

eign must be assumed to know when he borrows from private parties whether or not he will be able to pay, whether or not he is incurring an obligation within his "capacity to pay." The foreign creditor is not able to determine this matter for himself, either at the time of the borrowing or thereafter. Furthermore, whether a sovereign pays, or does not pay, depends in greatest part upon his will to pay. For few, if any, governments have borrowed beyond their *capacity* to pay if they really had a will to make the necessary levy upon the property of their nationals, and to pay. No nation has any right to invoke its lack of "capacity to pay" its obligations to private creditors until it has fully exhausted its taxing powers, and no debtor sovereign now in default, in so far as the Council is advised, has even approached a condition of exhaustion of its taxing powers.

The Council has announced its intention to continue to take advantage of every opportunity that may arise to aid the holders of defaulted foreign dollar bonds.

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NEUTRALITY OF ÉIRE

Following a course which Mr. de Valera had indicated as early as the preceding February, Éire elected to be neutral when Great Britain and the Dominions of the British Commonwealth entered the present war against Germany. While it would be premature to deal with the way in which Irish neutrality has worked out in actual practice until more documentary evidences are available, some matters relating to the status itself present engaging questions of public law, both constitutional and international.

Sometimes called an "honorary" member of the British Commonwealth of Nations,¹ Éire has evolved as the most definitely independent entity of this group. The Constitution effective in 1937, which omitted specific mention of the King, left open the way to provision by Irish statute for the appointment of diplomatic and consular agents and the conclusion of international agreements through "any organ used as a constitutional organ for the like purposes" by other members of the British Commonwealth. The Executive Authority (External Relations) Act, 1936, had set forth that the Executive Council in Ireland should appoint diplomatic agents, but that so long as the country was associated with the other entities in the British Commonwealth, the King might and was authorized to act on behalf of Ireland for this purpose, as and when advised by the Executive Council to do so.² The King thus became, in contemplation of the Irish leadership, a "statutory officer."³ The power to bring Éire into a war was kept in Ireland, assent of Dáil Éireann being required for a declaration or for participation.

¹ The Times (London), Oct. 7, 1939, p. 3.

² See A. B. Keith, "The Constitution of Éire," *Juridical Review*, Vol. 49, pp. 256-281 (Sept., 1937); A. W. Bromage, "Constitutional Developments in Saorstát Éireann and the Constitution of Éire: I, External Affairs," *American Political Science Review*, Vol. 31, pp. 842-861 (Oct., 1937).

³ The Round Table, No. 115, p. 590 (June, 1939).

But with her currency geared to the pound sterling, her principal markets in England, and her economic life inevitably affected by policies adopted across the Irish Sea, the country is not exactly separated from Great Britain in an economic sense. At the same time, the old grievance concerning partition afforded a political reason for the state's remaining aloof from Great Britain in the war, and for Irish political leaders' avoidance of too much expression of sympathy for the British cause. A policy of participation in the struggle would apparently have provoked strong dissent. The coming of the war seems to have put an end to I.R.A. activities in Great Britain, but it has brought no all-Ireland union. Soon after the beginning of the war the Governor of Northern Ireland (an area where there is a British "garrison" but to which the British Military Service Bill was not applied) expressed to the King the "undying loyalty and devotion of this portion of Your Majesty's Empire."⁴ Northern Ireland is in a state of war notwithstanding the fact that, by the Constitution of Éire, the national territory of the latter state "consists of the whole island of Ireland, its islands and the territorial seas."⁵ A practical evidence of the political separation of Éire from Great Britain is the British control of prices of products imported from Southern Ireland to England.

Questions of international law growing out of the war relate particularly to nationality, representation, and certain problems of a neutral incident to geographical propinquity. Measures taken in Éire with respect to resident aliens presumably apply to British subjects, including those from Northern Ireland, as well as to Germans. By existing law of Ireland, citizens of Éire do not have the character of British subjects while in Ireland, whatever British law may say as to their remaining British subjects at least while they are outside of Éire.⁶ Mr. de Valera's view has been that the British attitude on conscription of Irish in England was at variance with international usage and the Hague Conventions.⁷ Early in the war, numbers of Germans were reported to be leaving Éire in anticipation of the country's neutrality being short-lived.⁸ The fact of Irish volunteers in the British forces would not involve the legal neutrality of Éire if there were no enlisting or recruiting in the neutral territory. Within a few days after the beginning of hostilities, the Dáil passed the Emergency Powers Act, 1939, whereby the government was given wide powers to control the movement of aliens in Ireland.⁹

⁴ The Times (London), Sept. 5, 1939, p. 10.

See "The British Commonwealth Goes to War," by Robt. B. Stewart, in the American Foreign Service Journal (December, 1939), Vol. 16, p. 645.

⁵ Art. II. The article following avoided an anomalous situation by providing in effect that the laws enacted by the Irish parliament should have the same area, extent of application, and the same extraterritorial effect, as those of the former Irish Free State.

⁶ A. B. Keith, *loc. cit.* ⁷ The Round Table, No. 116, p. 802 (Sept., 1939).

⁸ The Times (London), Sept. 13, 1939, p. 4.

⁹ The Act is summarized in Irish Jurist, Vol. 5, pt. 4, pp. 54-56 (Oct.-Dec., 1939).

Before the close of the first month of the war, the British Government had designated, in a "war emergency measure,"¹⁰ a special representative to Dublin. The appointee, Sir John Maffey, will presumably function not merely as another trade representative, nor as a minister plenipotentiary comparable with the German Minister in Dublin. According to the statement by the Secretary of State for Dominion Affairs, the Governments of the United Kingdom and of Éire took the action in order that "the existing system of communication" between the two countries might be supplemented.¹¹

A press censorship, increased taxes, a petrol rationing system, reduced shipping service between Ireland and England, and black-outs in Dublin seem to bear out Mr. de Valera's statement that Éire cannot hope to escape many of the consequences of the war. The Chief Minister admitted in an address before Dáil Éireann that because persons were not neutral in their individual opinions, the government's task of maintaining official neutrality would not be particularly easy.¹² Late in November the Irish Government announced the creation of a small naval force, to consist of motor torpedo boats and armed trawlers, which will supplement Ireland's coastal observation and fishery patrol vessels. The step followed "intensified naval warfare and sinkings along the Irish coasts."¹³ Irish complaint at the country's being included in combat zones in which American vessels are now forbidden to operate, drew from the Undersecretary of State of the United States the assurance that friendliest consideration would be given.¹⁴

To most of the special measures which the Irish Government has taken, belligerents could have no objection on grounds of right. As to black-outs, which were partial before November 18 but were to be complete thereafter, question was raised in Ireland as to whether their institution involved a breach of neutrality. Because of propinquity, and the possibility of locating British centers by calculation of the distance from such a point as Dublin, the policy has seemed justified by considerations of the strictest neutrality. Objection to black-outs has stressed their depressing psychological effect and has pointed to the contrasting policy of such a country as Denmark, with its flood-lighting of frontiers.¹⁵ That any neutral state may follow either of these courses without breach of its neutrality, seems clear. It would appear that a novel duty would be placed upon a neutral if it were required to conceal its very location from belligerent aircraft during the night.

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¹⁰ Manchester Guardian Weekly, Sept. 29, 1939, p. 241.

¹¹ The Times (London), Sept. 28, 1939, p. 3.

¹² *Ibid.*, Oct. 2, 1939, p. 5.

¹³ New York Times, Nov. 28, 1939, p. 2.

¹⁴ The Times (London), Nov. 15, 1939, p. 7.

¹⁵ *Ibid.*, Nov. 7, 1939, p. 15.