law of neutrality, still technically applicable to the United States, this attempt to treat both belligerents alike, when perhaps the equal application of the law might have unequal practical effects, could well raise a question of violation of neutrality, although it would be difficult to take seriously a complaint of discrimination, as was made by Bolivia, when both parties stand indicted of violating their treaty engagements towards other states, including the United States. More important, however, is the fact that in failing to make any distinction between the parties, the United States missed the opportunity to emphasize the development of international law since the World War, the principle that if the community of nations as a whole is to be collectively responsible for the maintenance of peace, its sanctions must be applied against the nation which refuses to resort to the orderly processes of conciliation and arbitration.

It was, of course, as was recognized in the report of the League's commission, too late in May, 1934, to distinguish between the responsibility of the two parties for starting the war. Both had shown themselves recalcitrant on occasion and had rejected opportunities of peaceful adjustment of the controversy. But it would at least have been possible to call for an immediate armistice, and, if one or other of the belligerents had refused the armistice, to apply the prohibitions of the resolution against it alone. If both agreed to the armistice, then arbitration of the dispute could have been demanded, and in the event of the refusal of one or other or both to arbitrate, the prohibitions could have been applied accordingly. It is submitted that if international sanctions are to have their most wholesome effect, they must be used to enforce positive principles of law and must seek to restore peace not only by denying belligerents the material of war, but by emphasizing that the nation that is willing to arbitrate will be given the protection of the international community as against a nation resorting to force. Even the isolated action of the United States would have been more effective if carried out in that way. In any event, however, the important practical fact is that the United States has now taken a definite stand and that the League of Nations is henceforth assured of our complete coöperation in a first positive step towards ending a scandal that has too long been allowed to continue.

C. G. FENWICK

THE ARGENTINE ANTI-WAR PACT

On April 27, 1934, the United States deposited with the Minister of Foreign Affairs and Worship of the Argentine Republic its adherence to the Anti-War Treaty on Non-Aggression and Conciliation. At the same time, adherences were deposited on behalf of Bolivia, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama and Venezuela. To this list should be added the original signatories: Argentina, Brazil, Chile, Mexico, Paraguay and Uruguay. Finally, it is interesting to note that this treaty, originally conceived as a purely South American contribution to

peace, was adhered to on behalf of Italy, March 14, 1934,[1] some six weeks before any American state, other than the six original signatories, had given such formal indication of approval.

The treaty was submitted to the Senate by President Roosevelt on April 23, 1934, and the adherence of the United States is "conditioned" upon the subsequent advice and consent of the Senate.

The treaty as finally signed does not differ widely from the draft project launched by Dr. Carlos Saavedra Lamas, the Argentine Minister of Foreign Affairs, in the late summer of 1932 and subsequently commented upon in this JOURNAL.[2] It is not wholly satisfactory to compare two English texts of this treaty which, as signed at Rio de Janeiro on October 10, 1933, is in the Spanish and Portuguese languages. The English text upon which the former comment was based was a translation published by the Argentine Embassy in Washington. The present comment refers to an English translation published by the Department of State of the United States.[3] Allowing, however, for differences in translation, there seem to be several substantial changes.

Article I seems to have been broadened in scope. In the draft treaty, the parties condemned wars of aggression "in their mutual relations"; in the final text there is added "or those [relations] with other states." The condemnation of such wars is thus made global, but the ensuing obligations of pacific settlement naturally are applicable only to relations among the parties. On the other hand, Article II of the draft declared that "territorial questions must not be settled by resort to violence"; in the actual treaty this declaration, and apparently the following assertion of the non-recognition doctrine, is limited by the phrase "as between the high contracting parties."

In Article V, which sets out the list of possible reservations or limitations to the conciliation procedure, there are minor changes. In paragraph (c) the reference to questions "which international law leaves to the exclusive domestic jurisdiction of each state," is altered to read "the exclusive competence" of each state. The "domestic jurisdiction" test, presumably modeled on Article 15, paragraph 8, of the Covenant of the League of Nations, has already some bases for interpretation; it is unfortunate to introduce a new term unless it seeks to convey a new meaning. Perhaps the word "domestic" was deleted as redundant because the paragraph sets up the criterion of the state's constitutional system. The final paragraph of this article is much clearer in the new text. It reads: "The effect of the limitations formulated by one of the contracting parties shall be that the other parties shall not consider

[1] U. S. Department of State, Treaty Information Bulletin No. 54, March, 1934. The United States Senate on June 15, 1934, gave its advice and consent to the adherence of the Government of the United States. (Congressional Record, June 15, 1934.)

[2] Vol. 27 (1933), p. 109.

[3] Press Releases, Weekly Issue No. 239, April 28, 1934, p. 234; this JOURNAL, Supplement, p. 79.

themselves obligated in regard to that party save in the measure of the exceptions established."

Under Article VIII of the draft, the conciliation commission might "request" from the parties to a dispute all necessary antecedents and information; under the final text, the commission may "require" such data. This suggests greater authority vested in the commission and more of an obligation on the states.

The treaty should not arouse opposition in the United States Senate. In general, the obligations for pacific settlement, which would be assumed by ratifying this treaty, do not go far beyond present commitments in the Briand-Kellogg Pact and the General Convention of Inter-American Conciliation of 1929. It does, however, embody a conventional adoption of the Stimson non-recognition doctrine. It also provides that if a state fails to comply with the obligations for pacific settlement under Articles I and II, the other parties "will adopt in their character as neutrals a common and solidary attitude." Here is a clear announcement on the part of nineteen states that neutrality is not dead. The "common and solidary attitude" of the neutrals naturally calls to mind the Armed Neutralities of 1780 and 1800 and other attempts at leagues of neutrals, none of which has been highly successful. It must be recalled that this third article of the treaty provides also for the exercise of "the political, juridical or economic means authorized by international law" and the pressure of public opinion, but expressly negates resort to "intervention either diplomatic or armed." This ban on intervention would seem to exclude the possibility of identifying an "aggressor" and making common cause against him. Neutrals could of course band together, agree upon various common measures which would be proper within the framework of the law of neutrality (such as an arms embargo against both belligerents), and exercise an influence the weight of which would depend upon their number and identity. If international law approves the convoy doctrine—as the Dutch have so long contended—the convoying of neutral vessels would be a possible measure under this treaty. If international law denies—as it surely does in the absence of treaty provisions to the contrary—the right of a neutral to place an embargo or other sanctions upon one of the belligerents and not on the other, such one-sided embargoes and other sanctions would not be possible under this treaty.

This article may have no little significance.[4] If other European states follow the Italian lead, we may find that through this treaty we have suddenly

[4] The full text is as follows: "Art. III. In case of noncompliance by any state engaged in a dispute, with the obligations contained in the foregoing articles, the contracting states undertake to make every effort for the maintenance of peace. To that end they will adopt in their character as neutrals a common and solidary attitude; they will exercise the political, juridical or economic means authorized by international law; they will bring the influence of public opinion to bear but will in no case resort to intervention either diplomatic or armed; subject to the attitude that may be incumbent on them by virtue of other collective treaties to which such states are signatories."

gone from the whole idea of sanctions under Article 16 of the Covenant over to the old idea of neutrality in the strict sense and yet with all neutrals presenting a united front to the belligerents. Of course it is true that this treaty expressly states that its obligations are "subject to the attitude that may be incumbent on them [the parties] by virtue of other collective treaties to which such states are signatories." Nevertheless, with talk of revision of the Covenant becoming more and more widespread,[5] it is not fantastic to find here the germ of future development. It would be the part of wise statesmanship to proceed at once to explore the lines which the solidary action of the neutrals should take.[6] If modifications of the law of neutrality are desirable, they should be effected in times of peace and not made the source of argument and friction after war breaks out.

Attention should be called to the resolution approved by the Seventh International Conference of American States at Montevideo on December 16, 1933.[7] This resolution was designed to urge states on to the ratification of the great anti-war pacts—the Gondra Treaty of Santiago, Chile (1923); the Briand-Kellogg Pact (1928); the Inter-American Conciliation and Arbitration Conventions of Washington (1929); and the Argentine Anti-War Treaty of Rio de Janeiro (1933). With reference to this last treaty, the resolution recites: ". . . the Anti-War Treaty, of Argentine initiative, is intended, as stated in its principles, to coördinate and make effective these various peace instruments that may definitely establish international peace without revoking any of the existing instruments, this being one of its characteristics and one of the superior aims with which it is inspired."

It may prove to be more than this, although this is a great principle and a fine ideal. If so, it offers as a future base on which to organize the world for peace, the following propositions:

1. Renunciation of war.
2. Agreement to use means of pacific settlement in all cases.
3. If war breaks out, agreement to be neutral but to take common and solidary action with other neutrals, presenting a united front.
4. Non-recognition of the spoils of war—"Victory gives no rights."

PHILIP C. JESSUP

INTERNATIONAL COÖPERATION IN THE SUPPRESSION OF CRIME

At the meeting of the American Law Institute in Washington on May 10, 1934, President Roosevelt recommended that the Institute undertake the clarification and simplification of the substantive criminal law, as it had already undertaken a similar task in the field of civil law. The President stated that "the adaptation of our criminal law and its administration to meet

[5] See Prof. James T. Shotwell's article in the New York Sunday Times, May 6, 1934.

[6] Compare Mr. Charles Warren's article "Troubles of a Neutral" in Foreign Affairs, April 1934, p. 377.

[7] Final Act (Provisional edition), p. 13.