Notre Dame Law Review

Volume 15 | Issue 4 Article 1

5-1-1940

# International Law and the Present War

Frederic Rene Coudert

# NOTRE DAME LAWYER

*A Quarterly Law Review*

VOL. XV MAY, 1940 NO. 4

## INTERNATIONAL LAW AND THE PRESENT WAR*

THE final outbreak of the war in Europe last September after months of apprehension and threatening naturally caused a disruption profoundly affecting all international relations, both in the East and in the West, both among belligerents and neutrals.

In addition to this appalling catastrophe and as a consequence thereof, most important legislation has within the last weeks been enacted by our Congress. This legislation is termed "neutrality legislation," but is in effect the enactment of a new American policy in dealing with a great European war which threatens to become world-wide. The object of the policy is to preserve America from entanglement in that war and to avoid what are generally thought to have been the unfortunate causes which led to our entry into the World War (1917). This new law would be more accurately termed an American defense legislation. It is revolutionary in its character in that it abandons the so-called policy of the freedom of the seas, so long maintained by the United States and for which the nation entered into war with Great Britain in 1812 as it did with Germany in 1917.

It is quite natural, therefore, that under these circumstances the attention of the public should be diverted from

*This address was first published in the NEW YORK LAW JOURNAL of November 30, 1939, and is republished here with permission of that publication.

the great and pressing problems of American domestic policy toward the more imminent and probably more dangerous problems of international relationships. For that reason international law, a subject little understood and considered but by very few, has come to the forefront in our public discussions. The whole matter of neutrality and the rights and duties of neutrals as regards belligerents was the subject of very protracted and very complete debate in the Senate of the United States. Under these circumstances its seems particularly opportune for those who are entering upon a career of the law to give attention to those problems of international law which so profoundly affect our own country.

Let me first call attention to the widespread belief that international law is very different from national law in that it is wholly vague, uncertain and without sanction. This assumption is not really founded upon fact, and is due to the use of international law in too loose a sense. Let us consider what international law is generally and then how its particular rules relating to war — an abnormal state of affairs — may differ in precision from those applying to a state of peace.

International law, roughly speaking, may be said to be the general agreement among nations as to certain rules governing their conduct in time of peace and in time of war. In time of peace these extend to a vast variety of questions constantly under discussion between governments through methods of diplomacy, through international arbitrations and through courts, such as the Permanent Court of International Justice at The Hague. Moreover, international law has been said from the earliest time in this country by the Supreme Court to be part of the common law and hence of American law, and has been acted upon consistently and repeatedly by the courts of the United States throughout the history of the nation. The enforcement of international law is also dependent upon the consent of nations, but this consent has usually

been given, and I know of no judgment of an arbitral tribunal which has not been honored by the losing party.

The Committee on International Law of the American Bar Association submitted a list of over five hundred cases in the courts of the forty-eight states of the American Union in which questions of international law were involved. In the New York courts there were something more than one hundred twenty-five cases of that character. All of these cases, gathered together by the industry of Professor Edgar Turlington, indicate the comparative frequency with which international law problems confront our courts, and there is every reason to believe that these cases will grow in frequency with the ever closer international connections and relationships created by modern science, annihilating as it does time and space.

As regards international arbitrations, we have had arbitration with Great Britain in thousands of claims since the famous Jay Treaty of 1795 providing commissions to arbitrate differences between the two nations. Questions arousing bitter national feeling have been arbitrated and the judgments enforced. After the Civil War an arbitral commission awarded damages for the destruction done by Confederate cruisers (Alabama claims) and what might have caused war was settled by the persuasive argument of lawyers and the decree of arbitrators. In my own time I have seen serious matters involving the freedom of the seas and the boundaries of nations thus settled — the Bering Sea Arbitration (in 1903), the Venezuela-Guiana boundary (in 1899), the North Atlantic fisheries (in 1912), the subject of controversy for a hundred years, and other claims — all of them involving the application of the rules of international law. Lord Salisbury felicitously remarked when the fisheries questions were settled that he was glad that an end had come to the controversy, as the words "cod" and "lobster" had been fighting words between the English-speaking peoples on both sides of the Atlantic for more than a hundred years.

Nor is international law of peace any more uncertain than is our constitutional law and many other domains of our law in which changes in social conditions and circumstances have led to the reinterpretation of old precedents and the reformulation of old principles.

The real difficulty to-day is with a comparatively narrow domain of international law. That domain is the domain of maritime law, or the law of the sea in times of war. It must be admitted at once that this sea law is at the present moment in a highly unsettled, vague and unsatisfactory state. Since the end of the Middle Ages and when modern history began there has been a necessary, unavoidable conflict of interest between the neutral and the belligerent on the high seas. The neutral sought to continue his peaceful trading; the belligerent sought to destroy all commerce of the other belligerent and to prevent neutrals from bringing him any supplies for his military forces. Out of these conflicts there grew certain rules, which rules were indeed a compromise between the rights of the neutral to sail freely upon the high seas and the right of a belligerent in war to attack his enemy and to cripple his resources.

The belligerent acted through the blockade of his enemy's ports and through the stopping of ships carrying supplies to the enemy of a military character, or of what has long been termed "contraband"— that is, contrary to the bans or laws. A blockade had to be real and effective. It was the method applied by England in the long struggle with the French Revolution and with Napoleon, and it was stringently applied by the Federal Government to the Southern Confederacy. It contributed in great measure to the destruction of the Confederacy through depriving it of munitions of war and of necessary foodstuff. A vessel attempting to run the blockade was subject to forfeiture both as to the ship and its cargo.

For the purpose of enforcing belligerent maritime measures prize courts are part of the judicial system of every maritime

country. In the United States the function of the prize courts is devolved by the Constitution upon the federal courts.

It may be interesting here to note that these courts have dealt with a very large number of prize cases. In 1923 there were published by the Carnegie Endowment for International Peace three large volumes containing the prize cases decided in the United State Supreme Court and including some cases in the lower courts in which questions of prize law were involved. These cases were those considered between 1789 and 1918, and the amount of prize law declared by our federal courts generally is second only to that declared and developed by the admiralty courts in Great Britain, which have since the sixteenth century and throughout the various wars which have afflicted Europe since that date, been engaged in dealing with prize law. A great number of cases arose out of the War of 1812. Many most important precedents were made during the War Between the States, and some of these precedents were invoked by the British prize courts as justifying the doctrines of blockade and contraband which they applied during the World War and which were so criticized by our State Department and by the public during that period.

In the early days the number of articles strictly adapted to war purposes was comparatively small, and there was a more or less general agreement as to what these articles were. A neutral vessel carrying contraband could be taken upon the high seas, the contraband removed and condemned in the prize court, and if the vessel contained in major portion a contraband cargo the vessel itself could be condemned.

Nowhere, however, had such difficult and complex questions arisen as during the last World War when the sea power of Great Britain was used to blockade Germany and to cut off that nation from all access to supplies from all over the world. Many notes of protest were written by the United States in regard to alleged violations by the British Govern-

ment of sea law. Elaborate answers were made by Great Britain, and lawyers on all sides divided upon difficult problems such as that of continuous voyage, ultimate destination, taking vessels into port for visit and search, taking off reservists, searching mail, *et cetera.* The history is long and complicated, but the United States maintained the position that it had taken during the Napoleonic wars — that it was entitled to trade freely upon the high seas, subject only to certain definite rules as to blockade, contraband, *et cetera,* as to which there had been theretofore considerable agreement among the nations.

At the beginning of the war the United States, Great Britain and Germany formally stated that they would abide by a certain code called the Declaration of London. This code had been drawn up by a convention of ten maritime powers in pursuance to a resolution of the Hague Convention of 1907. The object of the code was to clarify and make more precise the rules of sea law. This code was actually ratified by the Senate of the United States, and several of the others adopted it as part of their naval codes. The House of Commons in England ratified it, but the House of Lords finally rejected it on the ground that it did not give sufficient scope to the naval power of Great Britain in curbing neutral commerce. Our State Department found it impossible to obtain adherence to this code, and in the early days of the war announced that America would apply to the action of foreign belligerents on the high seas the old rules of international law as laid down by general agreement and the various precedents more or less accepted by the nations.

The emergencies of new conditions of warfare, and notably the submarine, brought about, as many well remember, a totally new and unprecedented situation. The submarine could not, as could a cruiser, bring a neutral vessel into a foreign port for search and put a prize crew on it and send it into one of its own ports. In the end the action of the submarine in violation of all past precedent, which had provided

for the safety of the crew and which save in exceptional circumstances forbade the destruction of the neutral vessel, led to war between Germany and the United States.

Some attempt has been made as a consequence of the Washington Conference of 1922 to assimilate the action of belligerent submarines to that of cruisers and to provide that the submarine may not destroy a vessel until full opportunity has been given to remove passengers and crew to a place of safety. In the beginning of this war Germany announced that it would comply with this standard. I think it has been pretty well demonstrated, however, that if the submarine is to be an effective weapon it is impossible to comply with this standard of elementary humanity. To set passengers and crew adrift in small lifeboats on the open ocean can by no stretch of the imagination be assimilated to placing them in a position of comparative security. The cruiser of former times was a vessel of some capacity and could take on board the people of any vessel that it might destroy. Moreover, it was at that time far less necesssary to destroy vessels, and under the international law preventing it could only be done under exceptional circumstances. The custom was to provide a prize crew and to send the vessel captured into port, there to be condemned by a prize court.

All these matters were brought into very clear relief by the case of the American vessel Flint so recently captured by a German cruiser, manned by a prize crew, sent first to a Russian port on the Arctic Ocean, expelled from there by the Russian Government, and finally brought by its prize crew into a Norwegian port. There Norway interned the prize crew and turned the vessel over to its original commander. It is reported that the alleged contraband cargo has been sold and that the vessel will return to the United States. It is hoped that the incident is over, but it certainly aroused great public interest and has caused a re-examination to be made of the law of prize. The action of Norway in return-

ing the vessel to the original owners was, I think, entirely in keeping with international law and with the soundest precedents.

A very similar situation rose in 1917 in connection with the case of the Appam. That vessel, a British merchantman cruising on the west coast of Africa, was captured by a German cruiser, the Moewe, a prize crew placed on board and also a large number of persons who had been taken from British merchantmen destroyed upon the high seas by that cruiser. The Appam was taken by the prize crew into the harbor of Newport News, and it was announced by the German Government that she was to remain in that harbor during the period of the war. This was claimed as a right arising out of a treaty with Prussia in 1799. Shortly after her arrival at Newport News the owner of the Appam filed a libel seeking to recover the Appam upon the claim that holding and detaining the vessel in American waters was in violation of the law of nations and of the neutrality of the United States. As the court said in rendering its opinion returning the Appam to the original British owners:

"The principles of international law recognized by this Government, leaving the treaty aside, will not permit the ports of the United States to be thus used by belligerents. If such use were permitted, it would constitute of the ports of a neutral country harbors of safety into which prizes captured by one of the belligerents, might be safely brought and indefinitely kept (The Steamship Appam, 243 U. S. 124)."

The court analyzed the treaty and reached the conclusion that the exception to the general international rule against sending prizes into neutral ports could not be held to imply an "intention to make of an American port a harbor of refuge for captured prizes of a belligerent government" and that "such use of one of our ports was in no wise sanctioned by the Treaty of 1799" with Prussia. The State Department in an independent examination of the question had reached the same conclusion as to the interpretation to be placed

upon the treaty. Curiously enough, in reaching this conclusion they were largely influenced by the examination of the French text of the treaty which made the matter much clearer than the somewhat ambiguous language of the English version.

The German Government also referred to Article 23 of rules adopted at The Hague concerning maritime warfare. This rule permitted the internment of prizes in neutral harbors, but as the United States in adhering to the convention generally had made a reservation against the application of Article 23 the general rule of international law against such harboring of prizes was applicable.

In the case of the Flint, the vessel not belonging to a belligerent, but being under a neutral flag, no question of the ownership of the vessel could arise until she was brought before a prize court. If found to contain a cargo of more than 50 per cent. contraband, she might be condemned and her ownership adjudged to the German Government. This clearly, however, could only take place upon proper proof of the facts of what in international law has been called "infection" and by the decree of a lawful prize court having jurisdiction over the vessel. The case of the Appam, a belligerent owned vessel, was more difficult, so that the counsel for the German Government vigorously contended that the capture itself of a merchantman belonging to a belligerent transferred title, and that even though the Appam were in Newport News in violation of American neutrality she could not be restored to her owners as they had lost all ownership by the effect of capture independent of the judgment of a prize court. In addition, a German prize court had condemned the Appam, although she was not of course within the jurisdiction of that court. It will interest students of the law to note that in answer to this claim a special brief was filed on the point that the capture did not divest the owners of what in Roman law had been termed the *spes recuperandi,* or hope of recovery.

This doctrine had passed into prize law, and to-day stands vindicated by the Supreme Court of the United States. As the court said:

"Nor can we consent to the insistence of counsel for appellant that the Prize Court of the German Empire has exclusive jurisdiction to determine the fate of the Appam as lawful prize. The vessel was in an American port and under our practice within the jurisdiction and possession of the District Court which had assumed to determine the alleged violation of neutral rights, with power to dispose of the vessel accordingly. The foreign tribunal under such circumstances could not oust the jurisdiction of the local court and thereby defeat its judgment * * *. The violation of American neutrality is the basis of jurisdiction, and the Admiralty courts may order restitution for a violation of such neutrality. In each case the jurisdiction and order rests upon the authority of the courts of the United States *to make restitution to private owners* for violations of neutrality where offending vessels are within our jurisdiction, thus vindicating our rights and obligations as a neutral people." (Italics mine.)

It is fortunate as avoiding a serious controversy between the United States and Germany that Norway so promptly and courageously applied the rules of international law as interpreted by our Supreme Court, despite the protestations of the German Government.

The difficulties arising during the last war and which have been the undoubted cause of our recent legislation were of a two-fold character: First, the application by Great Britain of a very liberal view of the power to declare goods contraband and of an extended application of the doctrines of continuous voyage and ultimate destination. Barrels of diplomatic ink were spilled over these controversies involving legal difficulties and subtleties of a most intricate order. American Civil War cases were invoked to justify the seizure by British orders of vessels containing foodstuffs destined for Scandinavian neutrals.

The doctrine of conditional contraband, that is, that such material could only be contraband when destined for armed forces, was refuted by Great Britain on the ground that in modern totalitarian war you cannot differentiate between the armed forces and the general population. This view again was predicated upon wholly changed conditions which were claimed to have abrogated ancient limitations easily applicable to a different state of affairs. War to-day is not something carried on between certain groups in each nation and from which the mass of population is largely immune, but the nations are now so organized as a unit that every individual must do his share in carrying out the nations' warlike will. This has reflected itself in international law and has made some old precedents unworkable. The controversies between Great Britain and the United States in these matters furnish most interesting questions for study to the student of international law, but were never submitted to any international tribunal. Both nations finally agreed to wipe the slate clean of reciprocal claims arising out of British maritime operations, and thus most interesting and far-reaching questions were never brought to the scrutiny of an impartial tribunal. This from the standpoint of international law was certainly unfortunate.

Of the many cases that came into the British prize courts, the most interesting and important was that of the Zamora, finally decided upon appeal by the Privy Council (1916). This case involved the validity of certain executive orders of the King in Council regarding the right to requisition vessels before condemnation by the prize court, and the question arose whether such orders in council were not in conflict with settled rules of international law. The court, after very careful consideration of the case, ruled that the said orders were not in conflict with international law. In reaching that conclusion, however, the whole question of the conflict between municipal law and international law and questions arising in the British courts were fully discussed. Reference was

made to a judgment of Lord Stowell which referred to the King in Council as possessing "legislative rights" over a Court of Prize analogous to those possessed by Parliament over the courts of common law. Even the almost sacrosanct authority of Lord Stowell was here questioned by Lord Parker in delivering the judgment of the Privy Council, for he said:

"At most this amounts to a *dictum,* and in their Lordships' opinion, with all due respect to so great an authority the *dictum* is erroneous. It is in fact quite irreconcilable with the principles enunciated by Lord Stowell himself."

He then cites a judgment of Lord Stowell in the case of The Maria, which contains the following passage:

"The seat of judicial authority is, indeed, locally, *here,* in the belligerent country, according to the known law and practice of nations; but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm; — to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and to impose no duties on Sweden, as a neutral country, which he would not admit to belong to Great Britain in the same character."

After quoting, Lord Parker continues:

"It is impossible to reconcile this passage with the proposition that the Prize Court is to take its law from Orders in Council. Moreover, if such a proposition were correct, the Court might at any time be deprived of the right which is well recognized of determining according to law whether a blockade is rendered invalid either because it is ineffective or because it is partial in its operation."

Although the decision in this case did not in ultimate analysis necessitate the overriding by the prize court of an order of the king in council, it did clearly enunciate the principle that no such crown prerogative could override a plain

rule of international law. In the case at bar this conflict was avoided by the holding that there was no irreconcilable difference between the applicable orders and the rules of international law as laid down in Great Britain and in the United States.

This case may become of very immediate interest in connection with the order in council just announced making goods of German origin or ownership subject to seizure on the high seas. How far such an order prohibiting export in neutral vessels of German goods may be compatible with international law was very fully discussed in the diplomatic correspondence between the United States and Great Britain during the last war. The arguments on both sides were many and complicated, and, as I have said, it is perhaps unfortunate that the problem was never submitted to an international tribunal. The situation, however, is illustrative of the fact that what we now call totalitarian warfare has so largely changed the situation as to render inapplicable or inadequate many of the older precedents. It might well be claimed from a larger and non-technical standpoint that such orders were justified on the ground that the totalitarian state exercised control over all private property and therefore property of German origin or ownership, even in neutral vessels, might be treated as enemy property everywhere confiscable. Whether this order establishes a true blockade or not may indeed be questionable, but certainly many neutral ports in the North Sea and the Baltic are natural ports of Germany, and although neutral ports cannot be blockaded under the existing geographical and economic circumstances, it is not impossible that very much the same results as that flowing from a technical blockade may be reached upon other grounds.

The problems with Germany were of a different character from the fact that they involved human life rather than mere property rights, and the continued destruction of neutral lives as well as property by the submarine finally forced

the United States to belligerent measures against Germany. The view of the Government of the United States regarding submarine activity is made evident in the treaty signed at Washington in February, 1922, between the United States, Great Britain, France, Italy and Japan relative to the protection of the lives of neutrals and non-combatants at sea in time of war, *et cetera*. That treaty was ratified by the Senate of the United States in March, 1922. It declares in its fourth article:

"The Signatory Powers recognize the practical impossibility of using submarines as commerce destroyers without violating, as they were violated in the recent war of 1914-1918, the requirements universally accepted by civilized nations for the protection of the lives of neutrals and non-combatants, and to the end that the prohibition of the use of submarines as commerce destroyers shall be universally accepted as a part of the law of nations, they now accept that prohibition as henceforth binding as between themselves and they invite all other nations to adhere thereto."

It is because of this situation as regards sea law, its uncertainty by reason of new conditions, the unwillingness of a nation like Germany that has submarines but few surface vessels to adhere to the settled rules, and the consequent controversy and difficulties that must arise, that the present cash and carry legislation was enacted. It practically abandons the old doctrine for which the United States fought in 1812 and again in 1917 of the "freedom of the seas." It is supposed that if the American flag disappears from the belligerent areas no such causes of controversy will arise as in the past, and thus the nation will more easily escape the dangers of being involved in war.

There is indeed throughout the land every wish to avoid involvement in war; yet we pay something of a price in renouncing American rights, and certainly some American prestige and dignity. By withdrawing from the high seas we leave the field to those who wage war to the uttermost, and

abdicate those rights admittedly belonging to neutrals under international law. Whether the system will succeed is a matter of individual opinion on which I express no opinion and as to which the future alone can tell.

Why was it during the twenty intervening years between the wars that no effort was made to enact among the nations a code of sea law? For this there are various reasons. Many believed that a collective system would take the place of the present international anarchy and that the aggressor would be judicially determined and that the other nations would suppress him as an outlaw. In other words, the attempt was made to out-law war. Moreover, it would have been almost impossible to get an agreement on sea law between Great Britain and the United States on the one hand and powers like Italy and Germany on the other, which would have been forced to rely on new engines of war — the submarine and the bombing plane — which could not be fitted into the old categories of international law. An attempt was made by some private groups, such as the Harvard Research Committee, to declare the law and to set up codes which might be used by governments in attempting to reach some satisfactory codification of maritime law. These are valuable contributions to a better future.

To-day the law is quite as uncertain as it was in 1914. This does not mean that there is no law, because doubtless, after the war, as has always happened in the past, tribunals of arbitration will be established and decisions will have to be rendered on claims put forth by governments. Our own government in the preamble to the Neutrality Act expressly maintains all its national rights, even though it prevents its own nationals from the exercise of such rights. For the time being, however, our present law should minimize controversy by the disappearance of American ships in those parts of the ocean where belligerents are operating.

A word as to the much mooted question as to whether in repealing the embargo the United States was doing an

unneutral act in changing its law during war. I take it that a nation may during a war in any way limit the exercise of rights which it possesses under international law by forbidding its citizens to exercise those rights, provided the nation does so for its interest and protection. What that interest and protection are, to my mind, is a matter wholly to be determined by the nation itself. Men may differ as to their motives for voting for such a law, but once voted it represents what our legislators believe to be the interest of the United States. Under those circumstances I do not see how any such limitation on our own rights — however wise or unwise — may be termed unneutral. Especially is it so when the law returns to the time honored international law of the sea, which allows neutrals to navigate freely, subject to the rights of belligerents to create effective blockades if in their power and to conduct visit and search for contraband and, if found, consequent condemnation.

This new legislation will undoubtedly create various unforeseen problems. Within a few days of its enactment much public sentiment was aroused by an announcement that American passenger and freight ships barred from the European trade were to be registered under the Panama flag so that they might continue to be of use to their owners and to the maintenance of international commerce. This from a practical standpoint might, of course, have greatly minimized the loss to the owners, would have avoided a considerable diminution in trade and have been of the greatest convenience to neutral nations in Europe. On the other hand, the law would not permit the employment of American seamen, and thousands of men would have remained out of employment despite the transfer of the ships. As to the legality of such a transfer, it seems to me that there can be little doubt. The law merely requires that the transfer be *bona fide* and that it be authorized by the Maritime Commission. Such authorization, wholly within the jurisdiction of the executive, seems to me to be beyond question by the courts

as an executive or political act with which they will not interfere. The larger question of how far such immediate transfer of registry was compatible with the dignity and moral standing of the United States is another question, upon which I vent no opinion.

A further more important and interesting development of the war situation arises from the Declaration of Panama at the meeting or congress held by the governments of the twenty-one American Republics last September and October. That declaration, after reciting the dangers to neutral commerce and the people of neutral states, declared that:

"There is no doubt that the Governments of the American Republics must foresee those dangers and as a measure of self-protection insist that the waters to a reasonable distance from their coasts shall remain *free* from the commission of hostile acts or from the undertaking of belligerent activities by nations engaged in a war in which the said governments are not involved." (Italics mine.)

It is then declared that:

"As a measure of continental self-protection, the American Republics, so long as they maintain their neutrality, are as of inherent right entitled to have those waters adjacent to the American continent, which they regard as of primary concern and direct utility in their relations, free from the commission of any hostile act by any non-American belligerent nation, whether such hostile act be attempted or made from land, sea or air."

And then follows a definition of these waters extending along the American coasts, to a distance in some places of three hundred miles from the shore.

Such a declaration, if really enforced by the American governments signatory thereto, would indeed be a radical departure from international law. It is quite true that the current belief that territorial waters are limited to three miles from the coast is not wholly accurate, that nations have claimed jurisdiction further out, and we have the enforce-

ment of smuggling regulations and some other police purposes, such as prohibition of the liquor traffic, beyond such limitation. The three-mile limit was originally founded upon the ability of cannon, which has since been so greatly extended, as all will remember who happened to be in France between 1914 and 1918. Nevertheless, with all these enlargements of any three-mile limitation, this declaration far outranks any claims made in recent times. It is true that the United States claimed plenary jurisdiction over the Bering Sea in connection with the protection of the seal herds and also certain rights for the same purpose in the North Pacific Ocean. These claims were adjudged adversely to the United States in the Bering Sea arbitration. Great Britain had long ago enacted various "hovering acts" to protect what it considered its security in certain circumstances. The most famous of these prevented vessels from hovering within twenty-five miles of St. Helena because of the fear inspired lest the great captive conqueror should once more regain Europe and recommence the struggle for mastery of the continent. To-day the United States is engaged in a serious controversy with Japan involving a claim to halibut and salmon fishing rights which extend over perhaps one hundred miles of salt water.

All these, however, are small in comparison with a claim which would immunize the American continent from belligerent action for hundreds of miles outside its coasts. One may well sympathize with this attempt to put war as a brutal and lawless thing far from us. Will it and can it succeed? Not until the United States and the other American states are willing to adopt it as part of a defensive policy. The effectiveness of such a defensive policy, at least at first, would depend wholly upon potential force, but if that force were so assured it might in time become a recognized doctrine, as is the Monroe Doctrine, and it might be the effective beginning of a policy for the outlawry of war such as was attempted, alas so ineffectively, in the so-called Pact of Paris, renouncing war as a policy and declaring that only peaceful

methods of redress could be sought. Although signed by fifty-three nations this pact so far has been little more than a declaration of a pious aspiration. That it may bear fruit, however, in the far future as witnessing the hopes and desires of masses of men throughout the world is not at all impossible.

What is the future of international maritime law in war? This is indeed a doubtful question. I hesitate to believe that the nations will ever agree upon some code which will be certain and precise. The interests of land power and of sea power of belligerent and neutral are always at variance. Any code would be a compromise to be violated by the strongest and only limited by fear of the strength of neutrals. The only alternative to this otherwise chaotic condition is some system of collective action in effect outlawing war as a legitimate method of pursuing political aims. Until we reach some such point, a neutral can only save itself from serious international disputes and perhaps war by either abdicating its rights upon the high seas, withdrawing behind its own boundaries, or by being so strong that no belligerent will dare to violate the rights which it asserts belong to it as a neutral under international law. We in America have apparently chosen the first course. I trust that it may be successful and that America may emerge with peace and undiminished influence in the council of nations. But as to this only the future can tell.

As long as the present situation of wholly sovereign states continues and as long as war is recognized as a legitimate means of carrying out a national policy, whatever that policy may be, the conflict between neutral and belligerent interests will continue. Only when some federative world plan becomes a reality, and it is realized among the nations that their major interest is in the preservation of peace through law, will this age-long conflict cease.

*Frederic Rene Coudert.*

New York, N. Y.