

## EDITORIAL COMMENT

### USE OF FORCE AND DECLARATION OF WAR

During the World War, 1914–1918, declarations of war were general and it was officially made known when peace was reestablished. In many of the more than fifty declarations of war the day, hour, and minute when war would begin was made known. For France the official period of the war was from “6.45 p.m. on August 3, 1914,” to “4.15 p.m. on January 10, 1920.” Thus the legal relations of foreign states as regarded France and the opposing belligerents, as well as of neutrals, could be determined. Hague Convention III of 1907 stated in the preamble that it was important “that hostilities should not commence without previous warning” and that “the existence of a state of war should be notified without delay to neutral Powers.” The discussions at The Hague in 1907 fully supported this statement.

In the Treaty of Versailles, 1919, such expressions as “external aggression,” “threat of war,” “dispute likely to lead to rupture,” “resort to war,” “act of war,” etc., occur. Other later agreements have introduced such phrases as “recourse to war,” “disputes or conflict of whatever nature or origin,” “event of war,” “virtual state of war,” etc. All of these words leave many possibilities of difference of interpretation, as has been evident in discussions upon liability under insurance contracts. When does liability begin, for what acts does the liability run, and when does it terminate? An answer could be found in such a case as France: from “6.45 p.m. on August 3, 1914” to “4.15 p.m. on January 10, 1920.” On the other hand, uncertainty as to the legal rights of all parties during and after the use of force without declaration of war has prevailed. Confusion as to the extent and nature of jurisdiction in certain areas still exists, giving rise to economic, geographical and diplomatic problems likely to create friction. This may be further aggravated when third parties attempt to proclaim that relations between those involved in the use of force constitute war even in advance of, or in absence of, any such declaration by either party to the controversy.

Hague Convention II, 1907, aimed to prevent by general agreement “armed conflicts of a pecuniary origin arising from contract debts,” thus removing one of the grounds often advanced for hostilities. It was thought at the time that resort to the use of force might become less frequent through international agreements gradually eliminating, one by one, the causes of war rather than through the more ambitious schemes for the complete prohibition of war except on the undefined ground of self-defense.

As is evident since the World War, the use of force without declaration of war gives rise to apprehension before, uncertainty during, and undetermined status after the use of force has ceased; all of which Hague Convention III, 1907, relative to the Commencement of Hostilities, had aimed to prevent.

The Brussels conference on affairs in the Far East adjourned on November 24, 1937, after giving much attention to the use of force without declaration of war. At the closing session, referring to agreements in "numerous international instruments," the conference declared:

It must be recognized that whenever armed force is employed in disregard of these principles the whole structure of international relations based on safeguards provided by treaties is disturbed. Nations are then compelled to seek security in ever-increasing armaments. There is created everywhere a feeling of uncertainty and insecurity. The validity of these principles cannot be destroyed by force, their universal applicability cannot be denied and their indispensability to civilization and progress cannot be gainsaid.

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**OBSERVATIONS OF FOREIGN GOVERNMENTS UPON SECRETARY HULL'S PRINCIPLES OF  
ENDURING PEACE**

The statement issued on July 16, 1937, by Secretary Cordell Hull, setting forth the position of the United States "in regard to international problems and situations with respect to which this country feels deep concern" has already been the subject of editorial comment.<sup>1</sup> As the statement was communicated to all foreign governments with the request for an expression of opinion upon the principles enunciated, a closer examination of the replies would seem to be of interest.<sup>2</sup>

One may begin profitably with the memorandum of the Portuguese Government which seems to have been carefully prepared and is the most lengthy and detailed of all. A mild reproof is voiced against the attitude of the great nations, "on the one hand to consider themselves immune and on the other hand, to maintain themselves alien to effective coöperation, truly useful in the international field." The memorandum warns against the "abstract and generalizing tendency of jurists," and cites as causes for failure the insufficient study of the causes of world unrest and the desire to find a single formula for the solution of international problems which shall be applicable *urbi et orbi*. The memorandum continues:

On general grounds, it also seems that no objection can be raised against the assertions, advices, or wishes as a whole of the Secretary of State: everyone desires peace, everyone proclaims the sanctity of treaties and the faithful compliance therewith, everyone desires that there be less difficulties in international trade, and everyone wishes to have the burden of armaments removed or lightened. Difficulties begin only when it is sought to pass from the field of intentions into that of action, or, more concretely, what is to be done so that the events—in the development of which it is very difficult to establish individual or national responsibilities—will not contradict the good intentions.

<sup>1</sup> George A. Finch in this JOURNAL, Vol. 31, October, 1937, pp. 688-693.

<sup>2</sup> The replies are collated in International Conciliation, November, 1937, No. 334, pp. 734-797, from texts supplied by the Department of State in Press Releases of August and September, 1937.