The discussions leading to the adoption of this article showed the opposition to the use of the submarine as an instrument of war.[3] Admiral Takarabe, of the Japanese delegation, said, "Japan heartily associates herself with the proposal" to put "an end once and for all, to the recurrence of the appalling experiences of the World War." The submarine is now, however, unquestionably admitted to be a legitimate instrument of naval warfare, but it must conform to reasonable regulations. These seem to be those long accepted as applying to destruction by surface vessels. The attacks of submarines during the "Spanish conflict" of 1937, were said in the Nyon Arrangement, adopted by nine states, September 14, 1937, to "constitute acts contrary to the most elementary dictates of humanity, which should be justly treated as acts of piracy." [4]

The deck of a destroying surface war vessel would manifestly not be a place of safety. A submarine belonging to the naval forces would scarcely be so regarded. Even lifeboats, save in exceptional circumstances, might involve danger. On the other hand, it could not be demanded that a belligerent, rightfully destroying a merchant vessel, place the passengers and crew in greater security than they had on board the destroyed vessel. Safety commensurate with that enjoyed by passengers and crew before the destruction of their vessel would seem to be the measure demanded. This does not imply the same comforts or conveniences, but the same absence of risk to life.

GEORGE GRAFTON WILSON

THE TAKING OF FOREIGN SHIPS IN AMERICAN PORTS

The law for the acquisition of foreign vessels in American ports, signed by the President on June 6, 1941,[1] is an extraordinary measure in many respects. It is without precedent in our peace-time history. The Act was initiated by a message of the President, dated April 10, 1941, pointing out that while there was provision for the requisition of American vessels, there was no "comparable provision with respect to foreign-owned vessels lying idle in our ports." The President enclosed a draft of a bill, which, after hearings by the House and Senate committees, was redrafted and extended.

The Act provides that, whereas the commerce of the United States is interrupted, the general welfare is threatened, and an emergency has been declared,[2] the President is authorized, for the purpose of national defense [3] and

[3] Proceedings, London Naval Conference, 1930, p. 82 *et seq.*

[4] This JOURNAL, Vol. 31 (1937), p. 179.

[1] On the same day the President issued an Executive Order authorizing the United States Maritime Commission to carry out the provisions of the Act. It especially ordered that "no vessel shall be transferred, chartered or leased to any belligerent government without the approval of the President."

[2] A "limited emergency" was proclaimed on Sept. 8, 1939, to safeguard our neutrality and strengthen our defense. An "unlimited emergency" was proclaimed on May 27, 1941.

[3] This phrase is used repeatedly in the committee reports and in the debates on H. R. 4466.

during the existence of the national emergency, but not after June 30, 1942, to purchase, requisition, charter or take over the title to, or the possession of, any foreign merchant vessels lying idle in the waters within the jurisdiction of the United States, the Philippine Islands and the Canal Zone, and necessary to the national defense, for such use or disposition as he shall direct.

One restriction is that just compensation must be paid to the owners in accordance with the Merchant Marine Act of 1936 as amended, whereby if any owner deems the compensation inadequate, he will be paid 75% of the value determined and allowed to sue for such additional sum as will amount to just compensation.

Another restriction is that any vessel found by the Maritime Commission within ten days to have been "on September 3, 1939, and continuously thereafter . . . exclusively owned, used and operated for its exclusive sovereign purposes by a sovereign nation making claim therefor . . . may be taken . . . only by purchase or charter." This provision was sponsored by the Senate Committee on Commerce to avoid any invasion of the immunity accorded to sovereign property in a foreign jurisdiction.

The Maritime Commission is empowered to charter and recharter other vessels, American or foreign, for use in any foreign trade or service, or to purchase and operate such vessels, giving primary consideration to the needs of national defense. This is to increase the powers of the Commission as to chartering and purchasing vessels.

Any vessels taken over under the Act may be documented as vessels of the United States, and may engage in the coastwise trade.

It is expressly provided, however, that nothing in the act shall be construed to modify or affect any provision of the Neutrality Act of 1939 as amended.

In committee hearings the minority objections centered around the seizure by a neutral of belligerent ships and the transfer of such vessels to an opposing belligerent, as being "acts of war" and a "blow to the laws of neutrality."

As to the emergency in shipping, the President pointed out in his message the dire shortage of tonnage for the national needs of the United States and other countries of this hemisphere, as follows:

> It is obvious that our own ultimate defense will be rendered futile if the growing shortage of shipping facilities is not arrested. It is also obvious that inability to remove accumulating materials from our ports can only result in stoppage of production with attendant unemployment and suspension of production contracts. It is therefore essential, both to our defense plans and to our domestic economy, that we shall not permit the continuance of the immobilization in our harbors of shipping facilities.

The number of vessels lying idle in American ports and subject to this Act is, by flags, Germany, 2, Italy, 28, France, 11, Denmark, 39, Lithuania, 1,

Rumania, 1, Estonia, 2, having a gross of nearly one-half million tons.[4] These ships have been immobilized for a long period of time and have not seen fit to depart or to enter into charter relations with the Maritime Commission because of war conditions. Much of the tonnage of belligerent countries was sabotaged to prevent its use. As pointed out in the committee reports, much of this idle tonnage formerly served our trade routes with South America and the Far East, where extreme shortage of shipping facilities now exists.

The chief causes of this shortage are the war sinkings, the withdrawal of foreign tonnage from the usual routes and services to fill the war needs of the belligerents, and the demand of American tonnage for our own defense uses and in defense aid to other countries. It is estimated that the war sinkings have in the past few months reached the rate of 5,500,000 tons per year, which is twice as fast as the United States and Great Britain together can build ships. Additional tonnage now under construction in this country will not be available in quantity until 1942. Although trade with continental Europe is almost wiped out, trade with South American countries has greatly increased, as has trade with Africa and the countries of the Far East, including Australia and the Dutch East Indies. To keep our own commerce moving is a national necessity. The defense program has increased demands for sea-borne materials of strategic and critical importance, for the transportation of men and supplies to the newly acquired bases, and for supplying the naval vessels.

In essence, the Act provides for the voluntary acquisition of foreign merchant vessels in our ports, and failing this, their forceful acquisition. There can, of course, be no objection to the voluntary acquisition of such vessels by the American Government. The forceful acquisition of foreign vessels by the United States is a different matter and requires consideration of the status of the United States in the present war.

If the United States were a belligerent, the exercise of involuntary acquisition would be more easily justified under international law. Under the ancient doctrine of angary, which was revived in the last war, any neutral transport facilities, including merchant vessels, may be taken over by a belligerent under extreme necessity upon payment of compensation. This is generally regarded as the right of a belligerent and not of a nation at peace.[5] An out-

[4] It is said that there are in other ports of this hemisphere about 1,500,000 tons of idle foreign shipping.

[5] G. G. Wilson, International Law, 9th ed., p. 367; Oppenheim, International Law, 6th ed., Vol. II, p. 622 ff.; Westlake, International Law, 2d ed., Pt. II, p. 134; Hyde, International Law, Vol. 2, p. 262 ff.; Fenwick, International Law, 2d ed., p. 541; Scott and Jaeger, Cases on International Law, p. 910, note and cases cited; Commercial & Estates Co. *v.* Board of Trade, [1925] 1 K.B. 271, Hudson, Cases on International Law, 2d ed., p. 1394.

However, G. G. Wilson points out that the right of angary originally "was exercised both in time of peace and in time of war." *Ibid.*, p. 367. J. E. Harley asserts that since the Portuguese case in the last war, "We can no longer limit the privilege of exercising the right to the belligerent alone." "The Law of Angary," this JOURNAL, Vol. 13 (1919), p. 284.

standing example was the taking over by the United States in the last war of 87 Dutch vessels within our jurisdiction under the proclamation of March 20, 1918. The British Government, on March 21, 1918, notified The Netherlands that the "Associated governments have decided to requisition the services of Dutch ships in their ports in the exercise of the right of angary." The Netherlands Government strenuously protested, but the United States defended on the theory of extreme emergency, which made the principle of angary applicable. The United States paid in full for the use of the Dutch vessels and returned them reconditioned and paid for any which were lost.[6] The United States also seized several incompleted Norwegian vessels and construction contracts. The seizure was the subject of much controversy. As the compensation offered was not deemed sufficient by Norway, the question of compensation was arbitrated at The Hague, the United States being compelled to pay some $12,239,000. The tribunal used the terms, "requisition," "eminent domain" and "expropriation" in respect of the taking.[7]

The Harvard Research in International Law, after a careful study of all material on the requisition of vessels and cargoes by a belligerent, suggests these three conditions: "(1) the existence of urgent necessity; (2) the voluntary presence of the vessel or cargo within the territory of the belligerent; (3) the payment of compensation."[8]

The United States, however, is at present undoubtedly not a belligerent; no declaration of war has been made on either side; the neutrality proclamations are still in effect; there are no hostilities between the United States and the warring nations; diplomatic representatives are maintained. If peace were declared today it would not be necessary for the United States to have a peace treaty with any of the belligerents. In the debates on the bill Senator George, Chairman of the Foreign Relations Committee of the Senate,stated, "We are not at war, we are not a belligerent." "We are not in war, but we are in a great emergency."[9] Senator Taft declared we are still

C. L. Bullock believes that angary is historically not a purely belligerent right, but a right of sovereignty exercised in the "requisition of means of transport [ships, vehicles or planes] *for purposes of transport*," and distinguishes it from requisition for other purposes. He lists several contemporary writers who declare that "a neutral state was undoubtedly just as much entitled as a belligerent to requisition foreign shipping in its ports." "Angary," British Yearbook of International Law, 1922–23, p. 119 ff.

[6] G. G. Wilson, *ibid.*, p. 367. Two of the Dutch vessels, *Merak* and *Texel*, while under requisition to the United States, were sunk by German submarines in this hemisphere, for which losses the United States-German Mixed Claims Commission made awards to the United States. Decisions & Opinions, 1925, p. 75. The Commission held that requisition "amounted to a special and qualified property in the ships tantamount to absolute ownership thereof for the time being." See J. B. Scott, "Requisitioning of Dutch Ships by the United States," this JOURNAL, Vol. 12 (1918), p. 340; Hyde, *ibid.*, Vol. 2, p. 266.

[7] This JOURNAL, Vol. 17 (1923), pp. 287, 362.

[8] Report on Neutrality, this JOURNAL, Supplement, Vol. 33 (1939), p. 361.

[9] Cong. Record, May 14, 1941, p. 4190.

neutral.[10] Not being at war, the United States is not in a position to apply the doctrine of angary to the seizure of foreign ships, if it is a belligerent right.

On the other hand, the United States cannot be ranked as a neutral according to the traditional principles of international law. The government has repeatedly and forcefully announced its policy to aid the cause of Great Britain in the present war and berated the course of the Axis. Pursuant to this policy it has turned back stocks of arms, ammunition, machine guns and planes to manufacturers, who sold them to the belligerents, and has in other ways officially facilitated such transactions.[11] In the deal between the United States and Great Britain, fifty American destroyers were turned over to Great Britain in exchange for eight naval bases in this hemisphere.[12] The Lend-Lease Act allows the United States to give various kinds of assistance to Great Britain as a defense measure—a policy of peaceful discrimination new to our legislative history.[12a] In opening United States ports for the repair of warships a neutral principle over a century old is broken down. Under this Act a number of vessels have been turned over to Britain, and some 200 emergency ships are under construction for her.[13] Certain Coast Guard vessels have been turned over to England by the United States. The United States Government is doing its utmost to promote the production of planes, ships and other war supplies with use of public funds for the aid of Britain. It is endeavoring to prevent France from collaborating with Germany as an instrument of aggression.[14] The American patrol of the Atlantic by ship and plane has been extended and increased in order to locate Axis submarines and raiders. American forces are relieving British forces in the protection of Iceland.

From this enumeration it is evident that the United States is not pursuing a neutral course in the present conflict, and yet is avoiding entry into the war as a belligerent. Indeed, this policy has been officially adopted and justified in pronouncements of the President and the members of his Cabinet, including the Attorney General.[15] The justification advanced apparently

[10] Cong. Record, May 14, 1941, p. 4125.

[11] See L. H. Woolsey, "Government Traffic in Contraband," this JOURNAL, Vol. 34 (1940), p. 498.

[12] New York Times, Sept. 4, 1940, p. 10. See Herbert W. Briggs, "Neglected Aspects of the Destroyer Deal," this JOURNAL, Vol. 34 (1940), p. 569.

The United States was a party to the Act of Habana, which was an effort to checkmate Germany in the possible acquisition of colonies in this hemisphere. This JOURNAL, Supp., Vol. 35 (1941), p. 18.

[12a] See Q. Wright, "The Lend-Lease Bill and International Law," this JOURNAL, Vol. 35 (1941), p. 308 ff.

[13] Cong. Record, May 6, 1941, p. 3746. House Hearings on H. R. 4088, 77th Cong., 1st Sess., pp. 35, 64, 65, 131. Senate Hearings on H. R. 4466, 77 Cong., 1st Sess., p. 19.

[14] U. S. State Dept. Press Release, June 5, 1941.

[15] Speech and proclamation of President Roosevelt, May 27, 1941; statement of Secretary of State Hull before the Foreign Affairs Committee of the House, on H. R. 1776, Jan. 15, 1941; statement of Secretary of War Stimson before the Foreign Relations Committee of the

rests on two grounds: the principle of self-defense in international law,[15a] and the principle drawn from an interpretation of the Pact of Paris that a violation of the pact releases other signatories from certain obligations of neutrality toward the violator.[16] On these principles, it is asserted, the United States is warranted in opposing the Axis by giving assistance short of armed force to Britain and other nations attacked and seeking to restore the reign of law and order in the world. The United States would thus be in an incongruous position between neutrality and belligerency, to which in the present war the term "non-belligerency" has been applied, as explained by R. R. Wilson.[17] The term "supporting state" has been suggested by Jessup, who accords such a state half-way belligerent rights short of actual conflict.[18]

The question then is whether the United States in the status of a "non-belligerent" state may undertake to requisition or otherwise take over foreign merchant ships in the present national emergency. It is generally admitted that a government has supreme sovereign right of control of all persons and property within its jurisdiction and may exercise this right whenever necessary to preserve its independence. The exercise of this right in time of peace is generally under the doctrine of eminent domain, that is, the taking of property for a public purpose[18a] upon the payment of just compensation judicially determined. It is submitted that this doctrine is applicable whether the nation is at war or at peace. The exercise of this right is well known and has been long practiced in common law as well as civil law countries. Certain writers are now advocating that the right of angary itself, as we have seen, is available to neutrals not less than to bellig-

Senate on S. 275, Jan. 29, 1941; speech of Attorney General Jackson before the International Bar Association, Habana, March 27, 1941, this JOURNAL, Vol. 35 (1941), p. 348.

[15a] Grotius says "the danger must be immediate." Bk. II, Chap. I, Sec. V.

[16] See the Budapest Articles of Interpretation of 1934 by the International Law Association. This JOURNAL, Supplement, Vol. 33 (1939), p. 825. These articles are entirely unofficial and have not been approved by the signatories of the Pact. Query whether some of the interpretations are not contrary to the Argentine Anti-War Pact of 1933. This JOURNAL, Supplement, Vol. 28 (1934), p. 79. They are contrary to the interpretation of the Pact as given by Secretary Kellogg before the Senate committee and by the committee's report submitting the Pact for ratification. Cong. Record, Feb. 24, 1941, p. 1354 *et seq.*

[17] R. R. Wilson, discussing the term, cites as examples, Turkey, Egypt, and Italy before entering the war, Spain, and perhaps Hungary and Rumania. He seems to indicate it is characterized by partiality and assistance short of use of force. "Non-Belligerency in Relation to the Terminology of Neutrality," this JOURNAL, Vol. 35 (1940), p. 121.

The term was used in the discussions of the Budapest Conference of 1934.

[18] Jessup uses the term "supporting state" for a state which aids a defending state without armed force. He suggests it may discriminate in respect of economic and financial embargoes, withdrawal of diplomatic and consular representatives, financial, economic and other aid, fuel, provisions and repairs for battleships. Harvard Research, Report on Neutrality, *ibid.*, pp. 879–880, 902. By analogy he calls attention to the similar attitude of several Latin American states after the United States entered the last war, p. 880 *et seq.*

[18a] Presumably in this case the public use is the national defense.

erents as a species of eminent domain.[19] It is not unlike the principle underlying Article 19 of Hague Convention V of 1907, which allows belligerents and neutrals alike to requisition and use railway material coming into their hands from the territory of the other, compensation being paid therefor.

In a letter of May 1, 1941, to Senator Bailey, Chairman of the Senate Committee on Commerce, in regard to the pending legislation, Secretary Hull wrote, "It is believed that there is adequate authority in international law for this method of acquisition." He enclosed a resolution dated April 26, 1941, of the Inter-American Financial and Advisory Committee, recommending to the American governments that they take over the utilization of foreign flag vessels idle in their ports "in accordance with the rules of international law" and "their respective national legislations" to meet the shipping emergency.[20] Secretary Hull also referred to certain precedents in the last war of the seizure by neutrals of belligerent vessels.[21]

[19] *Supra*, p. 499, note 5.

[20] The Committee resolves:

"To recommend to the governments of the American Republics:

"(a) That they declare that the foreign flag vessels in American ports, the normal commercial activities of which have been interrupted as a consequence of the war, may now be utilized by the American Republics in accordance with the rules of international law and the provisions of their respective national legislations, in such manner as to promote the defense of their economies as well as the peace and security of the continent. The utilization of said vessels may be effected by the American Republics either through agreements with the owners of the vessels or by virtue of the right of each of the American Republics to assume complete jurisdiction and control over such vessels, and as they may deem it convenient to satisfy their own requirements.

[(b) That just and adequate compensation be made.]

"(c) That they reaffirm their full right to the free navigation of those vessels, both in their national and international trade, once they are under the flag of any one of the American Republics, and that they agree upon measures tending to facilitate the effective exercise of said right." Senate Report 277, 77th Cong., 1st Session, p. 4.

[21] "Some precedents of the seizure by neutrals of vessels belonging to belligerents were referred to as follows by Assistant Secretary Long at the executive session of your committee:

"(1) In November 1915 the Italian Government requisitioned thirty-four German merchant vessels in Italian ports. The German Government made no protest, hoping, no doubt, that Italy would join the central powers or would at least remain neutral.

"(2) In February 1916 the Portuguese Government requisitioned seventy-two German vessels in Portuguese ports. The alleged cause of the seizure was stated to be the economic situation created by the illegal destruction of Portuguese shipping by German submarines. The two nations were formally at peace although hostilities between their colonies in East Africa had taken place.

"(3) In May 1917 the Brazilian Government, having revoked its proclamation of neutrality, requisitioned forty-two German vessels. After Brazil's declaration of war in November, they were leased to the French Government.

"(4) In August 1918 Spain requisitioned about ninety German vessels in Spanish ports. The Spanish Government declared that the seizure was indispensable for its existence, and apparently regarded the vessels requisitioned as substitutes for its own vessels sunk by German submarines, and consequently no compensation was payable.

From a review of the authorities and precedents, it is believed to be sound law to base the Act in question on the fundamental right of a sovereign nation in time of war or peace to take and use, upon payment of compensation, any means of transport within its borders in case of extreme necessity. As Secretary Lansing said in a note to The Netherlands:

> The law of angary is but one expression of the fundamental right of a sovereign to control all private property within his jurisdiction. . . . No independent and sovereign nation has ever conceded that private property within its jurisdiction could not be subject to its will upon properly compensating the owner.[22]

Of this general right, the right of angary is but a special phase or manifestation, and as such may or may not be applicable to the present situation. If the Act cannot be justified on this ground, it is difficult to perceive any legal warrant for it as the act of a neutral. Can additional strength be found in the status of "non-belligerency" under the interpretation of the Pact of Paris above mentioned? The status of a quasi-belligerent would tighten the emergency which made the action necessary, and no violation of international law could be charged, but only if a signatory has an option to throw aside the cloak of neutrality and to assist a defending state against a violator.

Does the fact that the property to be taken consists of foreign merchant vessels in our harbors affect the exercise of this right? The foreign merchant vessels in question are apparently privately owned ships and no question of government property seems to be involved. Nevertheless, the vessels fly a foreign flag, are registered with their home governments, are in international practice accorded a foreign nationality, and are, by comity of nations frequently confirmed in treaties of commerce and navigation, granted certain exemptions from local jurisdiction while in port. The exempted jurisdiction is by treaty generally exercised by the consul of the flag. Indeed, they have been in the past accorded the fiction of being floating portions of the territory of their country.

Nevertheless, the power of a local sovereign is, at least in emergency, to be regarded as supreme. The fiction above mentioned has been exploded in

---

"(5) Within the past few days France has requisitioned fifteen Belgian ships." Senate Report 277, 77th Cong., 1st Sess., p. 5.

These precedents are referred to by Fenwick, *ibid.*, pp. 543–544; Harley, this JOURNAL, Vol. 13 (1919), p. 294 ff.; Bullock, British Yearbook, 1922–23, p. 116 ff.

The Senate debates did not regard these instances as establishing a rule of international law or as on all fours with the present situation. Senator Bailey believed that the rule of international law is to the contrary and that the bill will set a new precedent which may be followed by other nations. Cong. Record, May 14, 15, 1941; Senate Hearings, *ibid.*, pp. 116–117.

[22] Harvard Research in International Law, Report on Neutrality, *ibid.*, p. 377.

England [23] and America.[24] The jurisdiction of the state of the flag is not primary nor absolute. When the vessel enters a foreign port it comes into a supervening jurisdiction. By custom, supported by treaties and some decisions, an adjustment is made whereby the disputes involving purely internal affairs of the ship are frequently left to the jurisdiction of the consul at the port and not the local authorities, unless they "disturb tranquillity and public order on shore or in port." This practice, however, is a matter of comity and concession.

The United States has enforced the Volstead Act of 1919 and the Seamen's Act of 1920 as to foreign merchant vessels though interfering with the internal affairs thereof. Besides, merchant vessels in port are subject to civil suits *in rem* and the officers and crew to civil and criminal suits for acts contrary to the local laws.[25]

The foregoing relates to the taking in the first instance of the vessels themselves. A separate question was raised in Congress as to the disposition of the vessels *after* the taking. Though the Government witnesses at the hearings contemplated that these vessels would be used in waters on this side of the world, the placing of any restriction on the use of the vessels was opposed by Secretary Hull and other officials. This led to the most controversial amendment of those offered to the bill, as follows:

> And provided further, That the flagships of nations now engaged in war, taken over pursuant to the provisions of this act, will not be turned over to any nation now at war or used for the purpose of promoting their military and naval objectives.[26]

Senator Bailey, who voted for the amendment in committee, believed the Lease-Lend Act allowed the President to turn the vessels over to a belligerent

[23] Lawrence Preuss, "State Immunity and the Requisition of Ships during the Spanish Civil War," this JOURNAL, Vol. 35 (1941), p. 279, quoting Lord Atkin: "However the doctrine of exterritoriality is expressed, it is a fiction, and legal fictions have a tendency to go beyond their appointed bounds and to harden into dangerous facts." Chung Chi Cheung *v.* The King [1939] A.C. 160 at p. 174. Also quoting Hill, J., in regard to Soviet ships: "It was not suggested that ships were to be governed by any principles other than those applicable to other chattels." *The Jupiter* (1927), P. 122 at p. 144. Also quoting Lord Jamieson in approval in the *El Candado*, 63 Lloyds L. Rep. 83 at p. 87.

[24] Fenwick, *ibid.*, p. 218, quoting Cunard Steamship Co. *v.* Mellon, 262 U.S. 100 (enforcing the Volstead Act on foreign vessels), which regarded the fiction as "a figure of speech—a metaphor" and indicated that the national jurisdiction was "susceptible of no limitation not imposed by itself."

See generally Harvard Research in International Law, Report on Territorial Waters, by G. G. Wilson, Comment on Art. 18, this JOURNAL, Spl. Supp., Vol. 23 (1929), p. 307 ff.

[25] Fenwick, *ibid.*, p. 222. As to liberating a person under extradition on a foreign vessel entering port, see Hyde, *ibid.*, Vol. I, pp. 403, 608. In the *Lotus* decision the Permanent Court upheld the jurisdiction of Turkey to prosecute an officer of a French vessel in port for a collision at sea resulting in the loss of a Turkish vessel and eight Turkish lives,

[26] This was the amendment of Representative Culkin which was voted down in the House Committee and lost in the House, 220 to 160, and which was taken up by Senators Vandenberg and Clark and voted down in the Senate Committee and lost on the floor, 43 to 38.

Power after the United States had once taken title.[27] The title and possession, he said, were to be taken, according to the langauge of the bill, "for such use or disposition as he [the President] shall direct." The debate was on the proposition that this action if taken would be provocative and would amount to an act of war.[28] In opposition, it was argued that most of the belligerent vessels were arrested originally because of sabotage,[29] and further, that once seized and title taken, the United States was free to dispose of them as it pleased, even to the extent of transferring them to a belligerent or to belligerent uses. As to this question, it may be said that, although the seizure under the Act may be regarded as unneutral in Germany's view that our shortage of tonnage was due to our aid to Britain, nevertheless there are no degrees of unneutrality, and that the subsequent transfer of these vessels to Britain is no more unneutral than other acts of the United States in aid of Britain. It was pointed out in the debates, however, that a series of unneutral acts was a growing aggravation that might eventually amount to a challenge. The only other bases of justification would be the principles above mentioned, of self-defense and support to a victim state.

L. H. WOOLSEY

THE VALIDITY OF THE GREENLAND AGREEMENT

On April 9, 1941, an agreement [1] relating to the defense of Greenland was signed in Washington by Secretary of State Cordell Hull "acting on behalf of the Government of the United States of America," and Mr. Henrik de Kauffmann, the Danish Minister in Washington, "acting on behalf of His Majesty the King of Denmark in His capacity as sovereign of Greenland, whose authorities in Greenland have concurred herein." The preamble to the agreement recites "the invasion and occupation of Denmark on April 9, 1940 by foreign military forces" and concludes that "although the sovereignty of Denmark over Greenland is fully recognized, the present circumstances for the time being prevent the Government in Denmark from exer-

[27] Cong. Record, May 14, 1941, p. 4116.

[28] For a discussion of what is an act of war see Clyde Eagleton, "Acts of War," this JOURNAL, Vol. 35 (1941), p. 321. He concludes that an act of war involves the employment of force, but that it does not create a state of war. "The act of war can be nothing less than an act of force—seizure of territory, blockade, landing of an armed force; but even such uses of force do not establish a state of war, nor do they lead in legal consequence to war." Other factors must be added. The state affected "is free to make its own decision as to whether it will reply by war, and that decision does not in the least depend upon international law or etiquette." He thinks "none of the measures thus far taken by the United States could be regarded as an act of war. . . . They do not measure up even to the stature of reprisals." See J. B. Moore, Proceedings of American Philosophical Society, 1921, Vol. 60.

[29] The Act of 1917, however, apparently did not make them forfeitable in the circumstances.

[1] For the text of the agreement, see Supplement to this JOURNAL, p. 129, and Department of State Bulletin (hereafter cited as Bulletin), Vol. IV, No. 94 (April 12, 1941), pp. 445–447. For relevant documents, see *ibid.*, pp. 443–448, and *ibid.*, No. 95, pp. 469–471.