

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.

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"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 İnönü 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 *Koelnisché Zeitung*).

Union in return for that country's continued "political neutrality" and economic assistance.⁴ With the rumors of Germany's plan of sending troops through Bulgaria, there has been some anticipation of Bulgaria's declaring her "non-belligerency."⁵ The still more anomalous situation of France has evoked at least one unofficial comment from an English source to the effect that if the Vichy Government were to announce itself as a non-belligerent, this would be so equivocal as to be more of a menace to Britain than if the Vichy Government were to go over openly to the side of Britain's enemies.⁶ As adherents to the so-called "new order," Hungary and Rumania might fall within the category now commonly called "non-belligerent."

To other neutrals close to the theatre of war, the term has apparently not been applied. Although Swiss war correspondents have recently been accused of "partiality" in the Italian press, Switzerland's neutrality would seem to have been thoroughly demonstrated. From Lisbon it was reported that Portugal, relying upon the German Government's promise to respect the sovereignty of Portugal and her colonies, and having received from Britain no request incompatible with strict neutrality rules, would never abandon her neutral status unless her vital interests or national honor should be threatened, or the fulfillment of her diplomatic obligations require such a course.⁷ In Eire is remarked a "spirit of detachment" from the struggle in progress, and a feeling of "confidence that our luck will hold."⁸

From the foregoing it will appear that "non-belligerency" has connoted various shades of partiality toward the contending parties, but stops short of war in the full legal sense. Whether it is more than a mere journalist's contrivance, unknown to the law, or "only a euphemism designed to cover violations of international law in the field of neutral obligation,"⁹ the term would seem to emphasize the idea that legal neutrality implies, as a minimum, some kind of peace—in the sense of absence of an actual contest of armed forces—whatever commitments short of this the state at peace may have toward one or more of those at war. The notion of neutrality as merely

⁴ The Times (London), Nov. 13, 1940, p. 4.

⁵ Reported remarks of Virginio Gayda in the *Voce d'Italia*, New York Times, Nov. 25, 1940, p. 3.

It was reported from Switzerland that Bulgaria and Germany might sign some kind of agreement defining the difference between "neutrality" and "non-belligerency" toward Germany. (*Idem.*)

⁶ British Weekly, Oct. 31, 1940, p. 41.

⁷ The Times (London), Nov. 9, 1940, p. 3, reproducing in part an article from the *Diario da Manhã*. In the same article General Franco was reported to be in agreement with Portugal on the localization of the war.

⁸ Dublin Evening Mail (editorial), Oct. 28, 1940, p. 4. See also an earlier editorial statement (*ibid.*, July 1, 1940, p. 2): "We have striven anxiously and scrupulously to maintain the neutrality that our Government declared at the outset, and we have maintained it successfully; but it would be folly indeed to imagine that our neutrality alone could save us from attack if it suited the purpose of one of the belligerent countries to attempt to make a battleground here. . . ."

⁹ As stated by Herbert W. Briggs, this JOURNAL, Vol. 34 (1940), p. 569n.

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

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THE HABANA CONFERENCE AND INTER-AMERICAN COÖPERATION¹

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

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

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

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

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

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

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