The one justifiable ground of belligerent complaint, that the American States will be unable to patrol so wide a zone and that belligerent acts may be *de facto* committed within it in spite of its proclamation, is met by the implied recognition by the American States that the abuse of the zone by one belligerent will release the other from the observance of it, at least with respect to the particular abuse. In such case neither belligerent will be substantially worse off than it was before.

The events of the present war only confirm the experience of previous wars that belligerents, with their backs to the wall and their national existence at stake, will seek to extend in every possible way such rights as the traditional law accords them and will make every change of circumstances an occasion for restricting further the trade of neutrals with the enemy, even to the extent of closing the highways of neutral commerce with other neutrals. It would seem equitable, therefore, that neutrals on their part should seek to limit the zones of combat and should, as in the case of the American Republics, bring their collective weight to secure the peace and safety of their continental waters far remote from the immediate theater of hostilities. If in so doing they should find it necessary to close their ports to belligerents which are unwilling to respect their claim, or even to discriminate against one that refuses in favor of one that agrees to respect it, no legal ground of complaint can arise. For the privilege of admission to neutral ports is not one that belligerents can claim as of absolute right; rather it is a concession which the neutral may grant or withhold, subject only to the condition that whatever discrimination against one or other of the belligerents it may be led to resort to shall be based not upon an arbitrary partiality, but upon the protection of its own national interests.

It is of interest to note that the meeting of the Foreign Ministers at Panama was the first application in inter-American relations of the procedure of consultation established in agreements signed in 1936 at Buenos Aires at the Inter-American Conference for the Maintenance of Peace and in 1938 at Lima at the Eighth International Conference of American States. While the Declaration of Panama does not fit precisely into the purposes contemplated at Buenos Aires, when the American Republics planned to adopt "in their character as neutrals a common and solidary attitude," it nevertheless gives proof of the new spirit of continental collaboration that has marked the relations between the American Republics of recent years. The rapidity with which it proved possible to hold the meeting of Foreign Ministers gives promise that the procedure of consultation may become in the future an even more effective agency of common action in the presence of emergencies.

C. G. FENWICK

COLLECTING ON DEFAULTED FOREIGN DOLLAR BONDS

The Foreign Bondholders Protective Council, Inc., was organized in December, 1933, for the purpose of securing resumption of service—interest and amortization—on defaulted foreign dollar bonds then amounting to about

$2,500,000,000 issued by some 23 countries. The Council concluded its first negotiations in February, 1934. Since then there has been actually paid to American bondholders, on account of the interest only of such defaulted bonds, $103,938,000 in cash and $37,204,000 in scrip—a grand total of $141,142,000. This has been done on a total expense account for the Council (covering the whole of the Council's work) of thirty-four hundredths of one per cent (.0034%) on the amount of interest so actually paid to bondholders, or of twenty-seven thousandths of one per cent (.00027%) on the face value of the bonds concerning which the Council has negotiated. It may be added that of the total sum of $2,500,000,000 of defaulted bonds, the Council has since its organization negotiated regarding the resumption, continuance, or increase of service on over $1,773,000,000. Of this sum, permanent settlements were arranged as to $245,000,000 and temporary settlements covering $1,528,000,000.

The Council was formed by a group of gentlemen who had been personally requested to set it up by the Honorable Cordell Hull, Secretary of State, the Honorable William H. Woodin, Secretary of the Treasury, and the Honorable Charles H. March, Chairman of the Federal Trade Commission. It was created in lieu of the organization of the Corporation of Foreign Security Holders provided in Title 2 of the Securities Act of 1933,[1] after the Administration had determined not to establish that body.

Following a meeting between President Roosevelt and the organizers in October, 1933, the White House issued a formal statement approving the creation of the Council, stating the need therefor, and outlining certain general principles that should govern its work. The Council was not to be a profit organization, was to carry on at the lowest possible expense to the bondholders, was to decide its own affairs independently, and Administration officials were stated to "have no intention, however, of seeking governmental direction or control of the organization, nor will they assume responsibility for its actions." The Council has carried on its work in accordance with these principles.

The Council does not represent the bondholders legally. It cannot negotiate settlements that are binding upon them. It has never called for deposits of bonds. The regular procedure of negotiation by the Council is this: It approaches the defaulting debtor on dollar bonds in an effort to induce it to resume or to increase its interest and sinking fund service on its bonds in accordance with the bond contract. Whenever the defaulting debtor can be so induced, the Council enters into negotiations with the debtor to secure from it the best possible offer of service. When the debtor makes the offer, the Council follows one of three courses: it tells the bondholders the offer is fair and equitable under all the circumstances, if in the Council's judgment such are the facts; or if the Council believes the offer is unfair, it tells the bondholders so, and may recommend against the acceptance of the offer by the bondholders; or the Council may pass the offer

[1] 48 U. S. Stat. L., p. 92.

on to the bondholders without any expression of opinion. In no event is the bondholder bound either to accept or reject the offer; he is in no way committed either for or against the offer; he makes his own decision about it. The offers arranged for by the Council always run to each and every bondholder, and not to a selected group only.

Believing that the world-wide depression made it undesirable, both for the bondholder and the defaulting debtor, to attempt to make final arrangements on the debt, the Council has endeavored to get the defaulting debtors to offer a temporary service covering a few years, the permanent settlement to come later when the condition of the world became more normal. However, some of the debtors have insisted on permanent arrangements now, seemingly in the belief that the present was their most opportune time for adjustments.

Of the approximately $2,500,000,000 foreign dollar bonds in default when the Council was organized, approximately $1,200,000,000 were Latin American dollar bonds, and $1,300,000,000 were European dollar bonds.

The following table shows the approximate amount of interest service, both cash and bonds (funding) which were offered to holders as the result of either temporary or permanent adjustments negotiated by the Council from the time of its organization up to the end of 1939. These figures do not include sinking fund payments made under any plan, but merely those payments made for interest.

	Outstanding When Adjusted *	*Period for Which Interest Was Offered*	*Cash*	*Bonds*
Brazil (temporary)	$ 375,965,035	3–3½ yrs.	$ 32,678,707	
Germany (temporary)	1,066,786,000	1 yr.	32,640,000 (a)	
Germany (temporary)		2½ yrs.	1,759,950 (b)	$29,332,500 (c)
Dominican Republic (permanent)	16,292,500	5½ yrs.	4,810,095	
Buenos Aires (permanent)	72,605,424	4 yrs.	10,489,968	
Costa Rica (two temporary)	10,489,351	2–2½ yrs.	519,863	
China—Treasury notes (permanent)	5,500,000	2½ yrs. (d)	343,750	1,058,750
China—Hukuang (permanent)	7,500,000	2 yrs.	375,000	..... (e)
Hungary—non-State (temporary)	11,468,000	2–2½ yrs.	436,741	
Cuban Public Works (permanent)	40,000,000	3½ yrs. (f)	4,450,250	3,476,800
Yugoslavia (two temporary)	42,366,300	3–4 yrs.	4,111,594	2,890,000
Poland (two temporary and one permanent), including Silesia and Warsaw	53,851,980 (g)	1 yr. (h) 7 mos. (i) 1½ yrs. (j)	3,456,475 2,818,879	440,000
Uruguay (permanent)	52,947,500	2 yrs.	3,989,125	
Montevideo (permanent)	4,863,500	2 yrs.	360,982	6,443
Mendoza (permanent)	4,327,000	2½ yrs.	342,400	
Santa Fé, Province and City (permanent)	8,859,200	1 yr.	354,368	
	$1,773,821,790		$103,938,147	$37,204,493

* Where there are more than one adjustment, the amounts given are for the earliest one.
(a) Based on $1,066,786,000—the figure given in February, 1934, as then outstanding.
(b) Received as 3% interest on $29,332,500 funding bonds.
(c) Amount issued only.
(d) Cash for 2½ yrs.; scrip for short-fall during 2½ yrs. and for 15 yrs. back interest at 1%.
(e) Scrip to be, but not yet, issued. $562,500 for short-fall during 2-yr. period and for 6½ yrs. back interest at 1%.
(f) Cash for 2½ yrs.; bonds for 4 yrs.
(g) Amount outstanding under temporary adjustments; $41,185,400 under permanent adjustment.
(h) 1 yr. under first temporary plan.
(i) 7 mos. under second temporary plan.
(j) 1½ yrs. under permanent plan.

It is of interest to note that on the permanent settlements, the average annual interest rate return (at the lowest rate called for under the adjustment plans) has been approximately 4.3%; the sinking fund arrangement has been approximately 1.2%, or a total service of 5.5% per annum.

To meet the expense of all of this work, the Council has spent approximately $80,000 per year, including rent, clerical help, supplies, preparation and printing of the Annual Report, statistical service, telephone, telegraph, traveling expenses, negotiation expenses, officers' salaries, and all incidental costs whatever.

Being a strictly non-profit organization and having neither capital stock nor assets, the Council has found difficulty in financing itself. Failing to get some sort of endowment, it turned to the issue houses and banks on the theory that as they had profited by the issuance of the bonds they should contribute to the protection of the rights of the bondholders. This plan had the express approval of the Administration. Later the Securities and Exchange Commission condemned this plan, and the Council then turned to the bondholders (from whom it has asked 1/8 of 1% of the face value of the bonds on which it has arranged permanent settlements), and to the debtor states on the theory that a debtor should bear at least a portion of the costs of refinancing. The bondholders have in largest part generously responded, though some (largely foreign holders, American speculators, and arbitrageurs) have accepted the benefits of the Council's work but have refused to contribute to its support. To remedy this situation the Board of Visitors (named by the Secretary of State and the Chairman of the Securities and Exchange Commission at the request of the Council) have approved a levy (the maximum being 1/8 of 1%) on all bonds participating in any adjustment.

Speaking generally, defaulting debtors on dollar bonds, are defaulting, not because they are unable to pay all or a good part of their debt service, but simply because they do not have the will to pay. For example, one country in total default on its dollar bonds since 1932 and 1935, had, during the seven years of default, a favorable trade balance with the United States of approximately three times the amount of the full contract interest service on their dollar bonds, yet during all this time it refused either to serve its bonds or seriously to discuss service, though paying full service on its total internal debt, even up to 10% per annum. Other cases are almost as flagrant. Six Latin American countries having a favorable balance of trade with the United States in 1938 made no interest payments on their bonds for that year. In contrast with that, four countries—Argentina, Dominican Republic, Haiti, and Uruguay—had unfavorable balances of trade with the United States for 1938, and yet paid full bond interest for that period. There are some defaulting debtors who will make no adequate service, if any at all, upon their defaulted dollar bonds, except under governmental pressure.

In its work the Council has at all times applied certain principles. It has steadily refused to discuss or even listen to arguments to the point that the principal amount of the bonds should be reduced, or that adjustments should be made that would in effect constitute a reduction. The Council's files contain great numbers of letters showing that there are thousands, if not hundreds of thousands, of bondholders who bought their bonds at the original issue prices. These are in great part aged people who invested their life savings in "government gold bonds" frequently under a sales representation that they were "better than money in the bank," because the bonds drew a high interest rate, and bank balances drew a low interest rate. These people write from hospitals, infirmaries, county poor houses, and bare homes. They say these bonds represent all they have in the world. The Council has refused to sacrifice the rights and necessities of these American citizens to the interests of defaulting debtors, able to pay and lacking only the will so to do.

One of the iniquities of the existing condition of foreign dollar bond defaults is this: while governments allege they are unable to find either funds or dollar exchange to pay the interest and sinking fund on their bonds, nevertheless, such governments (many, and indeed most of them) have been able to find both funds and dollar exchange to buy up in our markets their own bonds at the very low prices at which the bonds are selling due to their own wilful default. The Council has complained and inveighed against this in vain. In its 1937 Report the Council said:

> Because of the character of such a transaction as this repatriation of defaulted bonds, the participants therein do not usually disclose the extent of their operations, and it is therefore difficult to obtain accurate figures regarding the extent of the operation. But from such fragmentary information as the Council can secure it would seem that some municipal defaulters have bought up while in continuous default, as much as 83.5% of their indebtedness outstanding at the time of default; one country with an outstanding indebtedness at the time of default of over 850 millions, has repatriated, at default prices, approximately ⅓ of the debt. Thirteen countries in default (on which fairly accurate data have been obtained) had at the time of default approximately $1,815,347,000 of dollar debt outstanding. These countries have in some 7 years repatriated approximately 25% of this debt, though all the time alleging they had not available funds or exchange to serve their bonds.

Government estimates indicate that almost a dozen countries in default in service payments on their dollar bonds, most of them alleging as a reason for their default a lack of dollar exchange, have been able to find enough of that exchange to repatriate from 15% to 50% of their outstanding dollar issues.

Another contention which defaulting debtors frequently make is that their bonds are in the hands of holders who have bought them at the low

prices existing since default, and therefore that the interest should be cut to what would be a fair return upon the price actually paid. The Council has refused to yield to this argument because, first, of the great injustice it would work on the original holders (already referred to), and next because it considers dishonest an argument by a debtor which would put a premium upon his own wilful default.

In this connection the Council has had constantly in mind that there is a certain fundamental difference between enterprises and investments made by Americans in the United States and the same sort of operations undertaken by them in foreign countries. Where the enterprise is domestic, the national wealth is not much concerned with who, among the people of the United States, shall gain or lose with reference to that enterprise. If "A" loses to "B" in such an investment, the property being still in the United States, the national wealth is not in any way impaired. However, where the American capital is invested in bonds of a foreign country the situation is wholly different. This bond investment is an outlay of the national wealth which is lodged in the foreign country. If the investment is not returned to the United States, the national wealth has been by that much depleted. For example, a foreign government borrowing a dollar and paying back 20¢ (on the theory that since the particular holder of the obligation at the time of payment had paid only 20¢ for it, the debtor should be able to wipe out his obligation by the payment of the 20¢), would deplete the national wealth by 80¢ for every dollar which had been originally invested.

One of the considerations most frequently urged upon the Council in connection with an application to reduce either the principal sum of indebtedness or the service (interest and amortization) thereon, has been that of "capacity to pay" which is, in fact, brought forward rather as *incapacity to pay*. This is frequently urged by debtors whose revenues are approximately at the same height as when the loans were made, but whose expenditures have enormously increased, either for war equipment or for the frills of modern governmental activities. It will be recalled that the phrase originated in a discussion between sovereigns with reference to obligations running between them, and arising out of a joint partnership, political operation, for political purposes, the World War. If these sovereigns, in such a discussion, wished in adjusting their sovereign debts to take account of the relative "capacity to pay" of the sovereign debtors, their partners in the joint enterprise, such was their sovereign privilege. They were dealing as equals about their own debts, and could, with reference thereto, be generous or otherwise as suited their sovereign interests, conveniences, circumstances, or commitments.

The Council has said, however, that neither this phrase, "capacity to pay", nor the principle it formulates has any proper place whatsoever in a discussion between a sovereign and his private foreign creditors. A sover-

eign must be assumed to know when he borrows from private parties whether or not he will be able to pay, whether or not he is incurring an obligation within his "capacity to pay." The foreign creditor is not able to determine this matter for himself, either at the time of the borrowing or thereafter. Furthermore, whether a sovereign pays, or does not pay, depends in greatest part upon his will to pay. For few, if any, governments have borrowed beyond their *capacity* to pay if they really had a will to make the necessary levy upon the property of their nationals, and to pay. No nation has any right to invoke its lack of "capacity to pay" its obligations to private creditors until it has fully exhausted its taxing powers, and no debtor sovereign now in default, in so far as the Council is advised, has even approached a condition of exhaustion of its taxing powers.

The Council has announced its intention to continue to take advantage of every opportunity that may arise to aid the holders of defaulted foreign dollar bonds.

J. Reuben Clark, Jr.

NEUTRALITY OF ÉIRE

Following a course which Mr. de Valera had indicated as early as the preceding February, Éire elected to be neutral when Great Britain and the Dominions of the British Commonwealth entered the present war against Germany. While it would be premature to deal with the way in which Irish neutrality has worked out in actual practice until more documentary evidences are available, some matters relating to the status itself present engaging questions of public law, both constitutional and international.

Sometimes called an "honorary" member of the British Commonwealth of Nations,[1] Éire has evolved as the most definitely independent entity of this group. The Constitution effective in 1937, which omitted specific mention of the King, left open the way to provision by Irish statute for the appointment of diplomatic and consular agents and the conclusion of international agreements through "any organ used as a constitutional organ for the like purposes" by other members of the British Commonwealth. The Executive Authority (External Relations) Act, 1936, had set forth that the Executive Council in Ireland should appoint diplomatic agents, but that so long as the country was associated with the other entities in the British Commonwealth, the King might and was authorized to act on behalf of Ireland for this purpose, as and when advised by the Executive Council to do so.[2] The King thus became, in contemplation of the Irish leadership, a "statutory officer."[3] The power to bring Éire into a war was kept in Ireland, assent of Dáil Eireann being required for a declaration or for participation.

[1] The Times (London), Oct. 7, 1939, p. 3.

[2] See A. B. Keith, "The Constitution of Éire," Juridical Review, Vol. 49, pp. 256–281 (Sept., 1937); A. W. Bromage, "Constitutional Developments in Saorstát Eireann and the Constitution of Éire: I, External Affairs," American Political Science Review, Vol. 31, pp. 842–861 (Oct., 1937).

[3] The Round Table, No. 115, p. 590 (June, 1939).