> manner in which activities of conquest spread and become enlarged as operations of conquest proceed, finds itself forced to arm as speedily as possible and to the utmost of its capacity in preparation for self-defense —toward preserving its own security by preventing war from reaching and crossing its boundaries.
>
> Today no country and no individual is secure against the destructive effects of the existing armed conflicts. No human being anywhere can be sure that he or she will be allowed for long to live in peace. Only by vigorous and adequate preparation for self-defense can any country, including our own, hope to remain at peace.

These vigorous words show plainly enough that in the Secretary's mind the shoe was on the other foot, and that the countries entitled to invoke the doctrine of self-defense as excuses for their conduct were not the invaders, and were in some cases countries that had not in fact become belligerents until their own territories had been made the object of attack, and that the countries so privileged embraced also those which were still at peace.

All of this points to the large inquiry as to the extent to which the doctrine of self-defense may properly be invoked in support of the conduct of a State, which is not at war and which finds in the attainment of known objectives by a particular belligerent a real menace to itself. Instances of the application of the Monroe Doctrine offer food for thought. It is here sought merely to point to the inquiry, rather than to explore the question, which it involves. At the moment that question is of far-reaching importance to the United States. The solution of it demands the careful thinking of those who profess an interest in international law, as well as of those who hold the reins of government. The consequences of penetrating thought need not be feared or dreaded. They may in fact produce the cheering conviction that without violating any legal duty to any belligerent, our own country enjoys great latitude in pursuing a course which the requirements of its own defense may be fairly deemed to demand.

Secretary Hull in his anniversary statement declared that the soundness of the principles underlying the Kellogg-Briand Pact has in no way been impaired by what has taken place since its conclusion. "Sooner or later," he said, "they must prevail as an unshakeable foundation of international relations unless war with its horrors and ravages is to become the normal state of the world and mankind is to relapse into the chaos of barbarism; and I am certain that there are in the human race resources of mind and of spirit sufficient to insure that these sane bases of civilized existence will become firmly established." These are heartening words.

Charles Cheney Hyde

INTERNATIONAL CRIMINAL JUSTICE

War, though hideous, hateful, and unendurable, must be regarded as a temporary and abnormal state of affairs. The normal state of affairs has to do with the problems of human relationships. These relationships never

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cease, whether within or between nations. Legal rights and obligations are constantly being created. Justice must be done, *ruat caelum.* International law has been laboriously evolved to serve the ends of justice between peoples. It embraces not only the interests of sovereign states but of individuals. Because a man is *heimatlos* and without a champion to defend him does not imply that he is to be denied either international rights or means of redress.

The problems of international justice are vast and comprehensive, increasing constantly with the rapidly changing social order throughout the world. The rights of men are not to be abandoned utterly because of international criminals. Our primary concern should be to deal effectively with all phases of international crime. It is a strange and lamentable fact that, while European jurists have long been preoccupied with the problem of international penal law, it has largely been ignored by Anglo-American jurists. The latter have been content to allow this complicated subject to be dealt with through private international law, which they prefer to term conflicts of law, or through the processes of extradition. We are immensely indebted to the conscientious and meticulous labors of the Continental jurists in the field of international criminal law. They have served to draw attention to and clarify many of the vital problems which the law of nations has neglected.

This subject was brought before the Advisory Committee of Jurists at The Hague in 1920 by its Chairman, Senator Baron Descamps of Belgium. He proposed the establishment of a High Court of International Justice competent to try "offences against international public order and the universal law of nations." This proposal was given only cursory consideration and was disposed of by a mere *voeu* recommending it to the consideration of the League of Nations. The League in turn summarily rejected the proposal on the ground that "there is not yet any international penal law recognized by all nations, and that, if it were possible to refer certain crimes to any jurisdiction, it would be more practical to establish a special chamber in the Court of International Justice."[1]

The idea of an international criminal court has persisted in claiming serious consideration. The International Law Association devoted several sessions to its discussion, and in 1926 adopted at Vienna a statute providing for such a tribunal.[2] The International Congress of Penal Law at Brussels in 1926 recommended the establishment of an international court having criminal jurisdiction.[3]

The assassination of King Alexander of Yugoslavia and the French Minister for Foreign Affairs in Marseilles in 1934 led to the calling of a diplomatic conference in Geneva in 1937 to deal with the problem of terroristic crimes. Two conventions were signed by twenty nations, one for the Prevention and

[1] Records of the First Assembly, Committees, p. 589.

[2] Report of the 34th Conference, 1926, pp. 130–142.

[3] *Actes du Congrès International de Droit Penal,* 1926, p. 634.

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Punishment of Terrorism, and the other for the creation of an International Criminal Court to deal with such offences.[4]

In an editorial comment in this JOURNAL by Judge Manley O. Hudson, of the Permanent Court of International Justice, attention was drawn to the numerous conferences and the abundant literature on the subject indicating "the spell which the idea of an international criminal court has exercised on many minds."[5]

In view of the great interest in the subject, why is it that the proposal for an international criminal court has met with so much opposition? It is true that the original hostility to the proposal of Baron Descamps was based largely on the fact that it was intended to deal primarily with "war crimes" which could not clearly be defined, or for which responsibility could not definitely be determined. It is also true that most of the ordinary crimes have been taken care of satisfactorily by treaties of extradition. It must be admitted that the general objection expressed by the League of Nations that there is no international penal law recognized by all nations is a sound one. *Nulla poena sine lege.* We are still confronted, however, with the inescapable necessity of perfecting the whole process of international justice in order that jurisdiction may ultimately be conferred on some "High Court" to deal with all "offences against international public order and the universal law of nations." The lack of an international penal law presents a most serious problem which should have the earnest attention of international jurists. The new world order which will emerge from the present anarchy will have to be based on a much more effective system of international law. The maxim *inter arma silent leges* may be true, in part, but those who labor for international justice cannot rest silent. The American Society of International Law must continue to meet intelligently and courageously its special responsibilities. Professor Jesse S. Reeves, in an address on International Criminal Jurisdiction, made before the Society at its annual meeting in 1921, stated:

> The controversy over the conflict of criminal laws is one of pure international law; it is a matter involving the reciprocal acts and obligations of state and state. . . . What is needed is a series of international agreements, so that the Permanent Court might have a standard of rights and duties of states with reference to their respective penal jurisdictions. Even more important than this, agreements of this kind would eliminate many international differences, and finally they would assist in the development of an important function—that of an international penal administration.[6]

This authoritative comment would seem to present a definite and serious challenge to the American Society of International Law to devote its dis-

[4] League of Nations Document, C.548.M.385.1937.V.

[5] Vol. 32 (1938), p. 549, which see for detailed references.

[6] Proceedings of A.S.I.L., 1921, pp. 67, 69.

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cussions to the specific problem of international criminal justice as well as to the problem of international justice in general. It might well be the main topic for discussion at the next annual meeting of the Society.

PHILIP MARSHALL BROWN

"NON-BELLIGERENCY" IN RELATION TO THE TERMINOLOGY OF NEUTRALITY

Of the new descriptive terms which have evolved during the current European War, "non-belligerency" suggests obvious questions concerning public legal relations. At this particular stage of the development it would probably be premature to try to state with any finality the significance of this particular expression in the diplomacy of the war period. The present comment will be restricted to some actual instances of the use of the term in recent months of the war, and to the possible relation of "non-belligerency" to the general terminology of neutrality.

The term was apparently first used, in the period after the outbreak of the war in September, 1939, to describe the status and attitude of Italy before that country became a belligerent. In the intervening months it has found frequent employment in a somewhat confused treaty situation, wherein arrangements of alliance do not necessarily bring a state into a war that is being fought by its ally. The position of Turkey will illustrate. It is well known that the "mutual assistance" pact signed by France and Great Britain with Turkey on October 19, 1939,[1] has, in general contemplation, ranged the latter country on the "side" of Great Britain. But as late as November 1, 1940, President Inönü could say, in a speech opening the Turkish National Assembly, that his country's attitude of non-belligerency need not constitute an obstacle to normal relations with all the countries showing the same measure of good will toward Turkey, that this attitude of non-belligerency made impossible the use of Turkish territory or sea or skies by the belligerents in action against each other, and that it would continue to make such use impossible so long as Turkey took no part in the war.[1a]

Egypt has continued its policy of "non-belligerency" even after air bombardment and invasion of its territory; its "temporizing" policy has been laid to party political rivalry.[2] After the entrance of Italy in the war, Spain came to be the most conspicuous "non-belligerent" state friendly to the Axis Powers, although in the German press there was, in November, some suggestion that the Soviet Union's attitude has become one of non-belligerency rather than benevolent neutrality,[3] and English editorial comment noted that Germany had found it necessary to make concessions to the Soviet

[1] Cmd. 6123.

[1a] As reported in The Times (London) Nov. 2, 1940, p. 4. The President is reported to have said in the same speech that the bonds of alliance with the British were "solid and unbreakable." Turkey is apparently bound to aid Greece if any Balkan Power joins a non-Balkan Power in an attack upon Greece. Turkey has therefore been called a "conditional non-belligerent." (New York Times, Nov. 3, 1940, 7:4.)

[2] Manchester Guardian Weekly, Oct. 4, 1940, p. 235.

[3] New York Times, Nov. 17, 1940, E4:5 (quoting from the *Koelnischė Zeitung*).

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