "the Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and war of all nations at peace with Germany on terms of entire equality," that, therefore, "the Canal has ceased to be an internal and national navigable waterway" but had become so assimilated to natural straits," that even "the passage of a belligerent man-of-war does not compromise the neutrality of the sovereign state under whose jurisdiction the waters in question lie," and that in any case Germany had a duty by Article 380 of the Treaty of Versailles, by which "the passage of neutral vessels carrying contraband of war is authorized", to allow the British vessel under French Charter, S.S. Wimbledon, to pass, no matter it was carrying munitions to Danzig for transshipment to Poland, a belligerent waging war on Russia. Based upon the foregoing opinions, the Court awarded an amount of 140,749.35 francs for compensation paid by the German Government to the French Government acting on behalf of the French firm of charterers. #425#

(7) Seventh, the nations of the American Continent declared their neutrality at the time of the Chaco War between Bolivia and Paraguay. #426#

(8) Eighth, the United States' arms embargo Act of February 1934, Chaco arms embargo of 1935, Neutrality Statutes

of August 1935 and Feb. 1936 adopted the principle of impartiality. #427#

(9) Nineth, no country has repealed its neutrality legislation. #428#

(10) Tenth, on October 14th, 1936, a declaration on the restoration of permanent neutrality was issued by Belgian Government, stating that Belgium would in future pursue an exclusively Belgian policy, would enter no alliances and would, like Switzerland and Hollandm adopt an attitude of complete neutrality in the disputes of her neighbours. #429#

(11) Eleventh, the Second World War, as beginning with the Sino-Japanese War of 1937, has furnished with many cases concerning the support or the violation of neutrality or the acts violating internationalist institutions.

(A) On Sept. 3, 1938, the 40th Conference of International Law Association at Amsterdam adopted a resolution concerning neutrality.

(B) On Sept. 13, 1938, the Swedish and Dutch representatives gave notice of their unilateral repudiation of the League's obligatory coercive provisions.

(C) On Oct. 4, 1938, France decided to accredit its new ambassador to the Italian Empire, thereby recognizing the conquest of Ethiopia. On Nov. 12, 1938, Costa Rica and on Nov. 13, 1938, Egypt granted the same recognition. Formal British recognition came into force on Nov. 16, 1938.

(D) On Nov. 19, 1938, a Treaty of Amity was signed by Poland and Japanese puppet state "Manchukuo" at Tokyo extending recognition to "Manchukuo".

(E) On Nov. 18, 1938, a Protocol was signed by the Baltic states

at Riga relative to neutrality. On Feb. 5, 1939, an official communiqué issued by the Baltic States stated that the policy of continued neutrality corresponds to the interests of the Baltic states and serves the cause of peace.

(F) On Nov. 22, 1938, the Government of Iraq recognized the sovereignty of Italy over Ethiopia. On Dec. 22, 1938, Canada granted the same recognition.

(G) On Dec. 14, 1938, the Latvian Government issued a Decree declaring Latvia a neutral state.

(H) On Jan. 10, 1939, Hungary became the 6th nation to grant recognition to the so-called "Manchukuo". The other five are Japan, El Salvador, Italy, Germany and Poland. On Dec. 4, 1940, Rumania (the 8th) formally recognized the so-called "Manchukuo". The 7th is Spain. On Dec. 1, 1940, Palestine Government withdrew de jure recognition of Ethiopia. On July 19, 1941, Finland (the 9th) recognized the Japanese puppet State "Manchukuo". On September 26, 1941, a Treaty of Comity and Commerce was signed by Spain and the so-called "Manchukuo".

(I) On April 8, 1939, Peru and Hungary announced their withdrawal from the League of Nations and continued collaboration with the technical bodies. Albania withdrew on April 14, 1939. Spain withdrew on May 8, 1939. On June 2, 1940, Chile's withdrawal became effective. Roumania announced, on July 11, 1940, and Denmarck, on July 19, 1940, decisions to withdraw. Venezuela's withdrawal became effective on July 15, 1940. On April 18, 1941, France announced officially its withdrawal from the League of Nations. Peruvian,

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[428] Borchard and Lage, p. 277.
[429] E. H. Carr, "International Relations Since the Peace Treaties", 1938, p. 231.

Hungarian and Spanish withdrawals became effective on April 8, 10 and May 8, 1941, respectively. On June 27, 1941, Finland cancelled membership of the League of Nations.

(J) After the outbreak of the European War, since Sept. 1, 1939, many states declared neutrality, including the League members. On Sept. 1, 1939, Denmarck, Latvia, Finland, Yugoslavia, Roumania, Bulgaria and Cuba declared their neutrality. On Sept. 3, 1939, the Netherlands. On Sept. 4, 1939, Brazil, Chile, Guatemala, Mexico. On Sept. 5, 1939, Iran, the United States, Spain. On Sept. 6, 1939, Uruguay, Peru. On Sept. 7, 1939, Dominican Republic. On Sept. 9, 1939, Guatemala. On Sept. 11, 1939, Panama. On Sept. 15, 1939, Paraguay. On Sept. 6, 1939, Argentine and, Sept. 14, 1939, Mexico sent their declarations of neutrality to the League of Nations. On Sept. 16, 1939, a Communiqué on neutrality was issued by the meeting in Brussels at which Belgium, Norway, Denmark, Sweden and Finland were represented. On Sept. 19, 1939, a Communiqué was issued by the meeting at Copenhagen at which Sweden, Norway, Finland, Denmarck and Iceland were represented, confirming their will to maintain a policy of neutrality, and expressing the right to continue commercial relations with all States. On Nov. 4, 1939, the United States promulgated a new Neutrality Act. On Sept. 20, 1939, Tailand declared neutrality. On Oct. 18, 1939, Bolivia. On Oct. 4, 1939, Ireland sent its declaration of neutrality to the League of Nations. On Oct. 3, 1939, the Panama Pan-American Conference adopted a declaration of neutrality. On March 16, 1940, a Communiqué was issued by the Conference of the three Baltic countries ended in Riga, stated their belief in neutrality and their intention to adhere the policy. On May 11, 1940, the

United States declared neutrality. On May 12, 1940, Spain. On May 13, 1940, Cuba and Brazil. On June 10, 1940, the United States declared neutrality (Italy joined the War on the Allies on June 10, 1940). On Nov. 15, 1940, the United States declared neutrality (Italo-Greek War on Oct. 29, 1940). On March 24, 1941, there took place an exchanged View between Russia and Turkey, pledging neutrality if either nation should be attacked. On April 10, 1941, the United States declared neutrality (Yugoslavia joined the War against the Axis powers on April 3, 1941). On April 13, 1941, Japan and Russia signed a 5-year neutrality pact at Moscow and a joint frontier declaration regarding the puppet state "Manchukuo". Ratifications exchanged on May 20, 1941. On June 22, 1941, Turkey declared neutrality (Russo-German War on June 22, 1941). The same day, Sweden. On June 23, 1941, Finland (but on June 26, 1941, Finland was at war with Russia and, on Oct. 6, 1941, explained that Finland had no political obligations to Germany). On Dec. 13/14, 1941, France(Vichy), Turkey and Iceland announced their neutrality. (On Dec. 7, 1941, the United States and Japan were at war. On Dec. 9, 1941, China formally declared War on Japan, Germany and Italy. On Dec. 10, 1941, Germany and the United States were at war. Dec. 11, 1941, Italy and the United States were at war.

(K) On August 26, 1939, Germany gave assurance to Belgium, the Netherlands and Switzerland of her intention to respect their borders. The same to Denmarck and Lithuania on August 29, 1939. On September 17, 1939, Russia made official confirmation of intent to respect Roumanian neutrality and territory. On Sept. 23, 1939, Great Britain promised to respect Norway's neutrality provided other states take the same action. On Jan. 15, 1940, Sweden and Norway

charged Russia with violating their neutrality when Russia was at an undeclared war with Finland, beginning on Nov. 29, 1939. On March 8, 1940, Norwegian Note to Germany protested the sinking of her ships contrary to international law. On May 6, 1940, Germany gave assurances of respect for Swedish neutrality. On May 10, 1940, Germany invaded Belgium, Luxembourg and the Netherlands.

(L) On Sept. 9, 1939, Australia proclaimed as contraband all supplies usable by the enemy. On Oct. 26, 1939, the Russian Government refused to recognize the validity of the British contraband regulations and gave notice of intent to reserve the right to claim compensation for any losses incurred in the enforcement of them. On Sept. 30, 1939, the German Government issued notice that British armed merchantmen would be sunk without warning or measures taken to assure the safety of the crews. On Nov. 21, 1939, Prime Minister Chamberlain of Great Britain announced "exports of German origin or ownership" subject to seizure by the Allied navies. French Government made similar announcement on Nov. 22, 1939. On Nov. 23, 1939, the Netherlands made a formal démarche to the British Foreign Office, reserving all rights under international law. Italian Communiqué of Nov. 24, 1939, protested the blockade plans. Japan and Sweden protested on Nov. 25, 1939. Norway, Nov. 27, 1939. Germany, Nov. 29, 1939. France issued a decree on Nov. 27, 1939, similar to the British one. The United States Note of Dec. 7, 1939, reserved her right to claim reparation for the damages to American interests. Russian Note of Dec. 10, 1939, reserved her right to demand compensation. On Feb. 14, 1940, an authorized German spokesman declared that neutral vessels going to Allied control ports will be considered unneutral and subject to torpedoing. On Jan. 7, 1940, Argentine protested

to Great Britain, France, Poland and Germany against the use of automatic contact mines outside territorial waters and reserved the right to claim damages in case of Argentine life or property loss. On Aug. 17, 1940, Germany decreed total blockade. On Feb. 17, 1941, and March 21, 1941, the confiscation by Chile of three Danish ships was protested. On April 2, 1941, a Brazilian Note protested the bombing of a Brazilian freighter on March 22, 1941, off Alexandria, Egypt. On Sept. 16, 1941, Panama protested the German torpedoing of the steamships Sessa and Montana and presented a claim for indemnity.

(M) On Nov. 21, 1939, the new British Consul-General in Albania left Rome to take up his appointment, this constituting de facto recognition of the Italian Union with Albania.

(N) On Dec. 15, 1939, the Government of Uruguay ordered the German pocket battleship "Admiral Graf Von Spee" to leave Montevideo by Dec. 17, after the ship had taken refuge from three British cruisers (Ajax, Exeter and Achilles). Uruguay also protested, on Dec. 16, 1939, to Great Britain and Germany for having permitted a naval battle inside the 3-mile limit. The captain, on Dec. 17, 1939, before ordering the scuttling of the ship, protested against being compelled to leave without adequate time for repairs. The Uruguayan Communiqué of Dec. 18, 1939, rejected the complaint. On Dec. 23, 1939, Argentine received a German protest against the internment of the crew members of the "Admiral Graf Von Spee". The protest was rejected on Dec. 27, 1939.

(O) On Jan. 8, 1940, the United States sent a Note to Great Britain protesting the seizure and censoring of neutral mails. On Jan. 17, 1940, a British reply rejected it. A French Communiqué of Feb. 2, a

1940, backed the British stand.

(P) On Feb. 14, 1940, the German steamship Altmark was stopped in Norwegian territorial waters for search. On Feb. 16, the British cruiser Cossack's crew boarded the Altmark in Norwegian waters and released 326 British prisoners; Norway and Germany protested. The Norwegian Senate's Court of Inquiry opened hearings on Feb. 23, 1940, at Hornshange and Egersund to establish the facts. On Feb. 27, the British Foreign Office considered the Norwegian suggestion to submit the case to an international tribunal. The ship Altmark arrived at Kiel on March 27, 1940.

(Q) On Feb. 29, 1940, nine Germans, seized on Jan. 21, 1940, by British warships from the Japanese passenger liner Asama Maru, were transferred to Japanese authorities at Tokyo.

(R) On March 30, 1941, under terms of the 1917 Espionage Act, the United States took control of 35 Danish, 2 German and 28 Italian ships in the United States ports on the grounds of sabotage or suspected sabotage. Germany and Italy protested on March 31, 1941. Latin American countries made several similar seizures on April 1, 1941. A second German Note of protest (April 1,) demanded the release of the ships. Brazil, Venezuela, Mexico and Uruguay detained Axis ships on April 3-5, 1941. On April 7, 1941, Mexico rejected German request for ships' return. Mexico expropriated 12 German and Italian merchant ships on April 8, 1941. The settlement of the claims is to be deferred until the end of the war. On April 10, 1941, President Roosevelt asked Congress for authority to take over any foreign-owned ships idle in port. The Inter-American Financial and Economic Advisory Committee at its meeting in Washington on April 26, 1941, adopted a resolution recognizing each American Republic's right to

seize idle foreign ships. /German Note, delivered on May 8, 1941, refused consent to the requisition of its ships seized on March 30, 1941. On May 9, 1941, Chile seized Danish ships. On May 15, 1941, President Roosevelt ordered the Coast Guard to seize all French ships in port. On Dec. 12, 1941, the United States seized 14 French ships in the United States ports. On Dec. 16, 1941, the United States State Department announced that the United States will take over the Normandie for which compensation will be made later.

(S) On July 25, 1941, the United States Executive Order froze Chinese credits in the United States upon China's request. On July 25, 1941, the United States Executive Order also froze Japanese credits in the United States. On July 26, 1941, Japan froze the United States credits in Japan. On Dec. 7, 1941, the United States further froze Japanese credits. On Dec. 9, 1941, Brazil, Peru and Uruguay froze Japanese credits. Thai credits were frozen by the United States on Dec. 9, 1941. Uruguay and Venezuela froze Axis funds on Dec. 10, 1941. Colombia and Bolivia froze Axis funds on Dec. 11, 1941. Panama froze Axis credits on Dec. 13, 1941. #430#

More strange and interesting are some particularly curious cases in this period, between World War I and World War II, concerning the development of the status of non-belligerency. Such cases chiefly occurred since the beginning of the World War II (1937).

(1) There were cases in which both belligerents and non-

#430# Deak and Jessup, "Neutrality Laws, Regulations and Treaties of Various Countries", 1939 (1943).
American Journal of International Law, 1939-1942.
The New York Times, 1939-1942.
Pfankuchen, "Documentary Textbook In International Law", 1940.
Briggs, "Law of Nations, Cases, Documents and Notes", 1938.
International Conciliation, 1939-1942.

belligerent referred to neutrality in undeclared wars. For instance, (A) On Jan. 15, 1940, in reply to Russia's complaint, Sweden and Norway charged Russia with violating their neutrality, during the Russo-Finnish undeclared War. (B) On Oct. 28, 1938, Japan protested in her Note to France against alleged shipment of arms to China and warned of possible consequences unless prohibited immediately. This case has been discussed in the preceeding chapter. It is remarkable that both Russia and Japan had been declared "aggressor" by the League, while Sweden, Norway and France were in the meantime members of the League.

(2) Japan, being a party to the Triple Alliance (Germany, Italy and Japan) and a non-belligerent, issued, on Sept. 4, 1939, such a statement as follows, after the outbreak of the European War since Sept. 1, 1939,: "In the face of the war that has just broken out in Europe, the Japanese Government intend not to be involved therein, but will concentrate their efforts on the settlement of the China affair". No word "neutrality" was referred.

(3) On Sept. 16, 1939, during the German-Polish War, Russia, a non-belligerent, ordered her troops to invade Poland. On Sept. 22, 1939, a joint Russian-German Communiqué announced that the Pissa, Narew, Vistula and San Rivers will form the new frontier between the two countries. Both Russia and Poland were member-states of the League of Nations. On Oct. 2, 1939, Secretary of State Hull of the United States issued a statement that the United States would not recognize the conquest and division of Poland.

(4) On Oct. 3, 1939, the American Republics Foreign Ministers Consultative Meeting at Panama City, adopted declarations

concerning a 300-mile safety/sea zone, continental solidarity for the Americas and neutrality (Declaration of Panama). It is gegerally known that the international law recognizes a 3-mile sea zone off coast as territorial water. On Oct. 13, 1939, a/British Admiralty statement termed such a zone impractical. On Oct. 20, 1939, Equador fixed a 500-mile neutral zone, including the Galápagos Islands. On Dec. 23, 1939, the 21 American Republics, after consultation, sent a joint statement to France, Great Britain and Germany concerning neutrality in American waters. On Jan. 15, 1940, Great Britain in reply rejected the idea of a zone of security and reserved "belligerent rights". On Jan. 23, and Feb. 14, 1940, French and German replies were sent separately, expressing the same view as Britainés.

(5) On May 10, 1940, the British occupation of Iceland was announced in London. The announcement of April 10, 1940, made by the British Foreign Office said that it had been informed that the Icelandic Althing (parliament) had adopted resolutions declaring that the Government of Iceland will assume for the time being all Icelandic powers hitherto exercised by the Danish King. Diplomatic officials were named on April 25, 1940, to represent Iceland and the United States in the new situation created by/the German occupation of Denmarck. It is notable that Iceland was hitherto in a status of personal union with Denmarck. Iceland was neutral, while Denmarck was at war; Britain was a belligerent in the meantime. On May 16, 1941, the Icelandic Parliament voted to sever personal union with Denmarck, terminating the Act of Union of Nov. 30, 1918. The Danish Prime Minister expressed in a Note of June 6, 1941, his acknowledgement. On July 7, 1941, the United States naval forces occupied Iceland at the invitation of the/neutral Icelandic Government !

(6) On May 18, 1940, the American Republics in a joint declaration denounced the invasion of the Low countries (Belgium and Holland). The American Republics were neutrals at that time.

(7) After the outbreak of the war between Italy and the Allies, the Spanish Government announced on June 13, 1940, that Spain would maintain a status of "non-belligerency".

(8) At the beginning of the war between Germany and the Allies in 1939, Italy, a party to the Triple Alliance, also refrained from issuing a declaration of neutrality and announced an attitude of "non-belligerency".

(9) On June 15, 1940, Russian troops marched into Lithuania. Russia herself announced that Estonia and Latvia had agreed to free passage of Soviet troops and the formation of new governments.

(10) On June 17, 1940, the United States sent identical Notes to Germany and Italy stating that, in accordance with her traditional policy relating to the Western Hemisphere, the United States would not recognise the transfer of any geographic region there from one non-American nation to another non-American power. The Governments of Great Britain, France and the Netherlands had been informed of the same. It is wellknown that the United States " traditional policy relating to the Western Hemisphere " is not international law, nor a treaty. On Oct. 24, 1940, [redacted] an Inter-American Emergency Committee For Provincial Administration of European Colonies and Possessions in America was formed. On

April 10, 1941, President Roosevelt signed the S. J. Resolution 7 providing for the non-recognition by the United States of the transfer of territory from ones non-American nation to another non-American nation.

(11) On July 5, 1940, an arrangement was concluded giving Germany the right to move unarmed soldiers and supplies of all kinds over Swedish railways to Norway. Sweden was a neutral.

(12) On July 5, 1940, the French Government of Marshal Pétain broke off diplomatic relations with Great Britain as a result of the British attack on the French warships at Oran, Algeria.

(13) On July 8, 1940, an Announcement was made in Washington that Great Britain had assured the United States of no blockade of French Martinique, W.I., On Dec. 18, 1941, French Martinique and the United States reached an agreement providing that the neutral status of the French possessions and naval vessels in the Western Hemisphere shall remain unchanged. On May 9, 1942, a Note of the United States to Admiral Robert, French High Commissioner in the West Indies, outlined conditions whereby the French possessions would remain under French control.

(14) On Oct. 23, 1940, the United States formally protested against the bombing of American oil properties in neutral Saudi-Arabia by Italy.

(15) On Nov. 6, 1940, an announcement was made at Washington that most Latin American countries had agreed to permit the United States to use the military, naval and air bases to be prepared and manned by the nations in which they are located. On Dec. 13,

1941, after the United States began to be at war with the Triple Alliance, the Brazilian ports were opened to the United States. On Dec. 13, 1941, Venezuela opened her ports to the ships of the United States and other American nations at war with the Axis powers. On Dec. 24, 1941, Mexico authorized the United States to use Mexican territory, water and ports. On Feb. 6, 1942, Uruguay declared that her port facilities were open to the United States which she considered a non-belligerent ! On May 18, 1942, Panama and the United States signed an agreement at Panama City concerning the use of Panama defence areas by the United States forces. On May 29, 1942, Colombia and the United States signed a military mission agreement at Washington, effective for 4 years.

(16) On Feb. 28, 1941, a Communiqué issued at Ankara stated that "The two Governments (Great Britain and Turkey) place / on record their firm attachment to the Anglo-Turkish Alliance" and agreed on a common policy. On April 9, 1941, the British, Yugoslav and Greek envoys were informed of Turkey's intention not to assist the Allied cause. On June 18, 1941, Germany and Turkey signed a 10-year friendship pact at Ankora(ratifications exchanged on July 5, 1941).

(17) On April 19, 1941, a British aggressive army landed at Basra, Iraq, to protect oil regions and open communications . The British Directorate of Propaganda issued a statement on April 23, 1941, denying any breach of national sovereignty. Iraqi Government protested on May 1, 1941, on grounds of the violation of Anglo-Iraqi Treaty. Fighting broke out on May 2, 1941. An announcement of the British declination of the Turkish offer to mediate, pending the withdrawal of the Iraqi troops, was made on May 5, 1941. On May 31, 1941, an armistice was signed !

(18) On May 15, 1941, Marshal Pétain announced that his Cabinet had accepted terms for a scheme of "collaboration" replacing the armistice agreement. On June 5, 1941, Secretary of State Hull's statement gave warning of the consequences to the French-American relations of the collaboration with Germany by the French Vichy Government. Both Vichy France and the United States then were non-belligerents.

(19) On June 21, 1941, Uruguay proposed to the American Republics that they treat any of their members engaged in war as non-belligerents. The United States approved that proposal on July 1, 1941. Costa Rica, Bolivia, Brazil and Mexico approved it on July 3, 4 and 10; while Argentine, in reply on June 28, 1941, insisted upon strict neutrality.

(20) On June 22, 1941, the day of the outbreak of the Russo-German War, Sweden decided to maintain a policy of neutrality. On June 25, 1941, Sweden agreed to permit passage of not more than one German army division. On July 27, 1941, the British Foreign Secretary Eden protested against the permission for transit of German troops.

(21) On June 27, 1941, the Danish policy of "non-belligerency" in the Russo-German War was re-affirmed; and diplomatic relations were broken between Russia and Denmarek.

(22) On July 30, 1941, the British Foreign Secretary announced that Great Britain had warned the Iranian Government against large numbers of German "tourists". On August 1, 1941, the Iranian reply to Great Britain stated that all necessary measures had been taken to preserve peace and order. On August 25, 1941, the British

and Soviet military forces made simultaneous advances into Iran. On August 28, 1941, the new Iranian Government came into power and agreed on Sept. 9, 1941, to the expulsion of the Axis legations' staffs and the surrender of their nationals. On Sept. 20, 1941, the Iranian Government pledged a pro-Allied policy. The withdrawal of the British-Soviet aggressive troops from Teheran began on Oct. 19, 1941. On Jan. 29, 1942, Iran signed a treaty at Teheran by which Great Britain and Russia undertake to respect the territorial integrity, sovereignty and political independence of Iran, which agrees to try to cooperate freely and to maintain internal order. The treaty came into force on Feb. 5, 1942.

(23) On Sept. 4, 1941, the United States S.S. Greer, a destroyer bound for Iceland, was attacked by a German submarine. On Sept. 6, 1941, the official German news agency admitted the encounter and claimed that the United States vessel was the aggressor in a German designated blockade zone. On Sept. 11, 1941, in a radio address President Roosevelt stated that he had ordered the navy to shoot on sight any Axis raider entering the United States defence waters. On Nov. 1, 1941, a German statement formally declared that the United States attacked Germany in the incidents involving the United States destroyers Greer and Kearney. On Nov. 8, 1941, Hitler ordered German navy to fire on the United States ships only after being attacked.

(24) On June 8, 1941, "Free French" and British forces entered Syria and Lebanon. On the same day, General Catroux, the leader of "Free French" forces, issued a proclamation declaring the people of Syria and Lebanon sovereign and independent. On June 9, 1941, France (Vichy) protested. On July 14, 1941, an armistice was signed

at Acre, Palestine, between the French (Vichy) and the "Free French" British forces. France (Vichy) ratified it on the same day. In accordance with the proclamation of June 8, 1941, which set a time limit on the French mandate over Syria, General Catroux declared on Sept. 17, 1941, the independence of Syria, with full sovereignty. Sheik Jaied-Din was proclaimed the First President of the Syrian Republic on Sept. 20, 1941. The independence and sovereignty of Syria were proclaimed on Sept. 26, 1941. On Oct. 6, 1941, the recognition of Syria was granted by Egypt. On Oct. 28, 1941, Great Britain recognized it. On Nov. 26, 1941, in the name of "Free France", General Catroux, at Beirut, read a charter declaring the Lebanon to be an independent sovereign State. President Naccash promised a loyal Lebanese collaboration with the Allies.

(25) On Dec. 18, 1941, an announcement was made in London of the occupation of the Portuguese Timor by the Dutch and Australian forces. Great Britain notified Portugal that the military forces will be withdrawn when the menace of Japan has ceased or when Portugal maintains an adequate garrison. The Portuguese Government issued a statement announcing the despatch of troops for the defence of the island.

(26) On Dec. 25, 1941, the "Free French" forces seized the French islands of St. Pierre and Miquelon, off Newfoundland, a move not approved by the United States Government, which asked the Canadian Government what steps it was prepared to take to restore the status quo ante. A plebiscite showed, on Dec. 28, 1941, 98 % in favour of an alliance with the "Free French". Under-Secretary of State Welles of the United States told a press conference

that the coup did not violate the Act of Havana. It may be remembered that neither France nor Canada was a party to the so-called Act of Havana. The incident that the "Free French" took over the said islands from the legitimate government of France no doubt belongs to the domestic affairs of France and legally prevents any external intervention.

(27) On Feb. 6, 1942, Uruguay declared that her port facilities were open to the United States which she considered a " non-belligerent".

(28) On Feb. 27, 1942, the United States announced that the Vichy French Government had given assurances that no military aid will be given to the Axis Powers except as required by the Armistice terms. On March 2, 1942, the United States recognised the "Free French" control of certain island possessions in the Pacific. On March 20, 1942, the Vichy Government of France made representations against the recognition. On April 4, 1942, the United States recognised the "Free French" control of the Cameroons and the French Equatorial Africa. A consulate-general of the United States will be established at Brazzaville; the Vichy French Government protested against the appointment. On April 13, 1942, the United States Note informed the Vichy French Government of its intention to "enter into relations with those French citizens who are in actual control" of French territories. On April 14, 1942, the French Government's statement rejected the United States Note. On April 29, 1942, Cuba granted de facto recognition of "Free French" control over five French territories. On March 26, 1942, the United States accepted the French (Vichy)

assurances that the French fleet would not be handed over to Germany.

(29) On March 12, 1942, the United States State Department announced that the United States had sent representations to the Vatican against the proposed establishment of diplomatic relations with Japan.

(30) On May 4, 1942, the British armed forces occupied the Island of Madagascar. The United States Department of State announced its approval and promised the United States assistance if necessary. On May 5, 1942, the French Government (Vichy) rejected the United States Note. On May 13, 1942, the British Foreign Office announced that the Free French National Committee would assist in the administration of the islands.

(31) On June 1, 1942, President Avila Camacho of Mexico signed a declaration of war against the three Axis powers (Germany, Italy and Japan), effective as of May 22, 1942 (a precedent of the retroactive effect of a declaration of war).

(32) On August 5, 1942, the Working Committee of the All India Congress Party approved a resolution promising to become an ally of the United Nations in return for freedom. Mr. Windell Wilkie, the leader of the United States Republican Party, after his return from a visit over the Near East, Russia and China, had given a radio speech reminding the imperialist states of giving up imperialism and restoring freedom to the oppressed nations. The British Prime Minister Churchill expressed later in Parliament the British intention not to alter the status quo of the Empire, though the present World War, which is still being in large-scale waged, has

been repeatedly said to be fought for the common freedom of nations and peoples and justice ! #431#

#431# merican Journal of Internation l Law, 1939-1942.
The New York Times, 1939-1942.
Deak nd Jessup, "Neutrality Laws, Regulations nd Treaties of Various Countries", 1939 (1943).
Oppenheim, "International Law", Vol. II, 1940, 6th ed. by Lauterpacht, p. 515.
Fenwick, "American Neutrality, Its Trial nd Failure", 1940, p. 143.
International Conciliation, 1939-1942.

Chapter VIII:

RECENT THEORIES RESPECTING THE STATUS OF NON-BELLIGERENCY

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Therefore, if we say the Third Period of the evolution of the status of non-belligerency, from the 16th century to the 19th century ending in 1914, is a period of struggle for neutrality, we may say its Fourth Period, as from 1914 A.D. to date, is a period of struggle for internationalism. We say"struggle"; it inevitably means that there were, and there are, different theories conflicting. These theories are numerous; yet they are possibly classified according to the following titles:

(I) Theories attacking neutrality;
(II) Theories supporting collective security;
(III) Theories attacking collective security;
(IV) Theories supporting neutrality;
(V) Intermediate theories.

(I) Theories Attacking Neutrality:

The writers who approve of the anti-neutrality theories are very many. Besides those mentioned in the preceding chapters, such eminent jurists and writers as MM. and Professors S. R. Chow, Politis, Lauterpacht, De La Pradelle, Scelle, Eagleton, Fenwick, Stimson, McNair, Brierly, Wright, Hudson, Garner, Molloy, Warren, Madariaga, Jackson, Baruch, Beard, Wilson, etc. are among them. Their opinions and reasons can be grouped as follows:

(1) "As a neuter neither purchases friends nor frees himself from enemies, so commonly he proves a prey to the victor;

hence it is held more advantage to hazard in a conquest with a companion than to remain in a state wherein he is in all probability of being ruined by the one or the other." #432#

(2) "Neutrality is no longer possible or desirable when the peace of the world and the liberty of the peoples are at stake," #433#

(3) "For a moral government and a moral people there can be no neutrality when the issue is between one who breaks his given word and one who keeps it....Neutrality represents an insidious attack upon the foundations of prosperity and peace," #434#

(4) "The neutrals learned during the World War that the extent to which they could continue their normal economic life depended chiefly on the degree to which they were economically self-sufficient or to which they possessed resources useful to the belligerents....When the vital interests of two belligerent groups are at stake, legal and moral arguments are available to both sides for ignoring the interests of those who do not choose to participate in the armed struggle." #435#

(5) "Neutrality is the product of international anarchy" and "has promoted militant hysteria and disorder and an accompanying deterioration of international relations." "In the present anarchic situation, each state can judge for itself the right or the wrong of the cause....also ought to assume her responsibility in determining the right or wrong of the cause, even if it is an insufficient

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#432# Molloy, "De jure maritimo et navali", 1680 (bk.I,ch.ix,sec.9). Borchard and Lage,pp. 4, 19. (The United States envoy at London Walter Hines Page, also expressed an anti-neutrality view in 1914)

#433# President Wilson's Address asking Congress to declare war,

judgement, and take sides for what it thinks is the right." #436#

(6) Neutrality is in violation of the League institution. "As between Members of the League of Nations there can be no neutrals." The proposal for re-stating the law of neutrality was contrary to Article 11 and 16 of the League Covenant. #437#

(7) Neutrality is "an ancient and now useless theory". "In law, neutrality has therefore ceased to be an institution". "Neutrality is destined to disappear." #438#

(8) Neutrality is the negation of law and order. Neutrality is a denial of the principle of collective responsibility upon which any system of international law must rest. Neutrality is contrary to the fundamental conceptions of law. #439#

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on April 2, 1917. Whitton, in Proceedings of American Society of International Law, 1930, p. 109.

#434# Annual Report of the Carnegie Endowment, 1936, pp. 5[illegible]-6. The New York Times, 1937, March 1, p. 10.

#435# Jessup, "Neutrality", Vol. III, ("The World War Period", by Turlington) p. 152.

#436# Hudson, in Proceedings of American Society of International Law, 1935, p. 44.
Garner, in Proceedings of A. S. I. L., 1933, pp. 148-149.
Eagleton, in Proceedings of A.S.I.L., 1931, p. 222.
Borchard and Lage, pp. 250, 254.

#437# Jessup, "Neutrality", Vol. III, p. 152.
Miller, "The Drafting of the Covenant", Vol. I, p. 432.
Ehrlich, "Collective Security", International Studies Conference, 1936, p. 437.
Great Britain's Foreign Office, "Memorandum on the Optional Clause of the Statute of the Permanent Court of International Justice (Miscellaneous, No. 12, (1929)), p. 10.
Hudson, in the New York Times, March 11, 1928.
Boye says: "La participation aux sanctions économiques n'est pourtant pas compatible avec l'impartialité qu'une puissance neutre est tenue de montrer, conformément aux conventions de la Haye de 1907, Nos V et XIII, Art. 9." (T. Boye, "Quelques Aspects du développement des Règles de la neutralité", dans Recueil des Cours, (de la Haye), 1938, II, tome 64, pp.219-220)

#438# Eagleton, in Proceedings of A. S. I. L., 1935, p. 133.
Professor N. Politis, "La Neutralité et la Paix", 1935, p. 179.
Professor G. Scelle, in "Collective Security", p. 25.

#439# Fenwick, in Proceedings of A. S. I. L., 1936, p. 149.

(9) "Actually there can be, or there is, no law of neutrality to-day". "From the moral point of view, neutrality as a principle is immoral." #440#

(10) To preserve neutrality in other people's wars is impractical or barbarous. #441#

(11) Neutrality has been entirely abolished, or is an anachronism. There is no such thing as neutrality. "Je crois que la neutralité est équidistance ou elle est inexistante....Je crois que nous sommes à la veille de lm' abolition complète de la neutralité. Tant que nous n'aurons pas aboli la neutralité nous n'aurons pas de paix dans le monde." #442#

(12) The Kellogg Pact has put an end to the traditional doctrine of neutrality, the duty of a neutral to maintain impartiality between two belligerents. The Pact of Paris, binding all important states, is the important international law in this connection, and a state which has gone to war in violation of its provisions has clearly violated a right of the other parties entitling the latter to undertake discriminatory measures by way of reprisal. "Probably the term neutrality in this connection should be abandoned for the objective is not impartiality but keeping the country out of war." A breach does not oblige all states to depart from their

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#440# Warren and Eagleton, in Proceedings of American Society of International Law, 1933, p. 163.
R. H. Jackson's Address before Inter-American Bar Association at Havana, March 27, 1941, American Journal of International Law, April 1941, pp. 348-359.

#441# Stimson, in Proceedins of A. S. I. L., 1935, pp. 121,126,129.

#442# Baruch, in New York Times, Jan. 29, 1936.
Arthur Krock, in New York Times, Dec. 26, 1936.
Senator Connolly, in New York Times, Feb. 21, 1937.
Cohn, "Neo-Neutrality", pp. 139, 140, 300.
Miss Crichton, "The Pre-War Theory of Neutrality", in British Year Book of International Law, 1928, pp. 101 et seq.

neutral attitude but as permitting them to do so; "...in so doing they would commit breaches of the traditional law of neutrality, but their justification for so doing would be the fact that they are doing it in return for a legal wrong inflicted upon them."#443#

(13) War can only be stopped by war and an aggressive nation can only be stopped by the use of force. #444#

(14) "Much of the old conception of neutrality as a possibility is gone in the modern world if large nations are involved in war.....real neutrality in a large scale war is almost impossible. War to-day involves blockade and the commerce of the neutral is as much under fire as are the participants." #445#

(15) "Neutrality offers no certain road for keeping out of war. The only certain way to keep out of a great war is to prevent that war from taking place, and the only hope of preventing war or even successfully restricting it is by the earnest, intelligent and unselfish coöperation of the nations of the world towards that end." #446#

(16) Neutrality is contrary to morality and all kinds of sanctions. "La neutralité est amenagée dans le sens de l'égoïsme. Sa maxime est'enrichissez' vous." "En realité, il ne faut pas s'y tromper. Le régime classique de la neutralité exclut toutes les catégories de sanctions, car c'est l'idée même de sanction qui est

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Brierly's address "Neutrality of States under the Covenant of the League of Nations and the Kellogg Pact", 1936. Ladariaga, Académie Diplomatique Internationale, Séances et Travaux, p. 159.

#443" McNair, in "Collective Security", pp. 435-436.
Q. Wright, in Polity, Feb. 1936, p. 6, col. 2.
Fenwick, "The Implicati n of Consultation", "Pact of Paris",

à la source de leur incompatibilité." #447#

(17) The conception of neutrality involves a weakening of the system of collective security. "There would be no positive assurance of security....Neutrality is morally unjustifiable. In case of an aggression in violation of international law, the neutral state is in the same position as the private citizen who witnesses a crime against national law and does nothing, an act which in certain countries including England, is punishable. In a moral, if not in

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American Journal of International Law, Oct. 1932, p. 787.
Cassin, in "Collective Security", p. 439.
"Final Report", in "Collective Security", p. 454.
Eagleton, in Proceedings of American Society of International Law, 1935, p. 133.

#444# Eagleton, Speech before Foreign Policy Association, March 7, 1936, The New York Times, March 8, 1936, p. 26, col. 1.

#445# Department of State's Memorandum submitted to the House Committee on Foreign Affairs, ~~xx~~ 1933.
Borchard and Lage, pp. 305-307.

#446# Stimson, in Proceedings of A. S. I. L., 1935, p. 129.
Charles A. Beard, in Events, (Sept. 1937, pp. 157-168) says that a State "cannot stay out of a general war if it comes"~~x~~ and that "only collective action can keep peace".

#447# De La Pradelle, in Bourquin, "Collective Security", 1935, pp. 404 et seq. (or in the original mimeographed text, p. 18).
Cohn, "Neo-Neutrality", pp. 300-301.
Lorimer says: "le droit est une branche de la morale, qu'il tend à la santé morale de la communauté et que ses règles s'appliquent non seulement aux individus, mais aussi aux Etats. Pour les individus, le devoir est clair. Si un homme assiste à une rixe et s'il pense qu'il peut séparer les combattants et mettre fin à une agression injuste, il a le devoir de s'interposer et de ne pas demeurer spectateur indifférent. De même, les Etats devraient se guider sur le même principe."
Westlake also concludes: "la neutralité n'est pas moralement justiciable."
Le Baron Albéric Rolin held: "On doit se demander si c'est conforme à la morale et à l'intérêt international universel qu'un Etat puissant ait le droit de rester toujours neutre, quelque flagrante, quelque évidente que soit l'injustice commise sous ses yeux."
See Professor A. Pearce Higgins, "La Contribution de quatre Grands Juristes Britanniques au Droit International, Lorimer, Westlake, Hall et Holland," Recueil des Cours, Académie de Droit International de la Haye, 1932, II, tome 40, p. 16-17.

an internationally legal, sense we may therefore conclude that collective security and neutrality are mutually exclusive." "The more there is of the one the less there is of the other." "Very often the armed forces of the aggressor will be so powerful as quickly to crush and annex the attacked state. In such circumstances, collective security which recognizes the right of qualified neutrality is an empty phrase." Only a system which requires "a complete formal identification of the members with the attacked state" gives real protection. This will be the eventual system of security. Morality, in the development of international law and order, should be analogous with that which regulates the relations of individuals within the states. Otherwise views are "suicidal for the smaller states, as dogmatic, and as naive." #448#

(18) "The ideas of neutrality and of international cooperation for the prevention of war are incompatible; neutrality is a product of international anarchy and has no right to exist in a society of states regulated by law." "Neutrality came to be regarded as no longer the symbol of peace. Although it was formerly a good, it had come to be rather the cause of evil." #449#

#448# Professor A. Lauterpacht, in "Some British Views on Collective Security", pp. 24, 25, 15 et seq..
Bourquin, "Collective Security", 1935, pp. 34, 79 et seq., 134 et seq., 412 et seq..
John, "Neo-Neutrality", 1939, pp. 304-305.

#449# Professor N. Politis, "La Neutralité et la Paix", ch. II etc., p. 37 etc..
See also Chapter I of this work, re: China's foreign policy.
Professor S. R. Chow, "China and Collective Security", etc..
Fenwick, "American Neutrality, Trial and Failure", 1940, pp. 147-152.
See also: A. M. Morrissey, "The American Defense of Neutral Rights, 1914-1917", (1939), pp. V, ix-xii, 3, 199, 200, 206, 207.

(II) Theories Supporting Collective Security:

Because the writers who attack neutrality are not necessarily supporting the system of collective security, this school is therefore to be formed. Such jurists as well as Governments as MM. and Professors S. R. Chow, Politis, Wright, Eagleton, Garner, Fenwick, Stimson, Hudson, Corbett, Newfang, etc. and China, New Zealand, Portugal, Liberia, etc., may be classed here. They hold:

(1) "Members of the League can not be neutral, but must take effective action to safeguard the peace and if war develops must give moral, if not physical, support to the victim of aggression as there defined, and to the police forces which go to his assistance #450#

(2) "...The only way to maintain peace and respect for law and treaty rights is by collective action; and such action is incompatible with neutrality. The Kellogg Pact will be respected only if we deliberately and strongly take sides against the violator of the Pact; and this can only be done effectively in conjunction with the other signatories of the Pact, acting through an established machinery." "An aggressive nation can only be stopped by the use of force." #451#

(3) The mere threat of preponderant holy force would discourage any potential aggressor and cause it to cease and desist. ...The only hope...is...unselfish cooperation of the nations."..#452#

#450# Q. Wright, in Proceedings of American Society of International Law, 1930, pp. 86-87.

#451# Eagleton, in Proceedings of A. S. I. L., 1935, p. 133. and Speech before Foreign Policy Association, New York Times, March 8, 1936, p. 26, col. 1.
Eagleton, "Organization of the Community of Nations", American Journal of International Law, April 1942, pp. 239-241.

(4) "I want to see the law so changed that it never can be said again that a neutral is under a legal obligation to accord the same measure of treatment to a belligerent who in the opinion of the neutral is an aggressor that he accords to one who in his opinion is a victim of an aggression." #453#

(5) "...Sanctions against a great power can be made effective only by military action." "The only possibility of avoiding war is through coöperation." "While all other naval powers are insisting upon its revision in the light of covenant obligations, there would seem to be little basis for an international conference or for any attempt at recodification." #454#

(6) "..The military sanctions...their practical application...is important and essential if the system of collective security....is to prove really effective and peace is to be safeguarded....The Chinese Government realizes the advantages of regional pacts of collective security and is prepared to accept the idea in principle, provided such pacts are....to serve as supplement to, and not as substitute for, any of its (Art. 16) important provisions. The [redacted] measures provided for (in Article 16) possess three requirements---namely, automatic, immediate and all-inclusive..." "The present covenant will be ineffective in the future....unless any sections that may be applied are supported by the certainty that

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Department of State's Memorandum submitted to the House Committee on Foreign Affairs, 1933. Borchard and Lage, p. 306. Beard, in Events, Sept. 1937, pp. 167-168.

#452# Stimson, in Proceedings of A. S. I. L., 1935, pp. 121,126,129.

#453# Garner, in Proceedings of A. S. I. L., 1933, pp. 148-149.

#454# Manley O. Hudson, in The New York Times, March 11, 1928. Borchard and Lage, p. 275.
Coudert, in Proceedings of American Society of International Law, 1935, p. 24.

the members of the League applying the sanctions are able and, if necessary, prepared to use force against force...we (New Zealand) are prepared to agree to the institution of an international force under the control of the League or to the allocation to the League of a definite proportion of the armed forces of its members to the extent, if desired, of the whole of those forces---land, sea and air." #455#

(7) "A moral basis for international unity must be found; law and justice must be made international as well as national conceptions.....It is a fundamental interest which of necessity results from the fact that we are living in a world with other nations and cannot cut ourselves off from social and economic relations with them, no matter what degree of formal political detachment we may endeavor to maintain. We have a right to protect that interest against law-breakers; and we have a duty to protect it. For there can be no more than an armed peace ahead of us for many years to come unless we are willing to undertake with other nations the formulation of just rules of law and also willing, when they have been formulated, to coöperate in maintaining them." #456#

#455# Memorandum of the Chinese Government making certain suggestions to improve the Application of the Principles of the Covenant, on August 27, 1936.
League of Nations Official Journal, Special Supplement No. 154, 1936, pp. 30-31.
Communication from New Zealand Government, July 16, 1936.
Official Journal, Special Supplement No. 154, 1936, p. 7.
The importance and value of military sanctions were rightly stressed by the Governments of China, Portugal and New Zealand. Liberia and Colombia expressed about the same view.
Engel, "League Reform", pp. 171-172.

#456# Fenwick, "American Neutrality, Trial and Failure", 1940, pp. 151-152.
[redacted]

(8) The future of neutrality will divide itself into four stages: the first is to be the abandonment of neutrality based on distinctions between just and unjust wars and the laying down of a definition of aggression; the second phase would consist in rendering aid to the party attacked; the third would be the treatment of war as an international crime, with penalties and legal consequences; the fourth would be the organization of a permanent international military force, as was originally suggested by France. "The stages...will not necessarily be reached in the order....In proportion as the necessities of life bring about the possibility of realizing one or another of these reforms, the world will advance, with more or less perseverance and logic, along the path of international organization....human progress does not follow a straight unbroken line....We are in one of these periods." #457#

#457# Politis, "Neutrality and Peace", (Carnegie Endowment ed.) 1935, pp. 80-98, 93.
Professor S. R. Chow, "The Pacific After the War", Foreign Affairs, October 1942.
Professor S. R. Chow, "China and Collective Security", 1938.
Professor S. R. Chow, Memorandum submitted to the Pacific Relations Conference of Dec. 4-14, 1942, at Mont Tremblant.
Peffer, "Pre requisites to Peace in the Far East", 1940.
P. E. Corbett, "Post-War Worlds", 1942.
Evan E. Young, "International Relations in a Post-War World", Proceedings of American Society of International Law, 1942, pp. 51-58.
Oscar Newfang, "The Road to Peace", (A Federation of Nations) 1924.
The New Commonwealth Institute, "Provisional Proposals for the Reform of the Covenant of the League of Nations", 1936.
The Next Five Years Group, (Lytton, Gooch, Zimmern, etc.) "A Peace Plan, --Proposal for the League" (Letter to the London Times), August 1, 1936.).
Mallery, "Typical Plans For Post War World Peace", International Conciliation, April 1941.
Shotwell, "After the War", International Conciliation, January 1942.
International Conciliation, April June 1941; November 1942; re: Organization of Peace.
Proposals made by Vice-President Wallace of the United States and ex-President Hoover, in New York Times, Jan. 1943.
Publications of the Committee To Study the Organization of Peace, New York, 1943---.

(9) The plan for a better system of collective security must be based upon the following points: "1. désarmement complet, 2. l'interdiction de la guerre sous toute ses formes. 3. le règlement pacifique obligatoire de tous les conflits internationaux sans exception. 4. la suppression de la diplomatie secrète. 5. le contrôle parlementaire de la politique extérieure. 6. une politique commerciale libre et ouverte. 7. la Société des Nations devrait embrasser toutes les nations sans exception.....Dans cet état de choses idéal, il ne resterait plus de place pour l'institution de la neutralité.....En terminant, rappelons-nous les paroles d'un homme qui, comme Grotius, ne fut pas seulement un citoyen de son propre pays, mais un grand citoyen du monde, le grand homme de science d'un pays fidèle à l'idéal..." #458#

(III) Theories Attacking Collective Security:

The writers, on the other hand, holding theories counter-attacking collective security, are: M LM. and Professors Borchard, Moore, John Fischer Williams, Lage, Coppola, Wolfers, Beard, etc.. They believe:

(1) "The belief that nations were each other's keepers or the guardians of each other's consciences would have been regarded as fantastic....Realizing that international law had behind it no sovereign state but only the support of mm custom and voluntary agreement, nations refrained from subjecting it to excessive strains."

(2) "A system of independent states of varying size

#458# John B. Whitton, "La Neutralité et la Société des Nations", Recueil des Cours, de la Haye, 1927, II, tome 17, p. 565.

and power could not, however, develop a legal system such as prevails within each one of the states....The system of independent states is far too primitive for so organic a legal system."

(3) "...Grotius and others....suggest a distinction between just and unjust wars; they advised neutrals to help the just, but when a distinction was impossible, to treat both sides alike ....It was impractical. The remedy would have been worse than the disease." #459#

(4) "...An international system on ideas of coercion which in practice repudiate experience, promote exaggerated nationalism, and further division among peoples." #460#

(5) "The 'idealists' supporting a pâan which inevitably had to employ starvation and force in behalf of a status quo that might prove disastrous, whereas any attempt to change that status quo, however desirable, was in principle condemned as immoral and illegal". #461#

(6) "The League's policies, military and economic, were left in the hands of the constituent members, while the economic and military enforcement of those policies was intrusted to the hands of its few principal members, the Great Powers. The Conference at Geneva therefore had no power beyond that which the directing nations were willing to supply...The suggestion that sovereign states,especially populous states, could be successively coerced, and that the measures of coercion could be called peaceful or could produce peace, was

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#459# Borchard and Lage, "Neutrality For the United States", 1940, pp. 1, 2, 4-5.
#460# Borchard and Lage, p. 18.
#461# Borchard and Lage, p. 50.

always a "pathetic fallacy". The alluring words "collective security" have by their very association with Articles 10 and 16 produced a degree of collective insecurity hitherto unknown." #462#

(7) "The current delusion that international law 'legalizes' war, and therefore must yield to the war-tending and warlike processes prescribed by the Covenant comprising 'sanctions', boycotts, and war itself is merely the legitimate offspring of the new and consoling theory that peoples may with force and arms peacefully exterminate one another, provided they do not call it war."#463#

(8) "Under the fear of boycotts every country will seek to make itself as independent as possible, militarily and economically, of other countries. Whether it considers sanctions practical or not,....this does not make for tranquillity but for fear and hysteria....Thus the threat of potential sanctions stimulates the urge for conquest." #464.

(9) "This reversion to medieval conceptions which were failures in their own time was claimed as evidence of progress. Yet ....it overlooked practically every important factor in international relations". "The new doctors failed to supply confidence in the efficacy of the new prescription." "The Amendment of 1921

#462# Lord Lothian, "New League or No League", International Conciliation, No. 325, Dec. 1936, pp. 589, 51.
Borchard and Lage, pp. 51-52.

#463# J. B. Moore, "An Appeal To Reason," Foreign Affairs, July 1933, p. 560.

#464# John Fiscler Williams," The Reform of the Covenant of the League", Hungarian Quarterly, II, 195.
Lord Lothian, "New League or No League", International Conciliation, 1936(Dec) p. 52.
H. Rowen-Robinson, "Sanctions Begone, a Plea and a Plan for the Reform of the League", London, 1936.
Borchard and Lage, p. 248.

that "each state is to be the judge of the question whether an aggression has been committed and of what it will contribute in the way of sanctions, though not yet universally ratified, has discouraged the original theory of Article 16 of the Covenant." "The peace-enforcing national armaments might be used for purposes whose holiness might be disputed and even debated by war." "The opposite of self-defence is aggression....the attempt so to define self-defence....is just as futile as the attempt similarly to define aggression...." #465#

(10) There is "the paradox involved in a system of collective action against the aggressor which forbids nations to resort to war for the defense of their own interests, that is, for the causes which affect them the most deeply, and....makes it, on the contrary, their duty to throw themselves into the struggle to ensure the respect of abstract rules which have no roots in their sentiments, their beliefs or their passions." "This myth of security....thus constitutes one of the greatest obstacles to the establishment..... of a veritable peace...." #466#

(11) "After having first been abolished completely, neutrality is now admitted to have a large role to play in cases where the aggressor cannot be picked or under the tolerated wars of Article 15 of the Covenant. But even in the untolerated wars which an aggressor is picked, the nations that do not choose to judge can still remain neutral while yet discriminating between aggressor and aggressee. This is called the'new neutrality". Quite in the

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#465# Borchard and Lage, pp. 249, 252-254; J. B. Moore, in New York Sun, Dec. 10, 1935; p. 24; "Appeal to Reason", p. 570.
#466# Coppola, "Collective Security", International Studies Conference, pp. 144-145. Borchard and Lage, pp. 254-255.

current tradition, it makes confusion worse founded. Concurrent economic unneutrality and military neutrality are a paradox..... The new school undertakes to apply to its discriminatory system the worthy name of 'neutrality.....unneutrality masquerading in the name of neutrality." #467#

(12) "No nation is fit to sit in judgement upon any other nation". #468#

(13) "Serious doubts prevailed even among the devotees of collective security as to what made a state an aggressor; who was to determine the aggression; and what was to be done about it. ....It is impossible to define the objective criteria." #469#

(14) In the new suggested scheme "for uniting neutrals against both belligerents with a view to shortening a war and bringing about an early peace", in which "the neutral is to be placed in the position of coercing the belligerents, by depriving them of the means of subsistence, to conclude a quick peace", that is to say, "neutrals

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#467# J. B. Moore, "The New Isolation", American Journal of International Law, XXVII, 1933, pp. 607, 622 et seq..
Borchard and Lage, pp. 257-258.

#468# President Wilson of the United States' statement, April 20, 1915.
Borchard and Lage, p. 256.

#469# Bourquin, "Final Report", "Collective Security", pp. 452-454.
Zimmern, "The League of Nations and the Rule of Law", 1936.
Wolfers, in Yale Law Journal, XLVI, 727.
Borchard and Lage, pp. 231-236.
Soviet Declaration submitted to Disarmament Conference, Feb.6, 1933, International Conciliation, No. 292, Sept. 1933, p. 65.
Norman Davis' Proposal, The New York Times, May 23, 1933, Press Releases, May 27, 1933, p. 390.
"The Slippery Aggression", The World Tomorrow, June 1930.
"War and Peace", American Journal of International Law, XXVII, 1933, pp. 114-117.
Eagleton, in Proceedings of American Society of International Law, 1932, p. 131.
J. B. Moore, "An Appeal To Reason", Foreign Affairs, July 1933, p. 566.---. Part I of the Draft Convention submitted by the United Kingdom, League of Nations Documents, X(1933), p. 2.

are to have the discretion to change their functions from those of abstention and impartiality to coercion and starvation, the result can hardly fail to affect one belligerent more seriously than another....its effect is bound to be discriminatory and the belligerent discriminated against cannot fail to regard the result as intentional." #470#

(15) The policy of coercion for shortening war in the form of discretionary embargoes on commodities "needed in war" or "other military supplies" falls into the category of "the repression of war by force" which "can only involve another and greater war". #471#

(16) Each nation has its "individual privilege of selection" and "the privilege of indifference". Nations have different "political motives for a judgement". There are not few opportunities for disagreement. "The possible scope of the principle of collective security has by attrition been reduced to microscopic proportions". #472#

(17) "Outside pressure on a state provokes excessive nationalism." #473#

(18) "Not all nations are able or willing to make the necessary sacrifices....No League such these idealists conceive is possible unless the sovereignty of its constituent members is terminated by their disarmament and the surrender of their independence. Inasmuch as the world is not ready for this, the present

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#470# Borchard and Lage, p. 267.
#471# Borchard and Lage, pp. 267-268.
#472# Borchard and Lage, p. 270.
#473# Borchard and Lage, p. 272.

League can have no more power than its constituent members are willing to supply." #474#

(19) The system of collective security as expressed in the Kellogg Pact contributed liitle to the renunciation of war. "In the past, war had been considered something like a disease--- neither legal nor illegal; Now by a world treaty, practically all wars obtained the stamp of official approval. The mere renunciation of war in the abstract in the first article of the treaty could have but little scope for application in view of the wars in the concrete sanctioned by the accompanying interpretations of the treaty."#475#

(20) "The provision found in Article 11 of the Covenant was employed to prove that a war anywhere affected the entire world.... ....this view had no substantial foundation in law." It is a traditional principle of international law that a treaty can not apply to states not signatory thereto. #476#

(21) "The doctrine of nonrecognition of annexations.... contributes very little to peace. Change is natural. Until we find a way of making changes amicably, the nonamicable method cannot be successfully outlawed....A country refusing to recognize a fact must either content itself with making faces or must fight. Little satisfaction can be derived from either alternative." #477#

(22) "We are not smart enough to settle the quarrels of Europe entrusted in the blood rust of fifty centuries of warfare,

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#474# Borchard and Lage, p. 275.
John Fischer Williams, "An Examination of Proposals" (Letter to the London Times, August 17, 1936).
#475# Borchard and Lage, p. 293.
#476# Borchard and Lage, p. 295.
#477# Borchard and Lage, pp. 302-303.

but I think we might defend our civilization and have one here." "International wars will cease when civil wars end." "Should we attempt to apply retrospectively the principle of staying or punishing the aggressor we should be obliged to determine the question whether the forcible creation of that great agency of law and civilization, the Roman Empire, or the forcible progress of any other great historic movement, should not have been prevented; whether the formation of the British Empire or the extension of France and her colonial empire should not have been opposed; whether the establishment of the Russian Empire should not have been resisted; whether the world should not have prevented the United States from becoming what it is; also, whether the forcible association in earlier times of the vast aggregation of states now known as China did not result from a neglect by other states of their duties and, perchance, their opportunities." #478#

(IV) Theories Supporting Neutrality:

The writers who attack collective security are not necessarily to approve of the maintenance of the traditional doctrine of neutrality, and the writers who insist upon the survival of neutrality are not necessarily attacking the ideal of collective security. Therefore the writers supporting neutrality are desirable to be grouped here separately. Mr. and Professors Borchard, Moore, Lage, Barclay, Jay, Adams, Jeffson, Baty, Gladstone, etc. belong to this

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#478# Beard's (Charles A.) speech before the House Naval Affairs Committee, 1938, Hearing on H. R., 9218, 75th Congress, 3rd session, p. 2189. Borchard and Lage, p. 395.
J. B. Moore, "An Appeal To Reason", pp. 559, 570.
Mr. Moore seems to have neglected that facts that no community of civilized states existed before the 19th century A.D. in the Eastern Asia, that the only advanced civilized state in the Eastern Asia was China, that China was, and is, a single state through her five thousand years of civilized life and written

category; they hold:

(1) Neutrality was brought about by the fact that "with the intensive cultivation of international trade incidental to the industrial system, voluntary consent was gradually obtained to rules for the greater security of peaceful trade, even in wartime, and the mitigation of the horrors of war for noncombatants." #479#

(2) "In a competitive world all conflicts could be avoided, still less that any good purpose could be served by intervening in the affairs of other nations or by judging the merits of their wars and taking sides accordingly." "The remedy would have been worse than the disease." #480#

(3) "Neutrality was necessary to self-preservation.....it was a stabilizing influence in the world."#481#

(4) "Neutrality is over centuries regarded by many down to 1914 as the maximum achievement of international law....It has achieved its importance with the growth of the state system, especially after the sixteenth century. The right to stay out of wars and to enjoy the privileges of neutrality was recognized by belligerents only after a struggle lasting over several centuries." "Neutrality is the most progressive branch of modern International Law. It is also that branch of International Law in which the practice of self-restraint takes the place of the direct sanctions of

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history, that China had her long"civil war"age between her "provinces" (technically and constitutionally, not "states") during her Chuan Chu Chan Kuo Period, 770-221 B.C., and fought only barbarians around her five thousand years ago and sometimes later, and that the establishment of the old Empire of China is entirly different from what is now known by us as "imperialism". "Empire" in the Chinese meaning is"State with an emperor"; "emperor" is an rank higher than

domestic law most effectively...While the right of war simply the right of the stronger, there was no room for neutral rights... It is the growth of a law of neutrality, through the modern possibility of concerted action among neutral states,which is bringing about improvement." "Men of good sense perceived that by building up this painfully won right to neutrality they had made a striking contribution to peace, to sanity, to the limitation of the horrors and area of war, and by such limitation, to the framing of workable treaties of peace. An immunity against war had thus been erected." #482#

(5) Neutrality is based upon "the necessity for candor, for open sincerity in international dealings.. .because states over which there is no sovereign power must look chiefly to themselves for their security....The belligerents have the right to know who is in the war and who is not, who is an enemy and who is a friend." #483#

(6) "The growth of trade and the dependence of the most seafaring as well as landlocked nations on the exchange of goods, both for their economic life and their prosperity, brought about certain compromises by which private neutral traders were privileged to continue their trade, even with the belligerents and their citizens ... .a coordinated compromise was brought about between belligerents and neutral rights." #484#

"king". A Chinese may wonder at the term "British Empire" which is adopted to qualify a state under a "King", not a "British Emperor". A Chinese may also wonder at the term "French Colonial Empire" which is adopted to qualify a Republic under a "President",not an Empire under an Emperor. Modern"imperialism"is actually "invasionism", a result of Industrial Revolution and Capitalism, not necessarily leading to the conquest of barbarous peoples, a cultural mission. Mr. Moore further ignores the reasons that a complete restoration of ancient ages is technically impossible and that the

(7) "In philosophy and in law the establishment of of neutrality and its privileges has until recently been considered a victory for civilisation over brute force, for law over anarchy." #485#

(8) "As it was the right of every nation to prohibit acts of sovereignty from being exercised by any other within its limits, so it was the duty of a neutral nation to prohibit such as would injure one of the warring powers. Hence, no succor should be given to either, unless stipulated by treaty, in men, arms, or anything else, directly serving for war." #486#

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principle of freedom and equality of nations instead of the status quo of states may be regarded as the only reasonable and fair way to solve the present international and racial problems.

#479# Borchard and Lage, p. 1.

#480# Borchard and Lage, pp. 1, 5.

#481# Borchard and Lage, p. 3.

#482# Borchard and Lage, pp. viii, 4, 5, 17, 18.
Sir Thomas Barclay's opinion in Encyclopedia Britainnica, (11 ed) s.v."Neutrality"
Professor Fauchille admits that "On créa la neutralité permanente de certains états, afin de limiter la guerre par sa localisation." ("Traité de Droit International Public", tome 2 (vol. IV), p. 653.

#483# Borchard and Lage, p. 6.

#484# Borchard and Lage, p. 7.

#485# Borchard and Lage, pp. 17, 19, 22.
John Jay's correspondence to President Washington of the United States, Sept. 15, 1794, Works, IV, pp. 58-59.
Hyneman, "The First American Neutrality", 1934, ch.ii (re: the attitude of Washington's cabinet)
In 1780, John Adams had expressed a common sentiment when he wrote from Paris to the President of Congress: "Our business with them (European nations), and theirs with us, is commerce, not politics, much less war."
See Wharton, "The Revolutionary Diplomatic Correspondence of the United States," 1889, III, p. 623.

#486# Moore, "Principles of American Diplomacy", 1918, p. 45. (re: Jefferson's principles of neutrality.)
President Wilson of the United States said on April 20, 1915: "I am interested in neutrality because there is something so much greater to do than fight; there is a distinction waiting for this nation that no nation has ever yet got, that is the distinction of absolute self-control and self-mastery."
See Baker and Dodd, "Public Papers of Woodrow Wilson".

(9) It was "unneutrality which helped to steer the United States into the conflict"(1917). "The one sure way to get into war is to take sides in any dispute likely to lead to an open breach." #487#

(10) "A small nation might lose its independence or life by a hostile attitude..." "La neutralité suppose un équilibre des Etats, qui empêche les forts de contraindre les faible. Cet équilibre manquait, surtout à la mer, où il y avait toujours une puissance prépondérante." #488#

(11) The law of neutrality, "recording from age to age the slow progress of humanity, has established the distinction between combatants and non-combatants, enjoined the human treatment of captives, limited the destruction and confiscation of property, enlarged the bounds of commercial freedom, and furnished the rules of decision by which international courts have in countless cases determined grave disputes and stilled the voice of strife." "Unless war is to be replaced by unchecked violence, masquerading under the name of self-defence or "federal execution", neutrality with its rights and obligations cannot be regarded as out of date." #489#

(12) "Is England so uplifted in strength above every other nation, that she can with prudence advertise herself as ready to undertake the general redress of wrongs ? Would not the consequences of such professions and promises be either the premature exhaustion of her means, or a collapse in the day of performance ? Is any Power at this time of day warranted in assuming this comprehensive obligation ?" #490#

#487# Borchard and Lage, pp. 55, 352. Beard in Events, Sept. 1937, pp. 167-168.

#488# Borchard and Lage, p. 256. re Swiss view, see Schindler,

(13) "Neutrality always has had....the highly moral and expedient object of preventing the spread of war....In reality, the better and speedier the means of communications the more effectively can a government enforce its neutrality....The supposition that the law of neutrality imposes moral indifference to the merits of armed conflicts and makes any intervention in them unlawful, I can only call baseless. The law of neutrality does not require a neutral state to remain so. A neutral state may, should it so desire, enter the conflict; but it cannot be both in and out. The law of neutrality merely applies the rule of common honesty. Parties to an armed conflict are entitled to know who are in it and who are not." #491#

(V) Intermediate Theories:

As some writers recognize the value both of neutrality and of collective security, intermediate theories have begun to take

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in "Collective Security", pp. 424-425.
Fauchille, tome 2 (Vol. IV), p. 639. But Fauchille also holds that "l'idée de neutralité, depuis qu'elle existe, a évolué à maints égards pour s'adapter aux régimes juridiques successivement établis." (p. 653.)

#489# J. B. Moore, "International Law and Some Current Illusions", pp. 36-37.
Baty, "The Future of Prize Law and the Freedom of the Seas", Journal of Comparative Legislation, XIII, 1931, 3rd ser. p.181.

#490# Gladstone's letter to General Grey, April 17, 1869. See Morley, "The Life of William Ewart Gladstone", 1904, II, p. 317.
Borchard and Lage, while approving of the British policy of "splendid isolation", admitted that "they apparently are unable to resist the moral urge to suppress 'aggressors'." ---"Neutrality For the United States", p. 395.
Consult also Letters of Charles Cheney Hyde and Philip C. Jessup, the New York Times, Sept. 21, and Oct. 5, 1939.

#491# J. B. Moore, "An Appeal To Reason", Foreign Affairs, July 1933, pp. 562 et seq..
Consult also Recueil des Cours, Académie de Droit International de la Haye, 1938, II, tome 64, pp. 161-230.

place. M., and Professors Jessup, Cohn, Lauterpacht, Hyde, etc. may be considered belonging to this category.

(1) Theory of Free Coöperation between Neutrality and Collective Security: (Jessup)

(A) "In international law, the legislative process is the slow and often unwieldly growth of international custom or the unanimous acceptance of a new rule through treaties. Neither of these processes has yet supplemented neutrality by new law of general application, although modifications for some states have been introduced by that general treaty called the Covenant of the League of Nations. The Pact of Paris, even more widely signed, may point along new roads, but the roads have been only roughly surveyed and not yet built....The world has not yet achieved a completely satisfactory international legal system, but such as it is and long has been, it still exists; neutrality is a part of it."

(B) "The trouble with neutrality....is that it has been based on the idea of protecting neutral trade with belligerents without interferming with belligerent operations.....Neutrality should be re-considered in the light of this fact.. .it can play its part in the current developments of the process of international coöperation. With a realistic base and with coöperative application, it may avoid some of its past weakness....States have always been at liberty to join in wars when they wished to do so....If any other State goes to war in violation of that treaty (Pact of Paris) we are free to join in warring against the treaty-breaker; we are under no legal duty to do so....The United States....is quite free to adopt a national policy in which neutrality will find no place...

...by our view of our own self-interest.....Neutrality is a living and ever changing subject like biology, economics and all law.... neutrality policy could safely supplement the League system and need not be antagonistic to it."

(C) "It will be well to keep in mind two important points.. .The first point is that the primary objective of a neutrality policy is to keep out of war. If war can be prevented, well and good; if it breaks out between other countries, the United States should seek to stay out. Its new neutrality policy may help in preventing war if belligerents know that they can not get supplies from this country. The underlying theory is comparable to that back of Article 16 of the Covenant although it would operate even where judgement on the aggressor is impossible and would operate upon both or all belligerents. If, as a nation, we are willing to go out and fight the battles of the weak and oppressed all over the world, it is better to avow that policy and prepare for it instead of sliding into it under other disguises. Neutrality should cease to be a road to war.....There is an honourable cooperative road to peace by way of neutrality. The second/important point is the realization that a neutrality policy can not achieve the first objective if neutrality is still regarded as a period of prosperity.....War anywhere is the concern and misfortune of peoples elsewhere....The country as a whole draws no lasting economic advantage from neutrality....If we choose Profits To-day, we may well find that we will have neither Profits nor Peace Tomorrow." #492#

#492# Jessup, "Neutrality", Vol. IV, (To-day and Tomorrow), 1936, pp. 207-213.
Jessup, "International Law in the Post-War World", in Proceedings of the American Society of International Law, April 25, 1942, pp. 46-51.

(2) Theory of "Neo-Neutrality"---Neutrality as a Non-violent Instrument For the Prevention of War: (Cohn)

(A) Cohn, the Danish writer, insists upon non-participation in war, while at the same time he wishes to make a contribution to war prevention. He rejects both the traditional neutrality and the system of sanctions developed under Article 16 of the Covenant of the League of Nations. As he says: "Neo-neutrality....is directed equally to oppose the warlike system of sanctions in Article 16, but not less to oppose the return to traditional neutrality with its passivity in the fight against war.....It does not abandon the idea of sanctions and co-intervention in order to safeguard peace.....aims at organizing and carrying into practice even in peacetime its war prevention measures."

(B) "It regards the system of Article 16 as a failure, because it is too late to put sanctions into effect when war has once started, since the prevention of war, according to Article 16, depends entirely upon a single and generally unascertainable factor, aggression, and finally because the system of Article 16 opposes one war by another war, a method which neo-neutrality regards as at once paradoxical and impracticable."

(C) Referring to something like practical scheme for his theory, he says only: "These elements (of his theory)....are not to be based upon the international law of war, but are to be incorporated into an amplified international law of neutrality....It calls

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Morrissey says in his "The American Defense of Neutral Rights, 1914-1917", (1939, p. 207): "Even to preserve neutrality, cooperation is necessary. Only by laying plans for economic cooperation in time of war and by diplomatic cooperation in time of peace may the United States reduce the causes of friction which lead it into war." See also A. B. Bowles,

for a large measure of solidarity....The fight against war and international injustice must be waged on many different fronts with the greatest energy and by entirely new methods....[illegible] law-neutrality embarks upon new methods in the age long fight for right against injustice, for peace against war, for freedom against oppression, for mutual assistance against general extermination, and for the protection of the economic, moral, and cultural progress of mankind." #493#

(3) Theory of Qualified Neutrality with the Spirit of Collective Security: (Lauterpacht)

(A) "Collective security and neutrality are mutually exclusive.....A complete formal identification of the members with the attacked state gives real protection....This will be the eventual system of security...The conception of neutrality involves a weakening of the system (collective security)."

(B) "The idea of neutrality has certain advantages. It permits a certain gradation, elasticity, and consideration of the greater or the lesser guilt of an aggressor. It averts the necessity of resorting at once to the extreme measures of a general war, in unimportant cases. It prevents a [illegible] localized condition of war from spreading into a world conflagration. It corresponds to the present legal status of the reciprocal relations between the states. It proves that war is not the only means of sanctions which

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"Prospective Development of International Law in the Western Hemisphere, as Affected by the [illegible] Crisis", Senate Record of June 30, 1941, U.S. Government Printing Office, 1941, pp. [illegible]. 3, 5, 7.

#493# [illegible] John, "Neo-Neutrality", 1939, pp. 349-351. Professor Bourquin criticized this theory, [illegible] expressed in the Danish Memorandum, by saying that "this action would lead in the contrary direction from that of the prevention of war."

is at the disposal of the League, and that a collective system of sanctions, and, at the same time, the neutrality of the individual members, are not mutually exclusive."

(C) "Partiality and neutrality are not mutually exclusive. ...The Covenant merely returns to the conception of qualified neutrality. A special form of neutrality among the League members does not require impartiality."

(D) "Le principe que les actes illicites ne peuvent produire des résultats juridiques avantageux pour le délinquant est sujet à l'importante exception relative aux règles de guerre et de neutralité. En principe, il s'ensuivrait qu'une guerre entreprise en violation du Pacte de la Société des Nations et, en particulier, du Traité Général de Renonciation à la Guerre, ne peut produire de résultats juridiques avantageux pour l'agresseur, y compris l'application des règles de la guerre et de la neutralité. Des raisons d'humanité et, dans une certaine mesure, l'absence d'organisme autorité chargé du devoir de déterminer le fait de l'agression, rendent nécessaire le maintien du fonctionnement, pour les deux parties, des règles de la guerre. Dans ces conditions, il s'ensuit que les règles de la neutralité doivent naturellement continuer d'être appliquées, à moins que les parties contractantes n'estiment être de leur droit et de leur devoir de punir l'agresseur du tort qu'il leur a fait, en lui refusant, à titre de représailles, les avantages de la neutralité." #494#

This view had been also expressed in Article III of the Saavedra Lamas Treaty.
Many writers in the United States had been holding something like this theory.

#494# H. Lauterpacht, "The Notion of Neutrality in a System providing for the Repression of War", in Some British Views on N

(4) Theory of Conventional Partiality For the Prevention Of War: (Hyde)

(A) "At the present time a belligerent state may without violating international law, supplyin itself from neutral territory with most of the articles necessary to military success. ....Wars are to-day won or lost accordin , to the aid which co es from neutral territory."

(B) For "removing armed conflict from the horizen.... the real value of a general arran ement with groups of states of any continent, enabling a neutral power to acquire the right without losin its neutral status (and possibly also undertake the burden) to withhold the fruits of its territory, especially in the form of military aid, from a contracting state which beco es a belligerent in violati m of its Covenant....we have the obvi us ri ht when a neutral to withhold impartiality the fruits of our territory from both or all belligerents. But we need so ething more -----the ri ht, under a specified contingency, to be partial and to take sides without violating a le al duty towards the belli erent whom we deem it just to penalize and without becomin its enemy. The acquisition of that ri ht calls for a treaty." #495#

Collective ecurity", art I[1] (Feb. 1935); see lso Bourquin, "Collective ecurity", pp. 24,25,79 et se ., 134 et seq., 412 et seq., 15 et se .
Oppenhei , Vol. II, 6th ed. p . 524-528.
. Lauter acht, "Re les ndrales du Droit de la paix", Recueil des Jours, de la a e, 1937, t e 62. p. 291.
John criticized Lauterpacht's t eory by sayin that 'there exists n such a re ment re ardin it (qualified neutr lity); the idea of neutrality is n t even mentioned in t e Covenant of the Lea e". ("Re -neutrality", p. 302.)
#495# J. J. yde, "Sa e uardin e ce- - onstructive u gesti n", American Journal of Internati nal Law, 1928, pp. 262-269.

Chapter IX: CONCLUSION:-

THE FUTURE OF THE STATUS OF NON-BELLIGERENCY--- THEORY OF JUST COLLECTIVE PARTIALITY (1)

Chapter IX: CONCLUSION:

THE FUTURE OF THE STATUS OF NON-BELLIGERENCY---- THEORY OF JUST COLLECTIVE PARTIALITY (1)

The above stated intermediate theories are the new theories in recent years, purporting to effect a compromise between the main conmflicting theories concerning non-belligerency. The main conflicting theories are the theories of collective security and neutrality. Whether one of them can overwhelm the other, in view of the present conditions of the world, it seems hardly to say.

(I) Preliminary Considerations:

Yet some indisputable conclusions seem possibly to be drawn from historical facts or reason:

(1) In the first place, there are at least twenty-one (21) types of the status of non-belligerency. In time of not a general war, the states may divide themselves into the following groups, expressing different attitudes :

(A) Original belligerents :---- The states that originally waged/a war, a contention between two or more states through their armed forces, under whatever form, for the purpose of overwhelming each other, and imposing such conditions of peace as the victor pleases.

(B) Non-belligerents :----

(a) Non-belligerents that adopt a policy of participating in the war : 1. As a result of treaty obligations, such as the obligations prescribed in the treaties of alliance or of mutual assistance or of collective security.

2. As a result of free policy from whatever motive not in violation of treaty obligations.

3. As a result of free policy from whatever motive in violation of treaty obli ations, such as the treaties of renouncing or restricting war or of neutrality (there is no legal distinction between the so-called "benevolent neutrality" and neutrality pure and simple.).

(b) Non-belligerents that adopt a policy of neutrality (abstention and impartiality) :

1. As a result of treaty obligations, such as the treaties of neutrality either bilateral or multilateral.

2. As a result of free policy from whatever motive not in violation of treaty obligations.

3. As a result of free policy from whatever motive in violation of treaty obligations, such as the treaties of alliance or of mutual assistance or of collective security.

(c) Non-belligerents that adopt a policy of intervention, without direct participation in war, though possibly with armed force ; 1. Impartial intervention :——

A. Purporting to bring about an earlier peace between the belligerents by such measures as embargo or other peaceful forms of pressure: a. As a result of treaty obligations, such as the treaties of renouncing or restricting war.

b. As a result of free policy from whatever motive not in violation of treaty obli ations.

c. As a result of free policy from whatever motive in violation of treaty obligations, such as the treaties of neutrality, either bilateral or multilateral.

B. Purporting to restrict the conduct of belligerents in war in such a way as to demand restrictions on the war-conduct of beliggerents or on the transfer of territory between belligerents;

a. As a result of treaty obligations, such as the treaties regulating the conduct of war or the status of certain territory.

b. As a result of free policy from whatever motive not in violation of treaty obligations, either bilateral or multilateral.

c. As a result of free policy from whatever motive in violation of treaty obligations, such as the treaties of neutrality either bilateral or multilateral.

C. For other purposes;

a. As a result of treaty obligations.

b. As a result of free policy from whatever motive not in violation of treaty obligations.

c. As a result of free policy from whatever motive in violation of treaty obligations.

2. Partial intervention:

A. By measures economic or social or diplomatic or any other than military:

a. As a result of treaty obligations, such as the treaties of collective security or the previous treaties of assistance.

b. As a result of free policy from whatever motive not in violation of treaty obligations.

c. As a result of free policy from

whatever motive in violation of treaty obligations, such as those treaties of neutrality, either bilateral or multilateral, which are not declared invalid and null by other covenants or conventions.

B. By measures military :

a. As a result of treaty obligations, such as the treaties of collective security or the previous treaties of assistance or of alliance.

b. As a result of free policy from whatever motive not in violation of treaty obligations.

c. As a result of free policy from whatever motive in violation of treaty obligations, such as the treaties of neutrality, either bilateral or multilateral, that are not declared invalid and null by other covenants or conventions.

Therefore, neither neutrality nor collective security (internationalistic intervention) constitutes the only type of the status of non-belligerency.

(2) In the second place, the evolution of the status of non-belligerency divides itself into four periods to date. In the first period (before 476 A.D.), the so-called Ancient Ages, a general tendency towards just peace and internationalism was to have taken place in the Eastern World----the Ancient Ages of China (770--221 B.C.), the so-called five hundred years "Chuen Chu Chan Kuo Ages", that is, in the real sense, the revolutionary period in the ending years of the Chinese Empire's Chow Dynasty (1122--221 B.C.)

In the Western World, the general tendency in the ancient Greek (before 27 B.C.) and Roman (27 B.C.--476 A.D.) Ages was towards the balance of power or imperialistic conquest, although the ideas of

justice had on some occasions occurred. In the second period, (the 5th, (476 A.D.)---15th, (1492 A.D.) centuries A.D.,), the so-called Middle Ages, the general tendency was the struggle for just peace ----a tendency, to a certain extent, similar to that of the thousand years earlier "Chuen Chu Chan Kuo Ages" of the ancient China. In the third period (the 15th (1492 A.D.)---19th (1914 A.D.) centuries A.D.), the so-called Modern Age before the World War of 1914-1918 A. D., the general tendency was the struggle for neutrality. In the fourth period (1914 A. D. to date), the soscalled Modern Age after the World War of 1914-1918(A.D.), the general tendency is the struggle for internationalism and just peace ----a tendency, to a certain extent, similar to that of the four hundred or more than one thousand years earlier Middle Ages and that of the more than two thousand years earlier "Chuen Chu Chan Kuo Ages" of the ancient China.

Therefore, it seems safely to say that neutrality represents a general human desire only for a short period of three or four hundred years in history, while just peace and internationalism have represented a general human desire for so long as covering all the ancient, middle, as well as modern ages. And even in that short period, neutrality was not the only possible type of the status of non-belligerency. The so-called International Law of Neutrality came to being only in the lower part of the 19th century (1856) or, more properly say, in the beginning of the 20th century (1907), the ending years of the Third Period, and soon, during the World War of 1914-1918 A.D., was violated and destroyed manifoldly by either the belligerents of both sides or neutral states.

(3) In the third place, that the realization of the national type of the rule of law in the international community constitutes

the ideal goal of the internationalistic collective security movement seems hardly open to question. Though no authority can say yet what should be the ultimate ideal system of the rule over human society, the national type of the rule of law as based on liberty, equality, fraternity and discipline has never been condemned by the majority of the civilized peoples. Peace, justice and prosperity have been gradually obtained from it by all. Thus, as Professor Lauterpacht says, morality in the development of international law and order, should be analogous with that which regulates the relations of individuals within the states, only a system which requires "a complete formal identification of the members with the attacked state" gives real protection; it is not an inapplicable carrying-over, into the field of international law, of municipal penal-law concepts. #496# Professor Jessup says that "it must be a world order based upon law....I had a survey made recently of the statements of the leaders of the Governments of the United Nations, of leaders in international thought, of leaders in the world of religion and of spiritual leadership, and I find in all of these statements a primary insistance upon the fact that the post-war international order must be based upon law" #497# Professor Kelson, in his "Law and Peace in International Relations"(1942), says that "..experience teaches that....seldom has a state refused to execute the decision of a court which it has recognized in a treaty. The idea of law, in spite of everything, seems still to be stronger than any other ideology of power." #498#

#496# Hersh Lauterpacht, "Some British Views on Collective Security", 1935, p. 24.

#497# Philip C. Jessup, "International Law in the Post-War World", in Proceedings of A. S. I. L., April 25, 1942, p. 46.

#498# Hans Kelsen, "Law and Peace in International Relations", 1942, pp. 169-170.

What should constitute the essentials of the ideal system of the international rule of law ? Many plans have been made public. Fairly speaking, at least four points have to be adopted: (A) To have an international code of law, governing the states of the world with such a binding force as municipal laws governing persons, comprising all the carefully selected old customary and conventional rules of"international law", and reflecting the common concept of justice of the international community formed through an adjustment of the justice conceptions of all the Eastern and Western different states and nations. (B) To have an international sovereign organ, replacing the old system of absolute national sovereignty, and compulsorily ruling over all states and nations. (C) To have, under the international sovereignty, an international constitutional law, by which the legislative, administrative and judicial (including sanction) bodies are to be brought about to exercise the international sovereignty. (D) To have all nations and states of the world entitled to live together with equal liberty and legal status under the international law; in cases of states composed of two or more nations, the liberty of states should not be maintained at the sacrifice of that of nations; the liberty of the strong states or nations should not be maintained at the sacrifice of that of the weak ones; all oppressed nations, including minorities, should be entitled to emancipation or independence or free association with any other nation or state either of the same origin or not; an international cooperation, the mutual respect of nations and states, the abolition of mutual misunderstanding and the renunciation of discriminative policies against one or another should be achieved; and the languages of certain nations should be adopted as international common languages according to their popularity in view of the number of people who used to prefer to use, the number of states and nations

that used to use, and the representation of different systems of advanced civilisation.

However, whether such an scheme for the ideal international rule of law can be completely carried into effect in the present condition of the international community, it has long been open to question. In theory, M. Cavaglieri says: there remains only the possibility of conceiving international law as "a system of promises between co-ordinated and juridically equal subjects". #499# M. Anzilotti says : the rules governing the relations of states are fundamentally different from those governing the relations of persons within the state; within the state, there obtains a relation of supremacy and subordination, and the creation of legal rules is exclusively, or almost exclusively, left to organs exercising power over the people of the state so that the legal rules appears as a command issuing from above, whereas the legal rules among states cannot be anything else except agreements and promises between equals; this is the reason why within the state instruments have been created for the compulsory realisation of the law by the judiciary, and the administration, whereas in international law such organs are either rudimentary (i.e. expressed in self-help or in joint intervention of a number of states) or entirely absent; this is, and must remain, the true nature of the rules of international law; the establishment of a power over states would mean the end of international law. #500# Professor Kelsen, while sharing part of M. Anzilotti's view, says that "From our examination of the structure of international law, from our recognition of the

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#499# Cavaglieri, "Lezioni di Diritto Internazionale", Parte generale 1925, pp. 44 et seq..
Lauterpacht, "The Function of Law in International Community", 1933, p. 416.

#500# Anzilotti, "Corso di diritto internazionale" (French translation by Gidel, 1929), p. 46. Lauterpacht, "Function of Law", p.417-8.

intimate connection that prevails between its technical evolution and the progress of international organization, there emerges the x conclusion that the forces working for world peace should not be deflected to aims which to-day, in view of the present state of international relations, are not yet attainable". #501# Professor Scelle, when criticising Professor Strupp's "Legal Machinery For Peaceful Change (Theory of Equity Settlement)"(1937), also says that "...comme volontariste et positiviste, toute règle de droit et toute institution internationale ayant exclusivement pour origine l'accord des Etats, la convention ou le traité. L'institution sociale y est réduite à un strict minimum, et le fédéralisme international ou superétatique y apparaît une utopie. L'organisation hiérarchisée de la communauté des peuples n'y tient aucune place et la souveraineté étatique y reste intacte.....ces déficiences proviennent (la Société Des Nations) non pas du caractère utopique du covenant, mais au contraire de sa timidité et de la contradiction qu'il porte en soi, alors qu'il organise en fait un système de fédéralisme institutionnel et prétend, en même temps, sauvegarder la souveraineté intégrale c'est-à-dire l'arbitraire gouvernemental.....Quel organe mieux que l'organe représentatif de la communauté internationale toute entière serait mieux à même d'apprécier le sens de l'intérêt collectif, c'est-à-dire des sacrifices nécessaires au maintien de la paix sociale, ce qui est l'essence même de ce que l'on appelle l'équité ? Entre collectivités politiques, entre Etats, il ne s'agit pas, comme entre individus, de satisfaire uniquement l'esprit de justice et de se laisser aller à une sorte de sentimentalisme individualiste.....Dans l'état actuel des relations internationales, de plus en plus troublées

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#501# Kelsen, "Law and Peace", p. 169.

par les infractions cyniquement infligées au Droit par les gouvernements dictatoriaux qui se mettant au-dessus de la règle de Droit international comme ils se mettent au-dessus de la règle de Droit constitutionnel, il faut, croyons-nous, prendre parti nettement. L'idée de souveraineté et de volonté autarchique est incompatible avec toute organisation sociale. La notion de souveraineté nous paraît même antinomique avec la notion de règle de droit....L'histoire des institutions politiques est faite toute entière de la lutte de l'irresponsabilité et de l'absolutisme contre la règle de droit. Et l'histoire nous apprend aussi que, progressivement, les institutions sociales ont mâté l'arbitraire des gouvernements....Si l'on veut la paix sociale, il faut consentir à créer des institutions ayant une compétence hiérarchique, supérieure à celles des Etats..." #502# More such opinions may be found in the theories attacking collective security as stated in the preceding chapter.

In practice, some facts which seem to prove the above stated points of view may be also found as follows:

(A) The discriminatory immigration laws and some other laws respecting the status of aliens of the United States, Holland (the Dutch Indies), Australia and some other countries are sustaining the existence of international misunderstanding and injustice which, no doubt, may threaten to disturb international peace.

#502# Karl Strupp, "Legal Machinery for Peaceful Change", 1937, Préface de George Scelle, Professeur à la Faculté de Droit de Paris, Associé de l'Institut de Droit International, p. XV, XVI, XVII, XXIII, XXV, XXVI.
Fenwick in his "American Neutrality, Trial and Failure"(1940) also admits that "whether,in the world which will follow the present war, even the fullest cooperation on the part of the United States with other law-abiding nations will succeed in creating a stable community of nations and in developing rules of law that can be enforced by the collective will of the community cannot be affirmed with absolute certainty."(p. 150)

(B) In regard to the independence movement of the 300,000,000 Indian Nation, which was an old independent state, [redacted] President Roosevelt of the United States did not express any moral support, though the Atlantic Charter of August 14, 1941, seems to have referred to the cause of freedom of nations. After the return from a visit to the Middle East, Russia and China, in 1942, Mr. Windell Willkie made an appeal to the renunciation of imperialism by a ratio speech. Though President Roosevelt, in reply, explained that the Atlantic Charter applies to the whole world, including Asia, the British Prime Minister Winston Churchill declared in Parliament on November 10, 1942, that the British Government has no intention to alter the status quo of the British Empire. #503#

(C) After Japan began to extend her war to the Pacific in 1941, the Chinese refugees were allowed to take refuge in Australia. At the same time, the Australian Government declared that the "White Australia" policy was not altered and will be maintained.

(D) The Nation of Corea (Chosen), which lost her independence in 1910 and had been keeping active her independence movement through the past thirty years, has already established a Provisional Government in Chungking for a long after the outbreak of this World War (1937). Its status is same as that of Poland, Czechs, Holland, Begium, etc. in the World War I as well as this World War II. Yet the United Nations except China, still withhold recognition.

#503# Mr. W.R. Plewman's War Review in Toronto Daily Star, Nov. 10, 1942, says: "Churchill told Parliament to-day, with an eye on Willkie, that he did not assume office to preside over the liquidation of the British Empire. Britain had no territorial designs, but would hang on to what she had." Toronto Daily Star reported on Nov. 19, 1942, that Toronto's Board of Control, "angered at Willkie for Attack Upon Empire, May Bar Civic Welcome". On Jan. 23, 1942, British Foreign Secretary Eden replied

(E) The "isolationists" remain still in the United States and some other countries with firm stand; most of the South American Republics are still"neutral".

(F) The "reservations" attaching to the ratifications of the Kellogg Pact of 1928, such as the American Monroe Doctrine, the British Monroe Doctrine, the free interpretation of self-defence, etc., are still valid. In the Pan-American Conference at Buenos Aires in January of 1936, the question whether the United States would support the policy of non-intervention among American neutrals should war break out on the American Continent or elsewhere had been referred to. The draft submitted by the American Delegation on Dec. 7, 1936, was vague.

(G) In 1940, after the League of Nations declared Russia an aggressor, Russia was not brought to terms.

(H) Since 1939, there have been many states declared withdrawal from the League of Nations, such as Peru, Hungary, Albania, Spain, Chile, Roumania, Denmarck, Venezuela, France, Finland, etc..

(I) Since 1933, there have been nine States granted recognition to the Japanese aggressor's puppet state "Manchukuo" in disregard of the League Covenant and the League Resolutions. These nine states are: Italy, Germany, Poland, Hungary, Spain, Rumania, Finland, and Elsalvador, in addition to Japan.

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in a cablegram to the question from Chinese circle that the British Government will approve of China's recovery of her territories seized by Japan in the past forty years. He did not refer to China's lost territories of Formosa, etc. (in 1895 seized by Japan), Indo-China (in 1862 by France) and Hongkong (in 1842, by Britain), etc.. See Toronto Shing Wah Pao Daily News (Chinese), Jan. 23, 1942, cable from Chungking; International Conciliation, June 1942 (India); A.J.I.L., 1942.

(J) The Hague Conventions respecting neutrality is still, to a certain extent applied in this World War.

(K) In the Pacific Relations Conference at Mont Tremblant of Dec. 4-14, 1942, a private proposal had been made public that, after this War, Indo-China, instead of Manchuria, is preferable to be returned to China. This proposal was rejected by the Delegates of China. The man who made this proposal precisely is without a normal brain. Whether Indo-China, part of China's territory before the French invasion in 1858, will be returned to China immediately or will be settled through friendly negotiation later, is another question. Manchuria, the Chinese Eastern Provinces, being one of the most important lost territories of China, shall be returned to China immediately. For Manchuria this war was begun. Shall we say that France shall give up her present "occupied region" and be compensated from Africa ? Shall we say that Great Britain shall give up her Scotland and be compensated from Iceland or European Continent ? Shall we say that the United States shall give up California, George Washington, etc., and be compensated from Mexico or Canada ? Shall we say that Canada shall give up the three provinces of British Columbia, Alberta and Saskatchuan and be compensated from Newfoundland or Alaska ? Some other proposals made by private persons suggested that the Chinese three Eastern Provinces (so-called "Manchuria") are desirable to be put under a system of international administration. This proposal is also childish. Can we suggest that the occupied France or Denmarok or Holland or Belgium or Czechoslovakia or Poland or any part of the British Commonwealth or of Russia or of the United States or of Canada shall be placed under international administration ? Even so, we see no reason ~~for preventing~~ why should be prevented an integral nation from

unification or reunification. The people of those Provinces in the North-Eastern China are the same Chinese people. Certainly all the Chinese people, 450,000,000, will not let their nation and state to be invaded or divided. Those childish proposals obviously represent a thought anti-internationalism, withholding the realisation of the ideal world rule of law.

(L) Furthermore, in the days around the New Year of 1943, some proposals from the isolationists in the United States were reported to have suggested that the Lease-Lend aid to China shall be postponed. The Chinese Government had never expressed its complaints in the unfair dealings on the part of the United States with the shipment of arms to Great Britain and Russia as comparatively to China; though the United States as well as Great Britain and Russia had declared that they have been fighting for justice, for the oppressed, for the aggrieved and heroically resisting China, and for the common good, against the aggressor Japan. It is extremely strange that China's such broad and generous attitude may have given rise to such isolationist proposals. Who would trust, then, that this World War is being fought for the world's just peace and the ideal international rule of law ? #504#

#504# See Chapter VII. See also American Journal of International Law, 1939-1942. The New York Times; Ta Kung Pao Daily News, Chungking; Central Daily News, Chungking, China.
Borchard and Lage, pp. 1, 2, 49, 241-248, 253, 261-265, 270-1, 275-7, 297-8, 332-3, 365, 367-8, 391.
Such facts are also remarkable as that the Chinese Military Mission to the United Nations was ignored by President Roosevelt in Washington for nine months and, then, was recalled by China's National Supreme Leader Generalissimo Chiang Kai Shek in Dec. 1942, (Life magazine, issue of Jan. 18, 1943.) &that some persons in the United States still advocate the maintenance of a strong Japan after the War and even would keep Japan in Manchuria and Korea as well. The Chinese former province Tan-Wan (Formosa), seized by Japan in 1895, is suggested to be put under an Anglo-American joint control.

The above stated cases do not demonstrate that the author wants to make judgement on the attitude or policy of either country therein interested, but are taken as evidence, which tells that there are remaining many problems and issues between nations or states awaiting fair settlement through friendly negotiations; and that, pending the negotiations, or before the final settlement, an ideal state of international rule of law can hardly be realized or expected.

(4) In the fourth place, whether war should be outlawed by the present international law, the answer is also twofold. On the one hand, war must be outlawed in view of social order and the safety of human life and property. In the World War of 1914-1918, 7,000,000 men were killed, 2,600,000 men were wounded; 1,575,000,000 people were involved, only 136,000,000 people escaped its flames; 28,000,000 lives who were members of the families of the killed were cruelly and irreparably torn; 8,000,000 lives who were members of the families of the wounded were more or less permanently and seriously handicapped; debts aggregating US$249,000,000,000 were incurred by the various governments in carrying on the war, debts whose service and liquidation will place a very heavy burden of taxation upon 1,050,000,000 people---two thirds of the human race---for several generations to come; destruction of property devoted to peaceful and useful pursuits (not to mention the billions of dollars of war materials consumed) aggregated US$50,000,000,000 or more; and only the losses of navy and aircraft on the part of belligerents and neutrals

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All of these old-fashioned and false ideas were corrected by Professor S. R. Shaw in his Memorandum on "A Permanent Order For the Pacific" submitted to, and his speech delivered before, the Pacific Relations Conference of December 1942, at Monte Tremblant. See also New York Herald Tribune, Jan. 1943. The Chinese Times, Toronto, Jan. 14-15, 1943. Professor Shaw seems to agree to Vice-President Wallace's Plan of Dec. 29, 1942.

aggregated 12,850,814 gross tons, including 568,537 gross tons for cruisers, 11,153,506 gross tons for submarines, 1,120,732 gross tons for mines, and 8,039 aircrafts. Its indirect effects are alsomm remarkable:- The starvation of 10,000,000 people in Russia and the Near East, the massacre of 2,000,000 Armenians, the death of 5,000,000 people from Cholera, typhoid fever and other pestilences, the serious under-nourishment and weakening of 200,000,000 people in Russia, Austria and Germany, the break-down of the currency system of Russia, Poland, Austria and Germany, etc.. Broadly speaking, there is hardly a country in the world that has not felt the indirect effects of the war in the dislocation of its trade and industry, and the increase of lawlessness and revolutionary assaults upon legitimate authority.#505#

In theory, as Professor Quincy Wright reports, "A system of international law must premise the right of states to exist. Every state has a duty to respect the rights and powers which international law has attributed to each state and which in the legal sense constitute its existence. These rights and powers assure the state the opportunity to possess its domain to protect its nationals, to govern within its jurisdiction, to enjoy its status and whatever additional benefits it may have acquired through the legal exercise of * its powers. War is in essence a denial of all of these rights. Each belligerent is proposing to bring about the complete submission of the other....Furthermore, the belligerent may limit many of the rights of neutrals....There is, therefore, an inherent inconsistency

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#505# Oscar Newfang, "The Road To World Peace", 1924, pp. ix-xi.
Borchard and Lage, "Neutrality For the United States", 1940, p. 434.
Fayle, "Seaborne Trade", III, p. 466.
Jessup, "Neutrality", III, (The World War Period, by Turlington), 1936.

in an international law which recognizes the right of states to exist and at the same time grants an unlimited power in states to institute a state of war and an unlimited freedom in states to remain neutral." #506# Moreover, modern jurists have insisted that war is not beyond human control and "recognized the possibility of artificial criteria to determine legal responsibility for initiating wars--- criteria which can be applied without attempting to solve insoluble historical disputes as to who is morally responsible for a particular war." #507#

However, on the other hand, war must be allowed to remain under the present international condition, in view of the preservation of justice and necessity. The reasons are obvious:

First, there is neither relation of supremacy and subordination nor organs exercising power over the people of the state in the international community. All breaches of international law and political claims of one state against another have to be dealt with, in the absence of general prinsiple of compulsory adjudication, specific commitment to adjudicate, and court police, through the only procedure of diplomacy. The matter has been eventually, in practice, left to the self-determination of each state. Each one is judge in his own case, a condition of anarchy which international law has tolerated, even in case such conventional law as the Covenant of the League of Nations, the Locarno Treaties, etc. are violated. (The World War II has proved.) #508# Thus, unless an ideal international rule of law

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#506# Q. Wright, "The Present Status of Neutrality", American Journal of International Law, July 1940, pp. 399-400.

#507# Q. Wright, "Changes In the Conception of War", A. J. I. L., Oct. 1924, pp. 766-767.

#508# re the nature of the present international community, see also: Lauterpacht, "The Function of Law In the International Community", pp. 416-418, 429.

is realised, war will be of necessity to remain as one of the coercive measures to be taken for the settlement of international disputes and just self-preservation.

Secondly, war itself, being a political means serving certain political aims, is neither moral nor immoral. The responsibility for war lies on the cause of war, the political aims. The seven Crusades (1096-1099 A.D.; 1149 A.D.; 1192 A.D.; 1203-1204 A.D.; 1228 A.D.; 1244 A.D.; and 1270 A.D.) are war. The criminal punishment, the function of police and revolution are, in the substantial sense, also war. The former served the God and justice; the latter serve the domestic just social order and common good. With regard to the international relations, what we desire and demand is not international "peace", "law", and "order", but international "just peace", "just law", and "just order". Since the Sino-Japanese War of 1937, China has lost 2,000,000 men and faced a problem of 50,000,000 refugees; it goes without saying her losses in territory, property, etc.. Yet China would fight from the beginning and has been enduring the fighting through five and one-half years, in despite of any sacrifice ! For what ? No doubt, for justice, for resisting the Japanese aggressor's unjust armed invasion since 1931 and for preventing an aggresor or an oppressor's dictated peace. Peace is neither surrender nor subjugation nor humiliation. Status quo might be not healthy, fair and just. To preserve that international peace and order of law would be a crime and an evil. To renounce war as an instrument of national policy in that case would be meaningless and unjust. Every wise man should have been convinced what the a

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Q. Wright, "The Present Status of Neutrality", p. 401-402.
Brierly, "The Law of Nations", 1936, pp. 257 et se..
Norman MacKenzie said before the Conference of the 1938 Session

present condition of the international community it is. Thus, unless an ideal international rule of law is realized, war is eventually preferable to be adopted for the preservation of justice.

Thirdly, because war may have different moral natures as following the nature of different political aims, the distinction between just and unjust war must be made. While just order and just peace should be preserved, all unjust war should be renounced; all just wars should be necessarily tolerated. What is unjust war ? Unjust war is the war at which one of the belligerent sides holds an unjust cause, in case either of aggression or of defence or of no cause. What is just war ? Just war is the war at which both of the belligerent sides hold a just or a not unjust cause of war. That a dispute may be non-justifiable in the sense that no court has jurisdiction, or that there is the inadequacy of the criteria and procedure for determining the justice of wars (even in case both sides are unjust), or that there is the befogging of the criteria which existed by the doctrine of "invincible ignorance" makes the both sides' just war possible. #509# Therefore, unless an ideal international rule of law is realized, war is desirable to be classed under two heads : unjust war and just war. In view of unjust war, war must be renounced; the unjust belligerent side must be punished and the just belligerent side must be entitled to whatever foreign aid. In view of just war, war must be tolerated.

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of the American Society of International Law that "the international community is primitive and heterogeneous;...there is no central authority or organized group exercising control in it;.... its procedural facilities are definitely limited;....resort to the extra-legal procedure of violence and war, as an option or substitute for law and legal procedure, is still possible and proper;". Proceedings of A.S.I.L., 1938, pp. 7, 22,23.

#509# Q. Wright, "The Present Status of Neutrality", p. 402.
Jessup, "Neutrality", Vol. II, pp. 8-10. (by Jessup and Deak).

Fourthly, in the present international community, self-preservation is no doubt necessary. Yet, in view of the possible existence of an unjust status quo, the wars of "defence" are not necessarily just and the wars of "aggression" are not necessarily unjust. The distinction between "aggressive" and "defensive" to-day is chiefly based upon the principle of the preservation of status quo, not upon justice. Therefore, "defensive" wars are not necessarily tolerable; and "aggressive" wars are not necessarily subject to renunciation.

Fifthly, when a state signs no such treaty as respecting the renunciation of war or including clauses of sanction, the state's freedom to wage war certainly excludes any legal intervention.

Thus, while war as a natural fact only has been "tolerated" by the traditional international law, even partly so after the World War I, a fundamentally legal settlement of the problem seems desirable. War as a means of just cause is desirable to be legally recognized. War as a means of unjust cause is desirable to be legally prohibited. Law must be made to adapt to, though at the same time must lead the progress of, the existing condition of a community and can be improved when the social condition changes. In order to make the international law more systematic, comprehensive and perfect, with legal rights and obligations more definite and clear and logic, for to-day, we see no reason why Professor Borchard worries over the Kellogg Pact by saying that "In the past, war had been considered something like a disease ---neither legal nor illegal. Now by a world treaty, practically all wars obtained the stamp of official approval..." #510#

Butler & Maccoby, "Development of International Law", 1928, p. 114. It is remarkable that the Pope is reported to have declined to pass judgement on which side in the present war was "just", and to have denied that one could speak of any side as fighting a "just war". (Borchard, "War, Neutrality and Non-belligerency", A.J.I.L. Oct. 1941, p. 621.)

(5) In the fifth place, the same observations can be applied to the problem of neutrality. On the one hand, neutrality must be outlawed by the present international law; because:

First, neutrality is inconsistent with justice. "The Father of Neutrality", E. Vattel, says : even the country invaded, foaming at the mouth with anger, may not judge of the assaulter of its country; "Nous ne somme point reçus à nous plaindre de lui, comme d'un infracteur du Droit des gens."#511# The great follower of Vattel, the United States, adopted a selfish policy of making profits at the expense of the life and death struggle of others and regarded neutrality as a period of prosperity. #512# The English Robert Walpole's policy of peace or neutrality was based upon selfish imperialism and utilitarianism. When, in the War of Polish Succession in the upper part of the 18th century, France had induced Spain to have concluded the so-called "first Pacte de famille"(a secret alliance against the German Emperor Charles VI and England) on Nov. 7, 1733, the sympathies of both King George II and Queen Caroline of England were strongly German, and both disliked the French; the majority of the ministry of the English Government inclined toward war as a result of the sentiment of national honour as well as loyalty to the Emperor (Germany). But Walpole, in answer to the Queen's arguments for war, replied: "Madame, there are fifty thousand men slain this year in Europe, and not one Englishman"! This Walpole Policy was well explained by Dr. David Jayne Hill,

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#510# Borchard and Wage, p. 293.
Q. Wright, "Changes in the Concept of War", pp. 755-767.
J. B. Moore, "An Appeal to Reason".

#511# Vattel, "Droit des Gens", III, c. 12, sec. 190.
Van Vollenhoven, "The Three Stages in the Evolution of the Law of Nations"(1919,The Hague),pp.26-29; and "The Law of Peace", (London,1936). Q. Wright, "The Present Status of Neutrality", p.410

#512# Jessup, "Neutrality", Vol. IV, pp. 212-213.
Miss Crichton, "The Pre-War Theory of Neutrality", British Year Book of International Law, 1928, pp. 101-111.

who says: "Walpole's interest in peace was not inspired by any of those moral ideals which in more recent times have been invoked to show the inherent wickedness of war. His political philosophy was frankly utilitarian....it was an advantage for English commercial and colonial progress to avoid as far as possible a waste of life and money while England's rivals were draining their resources and exhausting their energies in making a few territorial conquests of doubtful permanence....The aim of England, he held, should be to grow rich and strong by building up commerce and developing colonies. If others desired to exhaust themselves in unprofitable quarrels, England should simply leave them to their devices, and not drain the public treasury and shed the blood of Englishmen for purely imaginary benefits. But....while France was thus exercising a preponderating influence upon the course of events, the peace policy of Walpole was becoming every day more difficult to maintain....The time had come when the parliamentary opposition saw its chance to force a change of policy,....the moment had arrived when a world-struggle for commerce and colonies was to begin in earnest !" #513# The neutrality policy of Soviet Russia, as shown remarkably by her attitude toward Japan, Germany, Poland, etc., was criticised by Bernard Shaw soon after the outbreak of the Russian-German War of June 22, 1941; he said, "Yesterday, while we were waging a life and death struggle, somebody was to sit and look; to-day, when that "somebody" has been drawn into the same struggle, we may in turn sit and look !" #514# The injustice of neutrality is further pointed out by Professor Lauterpacht, who says that"Neutrality is morally unjustifiable. In case of an aggression

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#513# Hill, "A History of Diplomacy", Vol. III, 1914, pp. 441-2,446-7.
#514# Ottawa"The Citizen", June 23, 1941, p. 1.

in violation of international law, the neutral state is in the same position as the private citizen who witnesses a crime against national law and does nothing, an act which, in certain countries including England, is punishable." #515# Other arguments supporting the attack on the injustice of neutrality can be found in the preceding chapter and note no. 456.

Secondly, neutrality is inconsistent with the public order of law. Civilized people should have, and are able to have, the ideas of right and justice. The official expression of the common conceptions of right and justice of a people, considered to be the least requirement for their public order, is law. The protector of law is court with police. The existence of the common ideas of justice and right among civilized nations, same as the general principles of international law that are not yet enacted in treaties, cannot be denied or ignored. In view of such common ideas and customary laws, one civilized country can not say that it does not know what is right or what is wrong, what is just or what is unjust; nor can it say that it may not care of them. Based upon them, social order, either national or international, is to be formed. The doctrine of neutrality, as Professors Politis, Fenwick, Eagleton, etc. pointed out, is the result of anarchy and absolute sovereignty. It excludes the ideas of right, justice and sanction. Thus, neutrality and public order of law are mutually exclusive.

Thirdly, neutrality may be inconsistent with security, of either

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#515# Lauterpacht, "Some British Views on Collective Security", p.24. Cohn, "Neo-Neutrality", p. 304.
The Inter-American Juridical Committee's "Preliminary Recommendation on Postwar Problems" of Sept. 5, 1942, says that "the neutrality policy...., in spite of its justifiable domestic objectives, was an indirect encouragement to the aggressors". International Conciliation, Feb. 1943, p. 106.

the strong or the weak nations. The aggressor may invade any non-belligerent as it pleases. The countries now invaded, such as Poland, Belgium, Holland, Denmarck, Norway, Russia, etc., were either declared neutrals or states preserved as against external aggression by non-aggression treaties or other promises alike. Obviously, in a society of nations which tolerates neutrality, the state therein is possibly made easier to be invaded and absorbed by another state; in a society of nations which is under a system of collective security, the state therein is impossible or harder to disappear through an armed absorption by another state. #516#

Fourthly, neutrality may be inconsistent with the interests of neutrals. For instance, of the total naval and aircraft losses of 12,850,814 gross tons suffered by all the belligerents and neutrals in the World War of 1914-1918, 55,665 gross tons, 238,497 gross tons and 13,946 gross tons belong to the United States, Greece and Brazil prior to their entry into the War, 1,180,316 gross tons belong to Norway; 201,276 gross tons to Sweden; 243,707 to Denmarck; 211,969 to the Netherlands; and 168,491 gross tons to Spain; all these countries were neutrals. Thus, "the country as a whole draws no lasting economic advantage from neutrality and it is fallacious to build a policy on the assumption that it does." #517#

#516# Calvo, in his "Le Droit International, Théorique et Pratique" (1880, tome III, sec. 2315, pp. 452-453), says: "Certains engagements internationaux...ne suffisent ni pour prévenir tout danger de conflit, ni pour opposer des barrières sérieuses aux convoitises politiques ou aux exigences soi-disant stratégiques d'une grande puissance belligérante;" in the same section he says further: "à côté d'une sécurité relative la neutralité conventionnelle stipulée à titre général et permanent constitue en realité pour l'Etat à qui elle est imposée une charge souvent onéreuse, et toujours une atteinte plus ou moins directe à son autonomie et à son indépendance, aussi qu'au besoin d'expansion inné chez tous les peuples."

#517# Borchard and Lage, p. 454. Jessup, "Neutrality", Vol.IV, p.213.

Fifthly, since war ought to be outlawed, neutrality, consequently, ought to be outlawed.

Sixthly, neutrality is not necessarily able to keep a country in peace and out of war. As MM. Jessup, Morrissey, Warren, etc. well said, "War anywhere is the concern and misfortune of peoples everywhere;" "so long as we refuse to cooperate with other nations in trying to prevent the happening of a war, we are going to remain in a distinctly uncomfortable and precarious condition. In a neighborhood of highly inflammable buildings, to rely on the supposedly fireproof quality of one's own house, and to make no effort to prevent a conflagration starting, is a dangerous means of trying to 'play safe'." In practice, owing to that neutrality "cannot insure the United States against embroilment", the United States eventually entered into the wars of 1798, 1812, 1914-1918, and 1937--. Thus, "neutrality came to be regarded as no longer the symbol of peace. Although it was formerly good, it had come to be rather the cause of evil." #518#

But, on the other hand, it is obvious that, so long as absolute sovereignty and war remain, neutrality will have to also remain. In time of an ordinary war, neutrality is generally recognized as having certain advantages: It averts the necessity of resorting at once to extreme measures of a general war in unimportant cases. It prevents a localized condition of war from spreading into a world conflagration. It corresponds to the present legal status of the reciprocal relations between the states. It makes a belligerent

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#518# Jessup, "Neutrality", Vol. IV, p. 213.
Morrissey, "The American Defence of Neutral Rights, 1914-1917", p. 286.
Charles Warren, "Congress and Neutrality", in Quincy Wright (editor), "Neutrality and Collective Security", Chicago, 1936, p. 153. Politis, "Neutrality and Peace", p. 31.
Wright. "The Present Status of Neutrality," pp. 409-410.

knowing who is its friendly state and who is the friendly state of its enemy. It limits the destruction and confiscation of property. It enables a non-belligerent to maintain ordinary friendly relations with both of the belligerent sides, when a war is just for both of them. #519#

(6) In the sixth place, though, in view of the present state of international relations, the ideal international rule of law and the complete renunciation of war and of neutrality seem to be impossible to gain ground, human efforts must be directed to pursue them through practicable and positive steps, despite any sacrifice. As Professor Lauterpacht says, "any doctrine which, in relations between states, postulates the individual interest of the single state as the ultimate standard of values and of legal obligation, amounts to a negation of international law. It disregards the fact that, while in its internal relations the state is a law unto itself, and while its important interests are there the decisive consideration, this is not so in its capacity as subject to international law. This does not mean that international law disregards its important interests. It means only that these highest interests are recognized, measured, and adjusted by international law by reference to the equal interests of other states and to those of the international community as a whole. Undoubtedly the ultimate purpose of law is to serve the interests of those subjected to its sway. But that cannot mean that every important interest, so deemed by the state in question, can claim superiority over rights, recognized by international law, of

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#519# Lauterpacht agrees to these advantages of neutrality.
J. B. Moore, "International Law and Some Current Illusions", pp. 36-37.
John, "Neo-Neutrality", p. 303.
Q. Wright, "The Present Status of Neutrality", p. 402.
Borchard and Lage, p. 289.

other states. No doubt it is true to say that international law is made for states, and not state for international law, but it is true only in the sense that the state is made for human beings, and not human beings for the state. International law is made for states in their totality, and not for the transient benefit of the individual state. So far as the State's vital interests are concerned they are invariably within the sphere of legal protection by international law. But they are so protected as part of the international legal order. The sanctity and supremacy which metaphysical theories attach to the state must be rejected in any scientific conception of international law." #520# "Its (neutrality) disadvantage in perpetuating an inconsistency and preventing the healthy progress of international law toward effectiveness, may be momentous or even disastrous." #521#

Under this goal, certainly it is unwise to abandon all the past precious achievements since the conclusion of the World War I in this field. Progress through evolution is relatively slow; necessary sacrifices and difficulties are also inevitable. As the old French marshal Foch says, "Though they be less bloody and ruinous, the difficulties of peace demand the same virtues as those of war. Order, civic courage, the spirit of discipline and sacrifice which can subordinate particular interests to the general interest, the constant effort of all in the work ---whatever be the rank which each one occupies in the social scale --- are, among many other things, the essential bases upon which stand the development and prosperity of nations." #522# Thus, between two evils, one must choose the lighter.

#520# H. Lauterpacht, "The Function of Law in the International Community", pp. 430-431. On pp. 437-438, Professor Lauterpacht says: "Law can never, on the plane of mere fact, become an effective substitute for war. But that does not mean that law is in itself a powerful constituent element of peace....

No clearer lesson is to be drawn from historical facts than that the protection of neutral rights depends not upon the law-abiding attitude of belligerents, but upon the armed strength of neutrals. When Great Powers are lined up against one another, weak neutrals are in a precarious position. The vicious doctrine openly proclaimed in certain quarters, that military ends justify the most ruthless means to attain those ends, makes the "Law" a weak reed to lean upon. Even the strong neutral, while it may be able to ward off attacks upon its territory, may find that if it is to avoid being drawn into the war it will be called upon to sacrifice rights only less important to it than the integrity of its neutral territory. The strong neutral state may find itself obliged to go to war to maintain its rights including its right not to go to war. Hence, it is wiser that all the states of the world use their power to prevent war by way of achieving a world legal order, following the example of national community, rather than to try to maintain a policy of neutrality. The most vigorously neutral policy that could be maintained will not prevent a state from feeling the effects of the moral and economic ruin that is certain to come in the wake of war.

Consequently, "Nations must recognize in their mutual relations the priority of the moral law, which is the same for nations as for individuals; and they must make their conduct conform to the fundamental principles derived from that law." #523# "A moral basis

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the reign of law...is not the only means for securing and preserving peace among nations. Nevertheless it is an essential condition of peace...Juridical logic inevitably leads to condemnation, as a matter of law, of anarchy and private force."

#521# Q. Wright, "The Present Status of Neutrality", p. 410.
#522# Politis, "Neutrality and Peace", p. 98.
#523# "Preliminary Recommendation on Postwar Problems," formulated by the Inter-American Juridical Committee, Sept. 5, 1942; see International Conciliation, Feb. 1943, p. 119.

for international unity must be found; law and justice must be made international as well as national conceptions....It is a fundamental interest which of necessity results from the fact that we are living in a world with other nations and cannot cut ourselves off from social and economic relations with them, no matter what degree of formal political detachment we may endeavour to maintain. We have a right to protect that interest against law-breaker; and we have a duty to protect it. For there can be no more than an armed peace

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#524# Fenwick, "American Neutrality, Trial and Failure", pp. 148-152.
Borchard and Lage, "Neutrality For the United States", pp. 415, 395.
See also the cases (re Iraq, Iran, etc.,) in Chapter VII.
Another case is remarkable: In 1942, the Anglo-American allied forces invaded the French Algeria, etc., during the World War II. The French Chief of State, Marshal Pétain, protested. (see also the French attitude in 1940, below.)
Grey in a dispatch to Holland during the European War of 1914, said: "If a neutral power allows its sovereign rights to be invaded by one belligerent to the prejudice of the other, without effective resistance, it cannot complain if the other belligerent protects himself by similar measures." (The New York Times, Feb. 23, 1940, p. 4.) This was applicable to the United States in 1915 and 1916.
France, in 1940, maintained that if a neutral is unable to enforce respect for its neutrality on the part of one belligerent, the other may intervene"to force observance of that neutral's rights". This is a threat to all small neutrals ! Germany apparently took this view in occupying Denmarok and Norway, after the British had mined Norway's territorial waters. (The New York Times, March 27, April 9, 10, 1940).
Secretary-General Avenol of the League of Nations said in 1933:
"It is essential to realize that the alternative before the World is not a choice between the league and some better system of international relations, but between the League and complete anarchy."
(Avenol's speech before the House of Commons of Dec. 11, 1933, see also The Monthly Summary of the League of Nations 1933, pp. 299-300.)
Engel, "League Reform", p. 30.
Professor John B. Whitton, in Recueil des Cours de l'Académie de Droit International de la Haye (1927, tome 17, p. 567), says:
"En terminant, rappelons-nous les paroles d'un homme qui, comme Grotius, ne fut pas seulement un citoyen de son propre pays,mais un grand citoyen du monde, le grand homme de science d'un pays fidèle à l'idéal:"Je crois invinciblement, disait Pasteur, que la science (de Droit des Gens) et

ahead of us for many years to come unless we are willing to undertake with other nations the formulation of just rules of law and also willing, when they have been formulated, to cooperate in maintaining them." [24]

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[24] La paix triomphera de l'ignorance et de la guerre et que les peuples s'entendront non pour détruire mais pour édifier."

Chapter X: CONCLUSION:--

THE FUTURE OF THE STATUS OF NON-BELLIGERENCY----
THEORY OF JUST COLLECTIVE PARTIALITY (2)

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THE FUTURE OF THE STATUS OF NON-BELLIGERENCY--- THEORY OF JUST COLLECTIVE PARTIALITY (2)

(II) The Theory:

Based upon the foregoing considerations, it seems certain that neither the theory of ideal collective security nor that of neutrality is preferable. The four new intermediate theories also cannot solve the problem. Professor Mosca has said in his "Histoire des Doctrines Politiques" that a political institution must be based upon such a political theory as reflecting the community's common thought of the time being, and that the dissatisfaction of an institution demonstrates an inharmoniousness between the theory and the community's common thought, that is to say, the theory must accordingly change. In view of the present condition of international relations, there apparently must need a new theory of intermediate character as a compromise between the new ideal and the old practice, between the ideal international rule of law and its practicability. The most preferable way to such a compromise, considered to be a necessity, as I think, seems to be such an intermediate institution as serving the causes that peace must be reigned by the rule of law and that the rule of law must be reigned by justice. The aim of human efforts must be directed to carry into effect the ideal international rule of law, while, on way to it, as the present condition of international relations permits and requires, the world peoples will, by a collective action, undertake to renounce unjust neutrality and to adopt just partiality. This way suggested is based upon the assumptions

that a classification of war and a distinction between just and unjust wars are considered to be possible, in view of the past two decades' experiences in inducing the idea of justice to the international community, the modern legal thought of recognizing the possibility of artificial criteria to determine legal responsibility for initiating wars,#525# the general similarity between modern nations, either in the East or in the West, in the idea of justice as expressed in their municipal laws and the recognized harmony of the Christian thought of justice of the Western World with the Chinese thousands years traditional and Confucious philosophy of justice, which represents the Eastern World. The so-called "just War" is the war, at which both of the belligerent sides hold a just cause or a not unjust cause. The so-called"unjust war" is the war, at which one of the belligerent sides embraces an unjust cause, either in case aggressive or defensive or without any cause. The so-called "war", a contention between two or more states or nations through their armed forces, for the purpose of overpowering each other, and imposing such conditions of peace as the victor pleases, implies either the so-called "state of war", or "act of war", or "guerilla war", or the military coercive measures as tolerated by the traditional international law,#526# or any other military operations and conflicts of such nature. In the case of an unjust war, the unjust belligerent side as well as those states or nations that afford aid to the unjust belligerent side must be effectively punished and the just belligerent side must be entitled to, and must be effectively given, whatever foreign aid

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#525# Q. Wright, "Changes In the Conception of War", pp. 764-767.
#526# Read: Professor S. R. Chow, "New Progress In International Law", 1934, Chapter VIII, "The Legal Restriction On the Right of War", pp. 273-280, 284.

in whatever form. In the case of a just war, the war must be tolerated and neutrality should be maintained. In case both sides might be unjust, a just collective impartial intervention must be adopted to serve the cause of world peace and order. In all of these cases, the principle of collective and coercive action should be adopted and/is allowably supplemented by individual parallel actions; and the old doctrine that international law applies only to states and considers states/its only subjects, should be so modified as to enable itself to be applied to nations in question as well. #527#

This is, as I venture to offer and call it, "The Theory Of Just Collective Partiality" or "The Theory of Just Collective Neutrality", which is expected to become the characteristics of the coming Fifth Period of the evolution of the status of non-belligerency, beginning with the conclusion of the World War II (1937---).

#527# The subjects of International Law, other than sovereign states and the alike, which have only a certain position in international law with certain rights and obligations, may be classed under two categories: (A) Half sovereign collectivities; (B) Individuals. The latter is the result of the recent development of International Law; and its status in international law is not only asserted by such writers as M. Diena and Cavaglieri in Italy, Schücking and Wehberg in Germany, Kelsen and Verdross in Austria, Saldana in Spain, Basdevant and Duguit, de La Pradelle, Scelle, Fauchille, Le Fur and Akzin in France, Krabbe in the Netherlands, Mandelstam in Russia, Alvarez, Garner, Ralston, Brown and Eagleton in American, Politis and Spiropoulous in Greece, McNair and Lauterpacht in Great Britain, Professor S. R. Chow in China, etc., but also has been recognized by the Permanent Court of International Justice and some other international organs, including international tribunals, and municipal courts, through their judicial decisions and practices. For instance,
(a) The punishment of individual conduct:---such as pirates, persons who violated blockade or the regulations of submarine, criminal of war (see Treaty of Versailles, 1919, Chapter "Penalties"), etc.,
(b) The protection of individual rights:---such as minorities, International Labour Organization, the prohibition of slaves,

Then (1) what should be the criteria of so-called "justice" in the international community ?

There have been many suggestions. St. John Chrysostom says, "the only kind of war in the proper sense is the ordinary war when soldiers on our side are attacked by the barbarians; in which case there seems to be no doubt where the justice lies." St. Ambrose says, "Courage is in a sense more excellent than the rest, but it is never a virtue that goes alone. For it cannot commission itself, and there are times when courage without justice is the source of injustice. For the stronger one is the more prompt to oppress the weaker. And I consider that, in the matter of war, care must be taken to see whether the wars are just or unjust. Never did David declare war unless he had first suffered injurious attack." St. Ambrose also drew a distinction between the injustice which consists in the active perpetration of it and the injustice consists in failing to defend someone else who is the victim of an injustice; as he says, "there are two sorts of injustice: the one, of those who commit an injury; the other, of those who do not avert the injury from those against whom it is committed." This is called St. Ambrose's Doctrine of Duties. Cicero says, "there is no such thing as lawful war without a just cause....there can be no right ground for waging it except what I have set forth above as just cause of wars...The foundation of justice is good faith." In other words, These theorists

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plebiscite in the case of self-determination of nations, etc..
(c) The right to sue before the Permanent Court of International Justice:---as recognized by the draft-Statute of the Cour internationale des prises of the Hague Peace Conference of 1907.
(d) The regulations of some international organs such as those regulations constituting part of "droit international lato sensu", directly applying to individuals.
(e) The international effect of individual conduct:---such as boycott, organized or unorganized.

hold (A) that "the just use of force is fundamentally a social act. Both the duties of maintaining peace and of mutual assistance against aggression are necessary consequences of the essential sociability of human nature," (B) that "It is just to go to war in defence of one's country" and (C) that "It is a duty to intervene to defend others against injury and aggression, and this for a state is a just cause of war."

According to the doctrines of St. Augustine, 354-430 A.D., the greatest coordinator of Christian doctrines upon peace and war, the first theorist who molded the doctrine of justum bellum into the form of a scientific system, and his eminent followers such as St. Thomas Aquinas, 1226-1274 A.D., the greatest moralist of the Middle Ages, etc., (A) "The absence of a superior tribunal before which a prince can seek redress can alone justify him in making war, except when resisting actual attack;" (B) in addition, the following conditions must be fulfilled before a war can be just: (a) "It must have a just cause---this can only be a grave injury received (e.g. actual invasion, unlawful annexation of territory, grave harm to citizens or their property, denial of peaceful trade and travel), or a great injustice perpetrated upon others whom it is a duty to help (e.g. the same injuries as above, violation of religious rights);" (b) "It must be necessary (i.e. the only available means of restoring justice or preventing the continued violation of justice);" (c) "It must be

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(f) The admission of individual into the organization or treaty of states:---such as Article I of the Covenant of the League of Nations, recognizing certain political collectivities other than states as subjects of international law, the recognition of nations, etc..
See Professor S. R. Chow, "New Progress in International Law", Chapter IV & V, pp. 112-167.
Politis, "Les Nouvelles Tendances du Droit International", 1927, chap. II, p. 55-94.

the consequence of a formal warning to the offending state and must be formally declared;" (d) "It must declared and waged only by the sovereign authority in the state (i.e. one who has no political superior) and, if the defence of religious rights are involved, with the consent of the Church;" (e) "The good to be attained by war must be reasonably supposed to be greater than the certain evils, material and spiritual, which war entails;" (f) "A right intention must actuate both the declaration, conduct and conclusion of war. That intention can only be the restoration or attainment of true peace;" (g)"Only so much violence may be used as is necessary; in the case of defence, only so much as is necessary to repel the violation of aggressor;" (C) "The moral responsibility for war lies upon the sovereign authority, not upon the individual soldier or citizen; his duty is to obey, except in a war which he is certainly convinced is wrong;" "The duty of repelling injury inflicted upon another is the common obligation of all rulers and peoples;" "Priests may not fight even in just war;" (D) "The right of war is odious, this right exists in certain circumstances cannot be denied; but it is a regrettable necessary; and the main object of rulers should be to prevent the necessity arising.....A declaration of war---other than a war of self-defence against actual attack---is a penal act, justifiable only if an injury has been committed so great as to require the greatest penalty." While to Augustine the injury itself

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Professor S. R. Chow, "Modern Problems of International Law" 1931, ch. XII, pp. 259-272; ch. XIII.
Lauterpacht, "Boycott In International Relations", British Year Book of International Law, 1934.
Hwai-Chun Lu, "Boycott in International Law", 1935, National Wu-Han University, China.
League Assembly Report of Feb. 24, 1933.
McNair, "The Law of Treaties", 1938.

provides the just cause for war, Thomas Aquinas demands some fault on the part of the wrongdoer: his culpability which deserves punishment is the justifying reason for going to war. The just war is primarily in the nature of a punitive action against the wrongdoer for his subjective guilt rather than his objective wrongful act. Again, its aim must be peace in the Augustinian sense of term, viz., the maintenance of justice in the interest of the common good.

The great theorist, Franciscus de Vittoria (1480-1546 A.D.), who reached a climax in the evolution of the medieval doctrine of the just war, and whose teachings on international law of war combine a comprehensive exposition of the achievements of the past millennium with a clear foresight into its future problems, says: (A) "The state's right to wage defensive war is required by the order of society"...(B) "The state in possession should not be attacked by another upon any questionable claim to its territory." (C) A war for the practical purpose of protecting an oppressed or a weaker nation or people of whatever race against the cruel treatment inflicted upon ~~them~~ it by an oppressing or stronger nation is just and right. (D) The policy of conquest and oppression throught the world is unjust. (E) "There mis a single and only cause for commencing a war, namely, a wrong received." (F) "The Prince engaged in a just war is entitled, after victory, to demand damages, restoration and guarantees and to inflict punishment which, however, may not exceed degree and nature of the offence. What goes beyond those limit is unjust." Another theorist, Francis Suarez, (1548-1617 A.D.) says, "Defensive war is not contrary to love of neighbours...

Smith, "Great Britain and the Law of Nations", 2 vols, 1932. Fauchille, tome 2 (Vol. IV), p. 311 et seq.. Oppenheim, Vol. I. British North America Act, 1867; Statute of Westminster, 1931.

...Self-defence is a natural right....There cannot be a just war without a legitimate and necessary cause....This just and sufficient cause is a grave injury that has been committed and which cannot be repaired or avenged by any other means."

On the other hand, some writers such as Bartolus (1314-1357 A.D.) and Legnano considered war reprisal, an extraordinary remedy for injured rights which is just and lawful. Belli held that a lawful war can become an unlawful war on account of "a spirit of vengeance or for immoderate gains" on the part of the victor; "things, cities or others, which are captured in an unjust war do not become the property of the captors, but must be restored." Gentilis, who first made a distinction between the legal aspects of the war problem on the one hand, theology and ethics on the other, says, "If it is doubtful on which side justice is, and if each side aims at justice, neither can be called unjust."

Grotius, who made of the idea of bellum justum an issue of modern international law and wanted to find a law according to which righteous wars could be distinguished from unrighteous, adopts more or less unchanged the traditional doctrine of the just war from his predecessors. As he says, Just causes of war are primarily defense, recovery of property, and punishment; unjust causes, among others, are the desire for richer land, the desire for freedom on the part of a state in political subjection, or the wish to rule others against their will on the pretext that it is for their good! Objective justice can exist only on one side; those who are on neither side in war must refrain from lending assistance to the one who supports a wicked cause and from placing obstacles in the way of the party which wages a just war. The determination, however, where

in a given case true justice lies is left to their own judgement. Bynkershoek, in the 18th century, who, following Grotius, carried the notion of the just war from the Middle Ages into modern times, maintained a rule that "the only correct ground for war is the defence or recovery of one's own."

In the 19th century, a great theorist, Génicot, says: "II. In order that defensive war, whereby force is repeated, may be just, it is sufficient that this force be judged with probability at least to have been unjustly used. But if the contrary is morally certain, satisfaction must be granted to the just demands of the party declaring war. For it is impossible to have a war objectively just on both sides because two parties cannot have two contrary rights with regard to the same thing. Often, however, from lack of certainty, a war may be subjectively just on each side....III. In order that offensive war may be just the cause must be so grave that it has a real proportion to the manifold ills which can be foreseen as about to afflict both belligerents. Such like causes may be found on the side of the state about to declare war, for example the recovery of a province belonging to it whose recovery is of great moment to the public good, the punishment of grave insult either to the state or to its ruler, etc....Finally, the same faculty or obligation may arise from charity towards other nations unjustly oppressed." Another theorist, Taparelli d'Azeglio, says, "a nation ought not to declare war upon another before both of them have made known to one another their mutual grievances, the rights which they claim to possess and the satisfaction which may be required and granted by way of friendly settlement." The great philosopher Kent says, "An injury either done or threatened, to the perfect rights of the nation,

or of any of its members, and susceptible of no other redress, is a just cause of war." (Abdy ed. 1866, p. 164.)

In the 20th century, the conclusions of the theological conventions at Fribourg upon war in 1931 says, "a war declared by a state on its own authority without previous recourse to the international institutions which exist cannot be a lawful social process." Albert Valensin and J. T. Delos hold, "we must then consider as the aggressor the state which, being under an obligation to submit its difference with another to a procedure of conciliation, arbitration or judicial settlement, declares war in violation of its engagements or resorts to arms rather than conform to an obligatory sentence." Professor Shotwell, a contributor to the conclusion of the Kellogg Pact, holds that "the violation of its (a state's) own promise, in the covenant, to accept pacific means of settlement instead of force is the simplest and clearest possible test of aggression....violence by itself is not aggression. There is violence as well in defence and police action, neither of which can be called aggression....the aggression is the power which in going to war violates its already given pledge to settle its disputes peacefully instead... .the mere crossing of a nation's geographical frontiers is no sure test of aggression. Nowhere has this been more frankly stated than in the British reply to Mr. Kellogg's note (the British Monroe Doctrine). ....Legitimate defense is not confined to repelling invasion within a country's frontiers." Kellogg, in his note of June 23, 1928, says, "Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion." Quincy Wright says, "An aggressor is a state which may be subjected to preventive, deterrent or remedial measures by other states because of its violation of

an obligation not to resort to force." In 1936 the Final Report of the International Studies Conference of the League of Nations concerning collective security referred to a definition of aggression by saying that aggression is a state's resort to war in violation of Article XI of the League Covenant by an actual act of violence first committed on the chronological order. The Harvard Research Draft Convention on the Rights and Duties of States in 1939 defines aggression as "a resort to armed force by a state when such resort has been duly determined, by a means which that state is bound to accept, to constitute a violation of an obligation." This definition suggests that, unless the illegality of a resort to force"has been duly determined by a means""which the delinquent state"is bound to accept", third states ought to consider the situation "war", and ought to be "neutral". In November 1940, the Committee To Study the Organization of Peace, which was organized a few days after war had started in Europe in 1939 by some leading jurists of the United States including many of the members of the American Society of International Law, adopted a Preliminary Report, indicating some recommendations in respect to postwar peace program. The Report emphasizes the following points:- (A) "Recognition on the part of all peoples, large and small, strong and weak, of the rights of others." (B)"A willingness on the part of all to make sacrifices for the general good." (C) "A belief in the existence of a power in the world which makes for righteousness." (D) "Certain principles of moral and social conduct have been universally accepted, as a result of centuries of human experience." (E) "The basis of peace is justice....determined by the judgement of the community." (F)"Nations must renounce the use of force....except in self-defence....The justification for self-defence must always be the subject to review by an international court or other competent

body." (G) "The right...to maintain aggressive armaments must be sacrificed." (H) "Nations must accept certain human and cultural rights in their constitutions and in international covenants."

On the other hand, some international treaties and conventions referring to the criterion of justice are also remarkable. (A) The restriction on a statem's illegal resort to war is vaguely recognised in the Hague Convention of 1899 for the Pacific Settlement of International Disputes. (B) The Covenant of the League of Nations of 1919 recognised the following as just principles: (a) the principle of not resort to war (Preamble), (b) the principle of peaceful change of status quo (Art. 19), (c) the principle of mutual respect and preservation as concerning the territorial integrity and the existing political independence of states, including the principle of non-intervention in the domestic affairs of other states, an armed violation of which constitutes an unjust war (Art. 10), (d) the principle of peaceful settlement of international disputes, an armed violation of which constitutes an unjust war (Arts. 12-16), (e) the principle of international rule of law----to respect and observe international law (Preamble), (f) the principle of fair treatment of minority and backward nations (Art. 22), (g) the principle of open diplomacy (Preamble and Art. 18), (h) the principle of the application of treaties to non-contracting parties (Arts. 11 and 17, 15 & 14), (i) the principle of equality respecting the status of all states and nations (Art.5), (C) The Locarno Treaty of 1925, in its Art. 4, refers to "unprovoked act of aggression", "the crossing of the frontier", and "the assembly of armed forces"as the conditions justifying a just defensive war. (D) The Kellogg Pact of 1928 renounces war on the one hand and set a rule of peaceful settlement of

disputes on the other. (E) In some of the bilateral non-aggression pacts concluded between various countries, agreement on the meaning of aggression is contained. For example the Soviet Russian Government has undertaken to give a a definition of the kinds of aggression which are to be prohibited by the non-aggression pacts it has concluded:- (a) a declaration of war; (b) invasion without declaration; (c) bombardment of territory or attack on naval or air forces; (d) landing of armed forces without permission of the government, etc.; (e) establishment of a naval blockade. (The pacts then list various acts or grounds which are not to be deemed a "justification for attack". (F) The Atlantic Charter of August 14, 1941, which was subscribed to by 26 United Nations on Jan. 1, 1942, refers to such just principles as (a) that there should be"no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;" (b) that it is "the right of all peoples to choose the form of government under which they will live"; (c) that "the sovereign rights and self-government" shall be restored to those who have been forcibly deprived of them," (d) that "all nations" shall be afforded the means of dwelling in safety within their own boundaries" and "assurance that all the men in all the lands may live out their lives in freedom from fear and want;" (e) that "a peace should enable all men to traverse the high seas and oceans without hinderance;" (f) that "all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force," and (g) that"in view of general security," "the disarmament of such nations as threaten or may threaten, aggression outside of their frontiers" "is essential".

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Yet, after an examination of the above stated theories on justice, there are certain points which seem to have been more or less overlooked: (A) Those theories seem to have little touched the abolition of absolute sovereignty of states which is essential to the realization of the ideal just order of the world. (B) Those theories seem to have little touched the concrete criterion and procedure for the change of status quo. (C) Those theories seem to have little touched the last step and procedure invoked when a failure of peaceful change of status quo, justly claimed by a state or a nation, has occurred. (D) Those theories seem to have little touched the last step and procedure invoked when an oppressed nation desires to be emancipated and made independent. (E) Those theories seem to have little touched the last step and procedure invoked when a minority nation within a state desires to be independent or to be absorbed into, or united with, another state, either of the same nation or not, (the free unification of the same nations, and the free unification of different nations). (F) Those theories seem to have little touched the last step and procedure invoked when the ill-treated foreign residents within a state, ~~possessing~~ either with or without that State's nationality, call for an effectual and fair settlement.

#528# John Epstein, "The Catholic Tradition of the Law of Nations", 1935, 525 pp.
Mgr. Batiffol, "L'Eglise et le Droit des Guerre", pp 35-37.
St. Augustine, "Contra Faustum (Patrologia Latina, t. 42), Lib. XII, cap. LXXIV (date 398 A.D.), --discussing the problem of justice of war; cap. LXXV,--discussing the responsibility for war; cap. LXVI,--discussing the evolution of the concept of war. "De Civitate Dei", Lib. I, cap. XXI, (413-423 A.D.)--discussing the unjust attack on those who are law-abiding; Lib. III, cap. XXVI,--discussing the terror of war; Lib. IV, cap. VI & XV,-Lib. XIX, cap. VII,-attacking imperialist and selfish conquest and annexation. "Quaest in Heptateuchum", VI,10,a, (419 A.D.),--discussing the justice of war.
St. Thomas Aquinas, "Summa: Secunda Secundae", questio XL (de Bello).

In this connection, St. Augustine soundly, but only, says, "the absence of a superior tribunal before which a prince can seek redress can alone justify him in making war, except when resisting actual attack." Also Franciscus de Vittoria said only that a war for the practical purpose of protecting an oppressed nation or people of whatever race against cruel treatment inflicted upon it by another oppressor-nation, is just and right. Francis Suarez also only says , "This just and sufficient cause (of war) is a grave unjury that has been committed and which cannot be repaired or avenged by any other means." Belli says, "Things, cities, or others, which are captured in an unjust war do not become the property of the captors, but must be restored." Cénicot says, "Offensive war may by just,....for example the recovery of a province belonging to it whose recovery is of great moment to the public good....Finally, the...charity towards other nations unjustly oppressed." Grotius says, "just causes of war are primarily defense, recovery of property and punishment; unjust causes, among others, are the desire for richer land, the desire for freedom on the part of a state in political subjection, or the wish to rule others against their will on the pretext that it is for their good. Objective justice can exist only

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Franciscus de Vittoria, "De Jure Belli".
Mgr. Pfeiffer, "Doctrine Juris Internationalis juxta Franciscus de Vittoria."
Francis Suarez, "De Legibus ac de Deo Legislatore" XII de Fide, Spe et Caritate; "De Caritate Disp. XIII de Bello, sect. I, 3,4,7.
Cénicot, "Institutiones Theologicae Moralis", cap. VI, p. 309--310.
Taparelli d'Azeglio, "Essai Théorique de Droit Naturel."
Wright, "Changes In the Conception of War", A.J.I.L., Oct. 1924, p. 755.
Mgr. Julien Bishop of Arras, "La doctrine traditionelle de l' Eglise sur les règles de la vie internationale", (Le Problème International" p. 340).
Shotwell, "War as an Instrument of National Policy and its Renunciation in the Pact of Paris", pp. 206-209.

on one side; those who are on neither side in war must refrain from lending assistance to the one who supports a wicked cause and from placing obstacles in the way of the party which wages a just war". Bynkershoek also says, "the only correct ground for war is the defence or recovery of one's own." Kent says, "An injury either done or threatened, to the perfect rights of the nation, or of any of its members, and susceptible of no other redress, is a just cause of war."

Frankly speaking, the problem of the criterion of international justice is touching three points: (1) Is the last resort to war still necessary in view of the continuance of the present condition of the international community, before the realization of an ideal just rule of law over the world ? (2) Is status quo so perfect and satisfactory that it needs not changing ? (3) If status quo needs changing, according to what criterion it should be worked out ?

The first point has been already observed in the preceding section---the preliminary considerations. The second point seems to need little discussion, as the fact is clearly shown. Yet in view of the facts that, on the one hand, such general conventions as the Covenant of the League of Nations and the Kellogg Pact prefer to maintain the status quo and allow no effectual coercive measure as the last resort for the change of it by renouncing the use of force at all and at the same time by providing no sanction for unjust status quo protectors and that, on the other hand, such writers as J. B. Moore and E. Borchard hold that war is inevitable and that status quo is not unjust at all and does not deserve to be preserved, a few words seem

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Eagleton, "Organization of the Community of Nations", A.J.I.L., April 1942, pp. 229-241.

. Wright, "The Concept of Aggression in International Law", A. J.

necessary. Professor Moore's interesting exposition has been introduced in the preceding chapter. Professor Borchard, when criticizing Professor Politis' "La Neutralité et la Paix", especially emphasized that "In a world in which the status quo has been created by the use of force, with maldistribution on every hand, it is disingenuous to assume that anyone who tries to upset it is a moral pariah. The arrangements of 1919 are a standing incentive to despair and an invitation to revolt...." #529# All of the ideas as represented by the

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I.L., 1935, pp. 373-395.
. Wright, "The Present Status of Neutrality", A.J.I.L., July 1940, pp. 391-415.
Joachim Von Elbe, "The Evolution of the Concept of the Just War in International Law", A.J.I.L., Oct. 1939, pp. 665-688.
Gentilis, "De Jure Belli Libri Tres"(1593) in the Classics of International Law, Oxford, 1933.
Grotius, "De Jure Belli ac Pacis", bk. II, ch. XXII, secs. VIII-XII.
Bynkershoek, "Quaestiones Iuris Publici Libri Duo" (1737), in Classics of International Law, Oxford, 1930, Vol. II, p. 15.
Holland, "Lectures on International Law", p. 246.
Professory S.R. Shaw, "New Progress In International Law",ch. VIII.
Borchard and Lage, "Neutrality For the United States", pp. 261 266. Rev.Prof. Lesiré Bergeron, "Cour du Droit des Gens".
Soviet Russia's Declaration submitted to Disarmament Conference Feb. 6, 1933, International Conciliation, Sept. 1935,p.65.
Maurice Bourquin, "Final Report," Collective Security, 1936, pp. 452-454.
James Brown Scott, "Peace Through Justice", 1917.

#529# Borchard, "Nicolas Politis, La Neutralité et la Paix", American Journal of International Law, 1935, pp. 717-719.
J. B. Moore, "An Appeal To Reason", Foreign Affairs, July 1933, pp. 559,570.
The Canadian Government expressed its view on Article 10 of the Covenant of the League of Nations in its reply to the League Assembly's Resolution of July 4, 1936, by saying that those "Status quo guarantees of Article 10" should be removed, particularly as the provisions for the revision of treaties... ..contained in Article 19, and which were in form and fact an essential complement to the provisions of Article 10." Official Journal, 154, p. 74.
Engel, "League Reform", pp. 18, 23, 201-202.
The Prime Minister of Canada, Sir Robert Borden, at the Peace Conference in 1919, had, in a Memorandum of March 13, 1919, submitted to the Commission on the League, proposed the deletion of Article 10, because, he held, the mutual guarantee of territorial integrity might lead to an impossible attempt to prevent the modification of unjust and untenable frontiers.M (Miller, "The Drafting of the Covenant", Vol. I, p. 356.
Rappard,"The Quest for Peace," p. 209.

above stated conventions and writers are not perfect and fair.

In the first place,(1) to preserve status quo is essential to the preservation of social order against anarchy; law is essentially made for this purpose.

In the second place,(2) status quo is not necessarily unjust or just as a whole, but possibly part unjust and part just. Just part should be preserved; unjust part should be modified and corrected through peaceful procedure first and, as the last resort, by sanction or, if no sanctions provided for, force.

In the third place,(3) In the municipal community of a state there are rich persons and poor persons, or classes poor and rich; the institution of law has been being carried on therein more or less satisfactorily; the adoption of the rule of law therein was initiated not after a communist or other socialist revolution. This example may explain that in the international community, composed of rich states as well as poor states, the institution of the rule of law can be adopted prior to a settlement of international economic problems and a re-distribution of territory among nations.

In the fourth place,(4) law is used for the preservation of the present social order, including the protection of the rich as well as the poor; but the function of legislation does not exclude the adoption of laws for effective change of status quo.

In the fifth place,(5) Historical facts cannot be traced too far, when the settlement of a problem of the change of status quo is searched for. In 1919, the settlement of the French territorial claims was effected in reference to the boundary of France of about fifty years ago (1870). In 1919, the restoration of Poland was effected in reference to her boundary of about one hundred years ago (1772-1795). If goes too far, who can restore the Roman Empire together with the

peoples of that time ? Who can restore the five thousand years ago Chinese Empire together with the barbarian tribes of that time ?

In the sixth place,(6) the present problem of the revision of status quo can only be sought to be solved on a basis,which is at present age considered just; and, after the problem is so solved, it may be believed that no longer and no more will remain any just complaint in question. This is certainly the best way to solve to-day's such problems.

In the seventh place,(7) The Treaty of Versailles of 1919 to be considered "an invitation to revolt" is not because of its function of preserving status quo, but because of its function of preserving an unjust status quo.

In the eighth place,(8) To maintain and preserve a just status quo by law, backed by effectual sanctions, is more beneficial to smaller or weaker nations or states than to bigger or stronger ones. According to justice, no one should deny such status quo.

Therefore, an idea of the distinction between just and unjust changes of status quo, territorial as well as of the treatment of nations, must be adopted and a proper procedure for such dealings must be afforded. A just change of status quo must be effected with the assistance of an effectual system of sanction; in case a just claim for such change is not properly dealt, or in case a recognized just change is not timely to be effected, the last resort to war should be considered just. On the other hand, an unjust change of status quo must be prevented; the resort to war for an unjust change should be considered unjust and subject to effective sanction.

The third point, what should be the criteria for judging the justice of the change of status quo, may be embodied,for its

solution, in the criteria of the distinction between just war and unjust war, that is, the criteria of justice in the present and post-war international community.

Based upon the foregoing theories, opinions and historical and recent facts, as exposed in the preceding chapters and paragraphs, the objective criteria of international justice may be pointed as follows:-

(1) The co-existence and equal freedom of all the nations of the world.

(2) The co-existence and equal freedom of all the states of the world, provided that the principle of (1) is not violated.

(3) The emancipation of all the oppressed or ruled nations, which have been carrying on an organized independence movement.

(4) The free unification of peoples belonging to one nation, which live in different states.

(5) The free unification of peoples belonging to different nations, which live in different states.

(6) The equal treatment of foreign peoples and residents.

(7) The equal treatment of minority nations.

(8) The restoration of the territories and the independent states, the loss of which was brought about by armed force in the past fifty years (from 1943 back to 1893, or one other reasonable period which may be set for such restoration by an agreement).

(9) The right of all nations to choose the form of government under which they live.

(10) The restoration of sovereign rights and self-government to those who have been forcibly deprived of them.

(11) The economic equality of nations and the free development

of economic affairs within each state.

(12) The mutual respect to, and the self-preservation of, the territorial and administrative integrity and political independence of all states, provided that the principles of (1) to (11) are not violated.

(13) The non-intervention in the domestic affairs of a state or of a nation by other states or nations, provided that the principles of (1) to (11) are not violated.

(14) The settlements of international disputes including territorial claims not by resort to war, but by means of pacific measures, provided that pacific means are readily afforded and effectively adopted and that the claims that accord with the principles of (1) to (13) are backed by the system of prompt resort to effectual sanctions and other effectual preventive and repressive measures on the part of the organization of the international community.

(15) The loyal observance of international law, that is to say, international treaties and promises which are brought about not by force, but by free will and agreement, and are not in violation of the principles of (1) to (14).

(16) The freedom of all men to traverse the high seas and oceans without hindrance.

(17) The assistance of states and nations by collective and effective action to the oppressed nations and states upon such claims and request, against the oppressor.

(18) The assistance of states and nations by collective and effective action to the states and nations that have suffered from a violation of the principles set forth in the other sections herein committed by other states or nations.

(19) The collective preservation of a society of nations and states against external aggression from ~~minions~~ non-member-states or nations of the society.

(20) The adoption of collective and effective action by a society of nations and states to intervene in the affairs of non-member states or nations which take actions inconsistent with the world's common conceptions of justice, peace, and order, based upon the principles set forth in the other sections herein.

(21) The abandonment of the use of force, including war, declared or undeclared, military coercive measures, and external aggression (an actual attack on another nation or state with armed forces by the crossing of frontier from air or land or sea in violation of the principles set forth in the other sections herein), except in case of the preservation of the principles set forth in the other sections herein.

It seems that certain points need more explanation:

First, the natural unit of the world community, similar to individual person as the natural unit of domestic society, is not "state", but "nation". Nation is formed by a naturally grown and developed group of people of same race and blood, same tradition and habit, same speaking and written language, and same faith. State, which may be based upon not one single nation, but more than two nations, is relatively an artificial political collectivity. The traditional terms "law of nations" and "international law" are not correct. They should be changed into "law of states" and "inter-state law", in view of the traditional thought of international law. In Chinese, the term "Kuo (State) Chi (between) Fa (law)" is without such mistake. "Nation", in Chinese, is "Min (people)--Tsoo (group

or society)" and"state" is "Kuo"(a combination of territory, people and sovereignty). These two words in Chinese are never misused. The doctrine of right of man certainly, when applying to international society, implies a doctrine of right of nation. The co-existence of nations, like the co-existence of individual persons in domestic society, on equal basis is indisputably sound.

Second, the definition of "external aggression" as suggested above is believed to be the most preferable and sound one. Because that a state in disregard of a possible procedure of pacific settlement commits an actual attack by crossing frontier is obviously aggression. Some writers argued that for strategic reasons a state may fight a defensive war by first crossing frontier. This is not sound. For in a system of Just Collective Partiality, in which an effective assistance on the part of other "member-states" is assured, the defensive state needs not first cross frontier for strategic gains, if which may disturb the judgement of aggression. Moreover, according to this definition, an actual attack by crossing frontier does not necessarily constitute aggression, but may by just; and the defensive state, at the same time, may be unjust, because the other principles than that of pacific settlement as stated above have to be observed; for instance, the emancipation of an oppressed nation within a state, the free unification of nations, etc.. Thus this definition is relatively more reasonable and beneficial to all nations without great danger.

Following the above stated twenty-one points, we can, without great difficulty, define what are just causes of war and what are unjust causes of war:

(1) Just causes of war are:

(A) War of Self-preservation:---This is the armed resistance waged by one or more states or nations against one or more states or nations that committed an actual attack by crossing frontier in violation of the"Twenty-one Principles".

(B) War of Remedy:---This is the last resort to war in accordance with, and for the preservation of, the "Twenty-one Principles".

(C) War of Sanction:---This is the collective military measures to be taken by an international organization for the preservation of the "Twenty-one Principles".

(D) War without legal restriction:---This is a possible war not in violation of the "Twenty-one Principles", as a result of the doctrine of "invincible ignorance", and of the other sections herein.

(2) Unjust causes of war are:

(A) War of External Aggression:---This is an actual attack by crossing frontier in violation of the "Twenty-one Principles".

(B) War with legal restriction:---This is a war without an actual attack by crossing frontier, but in violation of the "Twenty-one Principles", such as the violation of the freedom of seas, the attack on oppressed nations or aliens within a state, etc..

(C) Military act with legal restriction:---This is a military act in violation of the "Twenty-one Principles", such as illegal assistanse to the aggressor or covenant-breaker, or illegal non-assistance to the victim, etc..

(D) War against world's public peace and order:---This is a war not in violation of the "Twenty-one Principles", but disturbing the World's peace and public order.

The terms "just cause of war" and "unjust cause of war",

"just war" and "unjust war", must be clearly distinguished. Many writers use these terms without due care. For instance, when one says "to fight a just war", he means that he has a just cause of war, while his enemy has an unjust cause of war; when one says "that war is unjust", he means that one of the belligerent sides embraces an unjust cause of war, while the other belligerent sides may embrace a just cause of war. Therefore, the same war becomes both unjust and just, both a crime and not a crime. It is at least a technical wrong and inconvenient to students.

Thus, following the above stated distinction of just and unjust causes of war, we may define what is just war and what is unjust war and their legal consequences:

(one side) (the other side)

(1) Just cause of war / Just cause of war ------ Just war.....the Doctrine of Just Collective Neutrality applies.

(2) Just cause of war / Unjust cause of war ------ Unjust war....the Doctrine of Just Collective Partiality applies.

(3) Unjust cause of war / Unjust cause of war ------ Unjust war...the doctrine of just collective impartial intervention or Just Collective Neutrality applies.

Then (2) what does "Collective" mean ? It comprehends four elements: (A) Collective; (B) Coercive; (C) Majority vote; (D) Supplementary regional system.

The first two are relatively simple and need not much discussion, because, without collective action on the part of non-belligerents, the unjust belligerent side, when formed by power-

-ful states, would be hardly controlled and brought to terms by an overwhelming power; without coercion, an established order of law can not be maintained and guaranteed. As Professor Scelle says: "il faut donner compétence à un organe social susceptible de dégager objectivement l'intérêt de la communauté internationalme toute entière, ou bien on court le risque de ne reviser que contre les faibles. Quels que soient les modes de coercition, qui peuvent être d'ailleurs infiniment varies et se prêter à de multiples combinaisons dans l'ordre économique, politique, financier, et même psychologique, il faut prévoir ici si l'on veut faire oeuvre pratique, un système de coercition." The distinction between war and international police must be kept in mind; illegal war is a crime; war waged to punish the criminal is not war but exercise of the police power. #530# Professor Q. Wright also says: "The effort to organize the world to prevent war by effective sanctions....has manifested a general realization that in the modern world hostilities anywhere are the concern of all states." #531# Professor Gagleton says: "Certain principles of moral and social conduct have been universally accepted, as a result of centuries of human experience....There can be an internation al police to stop aggressors.....law can be enforced only if the power of the community, overwhelmingly greater than the power of any of its members, is brought to bear when and where lawlessness begins...law is helpless---unless it can muster a superior force... human experience gives us no other solution than the use of the

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#530# Professor Karl Strupp, "Legal Machinery For Peaceful Change", 1937; Préface de Professeur George Scelle, p. XX.
Professor Scelle's Memorandum, "Theory of International Government", New Commonwealth Quarterly, I, (1935-1936), pp. 18 et seq..
Bourquin, "Collective Security", pp. 25, 276.

#531# Q. Wright, "The Present Status of Neutrality", American Journal of International Law, July 1940, p. 407.

combined and organized strength of the whole community against whatever member thereof resorts to force....If...wishes international law to survive and prevail, he must build an organization behind it to support and maintain it...force is used...by the community in support of law and justice...if the community of nations cannot voluntarily and reasonably agree upon a system which can monopolize the use of force, the force will be used by some person or nation to impose upon all a 'new order' in which subjugated peoples will have no voice." The Preliminary Report of the United States' Committee To Study the Organization of Peace of 1940 made a similar proposal that there must be the willingness on the part of all to make sacrifice for the general good and that the formation of adequate police forces, world-wide or regional, and world-wide economic sanctions, to prevent aggression and to support international covenants is necessary. Prince must be paid in order to secure the absence of war. That price is the organization of the community, and the willingness of each member of the community to contribute his share of effort and, if need be, of blood to uphold the law of the community.#532# Professor Politis also referred to this point by saying that "if we are to have a condition of solidarity and permanent peace which is not utopian in character, we must not shun the sacrifices necessary to obtain it....finally there would be the organization of a permanent international military force, as was suggested by France." #533# Professor Fenwick further says, "Obviously a weak state is not in a position to take such a stand without the support of the other members of the community; for it cannot be expected to risk its national existence in an effort to uphold the principle of law or order. Only the strongest of the

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#532# Eagleton, "Organization of the Community of Nations", A.J.I.L., April 1942, pp. 229-241. The Preliminary Report, 1940.
#533# Politis, "Neutrality and Peace", Chap. V.

powers can take such action individually; and it is clear that if such a power could act in cooperation with other law-abiding powers their combined efforts might constitute such predominant power that the potential outlaw could be restrained without recourse to actual force." #534#

The third element, the principle of majority vote rule over all, seems open to question, in view of the doctrine of absolute sovereignty from which is derived the principle that new rules of law depend for their validity upon consent. In practice, several existing public international unions continue to adhere to the rule of unanimity for the adoption of final acts. Outstanding among these are the conference of the Union for the Protection of Industrial Property (1883), the conference of the Union for the Protection of Literary and Artistic Works (1886), the General Assembly of the International Institute of Agriculture (1905), the Governing Board of the Pan-American Union, the Permanent Advisory Commission for Military, Naval and Air Questions of the League of Nations, and where special diplomatic conferences are called to revise conventions of public unions decisions are frequently, if not generally, by unanimous consent. Certain bodies nominally reaching decision by majority may, on occasion, be thrown back on unanimity by reason of certain convention stipulations. For example, in a few cases decisions reached by majority require unanimous approval by the participating powers before they can have any legal validity, as in the International Commission of the Office of Epizootics and the International Commission of the International Bureau on Intelligence on Locusts. In some other cases decisions are obligatory only for those

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#534# Fenwick, "American Neutrality", p. 150.

states voting for them, as in the Central Commission for Navigation of the Rhine. Article V (#1) of the Covenant of the League of Nations also remarks that "Except where otherwise expressly provided in this covenant or by the terms of the present treaty, decisions at any meeting of the Assembly or of the Council, shall require the agreement of all the members of the League represented at the meeting."

Yet, on the other hand, not only does it appear that majority decision has been accepted somewhat more widely than generally has been appreciated, but also the trend of the last twenty years may be said to be definitely toward a more complete acceptance of the rule. Strict adherence to the rule of unanimous consent has become unusual. In a number of bodies, unanimity is required for some decisions of importance, but other decisions may be taken by some form of majority vote, such as in the Council and the Assembly of the League of Nations, the European Commission of the Danube, the International Commission of the Elbe, the General Conference of the Metric Union, the International Sugar Council, the Cape Spartel Lighthouse Commission, the Committee of Control of the Tangier Zone, and the Permanent Technical Hydraulic System Commission of the Danube. In a very much larger number of permanent international bodies in which states or administrations are represented, all decisions of consequence which the organ is permitted to take are reached by some form of majority vote, such as in the International Commission for Air Navigation, the Committee of Experts of the Railway Union, the General Conference of the Relief Union, the Conference of the International Hydrographic Bureau, the Conference of the International Labour Organization, the Governing Body of the International Labour Organization, the General Conference

of Communications and Transit, the Baltic Geodetic Commission, the Permanent Committee of the International Office of Chemistry, the Technical Organizations of the League of Nations, the Congress of the Universal Postal Union, the Congress of the Postal Union of the Americas and Spain, the International [illegible] Committee of the International Office of public Health, the Conference of the Telecommunications Union, the International Conference of American States, the Executive Committee of the International Institute of Refrigeration, the Permanent Committee of the International Institute of Agriculture, the Advisory Committee on Traffic in Opium and other Drugs, the Advisory Committee on Protection of Children and Young People, and the Administrative Council of the International Exhibitions Union.

In a few cases majority decision rests upon express convention provision to that effect, such as in the Conference of the International Labour Organization, the Baltic Geodetic Commission, and the General Council of the International Relief Union. Much more frequently, the conventions specify that decisions in respect to certain matters may be reached by majority, the organs being left free to determine the vote essential for decision in other cases. This is the case in respect to the International Commission for Air Navigation and in the Governing Body of the International Labour Organization. In other conventions, such as those creating the Council and Assembly of the League of Nations, the Permanent Technical Hydraulic System Commission of the Danube, the [illegible] Committee of Control of the Tangier Zone, and the International Sugar Council, the drafters attempted to provide for all decisions, in some cases specifying majority vote and in others unanimity. In addition, many exceptions have developed in the practice of the

Council and Assembly of the League of Nations to the general rule of unanimity laid down in Article V of the League Covenant; it goes without saying that Article V (#2) of the Covenant remarks that "All matters of procedure at meetings of the Assembly or of the Council, including the appointment of committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the members of the League represented at the meeting."

In many other cases, the terms of the conventions forming the basic law of permanent international bodies are silent on the vote necessary for decision, providing either explicitly or by implication for determination of the matter by the organs themselves. For example, the Conference of the Union for the Protection of Industrial Property adheres strictly to the rule of unanimous consent; the same are the Congress of the Universal Postal Union, the Congress of the Postal Union of the Americas and Spain, the Permanent Committee of the International Office of Public Health, the Conference of the Telecommunications Union, and the Permanent Committee of the International Institute of Agriculture. Many other bodies use majority decision. Where majority decision has been established in such cases it generally rests upon express provision in the internal regulations. Although such regulations are susceptible to change by majority action, majority decision has in many cases hardened into a constitutional practice from which it would be difficult to deviate. In at least one case, that of the Permanent Committee of the International Office of Public Health, majority decision rests entirely upon practice.

Aside from the increased number of international organs now taking decisions by some form of majority vote, other evidences exist to suggest some tendency toward substitution of the majority principle for that of unanimity for determining the will of the whole.

In the first place, in many of the permanent organizations which yet cling to unanimity for all or part of their decisions of consequence, considerable dissatisfaction has developed with the rule; among such cases are the Conferences of the Union for the Protection of Literary and Artistic Works and the Union for the Protection of Industrial Property. Essentially notable are the proposals submitted to the League of Nations by its various member-states. Eleven Governments (China, Canada, France, United Kingdom, U.S.S.R., Belgium, Sweden, Denmark, Colombia, Esthonia, and Finland) suggested the votes of the parties should be ignored in reckoning unanimity under Article XI of the League Covenant. One (Norway) Government suggested majority vote should suffice under Art. XI, and another (Latvia) suggested majority decision under the article should be considered. Four Governments (Denmark, Finland, Norway, and Sweden) recommended that decisions to request advisory opinion from the Permanent Court of International Justice should be taken by majority vote. One (Peru) suggested majority decision under Article XV,(#4), Two (Colombia and Lithuania) favoured majority decision under Article X to make that article workable. Five (Esthonia, Liberia, Lithuania, U.S.S.R., and Latvia) suggested some form of majority decision under Art. XVI. Two (Peru and Bulgaria) favoured a qualified majority under Art. XIX, and one (Norway) believed that a majority should suffice under the article since the Assembly is authorized to advise rather than to decide.

In the second place, even the Permanent Court of International Justice has encouraged rejection of the rigid unanimity rule, as

shown in its opinion in the case of the dispute between Great Britain and Turkey concerning the form of resolution of the Council on the frontier of Iraq. The Court's opinion says, "It should be observed that the very general rule laid down in Article V of the Covenant does not specifically contemplate the case of an actual dispute which has been laid before the Council. On the other hand, this contingency is dealt with in Art. XV, (#6 & #7), which, whilst making the limited binding effect of recommendations dependent on unanimity, explicitly states that the Council's unanimous report need only be agreed to by the Members thereof other than the representatives of the parties. The same principle is applied in the cases contemplated in paragraph 4 of Article 16 of the Covenant and in the first three paragraphs which, in accordance with a resolution of the Second Assembly, are to be inserted between the first and second paragraphs of that article".

In the third place, in the terms of many post-war multilateral conventions which provide for no permanent administrative organs of their own, an increasing number of these provide for consideration of revision upon the suggestion of some fraction of the contracting parties, such as Art. 34 of the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, July 3, 1931, Art. 7 of the Agreement concerning Manned Lightships not on their Stations, Oct. 23, 1930, Art. 29 of the Convention regarding the Régime of the Straits, July 20, 1936, Art. 8 of the Convention on Stamps Laws in connection with Cheques, March 19, 1931, Art. 30 of the International Convention relating to the simplification of Customs Formalities, Nov. 3, 1923, Art. 18 of the Convention for the Regulation of Whaling, Sept. 24, 1931, etc..

In the fourth place, provision has been made in at least one post-war (post-World War I) convention of recent date, the Convention regarding the Régime of the Straits, signed at Montreux, July 20, 1936, and ratified on Nov. 9, 1936, by Bulgaria, France, Great Britain, Greece, Roumania, Turkey U.S.S.R. and Yugoslavia, for revision of certain articles by majority vote (Arts. 29, 14, 18).

Thus, in practice, specific authorization of majority rule appears much more frequently in post-war conventions than in those drafted earlier. With certain notable exceptions, majority decision in bodies established in the pre-war period has developed from internal usage. For the most part, those organs which adhere strictly to the rule of unanimous consent for all important decisions are following practices formed in pre-war period, only one such organ, the Permanent Advisory Commission on Military, Naval and Air Questions, being a post-war creation.

In theory, Grotius, Locke, Rousseau, Rolin, etc. are in support of majority rule. Since the second half of the sixteenth century, this principle of majority rule has been adopted by the English Parliament and followed by all other democratic countries. Within states the emergence of a recognized community of interest accompanied by substantial agreement upon the general ends to be sought in the social order made possible the acceptance of majority rule as the most convenient way of arriving at decisions. The situation is not different in the international sphere. The most important reason for unanimity rule in international community is the protection of small and weak states. But when the rule of majority is adopted in such case as the suggested theory and system of Just Collective Partiality is concerned, the small and weak states and nations are justly

protected rather than unjustly threatened. In view of the necessity of satisfactory enforcement of such as just system of common protection, majority rule is doubtless the preferable. As Professor Riches says, "It is.....apparent that the discarding of the rule of unanimity has contributed markedly to the success of many permanent international bodies. In general, those which have been most successful over a period of years are the ones which have substituted majority decision for the rule of unanimous consent, at the same time permitting some modification of political equality. The factual experience of the organizations....indicates that concessions, such as modification of the unanimity rule and political equality, are prerequite to the construction of effective international government." #535#

The fourth element that supplementary regional system to the collective action is permissible, seems need not much explanation. For the sake of technical and military conveniences, possible ready and effectual measures to help collective action seems hardly open to question. As the United Kingdom Government says, "one of the great advantages of regional pacts is that their terms are known in advance, as are the conditions in which they will apply. The value of agreements for collective action, as a deterrent to an aggressor, depends largely on the certainty that they will be applied. The uncertainty of the operation of wider and more ambitious schemes may tempt an aggressor to hazard the risk that they will not be operated."

#535# Cromwell A. Riches, "Majority Rule in International Organization", 1940, pp. 1-30, 31-58, 291-306, 305, 12.
Official Journal of the League of Nations, 1936, Special Supplement No. 154, (League Doc. C. 31. 1936. VII.).
Publications of the Permanent Court of International Justice, Series B, No. 12, p. 31.
H. Lauterpacht, "The Development of International Law By the Permanent Court of International Justice", pp. 47-50.
American Journal of International Law, Supplement, XXXI, 1.

The Governments of Australia, Czechoslovakia and Iraq expressed the similar view. Thus, Australia, United Kingdom, Czechoslovakia, Dominican Republic, Ecuador, Estonia, France, Iraq, Latvia, Lithuania, Peru and U.S.S.R. are in support of regional security system, while New Zealand, Denmark, Norway, and Sweden would make no objection to it. France explained that the term regional "understanding" meant that "any group of powers whose union is based upon geographical situation or upon a community of interests"; and that such treaties would give full efficacy to article XVI of the League Covenant as they supplement by military measures the economic and financial sanctions which alone might not be sufficient. In order to avoid the danger, as the Canadian, Hungarian and Norwegian Governments pointed out, that such agreements might develop in practice into old-fashioned military alliances, and minimize the spirit of collective military sanction, either of which would constitute a menance to peace in general, the Governments of the United Kingdom, Australia, Peru, Denmark, Estonia, Finland and Soviet Russia specified that regional pacts must be consistent with the Covenant and even subject to the approval or control of the Council, or of the Assembly; and the Chinese Government as well as the Governments of Latvia and Lithuania thus concluded that regional pacts should merely supplement, but not be substituted for, the Covenant. It is no doubt that, when a universal institution of Just Collective Partiality is established, the military coercive system embodied therein for the preservation of the institution would accept regional measures as supplement, that is to say, as part of collective military action. #536#

#536# Engel, "League Reform", pp. 175-191.
Official Journal, 154, pp. 28, 82-86, 88, 89, 97, and Documents C.S.Ex. 15, p. 72, 75, 80, 8.
18th Assembly, Records of Plenary Meetings, pp. 86,89, 51.

Then (3) what is the scope of the partial measures to be taken by the International Institution of Just Collective Partiality ? And what is the scope of its application ?

With regard to the possible partial measures for sanction to be taken by the Institution against the unjust belligerent side, we may mention at least six:-

(A) Participation in actual war by despatching military, naval or air forces.

(B) Military assistance by supplying arms, war-ships, planes, war materials, recruits, volunteers, etc., and allowing passage of troops.

(C) Social, economic and financial assistance, including the supply of all materials and goods whatever.

(D) Non-recognition of all facts brought about by the force of the unjust belligerent side.

(E) Whatever measures individually taken by states as supplement to collective measures.

(F) Any other preventive and repressive measures which might lead to the effect of preserving the Institution, and of refraining from lending assistance to the unjust belligerent side and from placing obstacles in the way of the just belligerent side.

The first three categories of measures must be employed collectively at the same time; though the degrees of the strength of different powers participating therein should be taken into consideration, and regional system may go into action immediately to supplement the collective action. The fourth, collective non-recognition, is merely a measure purporting to keep the illegal status of unjust facts for future recovery. Non-recognition alone, as

Professors Arnold McNair, Philip Marshall Brown and those of l'Institut de Droit International argued, is useless.#537 On the other hand, as the fifth category of measures shows, collective action does not exclude measures individually taken; every individual state, including every individual citizen or association, is desirable to take whatever measure as he can think of and adopt, to serve the common cause, to fulfill his duty to human beings and justice, and to supplement the collective action for an earlier common victory. The sixth category of measures is of the same meaning as the fifth. In a word, the last three categories of measures are merely to supplement the first three categories. All of these had been more or less applied to the Sino-Japanese cases of 1931 and 1937 and the Italo-Ethiopian Case of 1935, though not completely. The experience proves that the loyalty of states to the preservation of the "institution" plus the collective military measures are necessary conditions to success. Other explanations may be found in the preceding pages.

With regard to the scope of the application of the Institution of Just Collective Partiality, as also having been explained in the preceding ~~xxxxxxx~~ pages, four categories of cases are suggested:

19th Assembly, Records of Plenary Meetings, p. 85.
Official Journal, 1936, p. 753.
In the 3rd Assembly (1922) of the League, Canada proposed an amendment, according to which the Council, in advising upon the means for the fulfilment of the provision of Art. 10 of the Covenant, should "take into account the political and geographical circumstances of each state." (3rd Assembly, Records of the Meetings of First Committee, p. 24.)

#537 McNair, "The Stimson Doctrine of Non-recognition, A Note on Its Legal Aspects", British Year Book of International Law, 1933, pp. 65-74. Brown, "The Recognition of New States and New Governments", A.J.I.L., 1936, pp. 689-694.
L'Institut de Droit International, Brussels, Resolutions, 1936.
Hwai-Chun Lu, "The Doctrine of Recognition In International Law", Université d'Ottawa, 1941.

(A) A just war at which both belligerent sides cannot be proved unjust for the time being.

(B) An unjust war at which one of the belligerent sides is unjust.

(C) An unjust war at which both belligerent sides are unjust.

(D) One or both of the belligerent sides in any one of the above three cases being non-member states of the Institution.

(E) Any state which violates the Covenant of Just Collective Partiality or goes to afford assistance to the unjust belligerent side.

In the first case, a collective and strict neutrality must be adopted and maintained by the non-belligerents, in order to effect the maintenance of common friendship and the limitation of warfare through the principles of abstention and impartiality. In the second case, Collective partial assistance must be effectively afforded to the just belligerent side. In the third case, collective impartial intervention, either negative, such as collective arms embargo, etc., or positive, such as collective boycott, armed intervention, etc., is desirable to be adopted, with a view to preserve world peace and public order. But when, in a war between two or more great powers, intervention is likely impossible or not preferable, in view of a combined strength so weak as unable to meet the counter-attack from the belligerents, the non-belligerents are desirable to maintain a status of collective neutrality which will possibly preserve their common neutral interests; because, when their common neutral interests are enamoed by one side, they may seek common defence from themselves or, if necessary, resort to reprisal by collectively going to the other side.

To the fourth case, the doctrine of intervention in non-contracting states is adopted and applied, for the sake of preserving

the world's justice, peace and order. In domestic society, laws, though not enacted upon the approval of every person, are to be compulsorily applied to all persons so far as the stipulations of the laws are so made. Individual person is not allowed to say that he does not like to obey that law because he did not participate in that enactment. He has to obey it by reason of the maintenance of social order; it is also a result of the principle of majority rule; there is almost no real unanimity rule in municipal community; coercion is indispensable with general order. In the international community, the truth is the same, though the number of states and nations in international community is relatively far smaller as in comparison with the number of persons in municipal community. In the past hundred years part of the world's states oppressed the old civilized Empire of China and forced her to accept the rules of the Western international law. Japan, Turkey and many "semi-civilized" and "uncivilized" nations met the same. As Professor William Edward Hall frankly admitted, "European states will be obliged, partly by their sense of honour, partly by their interests, to be guided by their own artificial rules in dealing with semi-civilized states, when the latter have learned enough to make the demand, long before a reciprocal obedience to those rules can be reasonably expected."#538# Despite that Hall's knowledge in China's long and advanced civilization and history is surprisingly poor and that his ruancius and childish attitude and opinions in his book are extraordinarily strange, his these words correctly prove the disordered and selfish bases of the "European International Law", which should be put under a codification, according to justice and logic, carried on by the

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#538# Hall, "A Treatise on International Law", 8th ed. 1924, by Higgins, pp. 48-49.

cooperation of Eastern and Western jurists, and an international "majority" rule, though used in a wron way. After the world War I, the United States'/and Russia's attitude toward the League of Nations obviously is similar to that of China, etc., toward the European international law one hundred years ago, but Articles 3, 4, 11, 17, 16, of the League Covenant failed to be ~~[illegible]~~ developed to become a strong system of majority rule forcibly over the United States, Russia, etc., which no doubt, as Hall will so consider, should be called "semi-civilized states" and forced to terms"long before" they "have learned enough" and can "reasonably expect a reciprocal obedience to those rules!"

Some other examples of the majority rule in this sense, in opposition to the rule that a treaty can not apply to non-contracting parties, can be found in the following cases:

(A) The Committee of Experts set up by the League of Nations in 1920 for the study of the dispute concerning Aaland Islands, applied the Treaty of 1856 respecting the demolition of military works in Aaland Islands to the non-party state, Sweden, by reason of that that Treaty was a "true objective law" and "a part of European law".

(B) The Treaty of Versailles respecting the neutralization of Kiel Canal, the parties to which were only 28 states, was considered by the Permanent Court of International Justice "an international waterway.....for the benefit of all the nations of the world. #539#

Objectively speaking, majority rule itself is, same as war, a means, the virtue of which dependms upon its aim. When aiming at just causes as above outlined, majority rule is right, just and necessary, that is to say, that the international constitution of Just

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#539# Professor S. H. Bailow, "New Progress in International Law", ch. VI,(the Development of International Legislation", p. 209.

Collective Partiality appplies to non-members states, is just and necessary.

The fifth case is obviously a logical consequence of the second case.

(III) The Machinery :

Finally, the Theory of Just Collective Partiality can be realized in three ways: (1) by an independent convention concluded by those powers which will adopt the Theory; or (2) by a modification of the Hague Conventions of 1907 respecting neutrality; or (3) by a modification of the Covenant of the League of Nations of 1919. For the convenience of working out the concrete plan, I prefer to adopt now the third way----a modification of the League Covenant so far as this field is concerned; because this covenant is the most perfect both in pirit and in content among all the old conventions respecting the establishment of world peace and order. But my purpose of so doing is only to set an example, which certainly may be followed by either of the two other ways.

Of the 26 articles of the League Covenant, only 4 are of this concern (Articles 10, 16, 17 and 19). However, the modification of these four articles is still not enough:

(1) At least 13 cases of possible war as tolerated by the Covenant, but not certainly just, or without precise provisions, should be removed or regulated. These 13 cases are: (a) Art. 15(##6,7)

McNair, "The Functions and Differing Character of Treaties", British Year Book of International Law, 1930, pp. 105-118.

where a report by the Council cannot be unanimously agreed to. (B) Art. XV, #6; where the members may go to war with the party which does not comply with the recommendations of the report. (C) Art. XV, Art. XII, #1, Art. XIII, #4; where no definite procedure and effectual coercive measures are provided for the enforcement of the report, the decision, or the award. (D) Art. XI, #1, & #2, Art. XV, #1, & #9; where may be no request. (E) Art. XII, #1, Art. XV, #1; where a dispute may not likely lead to a rupture. (F) Art. XV; where both parties may not accept the report. (G) Art. XV, #10; where a majority vote may not be reached. (H) Art. XV, #8; where one party may claim its domestic jurisdiction. (I) Art. XVII; where no provision is made for the aggression of a member state against a non-member state. (J) Art. XVII, #1; where the non-member party may refuse the invitation. (K) Art. XVII; where no adequate provision is made for the conflict between non-member states. (L) Civil war; where the rule of strict neutrality shall be applied to states, is not referred to. (M) War of self-preservation of foreign status quo; which is not clearly stipulated in Art. X. These points have been explained in Chapter VII.

(2) The criteria of justice in the international community as stated above should be inserted into the Covenant, either into the preamble or by a separate new article.

(3) A new article providing for the obligation to comply with international law shall be inserted into the Covenant together with a "Code of International Law" as an appendix. The Code shall be worked out through the cooperation of Eastern and Western jurists, representing the common thought of the two great civilisations, and embodying a newly modified law of neutrality with a view to meeting

new arts of war and all those other rules and principles which have been, or may be, generally accepted by all the nations. It should be such a code which can be regarded as a product of the Eastern (Chinese) and Western (Christian) Civilizations and may really deserve the name "International Law" and universal respect.

(4) A new article should be inserted into the Covenant, providing that in all cases of war, which are not regulated by the Covenant, shall be treated with collective and strict neutrality on the part of all the non-belligerent member-states and that, for the preservation of such neutrality, all kinds of measures may be taken collectively for reprisal. The Council shall meet immediately in such cases either upon the request of a member-state or upon the report by the Secretary-General and decide, by a majority vote, what effectual collective action is to be taken. In case all other measures taken by the Council are not effectual, it shall automatically and immediately order all the non-belligerent member-states to take the side, which did not violate the neutral rights of the non-belligerent member-states.

(5) A new article should be inserted into the Covenant, providing that in case of an unjust war at which both the sides are unjust, the Council shall meet immediately either upon the request of a member-state or upon the report by the Secretary-General and adopt, by a majority vote, such measures as it deems proper to bring about peace through an impartial intervention. If such an intervention is deemed not effectual by the Council, all the non-belligerent member-states shall collectively maintain neutrality. Should such neutrality be violated by either of the two belligerent sides, the consequent provisions of above (4) shall

be applied.

(6) Article X shall be revised and supplemented according to the following:-

(A) The principle that "the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League", shall be implied to embody the principles of "not to change the status quo by force","not to resort to war under whatever form, not to resort to military coercive measures," and "non-intervention in domestic affairs".

(B) The following exceptions shall be reserved: (a) the right of war of self-preservation, (b) the right of war of remedy, (c) wars ordered or authorized by the League, (d) wars not in violation of the criteria of justice, and (e) the principle of peaceful change of status quo.

(C) The war of self-preservation shall not be inconsistent with the criteria of justice.

(D) The principle of non-intervention in domestic affairs shall imply that a member-state shall not intervene in another member-state' political or economic or any other thought and institution and shall not direct or promote or encourage either expressly or implicitly another member-state's people to carry on a revolutionary or any other movement against their Government, unless with the permission of that Government. Should such case have taken place, the victim state, after failing to effect a settlement by direct negotiation, shall make appeal to the League Council. The Council, upon the arrival of such appeal, shall immediately make due investigation. After having recognized the truth of the appeal, the Council shall send a warning to

the covenant-breaking state and require it to take due steps to satisfy the victim state within two weeks. Should such warning be ignored, the Council shall automatically refer the case to the Assembly. The Assembly shall automatically and immediately invoke different measures of sanction as embodied in Art. XVI, step by step, as may be chosen by a majority vote, till the victim state's independence and territorial, sovereign and administrative integrity is restored.

(E) In case of any threat or danger of an external armed aggression, such as mobilization or mass of armed forces, or any other as may be deemed so from the military point of view, the threatened party shall make an appeal to the League. The Secretary-General, upon the arrival of the appeal, shall immediately make due investigation and, after having recognized the threat, report to the Council. The Council shall immediately send a warning to the threatening state, requiring it to restore the status quo ante within three weeks; in the meantime, the Council shall order the League's Military Chief of Staff to take prompt preventive action. The League's Military Chief of Staff shall immediately order, in the name of the Council, the Governments of certain member states to despatch designated amount of forces to help the defence of the threatened state, till the threat is removed. Should the threatening state ignore the League's warning, the Council shall immediately report to the Assembly. The Assembly shall immediately invoke the different measures of sanction as embodied in Art. XVI, step by step, as may be chosen by a majority vote, till the status quo ante is restored.

(F) In case of any armed external aggression, the victim state shall resist by force and appeal at the same time to the League.

The Secretary-General, upon the arrival of the appeal, shall immediately make due investigation. After having recognized the aggression, the Secretary-General shall immediately report to the Council. The Council shall immediately send a warning, requiring the aggressor to cease fire within three days and restore the status quo ante within three weeks. In the meantime, the Council shall order the victime state to take parallel action with the aggressor by ceasing armed resistence and by restoring the status quo ante, and report to the Assembly. The Assembly, in case the Council's warning is ignored by the aggressor, shall immediately and automatically invoke Art. XVI and order the League's military chief of staff to take prompt repressive action. The League's Military Chief of Staff shall, in the name of the Assembly, order the Governments of certain states to despatch designated amount of forces to help the victim state till the status quo ante is restored.

(G) The Member-states of the League shall not recognize any fact brought about by force in violation of the Covenant. Should any member/have violated this obligation, the victim state is entitled to take any measure for reprisal or to request the Assembly to consider it an aggressor and, therefore, immediately invoke the measures of sanction as embodied in Art. XVI, step by step as may be chosen by a majority vote. The Assembly, after having made due investigation and recognized the righteousness of the request, shall follow it immediately.

(H) The victim state, when resisting an armed external aggression, is entitled to secure assistance under whatever form from other member-states or non-member-states provided that such assistance shall be not inconsistent with the spirit of the Covenant and shall end with the restoration of the status quo ante.

(I) The League Council shall accept the demand of the victim state for indemnity and, by a two thirds vote, decide the amount of the indemnity or adopt other form of non-territorial compensation. Should such conditions ~~fail~~ have failed/to be accepted by the aggressor, the Council shall, by a majority vote, appoint one member-state to lead its own forces or allied forces to confiscate a designated amount of the aggressor's arms, implements of war and war-materials and decide the principle of the distribution of such confiscated things among the victim and sanctioning states.

(J) Should a member-state ~~commit~~ have committed/the act of external armed aggression within one year, the Council shall, by a two thirds vote, after the conclusion of the suppression of the second aggression, immediately appoint a member-state to station a designated amount of forces at some strategic places of the aggressor-state at least for three years. The expenses of the said forces shall be paid by the aggressor-state.

(7) Article XVI should be revised and supplemented according to the following:-

(A) The measures of sanction listed in the preceding section shall be inserted into this Article.

(B) Any case of violation of the Covenant, to which the measures sanction, as embodied in the other articles of the Covenant, are inapplicable, shall be subject to the application of the measures of this Article, if necessary, after warning.

(C) The permission to withdraw from the League shall be granted only in those cases where the withdrawing state has fulfilled all its financial as well as legal obligations as stipulated in the Covenant. The abive said "legal" obligations imply that the withdrawal

or the notice of the withdrawal of a member-state can only be effected after the settlement of all the disputes or cases of its concern, or after all parties to a dispute or a case have agreed to its withdrawal and will leave the unsettled cases or disputes pending.

(D) The measures as provided for in this Article shall be selected for application, according to the nature of a given case, by a majority vote either of the Council or of the Assembly, provided that the measure adopted shall be one deemed effectual to a settlement.

(E) In case a member-state resorts to force in a dispute, in disregard of its covenant obligations, the other party is entitled to request the Assembly to invoke the measures of sanction. The Assembly, upon such request, shall, by a majority vote, decide the steps of effectual sanction, till the status quo ante is restored.

(F) In case of a violation of the Covenant, being neither a dispute nor a resort to war, the Secretary-General shall, after having noticed the case, immediately direct the attention of the interested state to it and request the interested state to reply within two weeks. Should such request be ignored, the Secretary-General shall immediately report to the Council. The Council shall send a warning again and require it to comply with the Covenant within two months. Should this warning be ignored, the Council shall immediately report to the Assembly, which shall immediately select, by a majority vote, the measures of sanction for application, till the Covenant is respected.

(G) Any member-state, which does not comply with the collective action of sanction or with the League's other order for preventive or repressive action, through the Council or Assembly or the Military Chief of Staff or any other organ acting in the name of the Assembly or Council, as prescribed in the Covenant, shall be subject to the

application of the measures of sanction and the Council may adopt any other measure effectual to the reservation of the prosecution of sanction, such as [redacted] the provisional occupation of that state, the requisition of that state's war supplies without compensation, etc..

(H) The sanctioned state shall be required by the Assembly to pay indemnity under whatever form, the content of which shall be also fixed by the Assembly. The distribution of the indemnity shall be made in proportion to the losses on the part of the sanctioning, including the victim, states.

(I) The sanction imposed shall be raised, after due settlement, by a two thirds vote in either the Council or in the Assembly.

(J) The measures of sanction may be supplemented by regional security systems and actions.

(K) The Assembly shall, by a majority vote, set up two permanent committees: one is Permanent Committee for Coordination of the Economic Measures of Sanction, the other is Permanent Military Chief of Staff for Sanction. These permanent committees shall be entrusted with the work of study of interested technical problems and the power to execute the resolutions of the Council or of the Assembly concerning sanction.

(8) Article XIX shall be revised and supplemented according to the following:

(A) The change of status quo shall be allowed only in the following cases: (a) Treaties which have become inapplicable. (b) International conditions whose continuance might endanger the peace of the world. (c) An oppressed or ruled nation which desires to become an independent state and has carried on an organized independence movement. (d) An oppressed state which desires to restore its territorial

not in violation of the criteria of justice, soverign and administrative integrity and independence/. (c) The free unification of peoples, either of same nation or different nations, living in different states.

(B) Such request made by a nation or a state shall be submitted to the Assembly together with a statement on its concrete demands. The Assembly shall accept it and refer it to the Permanent Court of International Justice for investigation, study and recommendation. The Court shall ask for opinions the interested states and nations and adopt a report with recommendations by a majority vote. Based upon the Court's report, which shall be made within three months, the Assembly shall decide, by a two thirds vote, whether or not it would recognize the request as right, in view of the Twenty-one Principles of justice and the limits set up/in the preceding paragraph.

(C) Should the Assembly have so recognized, it shall formally request for approval from the interested states or nations of such change. The interested states or nations shall comply with this request and carry on direct negotiations with the appealing states or nation for the settlement.

(D) Should the interested states or nations not comply with the Assembly's request, the Assembly shall immediately and automatically authorize the appealing state to resort to war or to seek foreign military or any other assistance, or adopt the measures provided for in Article XVI for the enforcement of such change.

(E) Should the Assembly fail to effect such recognition and should the appealing state or nation fail to continue to insist upon its demand with sufficient reasons, such appeal shall not be submitted to the League again within the next seven years, except backed by two thirds member of the League.

(F) Should the Assembly, intentionally violating the criteria of Justice and the Covenant stipulations, fail to effect such a recognition and should the appealing state or nation be able to submit sufficient reasons, proof and fact for certifying the righteousness of its demand, the appealing state or nation shall be entitled to resort to war and to seek whatever foreign aid for remedy.

(G) Should the appealing state or nation resort to war for a change in disregard of the above peaceful procedure, the Secretary-General shall report, after having noticed so through due investigation, to the Assembly. The Assembly shall immediately order the appealing party to restore the status quo ante within two weeks. Should the appealing party ignored this order, the Assembly shall immediately adopt the coercive measures as provided for in Article XVI or in any other article of the Covenant, till the status quo ante is restored.

(9) A new Article should be inserted into the Covenant, providing the procedure for the enforcement of the principle of equal treatment of peoples, including minorities, foreign residents and foreign visitors. After having discovered such ill or unequal treatment, the victim state or nation is entitled to appeal to the League. The Secretary-General shall immediately make due investigation and, if so confirmed, report to the Council. The Council shall immediately requests the interested state to submit within three weeks a statement for explanation. Despite that either the interested state complies with the Council request or not, the Council shall, according to the criteria of Justice and the materials in hand, make a judgement. After having judged, by a majority vote, that the appeal is right, the Council shall immediately request the interested state to alter its

municipal law or policy, according to the recommendated principles based upon justice, within six weeks. Should the interested state ignore the Council's request, the Council shall immediately report to the Assembly, and the Assembly shall immediately and automatically authorize the appealing state or nation to resort to whatever measure, including reprisal and war, effectual to rendering justice.

The paragraphs (E), (F) and (G) under the preceding Article XIX are also applicable to the cases under this new article.

(10) Article XVII should be revised and supplemented according to the following:

(A) In case of a dispute or an act of external armed aggression or violation of sovereignty or threat to such act, occurred between a member-state and a non-member-state, the Secretary-General shall immediately make due investigation and then report to the Council. The Council shall immediately, in disregard of the attitude of the interested member-state, invite the interested non-member-state to follow the procedure and measures as provided for in the Covenant. In the meantime, the League shall accept any appeal from the non-member-state. If the non-member state agrees to the League's invitation, the Council shall immediately report to the Assembly. The Assembly shall immediately notify the interested member-state and welcome the delegate of the non-member-state to the Assembly. The case shall be dealt with by invoking the interested provisions of the Covenant; the member and non-member states interested shall have equal rights and obligations therefrom.

(B) In case of a dispute occurred between a member-state and a non-member-state, should the non-member-state refuse to accept the League's invitation or not appeal to the League, and should, at the

same time, no war occurred, the League shall leave it without any intervention.

(C) In case of (A), where the non-member-state, while refusing to accept the League's invitation or not making appeal to the League, resorts to war against the member-state, the Council shall, after having received the member-state's appeal, make due investigation immediately and then report to the Assembly. The Assembly shall immediately apply the measures of sanction as provided for in the relative article of the Covenant to repress the non-member state, till the status quo ante is restored.

(D) In case of (A), where the non-member state, while refusing to accept the League's invitation or not making appeal to the League, is attacked by the member-state, the Council shall continue to readily accept a possible appeal from the aggrieved non-member state and therefore extend the protection under the Covenant to it, provide that, after the status quo ante is restored, the non-member state will submit the dispute to the League; Then the procedure provided for in (C) shall be applied hereto.

(E) In case of (A), but between non-member-states, the Secretary-General shall immediately make due investigation and then report to the Council. The Council shall, in disregard of whether appeals have, or not, reached, invite the two parties to submit the dispute or case to the League. If the two parties accept, the Council shall immediately report to the Assembly. The Assembly shall immediately welcome the delegates of the parties to the Assembly. The relative Covenant provisions shall be applied thereto. The parties shall have equal rights and obligations under the Covenant.

(F) In case of a dispute between non-member states, where all the parties refuse to accept the League's invitation, but resort no

war, the League/shall leave it without any intervention.

(G) In case of (F), but where one party resorts to war, the Secretary-General shall make due investigation and then report to the Council, the Council shall immediately, by consulting the information at hand, declare the party resorting to war the aggressor by a majority vote and require the aggressor to cease fire and begin to restore the status quo ante within two weeks. The other party shall be required to resort to parallel action. Should one or both of the parties ignored the request, the Council shall immediately report to the Assembly. The Assembly shall immediately, by consulting the new information at hand, re-declare one party the aggressor, by a majority vote, and require one or both of the parties to cease fire and to begin to restore status quo ante within one week. Should one or both of the parties ignore the Assembly's requirement, the Assembly shall immediately adopt the measures provided for in Article XVI against one or both of the parties, till the status quo ante is restored.

(H) In case of a dispute between non-member states, where no war occurs, and where only one of the parties accepts the League' invitation, the Council shall leave it without any intervention.

(I) In case of a dispute between non-member states, where the party refusing the League's invitation resorts to war against the party accepting the League's invitation, the Council shall, upon the arrival of the appeal from the victim state, immediately adopt the procedure stipulated in above (C).

(J) In case of a dispute between non-member states, where the party accepting the League's invitation resorts to war against the party refusing the League's invitation, the Council shall immediately

, upon the arrival of a possible appeal from the victim party, adopt the procedure stipulated in above (D).

(K) The term "war" implies war under whatever form, including military comercive measures.

(L) In case the League needs the assistance from a non-member state in dealing with a dispute, an invitation may be sent to that non-member state by the Council by a two thirds vote.

(M) The Council shall, by a two thirds vote, accept or invite a non-member state' participation in the non-political activities of the League.

(11) The provisions of above Articles (2), (4) and (5) have a priority to all the other articles in application.

(IV) The Practicability:

Whether this Theory as well as the plan as stated above is practicable in view of the present condition of international community is certainly another problem deserving consideration. Yet, after having had an examination of the manifold reasons given in the preceding Chapter VIII and the "Preliminary Considerations" in Chapter IX, this Theory as well as the plan seems theoretically to be the only way to human progress. The development and progress of the present international society must be directed to pursue such goals as the ideal rule of law and just peace, as nearer as possible. The adoption of an idea of justice, based chiefly upon the equal freedom and co-existence of nations, and a distinction between just war and unjust war, between just and unjust neutrality, should constitute the immediate least progress of the international community, in addition

to the rule of law, which the human beings, who consider themselves "civilized", must try to achieve, no matter what price be paid. Peace must be an order on justice; order must be backed by force; force"is"sacrifice; no sacrifice, no just peace ! The seven Crusades during the eleventh and twelfth centuries as well as the present Sino-Japanese long War strongly prove this truth.

In practice, fortunately, the eve of the conclusion of the present World War II may keep us far more optimistic than that of the conclusion of the World War I. Before the conclusion of the World War I, there had been neither internationalistic institutions, nor their long experiences, nor their advocates with overwhelming influence, though there was such an eminent international jurist as Professor John Westlake, who said in his "International Law"(Vol. II, 1st ed. 1907, 2nd ed. 1913) that "Neutrality is not morally justified unless intervention in war is unlikely to promote justice or could do so only at ruinous cost to the neutral." #540# On the eve of the conclusion of the present World War II, we have had them all. The Joint Declaration of 26 nations on Jan. 1, 1942, is no doubt an endorsement of the cause and achievements of internationalism in the past two decades. A new world of justice has been repeatedly and strongly reminded of by the World's spiritual leader, the Pope; especially on the Christmas Eve in 1941, His Holiness Pope Pius XII says: "For if, to the vigor which shapes the material order, there be not united in the moral order the highest reflection and sincere purpose, then, undoubtedly, we will see verified the judgement of St. Augustine: 'They run well but they have left the track; the farther they run the greater is their error for they are going ever farther from their course.' Nor would it

be the first time that men who, in the expectation of being crowned at war's end with the laurel wreath of victory, have dreamed of giving to the world a new order by pointing out new ways which in their opinion lead to well-being, prosperity, and progress. Yet whenever they have yielded to the temptation of imposing their own interpretation, contrary to the dictates of reason, moderation, justice, and the nobility of man, they have found themselves disheartened and stupified in the contemplation of the ruins of deluded hopes and miscarried plans. Thus, history teaches that treaties of peace stipulated in a spirit and with conditions opposed both to the dictates of morality and to genuine political wisdom have had but a wretched and short-lived existence, and so have revealed and testified to an error of calculation....Such a new order, which all peoples desire to see brought into being after the trials and the ruins of this War, must be founded on that immovable and unshakable rock, the moral law which the Creator Himself has manifested by means of the natural order and which He has engraved with indelible characters in the hearts of men: that moral law whose observance must be inculcated and fostered by the public opinion of all nations and of all states with such a unanimity of voice and energy that no one may dare to call into doubt or weaken its binding force....Consequently, recapitulating and integrating what we have expounded on other occasions, we insist once again on certain fundamental conditions essential for an international order which will guarantee for all peoples a just and lasting peace and which will be a bountiful source of well-being and prosperity. Within the limits of a new order founded on moral principles there is no room for the violation of the freedom,

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#540# Westlake, Vol. p. 90.

integrity, and security of other states, no matter what may be their territorial extension or their capacity for defence....it is.....indispensable that in the interests of the common good the powerful states, as all others, should respect the rights of those smaller states to political freedom, to economic development and to the adequate protection, in the case of conflicts between nations, of that neutrality which is theirs according to the natural, as well as international, law." #541#

Among the recent leading international jurists, Professor Paul Fauchille seems to be the first or one of the faithful advocates of a more or less similar view to the Theory Of Just Collective Partiality. In his "Traité de Droit International Public"(1921), Professeur Fauchille says: "S'il faut dire qu'un Etat qui n'est lié vis-à-vis d'aucune des puissances belligérentes par un lien conventionnel a en principe le droit de rester neutre, convient-il cependant d'admettre qu'il ait toujours un pareil droit ? En se plaçant au point de vue de la justice et de la saine raison, ne doit-on pas décider qu'un Etat n'a pas ce droit quand il se trouve en présence d'une agression manifestement injuste, d'un évident abus de la force, d'un criant attentat au droit des gens, commis par une nation forte contre une nation faible. On a soutenu que, dans ce cas, les Etats ont le devoir, sinon pleinement juridique, du moins moral, de ne pas demeurer dans l'inaction, d'intervenir dans la guerre. Une attitude d'effacement absolu et d'égoïsme national, a-t-on remarqué, ne serait pas conforme à l'idée de la communauté juridique entre les nations civilisés que

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#541# Christmas Message of Pope Pius XII, December 24, 1941, International Conciliation, No. 377, Feb. 1942, pp. 87-89. The New York Times, Dec. 25, 1941.

la plupart des auteurs modernes admettent; elle serait, d'autre part, ajoute-t-on, contraire à l'intérêt bien entendu de chaque Etat, un attaque injuste qui atteint aujourd'hui un Etat pouvant demain en atteindre un autre." #542# Besides Fauchille, Professors Jessup, Deák, Butler, Maccoby, Ballis, etc. hold that the inadequacy of the criteria which existed by the doctrine of "invincible ignorance" which suggested that a war might be just on both sides. #543# Professor Shotwell, in his radio-speech "After the War", on Dec. 13, 1941, insisted upon that "The post-war world will not be ready for anything so splendid as the immediate establishment of a stronger and more universal League of Nations.....No thoughtful person is any longer in doubt as to the need of such an over-all organization, coordinating the various activities to which we have referred, and speaking with the authority of Peace itself....~~[illegible]~~ There must be no imperialism under the Anglo-Saxon system any more than under the German..... . Permanent peace lies in following the methods of democracy which are those of cooperation and understanding, and of equal justice to all." #544# The Preliminary Recommendation on Post-War Problems formulated by the Inter-American Juridical Committee at the request of the Third Meeting of Ministers of Foreign Affairs of the American Republics, Rio de Janeiro, January 1942, signed by M. Afranio de Mello Franco, Charles G. Fenwick, F. Nieto del Rio, C. E. Stolk, and P. Campos Ortiz, adopted, in its conclusion, further admirable theories that "...law and order should be based in the future, to the end that a just and permanent peace may be established among the nations,..." and that "Nations

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#542# Fauchille, tome 2, (Vol. IV), p. 640-641.
#543# Jessup and Deák, "Neutrality", Vol. I, pp. 8-10.
Butler and Maccoby, "Development of International Law", p. 114.
. Wright, "The Present Status of Neutrality", p. 402.
#544# Shotwell, in International Conciliation, January 1942, pp. 34-35.
The New York Times, December 13, 1941.

must recognize in their mutual relations the priority of the moral law, which is the same for nations as for individuals; and they must make their conduct conform to the fundamental principles derived from that law. Existing rules of positive law must not be regarded as fixing permanently the status quo, but rather as the necessary basis of international order and stability pending the adoption of rules more in accord with the new needs of the international community." #545#

Among government officials, Secretary of State Cordell Hull of the United States, also President of the American Society of International Law in 1941, in his speech before the Society's 35th Annual Meeting on April 24, 1941, at Washington, made a distinction between an "ordinary war" and "aggressive war". He said: "Too many people assume that the present struggle is merely an ordinary or regional war, and that when it comes to an end the side which is victorious will collect indemnities but otherwise leave the defeated nations more or less as they were before the conflict began. This assumption would prove entirely erroneous should the aggressor Powers be the winners. As waged by them this is not an ordinary war. It is a war of assault by these would-be conquerors, employing every method of barbarism, upon nations which cling to their right to live in freedom and which are resisting in self-defense." #546# Robert H. Jackson, the United States Attorney-General, in his speech before the Inter-American Bar Association, Havana, on March 27, 1941, declared that "the absolute category of neutrality on the

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#545# International Conciliation, Feb. 1943, No. 387, p. 119.
#546# Hull's speech, in Proceedings of American Society of International Law, 1941, p. 9.

one hand, and belligerency on the other hand, will not square with the test of actual state practice, and that, as judged by that practice, there is a third category in which certain acts of partiality are legal even under the law of neutrality....The only sanction that seems available in our times is the freedom of the right-thinking states of the world,...to give a material implementation to their moral and nationally official judgements as to the justice of a war.....We need not now be indifferent as between the worse and the better cause, nor deal with the just and the unjust alike.... A system of international law which can impose no penalty on a law-breaker and also forbids other states to aid the victim would be self-defeating and would not help even a little to realize mankind's hope for enduring peace....These speak a language understandable to those deaf to the precepts alike of Christian civilization and of legal obligation and scholarship," #547# In addition, President Roosevelt of the United States in his Message sent to the armed forces and auxiliary services of the Allies on Dec. 24, 1942, mentioned again the idea-"in defense of freedom and justice and human rights" which appeared in his famous Chicago "Quarantine Speech" five years ago (Oct. 6, 1937). #548#

Other facts which are remarkable are that not a small number of states in Asia, America and [redacted] Europe are still maintaining "neutrality", some resorting a collective action for its,(Pan-American) and that declarations of neutrality,after the outbreak of the present war in Europe, are numerous. The Hague Conventions respecting [redacted]

#547# Jackson's speech, in American Journal of International Law, April 1941, pp. 351, 358.
#548# The New York Times, Dec. 25, 1942.
Borchard and Lage, pp. 367-370.

neutrality are still valid. Every state, above all, seems by no means to have been prepared to give up the claim for preserving the exercise of full sovereignty; some states even will not yet give up their domination over other nations.

All these facts, on the eve of the conclusion of the present World War II, though still not much hopeful in view of a success in the realization of an ideal just rule of law in the international community, rightly prove the need and practicability of an intermediate theory like that of Just Collective Partiality, or Just Collective Neutrality. The practical results hitherto achieved tend really towards the establishment of a test as to the formal legality of a war rather than the setting up of standards for evaluating its intrinsic justice, though the characterization of aggressive wars as crimes frequently recurs in official and semi-official pronouncements. At the same time, the revival of the medieval conception of justice on war by the Versailles Treaty, which recognized the "war-guilt" and the principle of punishment, became already the starting-point for a movement once more, as M. Joachim Von Elbe says, to distinguish between just and unjust wars. #549# A profound change in the general attitude towards war has occurred. Therefore, this Theory, at least, and the Law for it, must, and now may, follow it.

In concluding this study, I would remind the world of three things which are essential to the successfulness of our effort towards the above said goal. The first is the duty of leadership in this period on the part of Great Powers and all the states who are earlier to be convinced of the necessity of the world's

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#549# Elbe, "Evolution of the Concept of Just War in International Law", American Journal of International Law, Oct. 1939, p.687-688.

realisation of a just peace. As His Holiness Pope Pius XII says, "it is inevitable that the powerful states should, by reason of their greater potentialities and their power, play leading rôles." #550# A group of at least 26 nations, who are "earlier convinced", as shown in 1942 (Jan. 1) at Washington, including Great Powers, should be able to achieve something by their determination and constant efforts under due direction. Lord Cecil of Chelwood of Great Britain, chief draftsman of the Covenant of the League of Nations in 1919, and winner of the Nobel Peace Prize, #551# Vice-President Henry A. Wallace of the United States, etc. #552# have made separately proposals for world policing system by the cooperation of the four Great Powers, Great Britain, the United States, Russia and China, in 1942. The formation of a "Big Four" Supreme Council of the United Nations has been reported to have been under way in January 1943. #553# We sincerely hope that they will run well and not leave the track.

The second thing is the world's unification of spiritual civilizations by the parallel efforts of the Catholic Church of the West and China of the East. The Pope's recognition of the coincidence between the Catholic Doctrines and the five thousand years old traditional Chinese philosophy, particularly concerning the concept of justice, made an invaluable contribution to the hopeful movement of achieving the world's just peace. The respectable Catholic Fathers' memorable good impression on the [redacted]

#550# Pope Pius XII's Message, in International Conciliation, Feb. 1942, p. 89.

#551# Cecil's statement in Dewitt MacKenzie's report from London, Oct. 30, 1942, A.P., Toronto Daily Star, Oct. 30, 1942. see also Toronto Daily Star, Dec. 29, 1942, (London, BUP), Plans for Trying War Criminals.

#552# Wallace's speech, in New York Times, Dec. 29, 1942. see also Ex-President Hoover's Address on "New Approach to Peace", in New York Times, Dec. 17, 1942. Hoover says,

four hundred and fifty million Chinese people during the past hundreds years and China's despatching envoy in/ 1942 to the Pope's Court surely add more to this contribution. The importance of such spiritual unification is shown by the reunification of China more than two thousand years ago. Though the peoples of the world to-day are not of one same nation as was the case of the Chinese Chuen Chu Chan Kuo Ages, the disappearance of the idea of racial discrimination in addition to a universally identical cultural and spiritual background would solve the problem. A combination of these two great spiritual civilizations would sweep off all mental obstacles in the way. The peoples of the world must be united spiritually under the leadership of the Pope, loyally and steadily. The western peoples, particularly, should not forget the great achievements of the Catholic Church in respect to the establishment of domestic social order, the suppression of private wars and the unification of the European states and nations in Middle Ages. That was really a regrettable tragedy which gave rise to the subsequent great wars and the sacrifice of millions of lives, as/ an eminent historian, Professor Carlton J. H. Hayes of Columbia University says: "While the Catholic Church remained as the only source of constant protection against Machiavellianism, the Protestant Revolution of the Sixteenth Century and the consequent disruption of Christendom split and weakened the one force which might possibly have offered resistance to

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"Part of the failure to win the peace last time was because we listened to the slogan of 'win the war first and discuss peace afterwards.'"
See also Professor S.R.Show's article in Foreign Affairs, Oct. 1942, and speech before the Mont Tremblant Pacific Relations Conference, Dec. 1942, (Paper No. 3, China Council of the Conference.) see also New York Herald Tribune, Jan. 1943.

rampant nationalism (narrow and audacious nationalism and racism), greedy imperialism, and immoral diplomacy. With the revolt of Northern Europe against the Papacy and the Catholic Church, the last bulwark of mediaeval internationalism went down in ruins, and there arose full-grown in its stead the state-system of modern Europe with all its faults and all its vices. The events of the fifteenth and sixteenth centuries brought into bold relief the truth, as Mr. David Jayne Hill puts it, "that, as in the constitution of single states the dissolution of monarchy presents no other alternative than anarchy or self-government, so in the relations of independent sovereignties, war and diplomacy become the inevitable substitutes for empire,"(Hill, 1158). When the Holy Roman Empire failed to exercise a general secular dominion, as it failed in the fourteenth century, and when the Papacy was no longer universally recognized as a tribunal of last resort, as befell in the sixteenth century, the security of nations henceforth became wholly dependent upon armed force on the one hand, or upon intelligent association for mutual safety upon the other. Unhappily for modern Europe, the aspiration after territorial aggrandizement became the passion of the greater states at the very moment when the Catholic Church, the traditional guardian of peace and international comity, was least able to defend the rights and liberties which it had sought to protect. Intelligent association for mutual support was accordingly pushed into the limbo of forgotten dreams. And international war has loomed larger than international peace in the annals of modern history."#55&#

(supplement to #549#: Barandon, "Le Système Juridique de la Société des Nations pour la Prévention de la Guerre"(Paris, 1933), p. 280 et seq. Oppenheim, Vol. II, pp.147-8. J.F. Williams, "Chapters on Current International Law", (N.Y., 1929), p. 72. The League of Nations Publications, VII, Political, 1938, VII, 1, (Dec. A. 7. 1938. VII), p. 51. Report of the Special Committee to Study the Application of the Principles of the League Covenant, Feb. 2, 1938.)

Lastly, I would remind again the world of the words of Monsieur Pascal, as cited by Professeur Bagard of the Université de Genève,-

"La justice sans la force est impuissante,
la force sans la justice est tyrannique.
La justice sans force est contredite,
parce qu'il y a toujours des méchans,
la force sans la justice est accusée.
Il faut donc mettre ensemble la justice et la force,
et pour cela faire que ce qui est juste soit fort,
ou que ce qui est fort soit juste." #555#

(Kwai-Jhun Li)

#553# "War Council Plan of Allies Evolving With Russia and China", The New York Times, Jan. 16, 1943, (Report by J.... Lawrence from Washington). The Report says also: "President Roosevelt has been trying to persuade Prime Minister Churchill to give up his opposition to any discussion now of post-war planning....Since a principal problem to be ironed out would be the post-war status of the British Commonwealth territories, especially India."

#554# Hayes, "Mediaeval Diplomacy", in Walsh, "The History and Nature of International Relations", 1922, pp. 87-89.

#555# Pensées de Pascal, in Bagard, "The Quest For Peace", 1940, front page.

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(4 March 1943, Kwai-Chun Lu.)

UTION OF THE STATUS OF NON-BELLIGERENCY IN INTERNATIONAL LAW

(Ph.D.(Sci.Pol.) Thesis---by Hwai-Chun Lu)

Contributions of this study:

(1) The first book on this subject in the world market.

(2) Original Research:-

(A) An original study of the Chinese theory and practice in this field since her ancient times.

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(C) An riginal study of the new facts/and theories up to date (World War II). ,cases,

(D) A systematic collection of materials which may facilitate the work of study in this field by other writers.

(3) First to make a classification of the status of non-belligerency together with a survey of its evolution since the ancient times to date.

(4) A new theory together with its machinery and the criteria of justice.

(5) The exposition of the grand contributions of the Catholic Church since the Middle Ages.

(6) Other critics and opinions are given on many occasions.