THURSDAY, APRIL 24, 1941

10:00 o'clock a.m.

Totalitarian Doctrines of World Organization:

National Socialist Doctrines. Professor HANS MORGENTHAU, *University of Kansas City.*

Communist Doctrines. Professor MALBONE W. GRAHAM, *University of California at Los Angeles.*

Japanese Doctrines. Professor HAROLD M. VINACKE, *University of Cincinnati.*

2:30 o'clock p.m.

Inter-American Organization:

Political Aspects. Professor CHARLES G. FENWICK, *Bryn Mawr College.*

Economic Aspects. Professor BENJAMIN H. WILLIAMS, *University of Pittsburgh.*

Business meeting and adjournment.

FRIDAY, APRIL 25, 1941

12:30 o'clock p.m.

Luncheon tendered by Carnegie Endowment for International Peace.

Speaker: DR. HENRY F. GRADY, *President, American President Lines,* "The Problem of Post-War International Economic Organization."

ADDRESS OF ROBERT H. JACKSON, ATTORNEY GENERAL OF THE UNITED STATES, INTER-AMERICAN BAR ASSOCIATION, HAVANA, CUBA, MARCH 27, 1941 *

Mr. President, Mr. Minister and Members of the Inter-American Bar Association:

The founding of this association, at a time when so much of the world either has lost or has forsaken government under law, bears witness to our faith in a civilization ordered by reason rather than by force. We are debtors to this captivating country and city, not only for a generous hospitality, but more importantly for an inspiring leadership. We lawyers from the United States value this opportunity to compare our own legal philosophy and institutions with those of other American commonwealths. You have no doubt been impressed with our modest habit of expounding our own law by a recital of some case we won.

Every delegate comes to this council with pride in his own national institution and tradition. No one comes to capitulate to any other. Each of our pioneering peoples of this hemisphere has looked to one or another of the old world civilizations to fertilize its intellectual life. Since communion with Europe has been interrupted we have turned to each other for cultural enrichment. We are rediscovering the Americas. Of course this has its

* Read by the Hon. George S. Messersmith, American Ambassador. Due to weather conditions, the airplane trip of the Attorney General to Havana had to be abandoned.—ED.

perils. I am told that in Washington the old and the young of both sexes are making a furious study of the Spanish and Portuguese languages. We trust that you good neighbors will bear with your characteristic good humor the punishment that is in prospect for your native tongues.

The easy and fraternal terms on which our profession meets, serve to emphasize the discord of the world and above vexing national problems rise grave questions of law relating to our international well being.

We are haunted by the greatest unfinished task of civilization which is to create a just and peaceful international order. If such a relationship between states is to be realized, we know its foundations will be laid in law, because legal process is the only practical alternative to force.

The state of international law and of progressive juridical thought on the problems of states not actually participating in hostilities is of more than academic interest in a world at war. The United States feels obliged to make far-reaching decisions of policy. I want the legal profession of this hemisphere to know that they are being made in the conviction that the structure of international law, however apparently shaken, is one of the most valuable assets of our civilization. There may be differences of opinion as to some of its particular rules, but we have made conscientious effort to square our national policy with enlightened concepts of the law of nations viewed in its entirety.

It is the declared policy of the Government of the United States to extend to England all aid "short of war." At the same time it is the declared determination of the government to avoid entry into the war as a belligerent.

The question has been raised whether the two aspects of this dual policy are reconcilable with law, or whether such comprehensive aid, extended to one belligerent party to the express exclusion of the other, is incompatible with the obligations which international law imposes upon a state, not a belligerent in the war.

President Roosevelt in his message to the Congress of January 6, 1941, said that "Such aid is not an act of war."

Secretary Hull and Secretary Stimson have voiced similar conclusions and the Committees of both Houses of Congress are committed to the same view.

But weighty names and even heavier texts are found to contend that our only legal alternatives are to enter the war ourselves or to treat all belligerents with impartiality. It has been asserted that international law forbids the United States to exchange over-age destroyers for air and naval bases in this hemisphere, and forbids us to render acts of assistance to a belligerent with whose institutions and cause we feel some kinship, and who has been subjected to aggression.

I do not deny that particular rules of neutrality crystallized in the nineteenth century and were codified to a large extent in the various Hague Conventions which support this view. But the applicability of these rules has

been superseded. Events since the World War have rejected the fictions and assumptions upon which the older rule rested. To appreciate the proper scope of that doctrine of an impartial neutrality we must look to its foundations. Its cornerstone is the proposition that each sovereign state is quite outside of any law, subject to no control except its own will, and under no legal duty to any other nation.

From this it is reasoned that, since there is no law binding it to keep the peace, all wars are legal and all wars must be regarded as just.

This doctrine is stated by a standard authority:

> it would be idle for it (international law) to affect to impart the character of a penalty to war, when it is powerless to enforce its decision. . . . International law has consequently no alternative but to accept war, independently of the justice of its origin, as a relation which the parties to it may set up if they choose, and to busy itself only in regulating the effects of the relation. Hence both parties to every war are regarded as being in an identical legal position, and consequently as being possessed of equal rights.[1]

It is easy to see how an international law which holds all wars to be legal, and all warring nations as possessed of equal rights, arrives at the conclusion that neutrals must not discriminate between belligerents.

To the mind untutored in such sophisticated thought it seems to be characterized by more of learning than of wisdom. It does not appear to be necessary to treat all wars as legal and just simply because we have no court to try the accused. That hypothesis seems to justify President Wilson's statement that "International Law has perhaps sometimes been a little too much thought out in the closet." Certainly the work-a-day world will not accept an unrealistic and cynical assumption that aggression, by a state that had renounced war by treaty, rests on the same basis as defense against an unprovoked attack in violation of treaty.

I think it was Henry Adams who complained that he was educated in one century and was living in another. All of us, even some of our international lawyers, suffer the same dislocation of ideas. The difference is that Henry Adams recognized it. Some of our scholarship has not caught up with this century which, by its League of Nations Covenant with sanctions against aggressors, the Kellogg-Briand Treaty for renunciation of war as an instrument of policy, and the Argentine Anti-War Treaty, swept away the nineteenth century basis for contending that all wars are alike and all warriors entitled to like treatment. And this adoption in our time of a discriminating attitude towards warring states is really a return to earlier and more healthy precepts.

The doctrine of international law in the seventeenth and eighteenth centuries was based on a distinction between just and unjust wars. From that distinction there was logically derived the legal duty of members of the

[1] Hall's International Law, 5th ed., 1904, p. 61.

international society, bound by the ties of solidarity of Christian civilization, to discriminate against a state engaged in an unjust war—in a war undertaken without a cause recognized by international law. That duty was stressed by the scholastic writers in the formative period of the law of nations. It was voiced by Grotius, the father of modern international law. There was, in his view, no duty of impartial treatment when one of the belligerents had resorted to war in violation of international law. Writing in 1625, he said "it is the duty of neutrals to do nothing which may strengthen the side which has the worse cause, or which may impede the motions of him who is carrying on a just war."[2]

It may be argued that the nineteenth century and the first two decades of the twentieth witnessed an interlude in international law inconsistent with what went before and also with what was to follow. But if I read history correctly, there has seldom, if ever, been a long period of time during the past three centuries when states, for their own self-defense or from other motives, have been completely impartial in relation to the belligerents. More often than not, at the end of wars, there have been recriminations of such activities, which have thereafter been largely overlooked. The testimony of historians as to the practice of states in the seventeenth, eighteenth and nineteenth centuries should not be overlooked by the international lawyer in so far as the real limits of the principles of neutrality are concerned.[3] It is safe to assert that the absolute category of neutrality on the one hand, and belligerency on the other hand, will not square with the test of actual state practice, and that, as judged by that practice, there is a third category in which certain acts of partiality are legal even under the law of neutrality.

Even during the vogue among publicists and text writers of the theory that all wars were just and all neutrality therefore undiscriminating, modern practice—especially American practice—shows instances of discriminating, qualified neutrality. During the World War, after the United States

[2] 3 *De Jure Belli ac Pacis* (Whewell ed., 1853), p. 293.

[3] In the seventeenth and eighteenth centuries it was not uncommon to grant the right of passage to one belligerent only. In particular, such one-sided aid was freely extended in pursuance of pre-existing treaties promising help in case of war. It comprised not only the right of passage, but also deliveries of supplies and contingents of troops. This admissibility of qualified neutrality, in conformity with previous treaty obligations, was approved by writers of authority, including leading publicists like Vattel and Bynkershoek, who otherwise stressed the duties of impartial conduct. Wheaton, the leading American writer, asserted, as late as 1836, that a neutral may be bound, as the result of a treaty concluded before the war, to furnish one of the belligerents with money, ships, troops, and munitions of war. Kent, another authoritative publicist, expressed a similar view. Distinguished European writers, like Bluntschli, shared the same opinion. Even as late as the nineteenth century, governments occasionally acted on the view that qualified neutrality was admissible. In 1848, in the course of the war between Denmark and Germany, Great Britain, acting in execution of her treaty with Denmark, prohibited the export of munitions to Germany. During the South African War, Portugal complied with the obligations of her treaty with Great Britain and permitted the landing of British troops on Portuguese territory.

had declared war on Germany, a number of Central and South American republics formally announced a departure, in favor of the United States, from the obligations of impartiality. Some of them, like Guatemala, El Salvador and Costa Rica, offered their territorial waters and ports for the use of the naval forces of the United States. Others, like Brazil and Uruguay, expressly modified their neutrality regulations in that direction. Uruguay issued a decree announcing that she would not treat as a belligerent any American nation engaged, in defense of its rights, in a war with states in other continents and Germany did not consider this decree as resulting in a state of war.

Thus, American states tendered to the United States, when in the throes of war, moral and economic support based on a conviction of the justice of our cause and the identification of their ultimate well-being with our success —a generous manifestation of good will for which my countrymen and my government will never cease to be grateful and to reciprocate. In fact the Joint Resolution of Congress enacting our Neutrality Act of 1939 provided: "This joint resolution (except Section 12) shall not apply to any American republic engaged in war against a non-American state or states."

The experience of the World War was too much for any doctrine that all war was to be accepted as just.

This doctrine was revised by the Covenant of the League of Nations. That instrument substantially limited the right of war and imposed upon its members certain duties designed to enforce that limitation.

The Covenant of the League of Nations did not abolish neutrality. It did not impose upon the members of the League the duty to go to war with the Covenant-breaking state. But it did lay upon them the obligation to adopt against the responsible state what was theretofore regarded as unneutral conduct contrary to international law. To that extent it revived non-participation combined with active discrimination against the aggressor and active assistance to the victim of aggression. The attitude of Great Britain during the Italo-Abyssinian war in 1935 and 1936 illustrated clearly the position created by the Covenant. Great Britain did not declare war on Italy. At the same time she insisted that Italy was not entitled as a matter of law to expect from Great Britain the fulfilment of any obligations either of the Hague Conventions or of the customary rules of neutrality. Great Britain thus applied the concepts of international law which logically resulted from substantial curtailment of the right of war. Great Britain and other members of the League of Nations adopted an identical attitude in the course of the hostilities between Finland and Soviet Russia. The British Government supplied Finland with arms and ammunition; it authorized the setting up in Great Britain of recruiting bureaus for the Finnish army; and it adopted other measures clearly prohibited by the Hague Conventions.

There would be obvious inconsistency in the United States invoking the benefits of a Covenant to which it refused adherence, but I cite the Covenant

because it both evidences and dates the changed position of both war and neutrality in the world's thought. And it was followed by another commitment to which we were a party.

The Kellogg-Briand Pact of 1928, in which Germany, Italy, and Japan covenanted with us, as well as with other nations, to renounce war as an instrument of policy, made definite the outlawry of war and of necessity altered the dependent concept of neutral obligations.

The Argentine Anti-War Treaty, signed at Rio de Janeiro in 1933, is one of the most important American contributions to the growth of the law in the last decade. It is in a real sense a precursor of the system of consultation which was started at Buenos Aires in 1936. The implications of consultation are well recognized today.

In 1918, in a letter to Colonel House who was then preparing a first draft of a plan of a League of Nations, Elihu Root expounded the fundamental bases for a new international order. He wrote, in part, as follows:

> The first requisite for any durable concert of peaceable nations to prevent war is a fundamental change in the principle to be applied to international breaches of the peace.
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> The view now assumed and generally applied is that the use of force by one nation towards another is a matter in which only the two nations concerned are primarily interested, and if any other nation claims a right to be heard on the subject it must show some specific interest of its own in the controversy. . . . The requisite change is an abandonment of this view, and a universal formal and irrevocable acceptance and declaration of the view that an international breach of the peace is a matter which concerns every member of the Community of Nations—a matter in which every nation has a direct interest, and to which every nation has a right to object.[4]

The principle stated by Mr. Root has been accepted by practically all states in the Treaty for the Renunciation of War, in the Argentine Anti-War Treaty, and in the replies to Secretary Hull's famous statement of July 16, 1937. That principle lies at the very foundation of our present policy.

Present aggressive wars are civil wars against the international community. Accordingly, as responsible members of that community, we can treat victims of aggression in the same way we treat legitimate governments when there is civil strife and a state of insurgency—that is to say, we are permitted to give to defending governments all the aid we choose.

In the light of the flagrancy of current aggressions, which are apparent on their face, and which all right thinking people recognize for what they are, the United States and other states are entitled to assert a right of discriminatory action by reason of the fact that, since 1928 so far as it is concerned, the place of war and with it the place of neutrality in the international

[4] Root's letter to House appears in The Intimate Papers of Colonel House, arranged by Charles Seymour, Vol. IV, p. 43. See also Jessup, Elihu Root, Vol. II, p. 376.

legal system have no longer been the same as they were prior to that date.

That right to resort to war as an instrument of national policy was renounced by Germany, Italy and Japan in common with practically all the nations of the world, in a solemn treaty which the United States helped to call into being, to which it has become a party, which it has been its proclaimed intention to make the cornerstone of its foreign policy, and whose provisions it has invoked on repeated occasions as expressing a fully binding international obligation. The present hostilities are the result of and have been accompanied by repeated violations of that treaty by Germany, Italy and Japan. It may be noted in this connection that Italy was the first state to adhere to the Argentine Anti-War Treaty, after the original signatories.

The Treaty for the Renunciation of War and the Argentine Anti-War Treaty deprived their signatories of the right of war as an instrument of national policy or aggression and rendered unlawful wars undertaken in violation of their provisions. In consequence, these treaties destroyed the historical and juridical foundations of the doctrine of neutrality conceived as an attitude of absolute impartiality in relation to aggressive wars. It did not impose upon the signatories *the duty* of discriminating against an aggressor, but it conferred upon them *the right* to act in that manner. This right they are indisputably entitled to exercise as guardians both of their own interests and of the wider international community. It follows that the state which has gone to war in violation of its obligations acquires no right to equality of treatment from other states, unless treaty obligations require different handling of affairs. It derives no rights from its illegality.

It is not to be overlooked in this connection that two groups of highly reputable international lawyers have agreed in general with this position. I refer to the International Law Association (especially to the Budapest Articles of Interpretation) and to the Research in International Law conducted under the auspices of the faculty of Harvard Law School, which, after considering this matter, came to substantially the same view, with the qualification that they might be more exacting with reference to the determination of the aggressor by a method to which the alleged law-breaking states had theretofore agreed.[5] Of course neither of these bodies spoke in relation, specifically, to conditions existing today.

[5] Almost contemporaneously with going into force of the Kellogg-Briand Pact, and at a time when it was not self-serving, United States Secretary of State Stimson, in 1932, announced his view of the change which that treaty wrought in our legal philosophy: "War between nations was renounced by the signatories of the Briand-Kellogg Treaty. This means that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing. Hereafter when two nations engage in armed conflict either one or both of them must be wrongdoers — violators of this general treaty law. We no longer draw a circle about them and treat them with the punctilios of the duelist's code. Instead we denounce them as law-breakers.

Most international lawyers will agree that where there is a specific legal obligation not to resort to armed force, where there has been a resort thereto, and where it has been appropriately determined that one party is the aggressor by a method which the aggressor has agreed to accept, the traditional rules of neutrality need not be applied. The difficulty with this proposition lies in the lack of means for determination of the fact of aggression.

There are compelling reasons why we must not await a judicial or other formal determination of aggression today. In the evolution of law we advance more rapidly with our concepts of substantive rights than with our machinery for their determination. Rough justice is done by communities long before they are able to set up formal governments. And where there is a legal obligation not to resort to armed force it can be effectuated as legal obligations have always been effectuated on the frontiers of civilization be-

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"By that very act we have made obsolete many legal precedents and have given the legal profession the task of reëxamining many of its codes and treatises." "The Pact of Paris: Three Years of Development," address by the Honorable Henry L. Stimson, Secretary of State, before the Council on Foreign Relations, Aug. 8, 1932, U. S. Government Printing Office, Washington, 1932; Foreign Affairs, Supp., Oct. 1932.

These codes and treatises have been and are being reëxamined as Secretary Stimson suggested they must be, and the legal consequences of the Kellogg-Briand Pact in the matter of neutrality were formulated in the so-called Budapest Articles of Interpretation adopted in 1934 by the International Law Association. They read as follows:

"WHEREAS the Pact is a multilateral law-making treaty whereby each of the High Contracting Parties makes binding agreements with each other and all of the other High Contracting Parties, and

"WHEREAS by their participation in the Pact sixty-three States have abolished the conception of war as a legitimate means of exercising pressure on another State in the pursuit of national policy and have also renounced any recourse to armed force for the solution of international disputes or conflicts:

"(1) A signatory State cannot, by denunciation or non-observance of the Pact, release itself from its obligations thereunder.

"(2) A signatory State which threatens to resort to armed force for the solution of an international dispute or conflict is guilty of a violation of the Pact.

"(3) A signatory State which aids a violating State thereby itself violates the Pact.

"(4) In the event of a violation of the Pact by a resort to armed force or war by one signatory State against another, the other States may, without thereby committing a breach of the Pact or of any rule of International Law, do all or any of the following things:

(a) Refuse to admit the exercise by the State violating the Pact of belligerent rights, such as visit and search, blockade, etc.;

(b) Decline to observe towards the State violating the Pact the duties prescribed by International Law, apart from the Pact, for a neutral in relation to a belligerent;

(c) Supply the State attacked with financial or material assistance, including munitions of war;

(d) Assist with armed forces the State attacked.

"(5) The signatory States are not entitled to recognize as acquired *de jure* any territorial or other advantages acquired *de facto* by means of a violation of the Pact.

"(6) A violating State is liable to pay compensation for all damage caused by a violation of the Pact to any signatory State or to its nationals.

fore courts and machinery of enforcement became established. In flagrant cases of aggression where the facts speak so unambiguously that world opinion takes what may be the equivalent of judicial notice, we may not stymie international law and allow these great treaties to become dead letters. Intelligent public opinion of the world which is not afraid to be vocal and the action of the American states has made a determination that the Axis Powers are the aggressors in the wars today which is an appropriate basis in the present state of international organization for our policy.

By resorting to war in violation of the provisions of the Kellogg-Briand Pact, or the Argentine Anti-War Treaty, the Governments of Germany, Italy and Japan, violated a right and affected the interests of the United States. It was not a mere formal or theoretical right that was thus affected. The very basis of these treaties was the assumption that, in this age of interdependence, all its signatories had a direct interest in the maintenance of

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"(7) The Pact does not affect such humanitarian obligations as are contained in general treaties, such as The Hague Conventions of 1899 and 1907, the Geneva Conventions of 1864, 1906 and 1929, and the International Convention relating to the Treatment of Prisoners of War, 1929." (Report of the 38th Conference of the International Law Association, Budapest (1934), pp. 66–68; also, this JOURNAL, Supp., Vol. 33 (1939), pp. 825–826, n. 1.)

These Budapest Articles did not secure unanimous approval on the part of international lawyers, but they gained support from the majority of them. Even those jurists who felt unable to subscribe fully to the Budapest Articles of Interpretation were emphatic that the Kellogg-Briand Pact effected a decisive change in the position of the law of neutrality. Thus, the late Ake Hammarskjöld, a Judge of the Permanent Court of International Justice from 1936 until his death in 1937, in discussing, in the course of the Budapest Conference, the implications of the Kellogg-Briand Pact in relation to neutrality, said: "You will have noticed that, except when the texts compelled me to use the word 'neutrality,' I have been careful to use another word: the status of non-belligerency. . . . I have chosen the other expression merely because I wanted to underline that the status of non-belligerency under the Kellogg Pact is not necessarily identical with the status of neutrality in pre-war international law." (Report, 38th Conf., *loc. cit.*, p. 31.)

The Budapest Articles of Interpretation were not disapproved by the United States. On the contrary, Secretary of State Stimson, speaking before the American Society of International Law on April 26, 1935, said: "Our own government as a signatory of the Kellogg Pact is a party to a treaty which may give us rights and impose on us obligations in respect to the same contest which is being waged by these other nations. The nation which they consider an aggressor and whose actions they are seeking to limit and terminate, may be by virtue of those same actions a violator of obligations to us under the Kellogg Pact. Manifestly this in itself involves to some extent a modification in the assertion of the traditional rights of neutrality. . . .

"Even in the face of this situation some of our American lawyers have insisted that there could be no change in the duty of neutrality imposed by international law. I shall not argue this. To such gentlemen I only commend a study of the recent proceedings last summer of the International Law Association at Budapest. The able group of lawyers from many countries there assembled considered this question and decided that in such a situation the rules of neutrality would no longer apply among the signatories of the Kellogg Pact, and that we, for example, in such a case as I have just supposed, would be under no legal obligation to follow them." (Proceedings of the American Society of International Law, 1935, pp. 121, 127.)

peace and that war had ceased to be a matter of exclusive interest for the belligerents directly affected. If that is so—and it is so—then international law provides an ample and practically unlimited basis for discriminatory action against states responsible for the violation of the treaty or treaties.

The Treaty for the Renunciation of War and the Argentine Anti-War Treaty, by altering fundamentally the place of war in international law, have effected a parallel change in the law and status of neutrality and we claim the wider rights which that change imparts. But independently of that view, there is another sound basis for our action today.

The legitimate application of the doctrine of self-defense and the implications of anti-war treaties go hand in hand. It is in these fields where perhaps the most important developments of international law will take place in the immediate future, and these are the developments which the international community has sorely needed—developments in international sanctions.

We all know that since 1928 the principle of self-defense has been used as an excuse for internationally illegal action, but we also know that there is a legitimate principle of self-defense in international law, which is one of its most fundamental principles. The standard of action under this principle, as under other principles of law, is that it is to be applied in relation to what the reasonable man (or state) would do under the same or similar threatening circumstances. There can be no doubt that the political, territorial, economic, and cultural integrity of the Western Hemisphere is menaced by totalitarian activities now going on outside this hemisphere. In this situation the principle of self-defense may most properly be invoked, and we in the Americas are invoking it in relation to the facts as we know them and as we, in our best judgment, can foresee them in the future. We are today putting content into the principle of self-defense by giving it concrete application which will create important precedents. By this action we are again showing the fundamental soundness of this principle of international law, and are developing its implications at the very moment when we are being charged, in certain quarters, with ignoring or violating the less fundamental rules of neutrality which are, both in fact and in law, irrelevant to the existing situations.

The present implementation of the principle of self-defense did not start with the Lend-Lease Bill in the United States. It began at the Panama Consultation in 1939 and was developed in relation to the law of neutrality by the Inter-American Neutrality Committee at Rio de Janeiro, as endorsed by the Consultation of Foreign Ministers here at Havana in 1940. That historic meeting accepted the recommendations of the Neutrality Committee and adopted the Act of Havana for the provisional administration of European possessions and colonies in the Americas. It went further and proclaimed the right and the duty of any signatory to take defense measures if the safety of the continent were threatened.

These events have ushered into international law a basis upon which the

United States may legally give aid to the Allies in the present situation. No longer can it be argued that the civilized world must behave with rigid impartiality toward both an aggressor in violation of the treaty and the victims of unprovoked attack. We need not now be indifferent as between the worse and the better cause, nor deal with the just and the unjust alike.

To me, such an interpretation of international law is not only proper but necessary if it is not to be a boon to the lawless and the aggressive. A system of international law which can impose no penalty on a law-breaker and also forbids other states to aid the victim would be self-defeating and would not help even a little to realize mankind's hope for enduring peace.

The principle that war as an instrument of national policy is outlawed must be the starting point in any plan of international reconstruction. And one of the promising directions for legal development is to supply whatever we may of sanction to make renunciation of war a living principle of our society.

The only sanction that seems available in our time is the freedom of the right-thinking states of the world, particularly the states of the Western Hemisphere, to give a material implementation to their moral and nationally official judgments as to the justice of a war. The American states have done this officially with respect to the invasion of Belgium, Holland and Luxembourg.[6] A public opinion which can express itself only in sermons is not likely to restrain the aggressive propensities of any powerful state. If, however, that opinion may command measures short of war that are likely to prevent the success of aggression, it is certain to have some deference even from the ruthless. Short-of-war measures which enlightened opinion may invoke include all forms of moral censure and diplomatic disapproval, discriminatory embargoes or boycotts, as well as financial credits and furnishing of supplies and material, weapons and ships. These speak a language understandable to those deaf to the precepts alike of Christian civilization and of legal obligation and scholarship.

After an experience that ranged from complete impartiality, through "armed neutrality" and then to war itself, President Wilson in 1919, addressing a group of international lawyers, said:

> If we can now give to international law the kind of vitality which it can have only if it is a real expression of our moral judgment, we shall have completed in some sense the work which this war was intended to emphasize.

The quarter century that followed has in my judgment given to international law that vitality—the League Covenant began the modification of the

[6] On the initiation of Uruguay, the American states released a joint declaration protesting against the military attacks directed against these states. They declared, in part, that: "The American Republics in accord with the principles of international law and in application of the resolutions adopted in their inter-American conferences, consider unjustifiable the ruthless violation by Germany of the neutrality and sovereignty of Belgium, Holland and Luxembourg." (Department of State Bulletin, May 25, 1940, p. 568.)

old concept that all wars were just and legal. The Pact of Paris and the Argentine Anti-War Treaty completed the outlawry of war. The signatory may now in its policy express its discriminating judgment and its moral convictions.

It is upon these considerations that I have advised my government in the hope that its course may strengthen the sanction against aggression and contribute to the realization of our aspiration for an international order under law.

THE INTERNATIONAL LABOR ORGANIZATION IN 1940

A substantial breakdown in the international labor code laboriously constructed by the International Labor Organization was one of the resounding shocks which the resurgence of international war had threatened in 1931.[1] Today the threat has become a reality. Of the 25th session of the International Labor Conference, the last to be held before the European war, it was written: "It might be said that as significant as the achievements of the conference were its defeats, for the cause of its defeats may well, in time, defeat every major effort of the Organization to improve labor and living standards."[2] The year 1940 unhappily saw this foreboding realized. Following the collapse of Europe before the overrunning hordes of Nazi Germany and the disappearance of every vestige of official I. L. O. influence in Europe, the International Labor Office established headquarters in Montreal.

The removal to Montreal was begun in July, the main contingent of the Labor Office staff leaving Geneva on August 7. This contingent contained some fifteen members of the staff and a dozen members of their families.[3] The removal was finally completed in September.[4] Of a staff of some 300 persons, a bare handful—between 50 and 60—were transferred across the Atlantic to the new headquarters.[5] Among these was the veteran E. J. Phelan, the lone survivor in the Office of that little group which had proved so instrumental in the drafting of the constitution of the International Labor Organization at the Paris Peace Conference. Most of the remainder of the Geneva staff were given the alternative of resignation or dismissal.[6] As in the case of retirements from the League of Nations Secretariat, resignations from the Labor Office carried adequate allowances, and the plight of these 250-odd persons is therefore not immediately serious. What is

[1] See Reports of the Director of the International Labor Office for 1931–1939.

[2] Smith Simpson, "The Twenty-fifth Session of the International Labor Conference," this JOURNAL, Vol. 33 (1939), pp. 716–725, at p. 722.

[3] Information supplied by the Montreal Office of the International Labor Office. See also New York Times, July 4, 1940, 2:7; Aug. 8, 1940, 13:3.

[4] Information supplied by the Montreal Office of the International Labor Office.

[5] *Ibid.* See also "Transfer of International Labor Office Personnel to Montreal," Monthly Labor Review, Vol. 51, No. 3 (1940), p. 585.

[6] Information supplied by the Montreal Office of the International Labor Office.