

non-involvement in direct hostilities is inconsistent with the traditional concept, and if it should come to have this meaning, the concept would have been strikingly narrowed. It is of course necessary to make allowance for inadequacies of translation (when so much attention is given to a single word) and to propaganda uses of such a term as "non-belligerency," which might suggest the legalization of differential treatment of belligerents. Neutrality in the traditional sense, or as it is sometimes expressed, "the punctilio of neutrality," has been called an "anachronism" in the present situation.<sup>10</sup> Fear of the very word "war," along with strongly felt political or moral reasons for favoring one side, has probably figured in the development. The attempted distinction between "perfect" and "imperfect" neutrality has long been familiar.<sup>11</sup> But, even without dependence upon a basis of reprisals for treaty violations, such definitely partial attitudes as have characterized the states commonly called "non-belligerent" in the present war may conceivably presage the time when differential treatment may be a matter of right as well as practice.

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THE HABANA CONFERENCE AND INTER-AMERICAN COÖPERATION<sup>1</sup>

Secretary Hull in his address at the opening of the Second Meeting of the Foreign Ministers at Habana, July 22, 1940,<sup>2</sup> said:

For nearly a year now, a new major war has raged, with increasing fury, over important areas of the earth. It came as a culmination of a process of deterioration of international conduct and international morality, extending over a period of years, during which forces of ruthless conquest were gathering strength in several parts of the world.

These forces, now at work in the world, shrink from no means of attaining their ends. In their contempt for all moral and ethical values, they are bent on uprooting the very foundation of orderly relations among nations and on subverting, undermining and destroying existing social and political institutions within nations. They have already left in their wake formerly sovereign nations with their independence

<sup>10</sup> The Times (London), Sept. 4, 1940, p. 5 (editorial). See also the statement that the Nazi war on the neutrals was not a mere incident dictated by military exigencies, but an essential part of the plan. (*Ibid.*, Sept. 2, 1940, p. 5.)

<sup>11</sup> Dana's Wheaton (1866), pp. 509, 510. As to a neutral's furnishing one of the belligerents with needed materials, under preëxisting treaties, the conclusion offered, with supporting references to Bynkershoek and Vattel, was that "The fulfillment of such an obligation does not necessarily forfeit his neutral character, nor render him the enemy of the other belligerent nation, because it does not render him the general associate of its enemy." (*Ibid.*, p. 517.)

<sup>1</sup> The Final Act and Convention are printed in the Department of State Bulletin, Aug. 24, 1940, Vol. III, No. 61, pp. 127, 145, corrected in the Bulletin, Aug. 31, 1940, Vol. III, No. 62, p. 178; and in the Supplement to this JOURNAL, pp. 1-32.

<sup>2</sup> See Department of State Bulletin, July 27, 1940, Vol. III, No. 57, p. 42. An excellent account of the Habana conference is given by Howard J. Trueblood in Foreign Policy Reports, Sept. 15, 1940.

trampled into dust and millions of proud men and women with their liberties destroyed.

Our American Republics had no part in kindling the tragic conflagration which has thus been sweeping across the world. On the contrary, severally and jointly, we did everything in our power to stay its outburst. Once the conflict had begun, we did everything we could to limit its spreading. But it has been increasingly clear that in the vast tragedy which has befallen large portions of the earth there are dangers to the American nations, as well, which it would be suicidal not to recognize in time and not to prepare to meet fully and decisively.

It has been increasingly clear that our nations must not blind themselves into fatal complacency as so many nations have done to their mortal sorrow—regarding the possibility of attack against them from without or of externally directed attempts from within to undermine their national strength and to subvert their cherished social and political institutions, or both. Too many nations have only recently paid a tragic price for confidently placing reliance for their safety and security solely upon clearly expressed desire to remain at peace, upon unequivocally proclaimed neutrality, upon scrupulous avoidance of provocation. Conquerors, invaders, and destroyers ignore or brush aside reasons such as these.

Looming ominously on our horizon is the danger that attempts may be made to employ against our nations, too, the same means of subordinating their destinies to control and dictation from abroad that have already been notoriously employed elsewhere against numerous other countries. We must recognize the serious possibility that no effort or method may be spared to achieve, with respect to some of us, economic domination and political penetration, and to sow, among our nations, the seeds of suspicion, dissension and discord—the frequent prelude to even more menacing action.

Lest our nations, too, suffer the fate that has already befallen so many other peace-loving and peace-seeking nations, wisdom and prudence require that we have in our hands adequate means of defense. To that end, in the face of common danger, our nations are already working together, in accordance with their firmly established practice of free consultation among equals and of voluntary coöperation with regard to problems which are of common concern to all of us. It is to examine such of these problems as are immediately pressing and to seek for them most effective solutions that the representatives of the twenty-one American Republics have come together at this time.

Secretary Hull declared that the solution of the economic problems alone was not enough to preserve the peace and security of this hemisphere, and, referring to the subversive action of foreign agents in this hemisphere, he said:

A new and evil technique has been invented which seeks by devious methods to corrupt the body politic in order to subject it to alien purposes. With cynical effrontery, sanctuary within the generous citadels of free speech and freedom of assembly is demanded by agents whose masters would obliterate those institutions and foment instead dissension, prejudice, fear, and hatred.

Passing to the consideration of the problem of the status of the European possessions in this hemisphere he said:

Specifically, there is before us the problem of the status of European possessions in this hemisphere. These geographic regions have not heretofore constituted a menace to the peace of the Americas; their administrations were established, for the most part, many generations ago and, in our time, have acted as congenial neighbors. We have no desire to absorb these possessions or to extend our sovereignty over them, or to include them in any form of sphere of influence.

We could not, however, permit these regions to become a subject of barter in the settlement of European differences, or a battleground for the adjustment of such differences. Either situation could only be regarded as a threat to the peace and safety of this hemisphere, as would any indication that they might be used to promote systems alien to the inter-American system. Any effort, therefore, to modify the existing status of these areas—whether by cession, by transfer, or by any impairment whatsoever in the control heretofore exercised—would be of profound and immediate concern to all the American Republics.

The broad aims and policies which he considered to rule in this hemisphere were ably stated by Secretary Hull and he referred to the efforts of his Government to ward off the impending catastrophe of war by an appeal addressed in 1937 to all nations. This appeal recited the "basic principles of orderly international relations under the rule of law as the foundation of its foreign policy" and invited comment thereon. "More than fifty nations expressed on that occasion their belief in the validity of these principles. At Montevideo, at Buenos Aires, at Lima, at Panama, the twenty-one American Republics proclaimed their acceptance." "Sooner or later," Secretary Hull declared, "the entire world must return to a system of international relations based on those principles." He continued:

They are the only possible foundation stones of an organized society assured of enduring peace and of sustained prosperity. The price of their abandonment is the chaos of international anarchy and the inexorable impoverishment of nations and individuals, such as we witness today in Europe and in Asia.

In a system of coöperative peace such as we envisage there is no exclusion. Its underlying principles are universal in their applicability; they can be accepted by all nations to the benefit of each and all; they must be accepted by all, if the light of modern civilization is not to be extinguished. Any nation which in good faith accepts and practices them automatically shares in the vast benefits they confer.

At this time, when these principles and these ideals are being widely challenged, when institutions based on them are being crushed by force over large areas of the world, it is doubly essential that our nations keep them alive and rededicate themselves to the cause of their preservation.

Secretary Hull in his address at the close of the conference<sup>3</sup> emphasized the necessity for the American nations to "strengthen further their already

<sup>3</sup> Department of State Bulletin, Aug. 3, 1940, Vol. III, No. 58, p. 65.

strong ties of unity and solidarity and devise a constructive program for implementing, through consultation and cooperative action, effective means of continental protection and defense." He proceeded to enumerate "three sets of problems and conditions" with which they were confronted.

The first [he said] relates to the possible transfer of sovereignty at any time over certain islands and regions from one non-American State to another non-American State. The second involves the threat of subversive activities in the American nations directed from outside the continent. The third comprises extremely grave economic difficulties and dislocations resulting from war.

"The American Governments have," the Secretary said, "demonstrated to the world their unalterable determination to preserve and strengthen the spirit and the system of continental unity and solidarity. They have thus cleared the decks for effective action whenever such action may become necessary." Happily reconciling whatever differences of opinion which at first appeared to exist, the meeting of the Foreign Ministers had, as Secretary Hull indicated, "unanimously agreed upon two documents designed to take care of any situation that may arise. These documents consist of (1) a convention, and (2) a declaration and resolution, referred to as the Act of Habana."

#### *The Inter-American Commission of Territorial Administration*

In the same statement which Secretary Hull made on July 30, 1940, upon leaving Habana at the close of the Second Meeting of the Foreign Ministers, he said:

The convention contains definite provisions for the administration of any region which it may be found necessary for the American Republics to administer. It has the twofold purpose of protecting the peace and safety of the American Republics, and of safeguarding and advancing the interests and welfare of the inhabitants of the region.

The administration, which will be under an "Inter-American Commission of Territorial Administration", is to be provisional in character and is to continue only until such time as the region is in a position to govern itself or is restored to its former status—whenever the latter is compatible with the security of the American Republics—whichever of these alternatives shall be found to be the more practicable and just.

The convention condemns all violence, whether under the form of conquest, of stipulations imposed by belligerents in treaties, or by any other process, and states that no transfer or attempt to transfer or to acquire any interest or right in any such region shall be recognized or accepted by the American Republics, regardless of the form that may be employed to attain such purposes.

Temporary provisions in the Act of Habana are designed primarily to cover situations that may arise prior to the coming into force of the convention which will require ratification by the various governments. They authorize the creation of an emergency committee composed of a representative of each of the American Republics, which is to be re-

garded as constituted when two-thirds of the members shall have been appointed. The appointments are to be made promptly. Should the committee be under the necessity of administering any region before the effective date of the convention, it will utilize the applicable provisions of the convention.

The Act also recognizes the possibility of emergency situations and the right of any of the American Republics, acting singly or jointly with others, to proceed in any manner required in its own defense or in the defense of the continent. If action is taken as an emergency measure, the matter is to be placed before the committee as soon as practicable in order that it may adopt appropriate measures.

### *Subversive Activities of Foreign Agents*

Secretary Hull, alluding to the propagandizing activities of certain foreign governments, referred to the manner in which they had employed "oral or written representations" and had had recourse to a promiscuous circulation of literature and propaganda designed to stir up dissension in the Western Hemisphere by beguiling and misleading the people. In the pursuit of these policies, Secretary Hull stated,

The personnel of diplomatic and consular missions has been increased out of all proportion to the needs for legitimate functions of such missions. It is well known that members of diplomatic missions have well-recognized functions and that the members of such missions are clothed with special immunities. When they engage in activities foreign to those that are recognized, they abuse their immunities and the government that has received them may well be concerned.

Likewise, the functions of consular officers are generally defined in international law and practice and the officers themselves enjoy certain special consideration by the local authorities. But when such officials engage in activities divorced from the customary consular functions, they abuse the hospitality of the state in which they serve. That situations of the foregoing character have developed in many of the American Republics, has been generally known for some time past.

This Meeting of Ministers of Foreign Affairs has taken cognizance of these matters in several resolutions, particularly the one relating to Activities Directed From Abroad Against Domestic Institutions and that relating to Inter-American Development of Standards on Diplomatic Officers. The first-mentioned resolution recites that the American Republics have equal concern and equal responsibility for the preservation of peace and security of this hemisphere, and that each shall adopt all necessary measures to prevent and suppress activities directed, assisted or abetted by foreign governments or foreign groups or individuals which tend to subvert the domestic institutions or to foment disorder in the internal political life of the Americas. It also provides for immediate consultation in the event that the peace of any of the American Republics is menaced by such activities, and for a full interchange of information regarding subversive activities within their respective jurisdictions.

In a word, there is in the resolution a definite recognition by the American Governments of an intrusion upon their hospitality and a dis-

regard of their desire to live in peace, freed from systems of government and of international policies which are foreign to the precepts of free and liberal institutions upon which the democracies of this hemisphere are based. The Habana meeting recognized the common interest of all of the American Republics in these matters and showed determination to maintain a solid front against any incursions.

The resolution concerning improper activities of diplomatic and consular agencies sets forth the underlying principles relating to the functions of such missions and calls upon the respective governments to take action to prevent and suppress such activities.

### *Economic Coöperation*

Passing to the third set of problems which the conference was called upon to consider, Secretary Hull said:

All of our nations are faced today with the distressing consequences of war-created disruption of world trade.

Surpluses of commodities, the exportation of which is essential to the economic life of the American Republics, have accumulated and continue to accumulate because Europe at war is unable to absorb them. Their existence is a matter of serious concern throughout the continent. In addition, we must envisage the possibility that, after the termination of hostilities, many important European markets for these commodities may be directed and controlled by governments which regard international commerce as an instrument of domination rather than as a means of enabling all nations to share fully and on a basis of equality in a mutually beneficial exchange of their surplus products. The resolution on economic coöperation adopted by the Habana meeting is designed to create and set into operation machinery of action to deal with and meet both of these situations.<sup>4</sup>

### *The Emergency Committee*

When the subjection of France and the other states of continental Europe forced the American Republics to face the imminent possibility of a modification of the status of the American possessions of those vanquished states, they took advantage of the existence of the Act of Habana, adopted July 30, 1940, to organize an Emergency Committee for the Provisional Administration of European Colonies and Possessions in the Americas.

The "Act of Habana" provides for an Emergency Committee composed of a representative of each of the American Republics and will be constituted as soon as two-thirds of the American Republics shall have appointed their members. The Committee shall assume the administration of any region in the Western Hemisphere now controlled by a European Power whenever an attempt shall be made to transfer the sovereignty or control of such territory to another non-American nation. It is to function only until the Convention on the Provisional Administration of European Colonies and Possessions in the Americas shall come into effect. The purpose of the "Act of Habana" in estab-

<sup>4</sup> Department of State Bulletin, Aug. 3, 1940, Vol. III, No. 58, p. 67.

lishing the Emergency Committee was to give immediate effect to the main provisions of the convention, also signed at Habana, regarding the setting up of a provisional administrative régime over any of the possessions now under the jurisdiction of a non-American government whenever an attempt may be made to transfer control or sovereignty thereof to another non-American government.

It also contains the important provision that, should the need for emergency action be so urgent that action by the committee cannot be awaited, any of the American Republics may act individually or jointly with others in the manner which its own defense or that of the continent requires. The American Republic or Republics taking action under these circumstances must place the matter before the committee immediately in order that it may adopt appropriate measures.<sup>5</sup>

*The Coffee Agreement*<sup>6</sup>

When we turn to the economic field, we find that inter-American coöperation in the fulfilment of the purpose of the Habana Conference has a special achievement to record: an agreement regulating the exportation and importation of coffee has been signed by fifteen American States. That is, by those republics of this hemisphere most immediately concerned either as producer or consumer.<sup>7</sup>

For several years the coffee situation has been very unsatisfactory to the growing states. Brazil, which produces the greater part of the world's crop, has been burning a portion in order not to flood the market and so as to keep the price at a reasonably profitable level. With this object in view, Brazil in the last ten years has burnt nearly eighty million bags—truly an enormous amount. The surplus crop of Brazil and the potential possibilities of increased production in other American States and elsewhere constitutes a serious threat for other States and for her own growers, especially if Brazil for one reason or another should cease to destroy approximately half of her crop and dump it on the world market.

The inconvenience and even financial disaster inherent in this situation was recognized to be a matter of the greatest importance to Brazil and certain other of the coffee producing countries of this hemisphere. In some instances the loss of revenue from export taxes on coffee would be likely to deprive the coffee producing government of the necessary funds to carry on its administration. Such a loss of revenue might, in turn, lead to internal disturbances which would, especially at this time, have an important bearing on its relations with the other States of this hemisphere. In the case of a

<sup>5</sup> Department of State Bulletin, Aug. 31, 1940, Vol. III, No. 62, p. 177.

<sup>6</sup> The text of this important agreement has been made public by the Pan American Union. It will doubtless be printed in a succeeding number of this JOURNAL after it has been duly ratified.

<sup>7</sup> The signatory states are Brazil, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru, the United States of America, and Venezuela.

State receiving loans from this country there would necessarily be some impairment of the security upon which those loans were based.

Consequently, the Inter-American Economic Committee created by the Panama Conference of Foreign Ministers, with additional authority conferred at Habana, undertook a thorough study of the international trade in coffee as it affected the economy of the Western Hemisphere. The purpose of the committee was to find a solution which would promote the orderly marketing of coffee and assure terms of trade equitable for both producers and consumers by adjusting the supply to the demand. The result of this investigation and the negotiations entered into by the delegates of the participating American Republics was the signing of an international agreement on November 28, 1940. This agreement made provision (Article IX) for the establishment of an Inter-American Coffee Board, with headquarters in Washington. After the technical experts had examined the data and the views of the producing states and of the United States as the principal consuming country,<sup>8</sup> an agreement was reached as to the annual quotas which each of the participating coffee-producing countries might export to the United States.<sup>9</sup> The Coffee Board will be authorized to increase or decrease the quotas for the United States market in order to adjust supplies to the estimated requirements. Such modifications cannot be made oftener than once every six months nor permitted to exceed five per centum of the basic quotas agreed upon. The board will also have authority to make certain modifications in regard to the quotas for export to the markets outside of the United States. The United States agrees to limit its importation for consumption of coffee from other countries (so-called colonial coffee)<sup>10</sup> to an annual quota of 355,000 bags of 60 kilograms. Annual quotas were also allotted to the coffee producing countries to govern their exports to the market outside of the United States.<sup>11</sup>

Other stipulations make provision to meet certain emergency situations which may arise and to allow for appropriate annual adjustments of the proportion of the actual exports of the respective coffee-producing countries, and the Coffee Board is furthermore authorized to make the adjustments necessary to meet in an equitable manner certain other specified contingencies.<sup>12</sup>

<sup>8</sup> The United States consumes 15 million of the total world consumption of 25 million bags.

<sup>9</sup> These quotas are given in Art. I of the agreement: Bags of 60 kilograms net, or equivalent quantities, Brazil, 9,300,000; Colombia, 3,150,000; Costa Rica, 200,000; Cuba, 80,000; Dominican Republic, 120,000; Ecuador, 150,000; El Salvador, 600,000; Guatemala, 535,000; Haiti, 275,000; Honduras, 20,000; Mexico, 475,000; Nicaragua, 195,000; Peru, 25,000; Venezuela, 420,000; total, 15,545,000.

<sup>10</sup> See Art. VII.

<sup>11</sup> Art. II gives these quotas as follows: Bags of 60 kilograms net, or equivalent quantities, Brazil, 7,813,000; Colombia, 1,079,000; Costa Rica, 242,000; Cuba, 62,000; Dominican Republic, 138,000; Ecuador, 89,000; El Salvador, 527,000; Guatemala, 312,000; Haiti, 327,000; Honduras, 21,000; Mexico, 239,000; Nicaragua, 114,000; Peru, 43,000; Venezuela, 606,000; total, 11,612,000.

<sup>12</sup> Art. XV provides that participating governments shall have the following votes in reaching decisions as to what action shall be taken: Brazil, 9; Colombia, 3; Costa Rica, 1;



The quota system adopted by the Inter-American Coffee Agreement saves the American market from the menace which hung over it when the European war shut off the sale of the ten million bags consumed by Europe. The dumping of this unsaleable surplus on the world market threatened to disrupt the orderly marketing of coffee in this country also. The Inter-American Coffee Agreement steadies the American market and at the same time assures the producing countries a normal export market in the United States, their principal consumer.

The agreement is to be effective for three years, from October 1, 1940, to October 1, 1943, but not less than one year prior to the date of expiration, the board is required to "make recommendations to the participating Governments as to the continuation or otherwise of the agreement. The recommendations, if in favor of continuation, may suggest amendments to the agreement."<sup>13</sup>

This agreement as to quotas is not a cartel, since it does not assume any control of the production or sales in any of the participating States but is confined to certain agreements as to exportation by the producing countries and importation by the United States.

In the absence of this agreement, a totalitarian State might well have it in its power to dictate terms to the coffee-producing States of this hemisphere and might disorganize prices in the world market to the severe injury of American economic, financial, and political interests.

Although the coffee agreement does constitute a restriction placed upon international trade, it is amply justified by the extraordinary conditions which exist. The fact that the solution of this economic crisis in the international coffee market has been made the object of an inter-American agreement is another indication of how effective can be the coöperation of the American Republics to protect their common interests.

The Habana Conference of Foreign Ministers fulfilled in a most notable manner the high purpose for which it met. This great achievement was due to the spirit of coöperation and fruitful collaboration which animated the distinguished minister delegates. Secretary Hull, in the statement which he made on leaving Washington to attend the conference, said:

A major purpose of the Habana meeting is full and free consultation among the American Republics with respect to the conditions, problems, difficulties, and dangers confronting each of them. The complete exchange of information enables each Government thoroughly to understand the problems, needs, and viewpoints of the others. The ground will thus be prepared for the adoption of basic and concrete measures, having common support, for the common benefit of each and all of the Republics.

The agenda of the forthcoming meeting calls for the consideration of

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Cuba, 1; Dominican Republic, 1; Ecuador, 1; El Salvador, 1; Guatemala, 1; Haiti, 1; Honduras, 1; Mexico, 1; Nicaragua, 1; Peru, 1; United States of America, 12; Venezuela, 1; total, 36.

<sup>13</sup> Art. XXIV.

certain immediate problems of economic and political security. The American Republics approach their task in a spirit of complete friendliness toward all nations demonstrating their will to conduct international relations on the basis of peace and friendship. The American Republics will deal with their problems realistically in the light both of emergency needs and broad objectives.<sup>14</sup>

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INTERPRETATION OF THE TERM "HIGH CONTRACTING PARTIES" IN THE  
AIR TRAFFIC CONVENTION

A recent decision of the House of Lords,<sup>1</sup> overruling the Court of Appeal, throws much-needed light upon the use of the term "High Contracting Parties" in treaties signed but not ratified. The decision also defines the term "international carriage" as used in the Convention for the Unification of certain Rules relating to International Transportation by Air, signed at Warsaw, October 12, 1929,<sup>2</sup> by over thirty states. The term "international carriage" determines the geographic scope of the convention. The decision is of particular interest also in this country, because the United States adhered to the convention on July 31, 1934, although not originally a signatory.

The term "High Contracting Parties" is of course a diplomatic formula for designating the parties to an international agreement. The question involved, reduced to its simplest terms, is whether the term refers only to the states which ultimately ratify a treaty, or whether the term embraces also the states which have signed it but which have not yet ratified it, or which never ratify it.

The appellants were a firm of bankers of Brussels, Belgium, who brought this action for damages against the Imperial Airways, Limited, to recover for the loss of a consignment of English and American gold coin of the value of £10,600 entrusted to the respondent on March 5, 1935, for transportation by air from London to Brussels. The respondent took the consignment to the Croydon Airdrome on the same day and there stored it overnight for transportation to Brussels on the following day. During the night, the gold coin was stolen from the vault in which it had been deposited. Action for the loss was begun more than six months but less than two years after the cause of action arose, and the respondent contended that the action was brought too late.

The carriage contract referred to the general conditions of carriage printed upon the back of the contract, which were those agreed upon by the members of the International Traffic Association, and which substantially embodied

<sup>14</sup> Department of State Bulletin, July 20, 1940, Vol. III, No. 56, p. 34.

<sup>1</sup> *Philippson v. Imperial Airways, Ltd.*, [1939] A. C. 332; 108 L.J.K.B. 415; this JOURNAL, Vol. 33 (1939), p. 588; Lord Atkin, Lord Thankerton and Lord Wright for reversal, Lord Russell of Killowen and Lord Macmillan dissenting. The judgments of the courts below are reported in (1937) 53 T.L.R. 850 and (1938) 54 T.L.R. 523, respectively.

<sup>2</sup> For text of convention, see Supplement to this JOURNAL, Vol. 28 (1934), p. 84.