> a zone should be recognized, and the measures of jurisdiction over such a zone to be exercised by the littoral state involved great divergencies. Enforcement of customs legislation, supervision and even control over fisheries, and security to the littoral state were the main foundation for the theory of the contiguous zone, insistence upon one or another depending upon the policy or point of view of particular states.[8]

In the light of this formidable consensus of opinion in favor of the principle of protective jurisdiction, the Declaration of Panama deserves most serious attention and consideration. It may be argued that it has unwarrantably extended the right claimed by the American Republics to safeguard themselves from the dangers of the present war in Europe. The Declaration may never be applied effectively. Nevertheless, it has enunciated and given weighty sanction to a basic right under international law which may not lightly be denied or infringed.

PHILIP MARSHALL BROWN

THE DECLARATION OF PANAMA

Serious misgivings appear to have arisen among a number of international lawyers as to the legal merits of the provisions of the Declaration of Panama.[1] They seem to feel that in drawing up the Declaration the American Republics over-stepped themselves; that they asserted rights for which there is no foundation at international law; that they put unwarranted restraints upon belligerent rights; that they were even guilty of encroaching upon the "freedom of the seas," which is held to be as sacred for those who want to use the seas for belligerent operations as for those who want to use them for peaceful commerce. More fatal even than the legal defects of the Declaration is said to be the fact that it cannot be enforced; and being unenforceable, the Declaration can only serve to weaken what little respect is left for the true rights of neutrals.

The objections are not all of equal weight, and some of them are based upon a misconception of the terms of the Declaration. The assertion that it is not permissible to change the rules of neutrality in time of war and that, however good a case the American Republics may have for insisting upon a change, they must wait until the war is over and then proceed to revise the rules of neutrality to be applied in the next war, hardly deserves notice. For if anything is clear from the history of international relations, it is that belligerents are constantly introducing new instruments and new methods of warfare during the progress of the war, many of which bear heavily upon neutrals and restrict more and more their normal relations of social and commercial intercourse, not only with the opposing belligerent, but with neutral states as well. With equal justification may neutral states seek by individual and by collective action to protect themselves against the impending ravages of a war while it is still in progress.

[8] "The Codification of International Law," this JOURNAL, Vol. 24 (1930), p. 494.

[1] Printed in Supplement to this JOURNAL, p. 17.

It has been objected that the assertion in the Declaration of an "inherent right" on the part of the American Republics to have the waters adjacent to the American continents free from the commission of hostile acts is a somewhat naïve attempt to create new "natural law rights" which are obviously in conflict with the positive rules of international law and, therefore, tend to weaken the force of existing rules, such as they are. The objection does undue honor to the conception of "positive law." International law had its origin in rules of "right reason." Many of the rules now accepted as positive law began as assertions of inherent right which in the course of time came to be generally accepted by all nations as binding obligations. Moreover, it is clear that the American Republics, in stating their claim to the security zone as an inherent right, were aware that they could not demand the same respect for it as for the older rights of neutrals embodied, for example, in the Hague Conventions of 1907. For that reason Article 2 of the Declaration announces that the American Republics will endeavor through joint representations to the belligerents "to secure the compliance by them with the provisions of the Declaration." This should dispose of the objection that the Declaration, by asserting natural rights not recognized by international law, is likely to involve the American Republics in controversies with the belligerents and thus endanger the very neutral position which they are attempting to protect. The Declaration of Panama states a new rule of neutral security, a rule justified by its inherent reasonableness and proposed to the belligerents as such; but nevertheless a rule which the American Republics intend to get observed by recourse if necessary to "certain measures" yet to be determined by consultation. The reference to these measures contains no threat of force, and there is no ground for reading such a threat between the lines of the text.

It may be implied from the terms of the Declaration that at the present stage the American Republics do not ask that one of the belligerents should respect the security zone unless the other belligerent on its part respects it. Hence it is to be expected that if a warship of one belligerent were to attack a warship of the other belligerent within the security zone, the latter would defend itself. The problem of determining in such case which belligerent took the initiative would be a practical rather than a legal question. No provision is made in the Declaration to meet the case of a battle begun outside of the security zone and continued within it, or for the case of the hot pursuit of a vessel sighted outside the zone and taking refuge within it—points which will no doubt be covered by the regulations to be recommended at the coming meeting of the Inter-American Neutrality Committee.

The objection that the Declaration of Panama cannot be enforced and, therefore, had better not have been made, leads to a consideration of the character of the "measures" to secure the observance of the Declaration referred to in the third article. Dismissing any suggestion of the use of naval force as wholly incompatible with the spirit of the Declaration, there arises the question of the possible denial of privileges of port to vessels com-

mitting acts of hostility within the forbidden zone, as suggested in the protest made on December 23 against the violation of the zone in the *Graf Spee* case. Here we are confronted with a problem of neutral duty as well as of neutral right. For it would seem clear that if the American Republics are to expect the belligerents to renounce hostile operations within the security zone, they must on their part see to it that not only their ports but the security zone itself be not allowed to become a base of naval operations for one belligerent against the other. This may conceivably call for consideration of possible additional steps by the American Republics, such as an extension of the established three-months limit on refueling, so that the limitation now operating against a single state may be made to operate for the American Republics as a unit. Again, it doubtless will be necessary to take measures to insure that goods are actually delivered at their port of alleged destination, possibly by the requirement of a bond in cases open to suspicion, in order to make certain that vessels ostensibly engaged in normal commerce may not actually be serving as auxiliary transports.

In the General Declaration of Neutrality of the American Republics,[2] adopted on the same day as the Declaration of Panama, the Meeting of the Foreign Ministers declared that there existed "certain standards" of neutral conduct which it was incumbent upon them to observe if they were to have their neutral status respected. In accordance with these standards a number of specific regulations were laid down, the strict observance of which should go far towards preventing any abuse of the security zone by one belligerent as against the other. These rules have yet to be made more precise and definite by the unanimous agreement of the Governments of the American Republics, and the Inter-American Neutrality Committee which is to meet at Rio de Janeiro on January 15, will doubtless consider other ways and means of meeting any complaint on the part of belligerents that the security zone is being used by the enemy in order to carry on its naval operations more effectively.

What of the width of the zone which, it is alleged, goes far beyond the "reasonable distance from their coasts" within which the Governments of the American Republics asserted that their waters should be free from the commission of hostile acts? If the average distance of 300 miles should seem at first sight to be excessive, it should be observed that the American Republics were seeking not only to prevent the commission of hostilities so close to their shores as to endanger coastal towns and local shipping, but to prevent any "obstruction to inter-American communications." Hence the zone was delimited so as to include "all the normal maritime routes of communication and trade between the countries of America." The demarcation of a narrower zone which, taking into account the greater carrying distance of modern guns, might still have protected local shipping and fisheries, would have been open to substantially the same objections from the belligerents, while greatly increasing the inconvenience and dangers to neutral shipping.

[2] Printed in Supplement to this JOURNAL, p. 9.

The one justifiable ground of belligerent complaint, that the American States will be unable to patrol so wide a zone and that belligerent acts may be *de facto* committed within it in spite of its proclamation, is met by the implied recognition by the American States that the abuse of the zone by one belligerent will release the other from the observance of it, at least with respect to the particular abuse. In such case neither belligerent will be substantially worse off than it was before.

The events of the present war only confirm the experience of previous wars that belligerents, with their backs to the wall and their national existence at stake, will seek to extend in every possible way such rights as the traditional law accords them and will make every change of circumstances an occasion for restricting further the trade of neutrals with the enemy, even to the extent of closing the highways of neutral commerce with other neutrals. It would seem equitable, therefore, that neutrals on their part should seek to limit the zones of combat and should, as in the case of the American Republics, bring their collective weight to secure the peace and safety of their continental waters far remote from the immediate theater of hostilities. If in so doing they should find it necessary to close their ports to belligerents which are unwilling to respect their claim, or even to discriminate against one that refuses in favor of one that agrees to respect it, no legal ground of complaint can arise. For the privilege of admission to neutral ports is not one that belligerents can claim as of absolute right; rather it is a concession which the neutral may grant or withhold, subject only to the condition that whatever discrimination against one or other of the belligerents it may be led to resort to shall be based not upon an arbitrary partiality, but upon the protection of its own national interests.

It is of interest to note that the meeting of the Foreign Ministers at Panama was the first application in inter-American relations of the procedure of consultation established in agreements signed in 1936 at Buenos Aires at the Inter-American Conference for the Maintenance of Peace and in 1938 at Lima at the Eighth International Conference of American States. While the Declaration of Panama does not fit precisely into the purposes contemplated at Buenos Aires, when the American Republics planned to adopt "in their character as neutrals a common and solidary attitude," it nevertheless gives proof of the new spirit of continental collaboration that has marked the relations between the American Republics of recent years. The rapidity with which it proved possible to hold the meeting of Foreign Ministers gives promise that the procedure of consultation may become in the future an even more effective agency of common action in the presence of emergencies.

C. G. FENWICK

COLLECTING ON DEFAULTED FOREIGN DOLLAR BONDS

The Foreign Bondholders Protective Council, Inc., was organized in December, 1933, for the purpose of securing resumption of service—interest and amortization—on defaulted foreign dollar bonds then amounting to about