

INTERNATIONAL CO-OPERATION FOR NEUTRALITY

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The peace plans fixed by the settlements concluding the World War have failed. The major scheme to align a society of states against a so-called aggressor, and by force to put it in its place, has had tragic results. A country relying upon the organization of some fifty states committed to that scheme has been subjugated and its territory annexed by its foe. The plan designed to make all members of a vast group of states participants in a conflict between any two of their number, and to take sides therein, and which in theory left little room for neutrality, has proved to be a cruel delusion and a source of bitter disappointment. The various reasons need not be marshaled. Yet one stands out, which it has taken the Italian-Ethiopian conflict to bring home to civilization. It is this—that the use of collective force to chastise a covenant-breaking belligerent is likely to impose too severe a task upon, and hence be too dangerous for, the powers called upon to effect chastisement. A long series of events characterized by the successful use of military force by members of the League of Nations as against other members, with negligible interference from or through Geneva, has strengthened that conclusion. The King of the Belgians has been alive to the implications of it and has recently declared that the safety of his country from invasion calls for a self-defending independent Belgium that must be neutral in the wars that afflict its neighbors.¹

Possibly civilization has had to undergo the experience of the past eighteen years before thinking could be applied in a judicial spirit to the solution of the question whether a general respect for the principles of neutrality by non-belligerent states may not be a powerful means of checking wars, and even a more powerful one than an arrangement which contemplates the taking of sides against and the penalization of a state which in violation of its covenant embarks upon war against another. That question is engaging close and widespread attention, and in some places there has already been found a response. Acts of Congress enacted in 1935 and 1936, though of brief and fragmentary character,² reveal a conclusion by the United States

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1. See the address of King Leopold III of Belgium, Oct. 14, 1936, in (1936) *LES DOCUMENTS POLITIQUES, DIPLOMATIQUES ET FINANCIERS* 532; *Belgium and Neutrality* (1937) 31 *AM. J. INT. L.* 81.

2. See the so-called *NEUTRALITY ACT*, 49 *STAT.* 1081 (1935), as amended and extended in 49 *STAT.* 1152 (1936), 22 *U. S. C. A.* §§ 245a-245i (Supp. 1936). Inasmuch as the *NEUTRALITY ACT OF 1936* expires May 1, 1937, still further legislative action on the subject is expected at the present Congress. See *U. S. News*, Jan. 11, 1937, p. 4, col. 6.

that in abstaining from participation in wars between other countries and in withholding American aid from opposing belligerents it lessens the danger of being drawn into foreign conflicts and also discourages its neighbors from having recourse to war. Other American republics appear to be gradually coming to a like conclusion. Thus far, however, slight attention has been focussed on the question whether and to what extent states which are disposed to respect individually the underlying principles of neutrality may consistently and wisely co-operate in time of peace, so that when war breaks out between others (perhaps members of their own particular group) they may as neutral non-participants therein, and as non-contributors thereto, save themselves from being drawn into the conflict and also lessen the duration and scope of hostilities. In what follows attention is called to some steps that have been and are being taken, as well as to some conditions to be met in order to cause such co-operation to become a useful and practical instrumentality.

As a means of approach, a word seems necessary touching aspects of the existing law. Neutrality implies in theory not only impartiality, but also non-participation in the conflict being waged; it precludes the taking of sides and inspires aloofness from the controversy. Again, in theory, it demands that a state professing to be neutral use the means at its disposal to prevent whatever it has the power to control, such as various resources within its territory, from being placed within the reach of one belligerent as a means of strengthening its power to oppose or overcome a foe with which that state is at peace.³ Yet the existing law, as reflected in the practice of states and relevant conventions, is less exacting. The neutral state today violates no duty to either or any belligerent when it does not attempt to prevent many forms of military aid within its control from leaving its domain and ministering to the needs of such belligerent as may procure them. It is true that there are some commonly accepted limitations of this freedom.⁴ But they are strangely limited. The neutral on its part must endeavor to prevent the fitting out, arming and departure from its territory of vessels adapted for hostile uses; it must not permit its territory to become a base of belligerent operations; it must not permit the organization of hostile military expeditions on its soil, or allow the belligerent states to organize military or naval forces within its territory. On the other hand, the neutral state is not obliged to endeavor to prevent belligerent vessels of war from obtaining much ma-

3. See 2 HYDE, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* (1922) §§ 844, 889; Hyde, *The United States as a Neutral* (1936) 45 *YALE L. J.* 608.

4. It should be noted that the government of a neutral state must not itself be guilty of impartial participation, or have recourse to many forms of conduct which it is not obliged to endeavor to prevent the inhabitants of the area which it professes to govern from participating in.

terial aid as by way of fuel supplies within its ports,⁵ or to check the exportation by individuals of munitions of war within a vast range, or to deter the making of loans to belligerents or the departure from its territory of unorganized individuals contemplating entrance into a belligerent military service.

It has come to be realized in the United States, however, that it is no longer desirable for a neutral state, availing itself of privileges that are not curtailed by international law, to permit its assets in a broad sense to minister to the needs of a belligerent country for use against its enemy with which the former is at peace; that such ministrations constitute participation in the conflict; and that the essential interests of the United States demand that it give up or cause the inhabitants of its territory to relinquish such participation in wars that are waged by others. This realization betokens appreciation of the inadequacy of the existing law with its artificial and seemingly arbitrary tests of the propriety of neutral conduct and neutral supineness. It manifests national consciousness of the fact that neutral participation in foreign wars tends to bring the neutral into conflict whenever that participation is on a scale sufficiently large to become a decisive factor in the outcome of the struggle. It reveals an awakening to the fact that in proportion as neutral sustenance is withheld from the reach of belligerents there is a reduction of fuel for the flames of conflict that may hasten the day of peace. These several considerations have already made a distinct impression upon opinion in the United States and elsewhere in the western hemisphere. They have inspired the enactment of new domestic laws and also endeavors to cooperate on the part of groups of states—notably the American republics, which anticipate aloofness from wars that engage their neighbors.

The uniting of neutral states for a common end is not a novelty in the international society. The eighteenth century witnessed the efforts of such entities to act together with a view to furthering their distinctive interests as such. Those which welded neutral powers together were, however, chiefly of commercial or economic import. It was the preservation of their rights of trade against belligerent interference that was of chief concern. Such states were not then considering how through a common front they might deter wars or lessen their duration or be non-contributors to the sinews of the contestants. In quite recent years, however, as in 1933, the American republics showed that they were considering neutral cooperation in a different light and for another purpose. The so-called Anti-War Treaty on Non-Aggression and Conciliation, signed at Rio de Janeiro, October 10, 1933,

5. The fullness of the aid is, according to Art. XIX of the Hague Convention concerning the Rights and Duties of Neutral Powers in Naval War, of Oct. 18, 1907, dependent on the legislation of the neutral. See 2 MALLOY, TREATIES (1910) 2361.

and to which the United States has since become a party, announced in Article III:

“In case of non-compliance, by any State engaged in a dispute, with the obligations contained in the foregoing articles, the contracting States undertake to make every effort for the maintenance of peace. To that end they will adopt in their character as neutrals a common and solidary attitude; they will exercise the political, juridical, or economic means authorized by international law; they will bring the influence of public opinion to bear, but will in no case resort to intervention, either diplomatic or armed; subject to the attitude that may be incumbent on them by virtue of other collective treaties to which such States are signatories.”⁶

The precise methods by which the contracting parties as neutrals might make effective their “common and solidary attitude” were not laid down. Yet the parties were agreed that in harmony with their obligations as neutrals they would not intervene and attempt, as by force, to cause an unfavored belligerent to do their bidding. The article manifested a common acknowledgment that without loss of neutral status and without taking sides in a particular contest, non-participating states with scrupulous regard for their duties under international law may exert a potent influence for peace, even upon others that may be locked in conflict and pursuing a sanguinary war. This acknowledgment was renewed in a text of a proposed convention (described as a Neutrality Convention) which the United States submitted to the Inter-American Peace Conference which convened at Buenos Aires in December, 1936,⁷ and also in the text of the convention which was ultimately there signed in behalf of the several American republics.⁸ In his opening address to the Conference on December 5, 1936, Secretary Hull expressed his thought as to the uses of the solidary neutral attitude in these words:

“If war should occur, any peace program must provide for the problem then presented. For the belligerent, there is the ruin and suffering of war. For the neutrals, there is the task of remaining neutral, of not being too disturbed in their own affairs, of not having their own peace imperiled, of working in common to restrict the war and bring it to an end.

“Can we in this conference work out for ourselves a common line of policy that might be pursued during a period of neutrality? Some first broad approaches toward that end are, I think, possible. If these are to be sound, they must be inspired by the determination to stay at

6. 906 U. S. TREATY SERIES (Dep't of State, 1936) 14.

7. The text as furnished by the Associated Press, Dec. 6, 1936, was published in newspapers in the United States, Dec. 7, 1936. See N. Y. Times, Dec. 7, 1936, p. 8, col. 2.

8. See Revised Draft of a Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States. 15 Dep't of State Press Releases, No. 377, p. 503 (Dec. 19, 1936).

peace. When interests are challenged, when minds are stirred, when entry into war in some particular juncture may appear to offer to some country the chance of national advantage, then determination is needed to retain neutrality. The maintenance of neutrality is an achievement to be attained more readily if undertaken jointly. Such agreement would be a tremendous safeguard for each of us. It might be a powerful means of ending war.”⁹

In harmony with Secretary Hull's views, the arrangement proposed by the United States provided that if, despite measures contemplated for the pacific settlement of differences, hostilities should break out between two or more of the parties, the governments of the American republics should be bound by certain definite stipulations. These announced that, in accordance with the terms of the Anti-War Treaty of Non-Aggression and Conciliation (the Saavedra-Lamas Treaty) the parties should adopt in their character as neutrals “a common and solidary attitude” and, acting through the agency of a proposed Permanent Inter-American Consultative Committee, immediately take cognizance of the outbreak of hostilities and endeavor to determine, jointly or individually, whether those hostilities should be regarded as constituting a state of war, so as to call into effect the neutrality provisions of the convention.¹⁰ Upon the determination of the existence of a state of war between two or more American republics, the parties remaining neutral were not to permit, during the continuance of hostilities, “. . . the exportation from their respective territories of arms, ammunition, or implements of war to any of the belligerents, or to any neutral country for trans-shipment to, or for the use of, any of the belligerents.”¹¹ Moreover, the parties were to agree to prohibit the flotation within their respective territories of any loans through the issuance of bonds, or other evidences of indebtedness and the establishment of any credit by or on behalf of the government of any American republic in a state of war with another American republic, as might be determined under the terms of the convention.¹²

In the convention that was accepted by the Conference, as set forth in a press release from the Department of State, December 19, 1936, it was declared that should hostilities break out between any two or more of the contracting parties, they should be governed by the following stipulations. In accordance with the terms of the Treaty of Non-Aggression and Conciliation, they were to adopt in their character as neutrals “a common and solidary attitude” which was to express itself through consultation and the taking

9. N. Y. Times, Dec. 6, 1936, p. 47, col. 4.

10. Arts. VI and VII. See N. Y. Times, Dec. 7, 1936, p. 8, col. 3-4.

11. Art. VIII. It was declared that the term “arms, ammunition and implements of war” should include the articles enumerated in Annex A attached to the convention, and which was to be regarded as an integral part thereof. See N. Y. Times, *supra* note 10.

12. Art. IX. See N. Y. Times, *supra* note 10.

cognizance of the outbreak of hostilities in order to determine, either jointly or individually, whether they should be regarded as constituting a state of war so as to call into effect the provisions of the convention.¹³ According to Article VI:

“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, the High Contracting Parties reaffirm their loyalty to the principles enunciated in the five agreements referred to in Article I, and they agree that in the case of an outbreak of hostilities or threat of an outbreak of hostilities between two or more of them, they shall, through consultation, immediately endeavor to adopt in their character as neutrals a common and solidary attitude, in order to discourage or prevent the spread or prolongation of hostilities.

“With this object, and having in mind the diversity of cases and circumstances, they may consider the imposition of prohibitions or restrictions on the sale or shipment of arms, munitions and implements of war, loans or other financial help to the states in conflict, in accordance with the municipal legislation of the High Contracting Parties, and without detriment to their obligations derived from other treaties to which they are or may become parties.”

It will be observed that in the first paragraph of the article quoted, the “common and solidary attitude” of the parties as neutrals is seemingly designed to express itself in mediatory efforts to discourage or prevent the spread or prolongation of hostilities. In the second paragraph, no contractual obligation is imposed upon any party to restrict or prohibit the sale or shipment of the articles referred to, or the yielding of financial aid to the states in conflict; the undertaking merely to consider such action leaves each party free to pursue a different course. In this respect, the convention sharply differs from the proposal offered by the United States. It may be needless to express regret that that proposal was emasculated. Nor is it necessary to advert to the reasons for that emasculation. The proposal of the United States, in harmony with its present legislative policy, served at least to focus the attention of the other American republics on the problem involved and to stimulate their thinking thereon. It may be doubted whether their final decision has yet been made, and it may take another inter-American war to satisfy their thought. That the United States has seen fit boldly, if not persuasively, to proclaim that the common and solidary attitude of the American republics as neutrals should express itself in a common endeavor to withhold needed sustenance from warring states in this hemisphere, is a fact of greatest significance. It justifies, moreover, examination of conditions on which there

13. Art. V. See *supra* note 8.

can be a reasonable basis for common action by states in time of peace to cooperate when wars ensue in which they are not belligerents.

The exercise of the mediatory function by concerted neutral action in order to discourage or prevent the spread or prolongation of hostilities has but a remote connection with concerted neutral efforts to withhold sustenance from belligerent forces. Hence the character of the exercise of that function deserves special consideration. It is not felt that the co-ordinated attempt of a group of neutral states to act as mediators is necessarily inconsistent with the maintenance of a neutral and non-participatory spirit. Such an attempt may, however, easily attain such a character; and it must lose its impartial aspect when it constitutes a solidary effort of a group of states to cause a particular belligerent to sacrifice special pretensions or claims that are peculiarly its own. The launching of a preponderant Pan-American influence against, for example, Ecuador, or Haiti or even the United States, to cause it to desist from the pursuit of a particular policy associated with the prosecution of a war in which it was engaged, might be difficult to distinguish from intervention, notwithstanding the technical right of such belligerent to regard the mediatory effort as merely recommendatory and as imposing no restriction upon its right to reject the proposal. Thus it is that the exercise of the mediatory function by a group of states is a delicate matter if it is not to be transformed into an instrument of intervention. In order to avoid abuse of it, the mediating group must make it clear that their action reflects no criticism of, or objection to, the particular aims of any belligerent that is urged to give up war and that the attempt is confined to encourage each and all of the belligerents to abandon the war that is in progress. The mediatory effort must not savor of participation in the conflict, however impartial; and it must never manifest directly or indirectly a suggestion or threat of penalizing a belligerent that is indisposed to yield. Perhaps these exacting conditions can not be met. Possibly the western hemisphere can only learn through experience how or whether the neutral mediatory effort is capable of utilization by a group of states in such a way as not to mark the taking of sides against an unfavored belligerent whose conduct in becoming and remaining one shall have aroused the animosity of many of its neighbors. It may be acknowledged that a united mediatory effort on the part of numerous states professing to be neutral, and applied impartially for the sake of encouraging the abandonment of war, cannot in fact operate equally upon the opposing belligerents. By reason of this circumstance it may be contended that the success of such an effort involves a special sacrifice and perhaps a special military detriment on the part of one of the contestants that is called upon to give up the conflict; and it may be further contended that in consequence of this fact the vigorous and effective action of the neutral mediators is simply irreconcilable with their professions of impartiality. By way of re-

sponse, it may be suggested that this objection is in reality directed against the abuse rather than the mere exercise of the right to mediate. It will be recalled that the right is generally acknowledged to be the possession of strangers to a dispute at any time, even during the course of hostilities.¹⁴ It is not apparent how the effort of several neutral states to employ together a privilege that each possesses is necessarily at variance with the requirements of international law.¹⁵

In relation to the co-operative effort to withhold neutral aid from belligerent forces, it has been observed that according to the proposed neutrality convention submitted by the United States to the Conference at Buenos Aires in December, 1936, the contemplated restrictions were moderate and well-defined. They inspire consideration of the larger problem concerning what complete deference for the underlying principle that is responsible for duties of prevention both logically and practically demands, as well as consideration of the technique of methods whereby a fresh co-operative effort may be best undertaken.

Inasmuch as the withholding of neutral sustenance from belligerent states is likely to be a greater detriment to one contestant than to its adversary, there is utmost need that any scheme of restriction be designed to operate in such a way as to minimize the charge by an offended belligerent that the neutral action was a blow directed primarily against itself. To that end, the common withholding of neutral aid should be arranged so as to operate, as far as possible, automatically upon the outbreak of war (or upon a formal neutral conclusion that a state of war exists) and remain unrelaxed until at least the cessation of hostilities.¹⁶ No doubt, at any stage of a war, a group of neutral states may legally initiate a fresh policy of withholding sustenance; but that policy will be accepted with greater complacency and less opposition even by those contestants which suffer most from its operation if it be initiated contemporaneously with the outbreak of hostilities. Neutral affirmative action which, during the progress of a war, relaxes an existing embargo, such as one pertaining to munitions of war, is of different aspect. In such a situation, the placing within reach of both or all contestants of sustenance which the neutrals had previously withheld, amounts to conduct which, in so far as it aids one belligerent rather than its enemy, seems to mark a participation in the conflict for its special benefit. Thus the impartial yielding of sustenance that was previously withheld, dif-

14. See Art. III of Convention for the Pacific Settlement of International Disputes, signed at the Second Hague Peace Conference, Oct. 18, 1907. 2 MALLOY, TREATIES (1910) 2228.

15. See Resolution XXXVI on Good Offices and Mediation, adopted by the Seventh International Conference of American States, Dec. 23, 1933. REPORT OF THE DELEGATES OF THE UNITED STATES OF AMERICA TO THE SEVENTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, 19 CONFERENCE SERIES (Dep't of State, 1934) 244.

16. See Art. VIII of Neutrality Convention proposed by the United States at Buenos Aires, Dec. 6, 1936. See N. Y. Times, Dec. 7, 1936, p. 8, col. 3-4.

fers in legal contemplation from the impartial withholding of sustenance that was not previously withheld.

It is a difficult task to determine the character of articles which a group of co-operating states should wisely attempt to withhold from prospective belligerents. Munitions of war within broad and accepted categories may well be proscribed, as well as financial aid exemplified by credits made available for desired purchases in any quarter where needed sustenance is procurable. Food and kindred articles, although not to be classified as munitions of war, may perhaps constitute a form of sustenance of which a belligerent is in dire need as a means of safeguarding itself against serious weakness or possible defeat. Strong sentimental reasons may deter neutral states from agreeing to withhold such articles from their belligerent neighbors for fear of enhancing thereby the sufferings through starvation of non-combatant peoples. It must be borne in mind, however, that when a belligerent encounters a general shortage of foodstuffs within areas under its control, the sustenance of its military forces becomes its chief concern and that the foreign augmentation of needed supplies will surely be employed primarily to relieve those forces, and only secondarily to feed its civil population; and that, accordingly, foreign accessions of foodstuffs, in the absence of agreement, minister to the needs of the latter only in so far as they mitigate the effect of the general shortage. The neutral yielding to belligerent states of this form of sustenance contributes, therefore, a direct and vital augmentation of military power that is calculated to prolong the conflict and to enable the belligerent which becomes the recipient of the largest supply to become the victor. General agreement to withhold such nourishment might, therefore, be expected to be no small deterrent of recourse to war by a country which, although disposed to employ the sword as an instrument of national policy, was conscious of the fact that victory depended upon its ability to ensure the acquisition of foreign foodstuffs throughout the period of hostilities.

The added increment of foreign man power may mean much to a belligerent, especially when it is embodied in individuals possessed of military training. When it comes from a neutral state it gives special cause of umbrage to the belligerent which suffers most from the accessions of its enemy.¹⁷ Before the end of the eighteenth century the United States was a party to a series of treaties in which it was agreed that no citizen, subject or inhabitant of the United States should apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the subjects or property of the subjects of the other contracting party from the enemy of that party.¹⁸ Here is a suggested type or form of prevention which at the present time might be applied through convention. It is entirely con-

17. This has been well illustrated in the course of the still existing civil war in Spain.

18. See, for example, Art. XXI, treaty of amity and commerce with France, Feb. 6, 1778, 1 MALLOY, TREATIES (1910) 475; Art. XIX, treaty with The Netherlands, Oct. 8, 1782, 2 *id.* at 1230; Art. XXIII, treaty with Sweden, April 3, 1783, 2 *id.* at 1733.

sistent with a co-operative neutral effort that groups of states undertake, when not engaged in a war upon which others are embarked, to prevent their nationals who inhabit their respective territories from departing therefrom with a view to entering a belligerent service, when the evidence of such a design is conclusive or convincing to the neutral. Conventional arrangements should not, however, impose upon the neutral group an obligation that would cause any member thereof to be burdened with responsibility for the departure of individuals whom it did not in fact suppose to be destined for a belligerent service, notwithstanding the erroneousness of such a conclusion. It should be obvious that it is generally as feasible for a neutral group to endeavor to withhold man power as any other form of military aid from warring states that are in need thereof. The matter is, therefore, worthy of consideration.

Neutral states may encounter difficulty in agreeing to arrangements for embargoes upon shipments of proscribed articles consigned to neutral territory for transshipment to a belligerent area. If, however, the state of origin satisfies itself that the articles which it seeks to withhold from the use of a belligerent state are in fact to be transshipped abroad on sea or land, for consignment to belligerent territory or to a belligerent instrumentality, such as a vessel of war, it may reasonably forbid the departure of the consignment. It is not unreasonable for a group of prospective neutral states to agree severally, under like circumstances, to take such action. The conventional burden to be imposed upon the individual neutral state should not, however, be of unlimited scope. Its own opinion or conclusion as to the likelihood of transshipment abroad should be decisive of the fact in the solution of any question touching the proper response by the neutral to its duty of prevention as set forth in a convention. Faithful performance of such an obligation growing out of a treaty might cause the neutral to suffer some commercial losses. Yet it should be borne in mind that the sacrifice of such trade with neutral territory as a belligerent would itself enjoy the right to prevent or penalize because of the ultimate hostile destination and character of the cargoes involved is the giving up of a form of commerce on which neutral states should not themselves embark. When, therefore, a group of states contemplating the retention of a neutral status undertake to restrict a traffic between any one of its members and another neutral country whose territory is merely a base of reshipment of a cargo destined to a belligerent goal, the members of the group are merely giving up a traffic which they should not attempt to protect from belligerent interference, at least in so far as the articles of shipment are fairly within the class of those which any belligerent maritime power may reasonably today regard as contraband of war.¹⁹

19. If articles possess a character that causes them, to the neutral mind, to be such as should not find their way from neutral to belligerent territory, directly or indirectly, and if

The general co-operative effort to withhold neutral aid from belligerent seekers of it will be challenged by those who contend that the impartial withholding of neutral resources from a belligerent buyer is a device that is futile to hold in check a state which is bent on war, or to weaken the relative advantage of a country which with grim and harsh purpose acquires in time of peace an ample stock of needed supplies which its prospective enemy, like itself, could not procure in neutral territory after war ensued. Thus it is contended that restraints upon the freedom of belligerents to obtain sustenance from neutral sources, encourage states in time of peace to become armed camps replete with the means of attack upon a prospective foe.²⁰ This argument fails, however, to take cognizance of the fact that wars may break out suddenly, without long conscious preparation by either of the opposing belligerents and under circumstances when neither contestant has possessed itself of supplies that are adequate for a protracted conflict. It fails also to heed the fact that war supplies embrace numerous classes of articles that are not susceptible to long preservation and that, accordingly, substantial augmentations from foreign and neutral sources are likely to be essential to the victor in a prolonged struggle by land and sea. The practical bearing of these considerations is worthy of close attention. Wars are not likely to be long waged without foreign sustenance that is forthcoming during the course of hostilities, and victory may be quite beyond the reach of a belligerent that is then deprived of it.

In view, however, of the alertness oftentimes displayed by states to seize upon the relative weaknesses which a neighbor may develop as a means of gaining advantages otherwise beyond his reach, just as the gangster proceeds to get the drop on the victim whom he essays to rob, statesmen must be alive to the fact that the success of a co-operative neutral endeavor to withhold military or other aid from warring powers may be rendered nugatory and even harmful to a treaty-respecting country, unless the state which embarks upon war, whether as a covenant-breaker or otherwise, is really impotent to evade and break down the common design. Various devices may suggest themselves whereby members of a substantial group of states, such, for example, as the American republics, may protect themselves as against one of their number which embarks upon war against another. The conventions of 1922 and 1930 for the Limitation of Naval Armaments show how the groups of contracting powers sought by concerted action to safeguard themselves against augmentation of particular classes of naval vessels

the neutral state is satisfied that articles within such a category are in fact destined for a belligerent territory through a transshipment in a foreign neutral area, a case arises where a restriction by the neutral state of origin may become a sensible substitute for belligerent action.

20. See Mr. Lansing, Sec'y of State, to Mr. Penfield, American Ambassador to Austria-Hungary, Aug. 12, 1915, U. S. FOREIGN RELATIONS (Supp. 1928) 794.

that would enhance the relative naval strength of any signatory. They suggest methods that are within the reach of a contracting group of prospective neutral states. Thus, information concerning accessions of war supplies by the individual member of a group from any other member thereof could, in pursuance of agreement, be placed within the reach of every other member of such group that was co-operating for the cause of neutrality. Such an achievement might be effected by reciprocal undertakings causing the acquirer of supplies to report on accessions and the suppliers thereof to report sales.²¹ It is improbable that these dual undertakings could be successfully evaded.

With the growth of governmental oversight or control over the exportation of war materials which is likely to become a common incident in the international life, there is increasing opportunity for a group of states seeking to preserve and utilize their solidary interests to be apprised at all times of the full scope of the efforts of any individual member to gain in time of peace external aid for war.²² Possession of such information may be of utmost value in enabling the group as such to exercise the full measure of its mediatory influence both to deter the outbreak of war and to endeavor to safeguard any member of the group from an attack to which it may be exposed. Possessed of the requisite information the group may itself become, moreover, quite able to prevent a disaffected member from utilizing a season of peace as a special opportunity for strengthening its power for war and for improving its relative advantage when hostilities break out.

The limiting of accessions of foreign war supplies in time of peace, as by a scheme of rationing applied through the agency of the group of contracting states (such as the Permanent Inter-American Consultative Committee contemplated by the Neutrality Convention submitted by the United States to the Buenos Aires Conference of 1936), would not be impracticable, provided that reasonable tests of determining what should be regarded as the maximum peace requirements of members of the group could be agreed upon.²³ Possibly the acceptability of such a plan might be enhanced by the

21. See undertakings of the contracting powers to communicate promptly to each other specified information concerning the construction of vessels of war for a non-contracting power, contained in Art. XVI of the Treaty on Limitation of Naval Armament concluded by the United States, the British Empire, France, Italy and Japan, Feb. 6, 1922, 3 U. S. TREATIES (1923) 3104; also, undertakings concerning the furnishing of specified information relating to the replacement of vessels as contained in Chap. II, Part 3, Sec. I (b) of the same treaty, 3 U. S. TREATIES (1923) 3109. See also, Arts. 10 and 21 of the Treaty on Limitation and Reduction of Naval Armaments concluded between the United States and Other Powers at London, April 22, 1930, U. S. TREATY SERIES, No. 830.

22. Other consequences flow from governmental oversight and control over the manufacture and exportation of munitions of war. When the state exercising such a function finds itself neutral to a war that breaks out in any quarter, it must encounter utmost difficulty in denying the allegation that exportations of such articles for a belligerent use betoken neutral governmental participation in the conflict.

23. See Art. VIII of the Covenant of the League of Nations, 3 U. S. TREATIES (1923) 3338.

circumstance that the rationing agency would consider solely the matter of the scope of accessions from foreign sources, even though the amount thereof might be affected by what the acquirer had itself available within its own domain. The differences in the geographical size or strength of members of the group would, however, complicate the solution of the problem concerning the maximum that each member might fairly be permitted to import. Again, members of the group might evince reluctance to entrust to a common agency the power to determine or even recommend the maximum amount of supplies that each should be permitted to acquire from any other. Hence, one may well doubt whether at the present time a plan of rationing applied impartially through a competent agency would be acceptable to some states that might be disposed to withhold as neutrals much aid that might be desired by belligerents.

The foregoing considerations show the difficulties to be met in the attempt to prevent a group member that is bent on war from frustrating the common plan by its achievements in seasons of peace. It would be dogmatic to assert how prevention may best be effected; and it seems inadequate to refer merely to the potential resourcefulness of the interested group of states as a means of holding in leash a war-designing member. The point to be emphasized is that the treaty-respecting member of a group must not be penalized by the operation of a plan which enables an adversary in time of peace to compass its destruction. It is in that season, therefore, that the group may be obliged to do its hardest work in order to prevent its plan of withholding supplies after the outbreak of war from proving a fiasco. Yet such prevention is not impossible. Because it is not impossible, the mode of prevention deserves faithful consideration. In general, it is easier to influence the acts of a state which has not embarked upon war than those of one which has become a belligerent. The relative ease becomes an important factor in the solution of the problem. A group of countries acknowledging a common and solidary interest for peace may be able, if they exert the requisite influence, to keep in its relative military position a member whose aspirations at such a time are a menace to any other. This is the vital consideration that justifies the belief and hope that international co-operation for neutrality may become a blight upon war. Thus far the United States in the course of its recent legislation and as the proposer of a neutrality convention has taken a modest step in the right direction. The other American republics are also giving heed to the matter, despite their reluctance to accept definite commitments. When the republics of the western hemisphere become united in the conviction that the best way through which to avoid war and to lessen the duration of war is by withholding as neutrals fuel from the flames of conflict, they may be disposed to stride forward and make it impossible for an Ameri-

can state in seasons of peace to acquire from an American neighbor sustenance that will give it the victory if it resorts to war. Other continents will be profoundly interested as such an experiment is made in the American continents, for the issue confronts all civilization. That issue is whether international co-operation for a neutrality which denies impartially to belligerents a sustenance that is indispensable for their needs is a better bulwark for peace than a united effort of an organization of states to take sides against and penalize one of its number which in violation of its covenant embarks upon war as an instrument of national policy. The final decision remains to be reached.