

SEC. 5. EQUAL APPLICATION OF EMBARGOES, ETC.

Any embargo, prohibition or restriction that may be imposed by or under the provisions of sections 2, 3 or 4 of this act shall apply equally to all belligerents, unless the Congress, with the approval of the President, shall declare otherwise.

SEC. 6. AMERICAN VESSELS PROHIBITED FROM CARRYING ARMS, ETC.

(a) Whenever the President shall have issued a proclamation as provided for in section 2 of this act it shall thereafter be unlawful for any American vessel to carry arms, ammunition or implements of war to any belligerent country named therein, or to any neutral country for transshipment to, or for the use of, such belligerent country.

(b) If the President shall find that the maintenance of peace between the United States and foreign nations, or the protection of the commercial interests of the United States and its nationals, or the security or neutrality of the United States would be promoted by prohibiting American vessels from carrying any of the articles or materials enumerated in any proclamation issued by him under section 3 of this act, and shall so proclaim, it shall thereafter be unlawful for any American vessel to carry any such articles or materials from any place in the United States to any belligerent country, or to any neutral country for transshipment to or for the use of any belligerent country.

(c) The President may, from time to time, modify or revoke in whole or in part any proclamation issued by him under this section.

(d) When in the judgment of the President the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke the same and the provisions of this section shall thereupon cease to apply.

SEC. 7.

SEC. 7. PENALTIES FOR VIOLATION OF SECTIONS 2, 3 or 6.

(a) Whoever, in violation of any of the provisions of sections 2, 3, or 6 of this act, shall export, or attempt to export, or cause to be exported, or sell for export, arms, ammunition, implements of war, or other articles or materials enumerated in a proclamation by the President, or shall take, attempt to take, or shall authorize, hire, or solicit another to take any vessel or vehicle carrying such cargo out of a port or from the jurisdiction of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both; and, in addition, such vessel or vehicle, her tackle, apparel, furniture, equipment, and such part of the property or cargo as is covered by the proclamation shall be subject to the provisions of sections 1 to 8, inclusive, Title 6, Chapter 30, of the act approved June 15, 1917 (40 Stat. 223-225; U.S.C., Title 22, secs. 238-245).

(b) In the case of the forfeiture of any arms, ammunition, or implements of war, by reason of a violation of this act, no public or private sale shall be required, but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President.

SEC. 8. TRANSACTIONS WITH BELLIGERENTS.

Whenever, during any war in which the United States is neutral, the President shall find that the maintenance of peace between the United States and foreign nations, or the protection of the commercial interests of the United States and its nationals, or the security or neutrality of the United States would be promoted by requiring nationals of the United States to assume the risk of commercial transactions with the governments or nationals of belligerent countries, or persons residing therein, and shall so proclaim, thereafter American nationals who engage in such transactions shall do so at their own risk.

SEC. 9. TRAVEL BY AMERICAN NATIONALS ON BELLIGERENT VESSELS.

(a) Whenever, during any war in which the United States is neutral, the President shall find that the maintenance of peace between the United States and foreign nations, or the protection of the lives of nationals of the United States, or the protection of the commercial interests of the United States and its nationals, or the security or neutrality of the United States requires that American nationals should refrain from traveling as passengers on vessels of the belligerents, and shall so proclaim, thereafter nationals of the United States who travel on such vessels shall do so at their own risk, unless in accordance with such rules and regulations as the President shall prescribe.

(b) The provisions of this section shall not apply to a national whose voyage on a vessel of a belligerent was begun in advance of the date on the President's proclamation, and who had no opportunity to discontinue the voyage after that date; nor shall they apply under ninety days after the date of the President's proclamation to a national returning from a foreign country to the United States.

(c) When, in the President's judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke the same and the provisions of this section shall thereupon cease to apply.

SEC. 10. USE OF AMERICAN PORTS AS BASE OF SUPPLY.

(a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port of the United States fuel, arms, ammunition, men, supplies, dispatches, or information to any warship, tender, or supply ship of a belligerent nation, but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, Title V, Chapter 30, of the act approved June 15, 1917 (40 Stat. 217, 221; U.S.C., Title 18, sec. 31), and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign nations, or to protect the commercial interests of the United States and its nationals, or to promote the security or neutrality of the United States, he shall have the power and it shall be his duty to require the owner, master, or person in command thereof, before departing from a port of the United States to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, dispatches, information, or any part of the cargo, to any warship, tender, or supply ship of a belligerent nation.

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously cleared from

a port of the United States during such war and delivered its cargo or any part thereof to a warship, tender, or supply ship of a belligerent nation, he may prohibit the departure of such vessel during the duration of the war.

SEC. 11. SUBMARINES PROHIBITED FROM ENTERING AMERICAN WATERS.

(a) Whenever, during any war in which the United States is neutral, the President shall find that the placing of special restrictions on the use of the ports and territorial waters of the United States by the submarines of belligerent nations will serve to maintain peace between the United States and foreign nations, or to protect the commercial interests of the United States and its nationals, or to promote the security or neutrality of the United States, and shall so proclaim, it shall thereafter be unlawful for any such submarine to enter a port or the territorial waters of the United States, or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe.

(b) When, in the judgment of the President, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke the same and the provisions of this section shall thereupon cease to apply.

SEC. 12

SEC. 12. USE OF AMERICAN FLAG BY VESSELS OF BELLIGERENT COUNTRIES.

(a) Whenever, during any war in which the United States is neutral, the President shall find that vessels of a belligerent country, whether with or without the permission of the government of that country, are using or have used, during such war, the flag of the United States, or any artifice or device designed to indicate that such vessels are American vessels, contrary to the commercial interests of the United States and its nationals, or the security of the United States and its nationals, and shall make proclamation thereof, it shall be unlawful for any vessel of such country to enter a port of the United States after the date specified in the proclamation as the effective date thereof.

(b) If any such vessel shall enter a port of the United States contrary to the provisions of paragraph (a) of this section it shall be the duty of the Collector of Customs to refuse it clearance therefrom.

(c) If at any time after the issue of his proclamation, the President shall receive satisfactory assurance from the government of such country that use on its vessels of the flag of the United States, or other artifice or device herein referred to, has been discontinued and will thereafter be prohibited, he may revoke his proclamation, and the provisions of this section shall thereupon cease to apply.

SEC. 13.

SEC. 13. NATIONAL MUNITIONS CONTROL BOARD.

Section 2 of the Joint Resolution (Public Res.-No. 67-74th Cong.) approved August 31, 1935, is hereby amended to read as follows:

"(a) The National Munitions Control Board which is hereby established shall consist of the Secretary of State, who shall be chairman and executive officer of the Board, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce. Except as otherwise provided in this section or by other law, the administration of this section is vested in the Department of State.

"(b) The President is hereby authorized to proclaim upon recommendation of the Board from time to time a list of articles which shall be considered arms, ammunition, and implements of war for the purposes of this section.

"(c) Every person who engages in the business of manufacturing for export, exporting or importing any of the arms, ammunition, or implements of war referred to in paragraph (b) of this section, whether as an exporter, importer, manufacturer, or dealer, shall register with the Secretary of State his name, or style, principal place of business, and places of business in the United States, and a list of the arms, ammunition, and implements of war, which he exports, imports, or manufactures for export.

"(d) Every person required to register under the provisions of this section shall pay a registration fee of \$500 and upon receipt of such fee the Secretary of State shall issue a registration certificate valid for five years upon the payment for each renewal of a fee of \$500.

"(e)

"(e) Every person required to register under this section shall notify the Secretary of State of any change in the arms, ammunition, or implements of war which he exports, imports, or manufactures for export; and upon such notification the Secretary of State shall issue to such person an amended certificate of registration, free of charge, which shall remain valid until the date of expiration of the original certificate.

"(f) It shall be unlawful for any person required to register under the provisions of this section to import or export any of the arms, ammunition, or implements of war referred to in paragraph (b) of this section without having registered in accordance with the provisions of this section.

"(g) It shall be unlawful for any person to export, or attempt to export, from the United States any of the arms, ammunition, or implements of war referred to in paragraph (b) of this section to any other country, or to import, or attempt to import, to the United States from any other country any of the arms, ammunition, or implements of war referred to in said paragraph (b), without first having obtained a license therefor from the Department of State for each shipment.

"(h) Export and import licenses shall be issued to persons who have registered as herein provided for, except in cases where the exportation of arms, ammunition, or implements of war would be in violation of this section or any other law of the United States, or of a treaty to which the United States is a party, in which cases such licenses shall not be issued: Provided, however, That
after

after the ninetieth day following the effective date of this act no export licenses shall be issued unless the government of the country to which such arms are to be exported has indicated to the satisfaction of the Secretary of State that permission for the importation has been accorded: And provided further, That after the ninetieth day following the effective date of this act no licenses shall be issued for the export of appliances and substances exclusively intended for chemical warfare.

"(i) The Secretary of State shall issue regulations for carrying out the provisions of this section.

"(j) The Board shall be called into session by the chairman and shall hold at least one meeting a year.

"(k) No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of paragraph (c) of this section.

"(l) Any contract in violation of the provisions of paragraph (k) of this section is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States, and shall not afford any basis for the granting of legal or equitable relief by any such court.

"(m) No sale of the arms, ammunition, or implements of war referred to in paragraph (b) of this section shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government to any foreign government on or after

November 29, 1936. The provisions of the act of August 29, 1916, relating to the sale of ordnance and stores to the Government of Cuba (39 Stat. 619, 645, U.S.C., Title 50, sec. 72), are hereby abrogated as of November 29, 1936.

"(n) All persons required to register under this section shall maintain, subject to the inspection of the Secretary of State, such permanent records of manufacture for export, importation, and exportation of arms, ammunition, and implements of war as he shall prescribe.

"(o) Any person who violates or fails to comply with any of the requirements of this section or any regulations issued under this section shall, on conviction, be fined not more than \$10,000 or be imprisoned for not more than five years, or both, in the discretion of the court.

"(p) The Board shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain such information and data collected by the Board as may be considered of value in the determination of questions in connection with the control of trade in arms, ammunition, and implements of war. It shall include a list of all persons required to register under the provisions of this section and full information concerning the licenses issued under the provisions of this section.

"(q) Such amount as may from time to time be deemed necessary is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated to be expended by the Secretary of State in carrying out the duties as aforesaid and in defraying the expenses of the Board in discharging the duties placed upon it by this section."

SEC. 14. Regulations by the President.

The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this act; and he may exercise any power or authority conferred on him by this act through such officer or officers, or agency or agencies, as he shall direct.

SEC. 15. APPLICATION OF PROVISIONS OF THIS ACT.

If any of the provisions of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) Except to the extent that the law and rules of neutrality are or may be temporarily or provisionally modified by or under authority of this act the United States reserves and reaffirms its rights under international law as in effect prior to August 1, 1914.

SEC. 16. MODIFICATION OR TERMINATION OF TREATIES.

(a) If the President shall find that any of the provisions of this act, if applied, would contravene treaty provisions in force between the United States and any foreign country, he may enter into negotiations with the government of such country for the purpose of effecting such modification of the treaty provisions as may be necessary, and if he shall be unable to bring about the necessary modifications, he may in his discretion give notice of termination of the treaty.

(b) Except to the extent that the law and rules of neutrality are or may be temporarily or provisionally modified by or under authority of this act the United States reserves and reaffirms its rights under international law as it existed prior to August 1, 1914.

SEC. 17. REPEAL OF JOINT RESOLUTION OF AUGUST 31, 1935.

Section 1 and sections 3 to 9 inclusive of the Joint Resolution (Public Res. - No. 67 - 74th Cong.) approved August 31, 1935, are hereby repealed, but such repeal shall not affect any proclamation issued by the President pursuant to that Resolution. Any such proclamation shall remain effective until revoked in accordance with the corresponding provisions of the present act.

SEC. 18. AUTHORIZATION FOR APPROPRIATIONS.

There is hereby authorized to be appropriated from time to time out of any money in the Treasury not otherwise appropriated such amounts as may be necessary to carry out the provisions and accomplish the purposes of this act.

PSF

Neutrality - 1937

DEPARTMENT OF STATE
WASHINGTON

January 9, 1937.

Dear Mr. President:

Since I recovered from my muddle-headed misnomer of Bill Bullitt, I tried this morning to do some thinking on neutrality legislation, and the enclosure is the result. Since the memorandum was dictated, I have gone over it with Messrs. Sayre, Hackworth, and with Mr. Savage, who has been for a year studying the neutrality question here, and I believe that it meets their general approval. I would not bother you with it at this time, except that I believe you will wish to reach your conclusions at an early date with reference to the legislation you will approve.

Yours very sincerely,

Enclosure:
Memorandum dated
January 9, 1937.

Russell Brown

The President,
The White House.

Suggestions with reference to neutrality legislation.

It will have to be determined whether to amend the present law or to substitute for it a new law except a re-enactment of the license section.

Aside from the point just mentioned, my general view as to what would be possible and perhaps satisfactory is as follows:

1. I think it may be assumed that there will be insistence on maintaining the mandatory embargo provision relative to the shipment of arms, ammunition and implements of war to both or all belligerents when the President finds that there is a state of international war.
2. I think that the President should be authorized, when he finds that civil strife is threatened or in progress in any country and in his opinion the public safety so requires (I am adopting this language from one of the cases recently cited by the Supreme Court) to apply the provisions of the Joint Resolution approved January 31, 1922, to such country.
3. I think that the President should be authorized, when an international war or civil strife is threatened or in progress and in his opinion the public safety so requires,

to

to do all or any of the following things:

(a) Forbid or restrict the export from the United States to both or all of the belligerents any or all articles not included in the description "arms, ammunition and implements of war", with the proviso that such articles may be transported in foreign vessels if the consignor in every case shall have certified under oath that neither he nor any other citizen of the United States retains or has any right, title or interest in the articles shipped.

(b) Forbid the flotation in the United States of loans to belligerents and forbid or restrict commercial credits under such regulations as may be prescribed.

(c) Forbid or restrict under such regulations as may be prescribed travel by nationals of the United States on vessels belonging to or in which belligerents may have an interest.

(d) Forbid or restrict under the prescribed regulations the operation of commercial vessels of the United States in zones that, in the opinion of the President, are dangerous and

(e) Forbid the enlistment of nationals of the United States

States in the services of any belligerent wherever the nationals may be at the time.

In making these suggestions, of course, I have all the time had in mind that, in the actual drafting, a great deal of elaboration will be necessary and I have also constantly tried to think of what I believe to be the attitude of the Senate Committee.

There is attached to the memorandum a paper that shows the provisions of the Act of January 31, 1922, which is referred to under the above heading "2".

R. W. R.

**PROPOSED AMENDMENTS TO JOINT RESOLUTION OF
JANUARY 31, 1922.**

[Omit the part struck through and insert the part in brackets]

"That whenever the President finds that in any American [~~foreign~~] country, ~~or in any country in which the United States exercises extraterritorial jurisdiction,~~ conditions of domestic violence exist, which are or may be promoted by the use of arms ~~or munitions~~ [ammunition, or implements] of war procured from the United States, and makes proclamation thereof, it shall be unlawful to export, except under such limitations and exceptions as the President prescribes, any arms ~~or munitions~~ [ammunition, or implements] of war from any place in the United States to such country until otherwise ordered by the President or by Congress.

"SEC. 3. Whoever exports any arms ~~or munitions~~ [,ammunition, or implements] of war in violation of section 1 shall, on conviction, be punished by fine not exceeding \$10,000, or by imprisonment not exceeding two years, or both."

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ASSISTANT SECRETARY OF STATE

WASHINGTON

January 13, 1936.

Dear Mr. President:

Last week I appeared at two or three sessions of the House Committee on Foreign Affairs while the neutrality bill was being considered, and Friday and today I appeared with the Secretary before the Senate Committee on Foreign Relations.

Friday one member of the Senate Committee raised the question as to the expediency of excepting the Latin American nations from the operation of the bill, but apparently he had no support, and I would feel no concern whatever on that point but for the fact that Judge McReynolds seems determined to urge his Committee in the House to make that exception. It strikes me as wholly unnecessary, since, first, it can hardly be supposed that any Old World naval power will venture to attack a Latin American country, and, second, any threat of such an attack would give Congress full opportunity to modify the legislation. Furthermore, the proposal appears to be undesirable because its adoption would renew the discussion of the Monroe Doctrine by our Latin American friends. Of course I agree with you that their criticism of the doctrine is "silly", but people cannot be prevented from doing silly things.

I

Enclosure:

As stated.

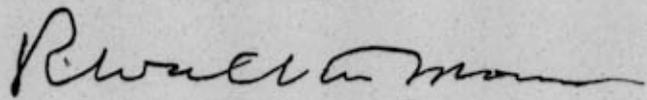
The President,

The White House.

I enclose an article that was printed in the Washington Star yesterday, which was not instigated by this Department, and I feel certain was not instigated by Senator Pittman. It states in a pretty emphatic way the objection to the undesirability of incorporating in the bill the "Latin American clause". I have talked with Secretary Hull, and we think that you may possibly believe it well to call McReynolds and ask him to lay off on that matter.

Although it would seem that Senators Johnson and Lewis would prefer that no legislation shall be enacted, I am sure that the other members of the Senate Committee, and all the members of the House Committee, favor legislation, though there are inevitable differences of opinion on specific provisions. For example, Senator Borah, who desires legislation, is very much disturbed by the provisions that will allow normal exports under the American flag, but authorize the shippers to be informed that they are to carry on at their own risk.

Yours very sincerely,



LATIN AMERICAN CLAUSE REGARDED UNNECESSARY

Exemptions Under Neutrality Act Seen as Only Complicating an Already Complex Problem.

BY GASTON NERVAL.

IN THE opinion of some members of the House of Representatives, the Latin American countries should be exempt from the provisions of the current neutrality legislation. Interpreting that view, the chairman of the Foreign Affairs Committee of the House has suggested that a special reservation be attached to the neutrality bill, to the effect that embargoes on arms or implements of war will not apply to nations of the Western Hemisphere being attacked by a non-American power.

In this fashion, the advocates of the exemption contend, the United States will live up to its "obligations under the Monroe Doctrine" and serve notice to the rest of the world that it still maintains its traditional opposition to any new attempts of colonization of the Western Hemisphere.

Apart from the fact that the "obligations" referred to never existed, the Monroe Doctrine being merely a unilateral declaration of the United States as to its concern over non-American actions in the American continent which would affect its own security and interests, the rest of the world does not need to be reminded of that concern. The rest of the world knows very well that any attack against Latin American independence from an outside power today would concern the United States, militarily, politically and commercially, just as much as it did in 1823.

Cannot Remain Indifferent.

As a matter of fact, such an attack would concern it much more so today, when the Panama Canal is the key to its military defense, when its commercial interests are incomparably larger, and when the political disadvantages of having large European colonies as neighbors would be enhanced, potentially, by the facilities of modern warfare. So, Monroe Doctrine or no Monroe Doctrine, the world knows that the United States is just as much interested today in preventing the introduction by force of new European colonies in the American Continent as it was in 1823. And when its own security and interests were at stake, the United States could hardly be expected to remain indifferent and let the neutrality embargo stand in its way.

Obviously, if the highly hypothetical emergency of a non-American invasion of some part of Latin America occurred in the near future, this embargo, and any other legislation intended to preserve United States neutrality in European or Asiatic wars, could be, and would be, quickly set aside by Congress. Neutrality itself would necessarily stop where the security and vital interests of the United States became involved.

But that should go without saying. To demand that a specific reservation to this effect be included in the current neutrality bill is like suggesting that the United States reserve the right to defend itself. The rest of the world does not have to be reminded that the United States intends to do so.

Why Complicate Issue?

Why, then, complicate further an already complex issue by means of a reservation which is, to say the least, superfluous? As Senator Pittman said, when informed of the proposal to exempt from the embargo countries attacked "in violation of the Monroe Doctrine"—Why bring that up?

The introduction of the Monroe Doctrine into the debate would only becloud it more, as it did last year, when some Senators, mistaking it for one of its multiple misinterpretations, invoked the doctrine in the World Court discussion, to oppose the jurisdiction of the Court in international questions arising in the American continent. By so doing, and particularly by the typically paternalistic tone and the historical inaccuracy of their references to the Monroe Doctrine, the members of the Senate aroused the indignation of Latin American statesmen, who were at a loss to reconcile such views with the friendly and liberal expressions coming from the executive branch of the United States Government in the form of the "good neighbor policy."

Resent Dictatorial Features.

That is, precisely, the danger. The Monroe Doctrine has been so greatly misunderstood, misinterpreted and misused that, whenever it is brought again into the limelight of public discussion, it is bound to stir unfavorable reaction on the other side of the Rio Grande. Latin Americans resent—even now, more vividly than official statements would indicate—the many distorted and abusive features of the doctrine in the past, and they are not as yet so sure—also, less sure than diplomatic utterances would admit—that these will not be re-enacted in the future. On the other hand, because of the same misunderstanding and misapplication of the doctrine by Monroe's successors, every other public man in the United States who speaks of the Monroe Doctrine contributes in one way or another to increase its unpopularity throughout Latin America.

If, then, as is the case, the animosity and suspicion of the Latin Americans toward the Monroe Doctrine is ever present, and the ignorance of its causes and effects is so widespread even on Capitol Hill, and if, moreover, the purpose for which its invocation is now suggested would be the statement of an obvious fact—"why bring it up?"

(Copyright, 1936.)

ca. Jan. 22, 1936 —

see N.Y. Times, Jan. 23,

1936, p. 11

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DEPARTMENT OF STATE
OFFICE OF THE SECRETARY
WASHINGTON

MEMORANDUM FOR
THE PRESIDENT.

I am informed that the House Committee on Foreign Affairs this morning adopted the following amendment to the pending Pittman-McReynolds neutrality bill:

"(g) No American republic shall be considered a belligerent or a belligerent country or nation within the meaning of this act if such Republic is engaged in war against any country not an American Republic."

It is believed that this provision would except from the operation of the Act each and all of the 21 Latin American countries. I am of opinion that this amendment contains language about as desirable as could well be selected, in the light of all phases of the situation. This amendment, as stated makes an exception of the Latin American nations from the operation of the act. Other proposed drafts would make a reservation as to the policy of our Government, such as the following draft of the original purposes of the Monroe Doctrine:

"Nothing in this Act shall be construed as an abandonment or abridgment of the policy of the Government of the United States to oppose the acquisition or control of additional territory in this hemisphere by any
non-American

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non-American power, or the encroachment of any non-American power upon the political independence of any American state."

I think the former provision as adopted by the House Committee this morning, which by the way was framed by Mr. Hackworth, if my information is correct, is much more preferable of the two drafts.

It would seem to me that the draft which was to-day made an amendment to the McReynolds bill, as above stated, would serve every purpose in connection with neutrality legislation and policies that a recital of the Monroe Doctrine itself would serve, while avoiding the misunderstanding which the latter might create ^{as controversy} in Latin America.

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PSF - ~~Neutrality~~
message file
1936

SAFEGUARDS TO NEUTRALITY

By Charles Warren

TO THOSE who regarded strict neutrality as an effective means of keeping the United States out of war I addressed an article in FOREIGN AFFAIRS for April 1934, entitled "Troubles of a Neutral." In it I tried to point out that maintenance of neutrality was no simple or easy matter; and that it must be supplemented by further legislation, and by the concession of alleged rights hitherto claimed by us, if we expected to avoid the frictions and controversies with belligerents which, judging from our experience in the World War, would inevitably occur in a future war. I pointed out twelve distinct subjects of legislation, which, based on my official experience from 1914 to 1917, I deemed necessary for the more effective preservation of our neutral status as a nation; and I stated that "it is better that our citizens should run the risk of commercial loss than that the country should be involved in a war to protect their alleged commercial rights. . . . Our Government may very properly say, in effect, to its citizens during the war: you engage in such trade at your own risk." Since 1934, the widespread and enhanced interest in the subject has resulted in the recent Joint Resolution of August 31, 1935, in which five of the subjects to which I called attention in my article have been more or less adequately dealt with.

On October 5, 1935, the President of the United States, acting under this Joint Resolution, after proclaiming the existence of a state of war between Ethiopia and Italy, established an embargo on arms, ammunition, and implements of war, and notified American citizens that they travelled on any vessel of a belligerent nation at their own risk. In addition, he issued a notable statement, announcing a new policy for the better safeguarding of our neutrality, in which he said: "In these specific circumstances, I desire it to be understood that any of our people who voluntarily engage in transactions of any character with either of the belligerents do so at their own risk." The President took this step, not under any statutory authorization or direction, but in pursuance of one of his Executive functions — namely, that of deciding whether, through the State Department, he will or will not present claims of American citizens against foreign nations. His policy is based on a firm principle, to wit, that the right of the nation to keep out

of war is greater than the right of a citizen to engage in trade which might implicate the nation in war. It recognizes that new conditions of warfare have made necessary a new attitude towards actions of our citizens. The end sought is to keep the nation rather than the individual out of trouble.

Criticism of this policy has taken several forms. First, exporters and others have claimed that it would destroy trade with a belligerent. But the President's statement does not ban or abolish trade in contraband or otherwise; it simply informs traders that if they wish to seek profits out of a war, they may do so, but that in doing so they need not expect their Government to support them and to involve itself in dangerous international controversy in defense of their trade profits. As Professor James Brown Scott has recently well phrased it: "The President has recognized that insistence upon the so-called neutral right to make profit from other peoples' wars, results in other peoples' wars becoming our wars." Moreover, it is nonsense to contend that traders will not take the risk. In any war in which great nations are parties, the profits will always be so large that Americans will indulge in risky speculation. In the World War, many instances were known of a single voyage to Scandinavian countries in which the entire costs of ship and cargo were repaid out of profits.

Another criticism is that the policy abandons the old American doctrine of "Freedom of the Seas." This is a result of the looseness with which historical phrases and political shibboleths are used in the press, on the platform, and in the halls of Congress. Of course, "Freedom of the Seas," never at any time in our history meant that Americans had the right to ship contraband, or that contraband so shipped to or for a belligerent nation should be safe from capture and confiscation. In recent years, the American doctrine has been at least twice officially phrased and declared — once by President McKinley in his Message of December 5, 1898, and once by Congress by the Joint Resolution of April 28, 1904. In each case, it was stated to be "the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerent powers." Secretary of State Root in his instructions to the United States delegates to the Hague Peace Conference, May 31, 1907, stated that "this resolution is an expression of the view taken by the United States during its entire history," and he instructed the delegates to advocate the following proposition: "The private property of all citizens or subjects

of the signatory powers, with the exception of contraband of war, shall be exempt from capture or seizure on the high seas, or elsewhere by the armed vessels or by the military forces of any of the said signatory powers. . . ." And Secretary Root continued by pointing out that it was important that agreement should be reached as to what constituted contraband; for if the existing tendency to enlarge contraband lists continued, such action together with the application of the doctrine of continuous voyage would result in depriving any rule regarding property on the high seas of its effect to a large extent.

It will thus be seen that the United States never claimed that contraband goods should be exempt from capture on the high seas. It has always recognized that its doctrine of "Freedom of the Seas" had no reference to contraband. It has always sought to restrict extension of contraband lists by belligerent powers, but its efforts during the World War were completely unsuccessful. Today, the lists of articles considered contraband by the nations engaged in that war remain just where they were at the end of that conflict. Hence, when practically everything is now contraband, "Freedom of the Seas" as an American principle has no application whatever; and the President's policy constitutes no abandonment of it.

A third criticism of the President's policy represents it as a surrender of the rights of American citizens. This raises the whole question whether a citizen has a right for the sake of trade to endanger his own country. Has a citizen, by supplying necessities to a belligerent, the right to prolong a war, the early termination of which is for the interests of his own country and of the world? Certainly he has no legal right to engage in trade in contraband; and he has no moral right to expect the nation to dispute the belligerent definition of contraband if such dispute would tend to engage the nation in a war. Secretary Root in 1907 prophetically pointed out that: "Resistance to this tendency towards the expansion of the list of contraband ought not to be left to the neutrals affected by it at the very moment when war exists, because that is the process by which neutrals become themselves involved in war." In other words, an American citizen has the right to risk his own life and property but not the right to risk the lives and property of his fellow-Americans by involving them in international conflict. Just as this country has at last come to recognize that American blood must not be shed simply to protect invest-

ments made and risks incurred by our citizens in foreign countries for the sake of enhanced profits, so it now announces that those citizens who seek to make profit out of a war or out of a belligerent engaged in war must do so on their own responsibility.

Fourth, it is charged that the President's policy makes no discrimination between transactions with an aggressor belligerent and transactions with an innocent party in the war, and that thus it may favor an aggressor and penalize its opponent. Curiously, this criticism has come in many instances from newspapers and politicians who have vigorously opposed the entrance of the United States into the League of Nations. Having refused to allow this country to become a member of the League, they now complain that the President's policy may interfere with the League's action against an aggressor. Under the recent neutrality law, the President is obliged to declare the embargo against both belligerents, and he clearly would not be warranted in any Executive action which, in presenting claims of our citizens, would discriminate between belligerents. If action is desired against an aggressor nation alone, it can be satisfactorily taken only after entrance by the United States into the League and after the United States shall thus have had an opportunity of participating in the decision fixing the status of an aggressor and determining on the actions to be collectively taken by members of the League against an aggressor. A policy which the United States might adopt as a member of a collective body of nations, and in the formulation of which it had had a part from the outset, is not necessarily the policy which it would be advisable for it to adopt when acting independently of other nations and subject to animosity or attack from a belligerent directed at it in lonesome isolation. On the other hand, the President's policy will not interfere with the enforcement of sanctions by the League of Nations against an aggressor; for the risk which an American must assume includes all possibilities of seizure of his goods growing out of engaging in transactions of any character with a belligerent. It would, therefore, seem clearly to include the risk of seizure and confiscation not only by the opposing belligerent but also by any nation enforcing a sanction imposed by the League. Americans trading with a belligerent at their own risk can hardly expect the President to present claims for seizure by a party engaged in a war or by a party engaged under a treaty in trying to stop the war.

Unquestionably, some perplexing problems may be presented in the enforcement of the President's policy in the case of indirect American trade with a belligerent, *i.e.*, in the case of shipment of goods to a neutral country for transshipment to the belligerent. The phrase "transactions of any character" doubtless includes indirect as well as direct trade. Difficulties, however, will occur in determining whether particular shipments to a neutral country are or are not designed for transportation and delivery to the belligerent; and as Professor Jessup has recently said: "It should be realized that this throws upon the neutral government of the United States the difficult task of discovering the cases of continuous voyage and ultimate destination." Complications with League nations enforcing sanctions are particularly likely to arise in this respect. But it should be especially noted that it will not be the task of the United States alone to find a practical solution of the problem presented by this indirect trade. For when an embargo is declared as a sanction by League members, they also will meet with difficulty in enforcing it against goods shipped to a non-member country for transshipment to the belligerent; since proof as to intention to reship will not be easy to obtain or to establish. The same difficulty of proof will confront the United States in enforcing its own embargo on arms and munitions, if shipment of such articles shall be made, not to the belligerent country directly, but *via* a neutral country. In fact, each country, whether League member or the United States, in the application of its embargo will be obliged to make, on the facts available to it, the same decisions as to ultimate destination of shipments, which Great Britain and France were continually making throughout the World War as to neutral shipments; and the decisions so made will again be sources of irritation to, and controversy with, shippers affected. And it is highly probable that some method must be devised which will restrict trade to neutral countries to the pre-war quota of imports, in order to avoid disputes as to ultimate destination.

Another criticism directed at the embargo section of the neutrality law is that in case of a war between a major and a minor power, or between two powers only one of which is geographically situated so as to be able to receive imports readily, an embargo works in favor of the one power and against the other. But it would work similarly unequally in case no embargo at all was declared. In fact, as is well known, the situation of Germany and

Austria in the World War was such that the unrestricted shipment of arms by American citizens actually worked only in favor of the Allies. Had an embargo been declared in 1914, while the Central Powers would not have benefitted by the reception of arms, nevertheless, the opposing belligerents would also not have benefitted. Therefore, an embargo on arms under the present neutrality law at least avoids the extension of actual aid to either the stronger or the weaker belligerent. To that extent certainly the stronger belligerent suffers greater loss than it would, were there no embargo at all.

In spite of all these criticisms and unsolved questions, the President's policy sets the nation on a new path. It does not pretend to solve the whole question of contraband and belligerent trade. But it will at least aid this country in avoiding some dangerous complications into which insistence on the old alleged neutral rights of trade drove us in the World War. It does not guarantee or insure us against involvement in war; but it is one decided step in the contrary direction.

There still remains, however, the necessity for further neutrality legislation by Congress on the subjects of restriction of loans and credits; control of a belligerent's action in this country in calling out and collecting its reservists; control of radio on foreign ships in our ports; and loss of citizenship for Americans enlisting in a foreign army. There are also other amendments to the present neutrality law which appear to be of major importance and which I desire to discuss in detail.

President Roosevelt's policy of trade at the risk of the trader, is, of course, merely an Executive policy, personal to the present incumbent; it has not the effect of a statute, enforceable until repealed. Legislation will be required, therefore, to put it into permanent effect. The policy, as stated above, would seem fairly to secure the United States against complications with belligerents arising out of trade by Americans. But to supplement this policy, an extension of the scope of the embargo contained in the recent neutrality law is desirable, both for the sake of providing a diplomatic instrument in the hands of the Executive, and for the sake of attempting to shorten a war by absolutely cutting off trade in articles fully as vital to the waging of war as are the "arms, ammunition or implements of war" included in the present very limited embargo. The term "arms and ammunition" has a well-settled technical meaning; and neither it nor "imple-

ments of war" comprises raw materials. The pedigree of the term, "implements of war," is found in several treaties signed by the United States—the Jay Treaty of 1794 with Great Britain, the Treaty of 1871 with Italy, and the Geneva Arms Traffic Convention of June 17, 1925 (ratified in 1934). In each of these treaties it is certain that the term was not to include raw materials.¹ Moreover, in the Senate debates on August 21 and 24, 1935, Senator Pittman, Chairman of the Foreign Relations Committee, in charge of the bill, stated specifically that the measure did not apply to supplies or to foodstuffs and that this was the opinion of the Committee, and that the Senate in ratifying the Arms Traffic Convention had before it the definition of the term. Accordingly, it is desirable that the word "munitions" should be substituted, or at least added. This term (as used in the Joint Resolution of March 14, 1912, relative to Mexico) has been construed in opinions by Attorney General Wickersham in 1912 (adopted also by Attorneys General McReynolds and Gregory in 1913 and 1915); and as so interpreted it was held to include "parts used for the repair and manufacture of such arms and raw material employed in the manufacture of such ammunition." The President should also be authorized to add to the embargo list certain specific articles peculiarly necessary for war, such as have been designated recently by the League of Nations as "key materials"—rubber, tin, nickel, chromium, tungsten, vanadium, aluminum, scrap iron.² In addition, the President ought to be given a discretionary power to embargo other key war materials like oil, steel, copper, potash, nitrates and chemicals. (It would probably be unwise to attempt

¹ The Jay Treaty of 1794, in defining "contraband," stated that "under the said denomination shall be comprised all arms and implements serving for the purposes of war by land or sea, such as cannon, muskets . . . and generally all other implements of war," and then followed the phrase, "as also timber for shipbuilding, tar or rosin, copper in sheets, sails, hemp, and cordage. . . ."—thus showing that the latter raw materials were classed as additional to "implements of war." In the Arms Traffic Convention of June 17, 1925, the term "arms, ammunition, and implements of war" was specifically defined as comprising a limited and definite number of articles, but not including in the definition raw materials. In the Treaty with Italy of February 26, 1871, the phrase is used in defining contraband as follows: "(2) Infantry Belts, implements of war and defensive weapons, clothes cut or made up in military form and for a military use."

² Most of the "key materials," specified above (except scrap iron) are not produced in the United States or are produced in quantities insufficient for our own consumption; they are articles which we import rather than export; and since the United States imports them from countries which are members of the League, there would be, at the present time, little likelihood of imports for the purpose of transshipment to the belligerents. Consequently, in the present war, a failure by the United States to embargo them would not interfere with enforcement by the League of its own embargoes. But in future wars there might easily be instances when efforts would be made to import from non-sanctioning nations, members of the League, for transshipment to belligerents, and hence the power to embargo even this type of "key material" should be granted to the President.

to embargo foodstuffs and cotton, owing to domestic conditions here.) The President should also be granted power to cut down shipments to belligerents, and to neutral countries suspected of transshipping to belligerents, to the average amounts of pre-war export to those countries. This might be difficult of administration, but the United States practically adopted such a policy after it became a party to the World War.

Not all of these powers would necessarily be exercised by a President; but he should have an authority broad and elastic enough to deal as they arise with situations which cannot be clearly anticipated in detail by any Congress. For instance, under some conditions the President should not be forced to put certain articles on the embargo list unless similar action were taken by other exporting nations; under other conditions, an embargo may be highly desirable, regardless of the action of other nations; and in still other cases, the imposition of any embargo might conflict with existing treaty obligations of the United States. Moreover, choice as to articles to be embargoed might be largely affected by the difficulty of enforcement and by the location of the particular nations engaged in the war. The extent to which an embargo would destroy American trade would also enter into consideration, although loss of trade to some extent, even to a considerable extent, is inevitable if we desire to keep out of trouble. It is the price we must pay for our neutrality — a price immeasurably less than the cost of a war.

While the actual exercise of Presidential authority to impose an embargo has a tendency to keep us out of dangerous international controversy only to the extent that it keeps the embargoed shipments from possible seizure by a belligerent, nevertheless an embargo policy is desirable for two other important effects which it may have. In the first place, the mere possession of the authority to embargo would be, in itself, a valuable aid in keeping out of war. For it would always constitute a forcible diplomatic weapon for the purpose of obtaining from belligerents fairer treatment for neutral lives and property, in the direction of reduction of contraband lists, agreements for requisition instead of confiscation of contraband, or similar modification of harsh war measures. To obtain such agreements would be the most satisfactory way to deal with the problems of trade and contraband and would result in the least destruction of our commerce. It ought to be possible at the outset of a war to negotiate agreements, which should at

least provide that the United States would relinquish any intention of challenging the right claimed by a belligerent to restrict the flow of neutral commerce through neutral ports, and that in return the belligerent would relinquish the right claimed to confiscate cargoes and would instead requisition them and make compensation to shippers for the goods and to shipowners for costs of detention.

In the second place, there is an important phase of an embargo policy which should be especially kept in mind in any discussion as to the articles which an embargo list should embrace. It is this. The possibility of preserving the United States from being involved in a war depends not alone on the maintenance of neutrality and on concessions of alleged rights of trade, but also on the length of the war. It is to our vital interest as a nation that a war should be cut short as early as possible. Prolongation of a war enhances the chance of controversies between belligerents and neutrals. It was this benefit of a restrictive policy that particularly appealed to some of our political leaders at the outset of the World War. Thus, Secretary of State Bryan wrote to President Wilson, as early as August 10, 1914, that "our refusal to loan to any belligerent would naturally tend to hasten a conclusion of the war;" and Senator Stone, Chairman of the Foreign Relations Committee, wrote to Secretary Bryan, January 8, 1915, that sales of munitions should be condemned because "such sales prolong the war." It is highly probable that, had the United States pursued this policy in 1914 and 1915, the World War would have terminated earlier. Therefore, when we now discuss the addition of "key war materials" or other articles to the embargo list, we should do it from this standpoint, and not (as many advocates of the League of Nations seem to think) from a mere desire to aid the League in enforcing sanctions, desirable as that aid might be in some circumstances. Strong reasons for prohibiting our citizens from trading in "key war materials" are, first, the added protection it may give us against being drawn into the war; and second, the effective manner in which it will promote the shortening of the war and the lessening of abnormal and disastrous social and economic conditions which a prolonged war produces for belligerents and neutrals alike.

Unquestionably, the present form of the embargo section of the neutrality law should be changed so as to give to the President full discretion as to whether, and when, and on what articles, he

will declare an embargo. To this extent, it should be permissive; but it should be mandatory, if and when proclaimed, as against both belligerents at the time of its proclamation. Further, the President should have power to proclaim an embargo not only "upon the outbreak or during the progress of war," but also upon the occurrence of acts of war or of force or hostile invasion; for, as in the case of Manchuria, there may be acts which are not technically acknowledged to constitute a war in its legal sense. And the President ought to be authorized to proclaim an embargo in case of a threat to use force or of hostile action likely to lead to war; he should not be required to wait until the actual outbreak of war, but should have the power to utilize the preventive effects of an embargo.

In considering an embargo policy to be embodied in permanent legislation, Congress must not center all its attention on the rather unusual conditions of the present war. The legislation must be sufficiently flexible and inclusive to meet other conditions. While objection may possibly be raised that an Executive might, in adding to or excepting from the embargo list, so act as to discriminate between the belligerents, to the disadvantage of the United States, this is not an objection which should be given great weight; for no Executive, responsive to the demand of this country to keep out of war, is likely to utilize an embargo for the contrary purpose. As a substitute for embargoes, some persons have advocated a "cash and carry" policy, under which belligerents would take title to goods here and transport them in their own ships. Such a policy would probably be insupportable, since it would be destructive not only of our trade but also of our merchant marine (unless our Government should be prepared to pay our shipowners a subsidy for the loss of their carry trade); and under present international financial conditions it would probably be impracticable of operation; moreover, this policy does not profess to deal in any way with sales by us to neutrals, and such sales are the very ones most likely to involve us in difficulties.

One other major problem which confronted the United States from 1914 to 1917 should now be settled by legislation — that of the armed merchantman.

The coexistence of three doctrines of international law entirely incompatible with each other under modern conditions of warfare produced serious complications for all neutrals. The first of these doctrines involved the right of a merchant ship, belligerent or

neutral, not to be attacked without warning — a well-settled rule of law, but established under old conditions of sea-fighting and before the advent of torpedoes and submarines. The second doctrine involved the duty of a neutral nation to use due diligence to prevent the equipping and departure from its ports of any belligerent vessel which it had reasonable ground to believe was intended to cruise or carry on war against a power with which the neutral was at peace. This rule of law, long agreed to, was definitely formulated in the Treaty of Washington of 1871; but it also was established with no prophetic conception of submarine or airplane warfare or of the type of vessel or equipment which might be used against such new instruments of war.

The third doctrine involved the right of a merchantman of a belligerent to carry armament for defensive purposes, without taking on the character of a war vessel. This was a rule finally definitely established in the early part of the nineteenth century, but which in recent years had been considered obsolete. The arming of merchant vessels at the time of the War of the Revolution and the War of 1812 was chiefly resorted to as a defense against privateers, wooden war frigates or cruisers of substantially the same type of craft as the merchant marine, and sometimes against pirates and slave traders. The advent of conditions in maritime warfare under which merchant vessels would have no successful chance to defend themselves against heavily-armed and armored cruisers, and the abolition of privateering by the Declaration of Paris of 1856, caused the practice to be lost sight of. But after the Russo-Japanese War of 1904, when nations began to grant subventions to shipbuilders on condition that merchant vessels be constructed so as to be capable of conversion into auxiliary cruisers in case of war, and in view of the adoption by some nations (Germany and others) of the theory of the legal right to convert merchantmen into war vessels on the high seas or in neutral ports, a renewed arming of merchantmen began; and with it came a consequent revival of the old international law applicable to them. The initial movement was made by Winston Churchill as First Lord of the Admiralty in a speech in the House of Commons, March 26, 1913. He announced that because of Germany's support of the right to convert, Great Britain would take measures to arm her merchantmen. On June 11, 1913, he announced that they were not to be equipped for attack but were to be serviceable only "to defend themselves against the attack of other vessels of their

own standing." On March 17, 1914, he stated that by the end of 1914-15, seventy ships would have been armed with 4.7 inch guns "solely for defensive purposes . . . not allowed to fight with any ships of war. . . . They are, however, thoroughly capable of self-defense against an enemy's armed merchantmen." It is a singular thing that apparently this new policy of the British Navy was not adopted to meet the submarine problem at all. Nothing is more curious than the ignoring of that problem in the years before the World War — and this in spite of the fact that as early as 1906 Germany took up construction of submarines, and that in 1908 the application of the Diesel engine to submarines made this type of ship a potentiality in any navy.

It was the relation of the submarine, however, to the question of the armed merchantmen, and to the other two doctrines of international law, above mentioned, which plunged the United States into serious complication and controversy at the very opening of the war. For the United States as a neutral was obliged to decide whether an English, French, or Italian merchantman, which happened to be in its ports and to leave carrying an armament, was armed for offensive or defensive purposes; and this decision had to be made in the face of the fact that Germany claimed that *any* merchant ship of her enemies carrying armament of *any* kind was, so far as a submarine was concerned, armed for offense.

The gradual implication of this country occurred as follows. On August 4 and 9, 1914, the British Embassy in Washington notified the State Department that, since Germany upheld the policy of converting merchant vessels into armed ships on the high seas, Great Britain would hold the United States responsible for any damages caused by German merchantmen "having been equipped at, or *departing from* United States ports." At the same time, it claimed the right of British armed merchant ships to enter United States ports and to sail therefrom armed with guns purely for defensive purposes, since Great Britain did not follow the German doctrine and practise of conversion. Secretary Bryan replied, August 19, denying that the German practise was contrary to international law, and refusing to accept the British contention that the United States was "bound to assume the attitude of an insurer" against damages caused by a German merchant ship leaving our ports. On August 25, 1914, Sir Cecil Spring-Rice, the British Ambassador, wrote that British mer-

chant ships were armed solely for the purpose of defense, and he gave assurance that they "will never fire unless first fired upon, and that they will never under any circumstances attack any vessel." A few days later, two British ships, the *Adriatic* armed with four guns, and the *Merrion* armed with six guns, entered our ports. As a precaution, our Government demanded that they land the guns before sailing out. The British Embassy, while maintaining that we had no right to make this order, authorized the landing of the guns of the *Merrion*, the other ship having already sailed.

On September 19, 1914, the State Department issued a circular setting forth our attitude as to the status of armed merchant vessels and the physical basis for determination of offensive or defensive armament. This circular elicited from the German Government, on October 15, 1914, a protest against our allowing the admission or departure of any armed merchant ships whatever and stating that "the distinction between the defensive and offensive is irrelevant. The destination of a ship for use of any kind in war is conclusive, and restrictions as to the extent of armament affords no guarantee that ships armed for defensive purposes only will not be used for offensive purposes under certain circumstances." On November 7 the State Department replied, denying the accuracy of the German view of the law, but stating that it had expressed to Great Britain a "disapprobation of a practice which compelled it to pass upon a vessel's intended use" and that as a consequence no British armed merchant ship had visited us since September 10.

In spite of our "disapprobation" of the practice, the Cunard liners *Orduna* and *Transylvania* entered our ports in March 1915, each with two 4.7 inch guns mounted aft. They were allowed to depart "on condition that the armament be used for defensive purposes only." In May, the British steamship *Asian*, arriving at New Orleans with four unmounted guns, caused further correspondence with Spring-Rice, and request was made that the guns be removed. In September, 1915, the *Waimana* arrived at Norfolk, having mounted a 4.7 inch gun. Refusal of the British Government to order this gun to be taken off resulted in a note from Secretary Lansing to Spring-Rice, that the *Waimana* would not be cleared "until your Government has given formal assurance that her armament will be used only for defensive purposes, or unless the armament is landed." The Department had

learned, wrote Lansing, that "British merchant vessels which carry arms have used them for offensive purposes in attacks upon submarines," and that it seemed clear "that British merchantmen have not always used their armament for defensive purposes only, and that they may, upon occasions, use any guns which they have mounted in unprovoked attack." This note presented the situation in which the new use of submarines in the war had involved the old international law as to defensively armed merchantmen. As early as February 1915, Germany had claimed that its submarines could not comply with international law doctrines as to attack without warning because of the conduct of British ships in ramming or attacking a submarine on sight; it contended that submarines were obliged to attack in this manner and submerged, because of the danger of being fired upon and attacked if they emerged on the surface. Great Britain, on the other hand, had complained that her merchant ships must be armed because of the conduct of German submarines in attacking without notice. Which policy was cause and which was effect presented a question incapable of solution. It was the old problem of the priority of the chicken or the egg. The one thing which was certain was that the two doctrines of international law as to the right of merchant ships to be armed and the right of such ships to be immune from unwarned attack could not exist coincidentally. The inevitable clash between these two doctrines of law was seen most clearly by neutral nations, to whom they presented grave danger of involvement in the war.

It was on this account that Secretary Lansing, fully conscious that international law could not be changed during a war by either belligerent or by the United States as a neutral, suggested to the Allied powers his famous *modus vivendi* in a note dated January 18, 1916. What he proposed was that as a temporary compromise the one side should relinquish its right to arm its merchant vessels, and the other in return should relinquish its right to attack without warning. He set forth the situation, with succinct clarity, as follows:

This right seems to have been predicated on the superior defensive strength of ships of war, and the limitation of armament to have been dependent on the fact that it could not be used effectively in offense against enemy naval vessels, while it could defend the merchantman against the generally inferior armament of piratical ships and privateers. The use of the submarine, however, has changed these relations. Comparison of the defensive strength of a cruiser and

a submarine shows that the latter, relying for protection on its power to submerge, is almost defenseless in point of construction. Even a merchant ship carrying a small caliber gun would be able to use it effectively for offense against a submarine. . . . Consequently, the placing of guns on merchantmen at the present day of submarine warfare can be explained only on the ground of a purpose to render merchantmen superior in force to submarines and to prevent warning and visit and search by them. Any armament, therefore, on a merchant vessel would seem to have the character of an offensive armament. . . . If a submarine is required to stop and search a merchant vessel on the high seas and, in case it is found that she is of enemy character and that conditions necessitate her destruction, to remove to a place of safety all persons on board, it would not seem just or reasonable that the submarine should be compelled, while complying with these requirements, to expose itself to almost certain destruction by the guns on board the merchant vessel.

The result of this effort by a neutral statesman was that which always befalls the innocent bystander. The Allied Powers declined, in decidedly tart language, to accede to the humane suggestion by the Secretary. And accordingly on February 16, 1916, Lansing withdrew his suggestion and stated that the United States would "cease its efforts to have the *modus vivendi* accepted and will rely upon the present established rule of international law that merchant ships are entitled to armament for defensive purposes only; and that nevertheless the Government feels free to change its regulations in regard to the evidence as to armament on merchant vessels arriving in American ports which would indicate that it was defensive only." Accordingly on March 25, 1916, the State Department issued a new Memorandum as to the presumptions relative to the status of merchantmen — a document which, by the way, has been strongly criticised by Professor Charles Cheney Hyde in his book on International Law. Meanwhile, on July 10, 1915, December 30, 1915 and February 11, 1916, our Government had received from the German Government, memoranda presenting clear evidence, from official confidential instructions issued in 1915 by the British Admiralty and found in captured British ships, to the effect that armed merchantmen were not to await attack or definite hostile act such as firing of gun or torpedo from submarines but were to open fire if it appeared that the submarine was in pursuit. Another secret order instructed masters that "if a submarine comes up suddenly close ahead of you with obvious hostile intention, steer straight for her at your utmost speed, altering course as necessary to keep her ahead;" and evidence was presented in other notes by Germany

of attempts by British merchantmen (sometimes under a neutral flag) to ram submarines, thus supporting the German contention that it was impossible for submarines to comply with the old law of the sea as to attack without warning, by reason of the danger of being fired upon or rammed.¹

While the evidence appeared to support the German claims as to the facts in the case of British ships, they did not support the German legal contentions as to neutral ships; for if war conditions had so changed as to make it impossible to use submarines in compliance with international law, then their use must be discontinued or changed so as to conform to the law, in case neutrals were affected. The United States could not admit the right of Germany alone to change international law during the progress of the war.

The whole situation, however, clearly proved that the old doctrine of armed merchantmen was unsuited to modern conditions. It put a grievous burden on neutrals in making a decision as to whether a vessel's armament in its ports was offensive or defensive — a decision which, if later appearing to be incorrect, might subject the neutral to heavy damages. And — what was more important — the existence of the doctrine and its acceptance by neutrals directly encouraged the German system of submarine attack without warning.

It is to be noted that the Netherlands throughout the war maintained the right to exclude from its ports armed merchant vessels. This is the policy which clearly the United States should now adopt. The neutrality law should be amended by providing that the President shall have authority to refuse entrance, or to order clearance, of all merchant vessels of a belligerent containing armament or preparations for armament, or else to treat them as vessels of war.

With the above amendments, the neutrality law ought to constitute a vastly improved defense to the maintenance of our position as a neutral nation. Nevertheless, the fact must be continually reiterated to those who rely on such legislation, even of the most perfect and rigid type, that it is no absolute guarantee against our being dragged into war; for conditions may arise not covered by the present or suggested statutes or by the President's

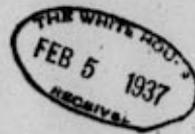
¹ Professor Thomas A. Bailey, in a masterly article on "The Sinking of the *Lusitania*" in the *American Historical Review* (October 1915) *XXI*, 54-73, states: "The question of ramming, as well as that of armament, has an important bearing on the *Lusitania* case."

declaration of October 5. Take the case of an American citizen travelling or serving as a member of the crew on an American or neutral ship not engaged in any transaction whatever with a belligerent, who loses his life as the result of a belligerent attack by submarine or airplane — it would be difficult, and certainly almost impossible if repetitions of such an incident occurred, to prevent this country from regarding such attacks and loss of life as a *casus belli*. Indeed, a question may well arise whether an American serving as a member of the crew of a vessel trading with a belligerent is, himself, voluntarily "engaging in a transaction of any kind" with a belligerent.

And so we are brought once more to the inevitable conclusion that the only sure way to keep out of war is to help in preventing the occurrence of a war. Moreover, the problem before the United States is not quite so simple as it appeared to some two years ago. The question is now, not merely whether we shall join or whether we shall continue to keep out of the League of Nations. It is not merely whether we shall refuse to aid the League in its attempt to avert a war. Now we are confronted with the question whether we will actually oppose and injure the League's efforts, by refusing to the President power to help shorten a war. That is a very grave question, which, in the consideration of amendments to the neutrality law, each of us ought to ponder with deep concern. There are very many Americans who, while possibly not yet prepared to advocate our entry into the League, are nevertheless not desirous to see the United States actually obstruct any efforts of the League to maintain peace. Though we may not yet be ready to join in collective action to prevent a war, should we not now be ready at least to frame legislation so as to enable the President, without implicating this country, to aid in preventing the continuance or the spread of a war?

Is it not possible that Americans who opposed the League as an ineffective body to promote peace, may, without inconsistency, be willing to assist the League in an actual, effective move to curb a war, if such assistance can be rendered by the adoption of an American policy which, while not discriminating between belligerents, will tend to reduce the supply of sinews of war to both, and hence to shorten a war? World conditions have greatly changed since 1920, indeed since 1934. Events are often stronger than words. Events may convince where arguments have failed to persuade.

59 EAST SEVENTY-NINTH STREET
NEW YORK



*PSF:
Neutrality file
1937*

February 4, 1937.

Dear Mr. President:

I am enclosing a memorandum which expresses my views as to the inadvisability of any rigid neutrality legislation which would hamper you in the discharge of your constitutional responsibilities in the conduct of foreign relations.

While it is apparently impossible now to get through a neutrality law that does not make mandatory an embargo on the export of arms to all belligerents, I am convinced from my talk with Key Pittman that if you insist that an exception be made in respect of the Latin American Republics, he can and will do it. This seems to me too important to run the risk of waiting and trying to deal with it by a separate bill. I also talked with Sam MacReynolds who agreed that an exception should be made of the Latin American countries and said he could get it through the House.

I have been thinking further about the interesting questions we recently discussed. While I do not see the need for any hasty decisions, I will be glad to go to Washington again whenever you have the time and inclination to discuss and consider further the matters that were raised.

Faithfully yours,

The Honorable
Franklin D. Roosevelt,
Washington, D. C.

February 4, 1937

MEMORANDUM RE NEUTRALITY and FOREIGN RELATIONS.

I

The world today is passing through a crisis marked by violation of treaties and non-observance of international law on the part of numerous powers. During this crisis and period of evolution and adjustment the President is going to be faced with a series of delicate and intricate problems differing so widely that they are not susceptible of treatment by any rigid rule imposed by law. If he is to conduct our foreign relations wisely, and in the best interests of the United States and world peace, it is essential that he retain wide discretionary powers to deal with situations in which he alone is competent to judge the requirements. Congress should not encroach upon the constitutional powers of the President to determine the foreign policy of the country. Congress can and should play a vital and essential role in the neutrality problem as it alone can enact legislation to enforce observance of such rules and regulations as the President may find it necessary and advisable to establish from time to time, as a means of keeping out of war or of limiting the scope and duration of war, and its effect upon our economic life.

II

During the 150 years of American history Congress has continually realized that discretionary authority in the President "was cognate to the conduct by him of the foreign relations of the Government". The uniformly long continued and legislative practice of the United States has been to recognize that the constitutional power, which is vested solely in the President to conduct the foreign relations of this country, necessarily gives him the right and the duty to determine the foreign policy and to use his discretion in the conduct of foreign relations. No President can surrender that power and Congress can not properly divest him of such power. (See Supreme Court decision in the Chaco case.)

III

The United States through all of its history has stood for the observance of international law and treaties. If the world is ever to be at peace and secure, international law must again be supreme. The President can not by statute of Congress agree that unilaterally the whole three hundred year structure of international law may be destroyed.

WHD

PSF Neutrality

[COMMITTEE PRINT]

FEBRUARY 5, 1937

*Neutrality
message file*

SHOWING AMENDMENTS PROPOSED TO BE MADE BY S. J. RES. 51 AND S. J. RES. 60 TO THE NEUTRALITY ACT OF AUGUST 31, 1935, AS AMENDED BY THE JOINT RESOLUTION OF FEBRUARY 29, 1936, AND THE TEXT OF S. J. RES. 47 AND S. 1249.

Existing law is shown in roman type.

Existing law proposed to be eliminated by S. J. Res. 51 and S. J. Res. 60 is shown in ~~stricken-through~~ type.

Matter proposed to be added by S. J. Res. 51 and S. J. Res. 60, and the text of S. J. Res. 47 and S. 1249, are shown in boldface type.

75TH CONGRESS
1st Session

S. J. RES.

IN THE SENATE OF THE UNITED STATES

JANUARY —, 1937

Mr. _____ introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

JOINT RESOLUTION

Providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*

1 Whenever the President shall find that there exists a state
2 of war between, or among, two or more foreign states, the
3 President shall proclaim such fact, and it shall thereafter
4 be unlawful to export arms, ammunition, or implements of
5 war from any place in the United States, or possessions of
6 the United States, to any port of such belligerent states, or
7 to any neutral port for transshipment to, or for the use of, a
8 belligerent country.

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(Pittman)

9 Whenever the President shall find that a state of civil
10 war exists in a foreign state and that such armed conflict
11 is of a magnitude or is being conducted under conditions
12 that the export of arms, ammunition, and implements of
13 war from the United States to said foreign state would
14 threaten and endanger the peace of the United States,
15 the President shall proclaim such fact, and it shall there-
16 after be unlawful to export arms, ammunition, or imple-
17 ments of war from any place in the United States, or
18 possessions of the United States, to any port of such state
19 or to any neutral port for transshipment to, or for use
20 in, said state.

21 The President, by proclamation, shall definitely enumer-
22 ate the arms, ammunition, or implements of war, the export
23 of which is prohibited by this Act.

24 The President shall, from time to time, by proclamation,
25 extend such embargo upon the export of arms, ammunition,

1 or implements of war to other states as and when they may
2 become involved in such war.

3 Whoever, in violation of any of the provisions of this
4 section, shall export, or attempt to export, or cause to be
5 exported, arms, ammunition, or implements of war from
6 the United States, or any of its possessions, shall be fined
7 not more than \$10,000 or imprisoned not more than five
8 years, or both, and the property, vessel, or vehicle con-
9 taining the same shall be subject to the provisions of
10 sections 1 to 8, inclusive, title 6, chapter 30, of the Act
11 approved June 15, 1917 (40 Stat. 223-225; U. S. C.,
12 title 22, secs. 238-245).

13 In the case of the forfeiture of any arms, ammunition, or
14 implements of war by reason of a violation of this Act, no
15 public or private sale shall be required; but such arms,
16 ammunition, or implements of war shall be delivered to the
17 Secretary of War for such use or disposal thereof as shall
18 be approved by the President of the United States.

19 When in the judgment of the President the conditions
20 which have caused him to issue his proclamation have ceased
21 to exist he shall revoke the same and the provisions hereof
22 shall thereupon cease to apply.

23 Except with respect to offenses committed, or forfeitures
24 incurred prior to ~~May 1, 1937~~, this section and all prela-
25 mations issued thereunder shall not be effective after May

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(Pittman)

1 1, 1937 the revocation of the proclamation or proclama-
2 tions issued thereunder, said proclamations shall become
3 ineffective after revocation.

S. J. Res. 60
(Clark et al.)

4 Except with respect to offenses committed, or forfeitures
5 incurred prior to May 1, 1937, this section and all proclama-
6 tions issued thereunder shall not be effective after May 1,
7 1937.

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8 Sec. 1-A. (a) Whenever the President shall have is-
9 sued a proclamation or proclamations as provided in sec-
10 tion 1 of this Act and he shall thereafter find that the
11 placing of restrictions on the shipment of certain articles
12 or materials in addition to arms, ammunition, and imple-
13 ments of war from the United States to said belligerent
14 described in the proclamation issued under said section 1,
15 or to a country wherein civil war has been proclaimed to
16 exist, is deemed necessary to promote the security and
17 preserve the peace or neutrality of the United States or to
18 protect the lives and commerce of nationals of the United
19 States, he shall so proclaim and it shall thereafter be
20 unlawful for any American vessel or airship to carry such
21 articles or materials to any belligerent country, or any
22 country wherein civil war exists, named in said proclama-
23 tion or proclamations issued under section 1 of this Act,
24 or to any neutral country for transshipment to, or for
25 the use of, such belligerent countries or within such

1 country where civil war exists. It shall also be unlawful
2 for any vessel or airship to transport any articles or
3 materials until all title and interest therein and possession
4 thereof shall have been transferred to some foreign gov-
5 ernment, agency, institution, association, partnership, cor-
6 poration, or national.

7 (b) The President shall by proclamation from time
8 to time definitely enumerate said articles and materials
9 which it shall be unlawful for American vessels to
10 transport.

11 (c) The President shall from time to time by procla-
12 mation extend such restrictions as are imposed under S. J. Res. 51
(Pittman)
13 this section to other countries as and when they may be
14 declared to become belligerents under proclamations
15 issued under section 1 of this Act.

16 (d) The President may from time to time change,
17 modify, or revoke in whole or in part any proclamations
18 issued by him under this section.

19 SEC. 1a. Whenever the President shall have issued his
20 proclamation as provided for in section 1 of this Act, it
21 shall thereafter during the period of the war be unlawful
22 for any person within the United States to purchase, sell,
23 or exchange bonds, securities, or other obligations of the
24 government of any belligerent country, or of any political
25 subdivision thereof, or of any person acting for or on behalf

1 of such government, issued after the date of such proclama-
2 tion, or to make any loan or extend any credit to any such
3 government or person: *Provided*, That if the President
4 shall find that such action will serve to protect the commercial
5 or other interests of the United States or its nationals, he
6 may, in his discretion, and to such extent and under such
7 regulation as he may prescribe, except from the operation
8 of this section ordinary commercial credits and short-time
9 obligations in aid of legal transactions and of a character cus-
10 tomarily used in normal peacetime commercial transactions.

11 The provisions of this section shall not apply to a
12 renewal or adjustment of such indebtedness as may exist on
13 the date of the President's proclamation.

14 Whoever shall violate the provisions of this section or
15 of any regulations issued hereunder shall, upon conviction
16 thereof, be fined not more than \$50,000 or imprisoned for
17 not more than five years, or both. Should the violation
18 be by a corporation, organization, or association, each
19 officer or agent thereof participating in the violation may
20 be liable to the penalty herein prescribed.

21 When the President shall have revoked his proclama-
22 tion as provided for in section 1 of this Act, the provisions
23 of this section and of any regulations issued by the President
24 hereunder shall thereupon cease to apply.

1 such fact, and thereafter the proclamation issued under
2 this section with respect to such foreign country shall
3 cease to be in effect and the prohibitions of such subsection
4 shall cease to apply.

5 Whoever, in violation of any of the provisions of this
6 section, shall export, or attempt to export, or cause to be
7 exported, either directly or indirectly, any such arms,
8 ammunition, or implements of war from the United States
9 shall be fined not more than \$10,000 or imprisoned not
10 more than five years, or both.

11 Sec. 1d. Whenever the President shall have issued his
12 proclamation as provided in section 1 of this joint resolu-
13 tion, thereafter it shall be unlawful for any American
14 citizen, partnership, company, association, business trust,
15 or corporation to retain or assert any right, title, or
16 interest in any article or commodity exported by sea from
17 the United States to any port or place which can be
18 reached only by traversing those waters adjacent to a
19 belligerent state which are within the zone of belligerent
20 operations as determined by the President, and no such
21 right, title, or interest shall be recognized by the Govern-
22 ment of the United States or by any court or officer of
23 the United States, or of any State, Territory, or possession
24 thereof, or of the District of Columbia, and any contract
25 for the insurance of risks on any article or commodity

1 so exported, or on any American interest therein, or
2 any American vessel carrying such article or commodity,
3 shall be null and void and unenforceable in any court
4 of the United States, or of any State, Territory, or posses-
5 sion thereof, or of the District of Columbia.

6 SEC. 2. That for the purposes of this Act—

7 (a) The term "Board" means the National Munitions
8 Control Board which is hereby established to carry out the
9 provisions of this Act. The Board shall consist of the Sec-
10 retary of State, who shall be chairman and executive officer
11 of the Board; the Secretary of the Treasury; the Secretary
12 of War; the Secretary of the Navy; and the Secretary of
13 Commerce. Except as otherwise provided in this Act, or
14 by other law, the administration of this Act is vested in the
15 Department of State;

16 (b) The term "United States", when used in a geo-
17 graphical sense, includes the several States and Territories,
18 the insular possessions of the United States (including the
19 Philippine Islands), the Canal Zone, and the District of
20 Columbia;

21 (c) The term "person" includes a partnership, com-
22 pany, association, or corporation, as well as a natural person.

23 Within ninety days after the effective date of this Act,
24 or upon first engaging in business, every person who engages
25 in the business of manufacturing, exporting, or importing

1 any of the arms, ammunition, and implements of war referred
2 to in this Act, whether as an exporter, importer, manu-
3 facturer, or dealer, shall register with the Secretary of State
4 his name, or business name, principal place of business, and
5 places of business in the United States, and a list of the
6 arms, ammunition, and implements of war which he manu-
7 factures, imports, or exports.

8 Every person required to register under this section shall
9 notify the Secretary of State of any change in the arms,
10 ammunition, and implements of war which he exports, im-
11 ports, or manufactures; and upon such notification the Secre-
12 tary of State shall issue to such person an amended certificate
13 of registration, free of charge, which shall remain valid until
14 the date of expiration of the original certificate. Every per-
15 son required to register under the provisions of this section
16 shall pay a registration fee of \$500, and upon receipt of such
17 fee the Secretary of State shall issue a registration certificate
18 valid for five years, which shall be renewable for further
19 periods of five years upon the payment of each renewal of
20 a fee of \$500.

21 It shall be unlawful for any person to export, or attempt
22 to export, from the United States any of the arms, am-
23 munition, or implements of war referred to in this Act to
24 any other country or to import, or attempt to import, to the
25 United States from any other country any of the arms,

1 ammunition, or implements of war referred to in this Act
2 without first having obtained a license therefor.

3 All persons required to register under this section shall
4 maintain, subject to the inspection of the Board, such per-
5 manent records of manufacture for export, importation, and
6 exportation of arms, ammunition, and implements of war as
7 the Board shall prescribe.

8 Licenses shall be issued to persons who have registered
9 as provided for, except in cases of export or import licenses
10 where exportation of arms, ammunition, or implements of
11 war would be in violation of this Act or any other law of the
12 United States, or of a treaty to which the United States is a
13 party, in which cases such licenses shall not be issued.

14 Whenever a proclamation or proclamations are issued,
15 as provided in section 1 of this Act, all licenses thereto-
16 fore issued under the Act, shall ipso facto, and imme-
17 diately upon the issuance of such proclamation or procla-
18 mations, cease to grant authority to export arms, ammu-
19 nition, or implements of war from any place in the United S. J. Res. 51
(Pittman)
20 States, or possessions of the United States, to any port
21 in said belligerent states or to such state wherein civil
22 war has been declared by Presidential proclamation to
23 exist or to any neutral port for transshipment to, or for
24 use in, any belligerent country or for use in any country
25 where civil war is proclaimed to exist; and said license or

1 licenses, insofar as the grant of authority to export to
2 such countries named in such proclamation or proclama-
3 tions of the President, shall be null and void.

4 The Board shall be called by the Chairman and shall
5 hold at least one meeting a year.

6 No purchase of arms, ammunition, and implements of
7 war shall be made on behalf of the United States by any
8 officer, executive department, or independent establishment
9 of the Government from any person who shall have failed
10 to register under the provisions of this Act.

11 The Board shall make an annual report to Congress,
12 copies of which shall be distributed as are other reports trans-
13 mitted to Congress. Such reports shall contain such infor-
14 mation and data collected by the Board as may be considered
15 of value in the determination of questions connected with
16 the control of trade in arms, ammunition, and implements
17 of war. It shall include a list of all persons required to
18 register under the provisions of this Act, and full information
19 concerning the licenses issued hereunder.

20 The Secretary of State shall promulgate such rules and
21 regulations with regard to the enforcement of this section as
22 he may deem necessary to carry out its provisions.

23 The President is hereby authorized to proclaim upon
24 recommendation of the Board from time to time a list of
25 articles which shall be considered arms, ammunition, and
26 implements of war for the purposes of this section.

1 This section shall take effect on the ninetieth day after
2 the date of its enactment.

3 SEC. 3. Whenever the President shall issue the procla-
4 mation provided for in section 1 of this Act, thereafter it shall
5 be unlawful for any American vessel to carry any arms,
6 ammunition, or implements of war to any port of the bel-
7 ligerent countries named in such proclamation as being at
8 war, or to the state where civil war is proclaimed to S. J. Res. 51
(Pittman)
9 exist, or to any neutral port for transshipment to, or for
10 the use of, a belligerent country, or within the state where S. J. Res. 51
(Pittman)
11 civil war is proclaimed to exist.

12 Whoever, in violation of the provisions of this section,
13 shall take, attempt to take, or shall authorize, hire, or solicit
14 another to take any such vessel carrying such cargo out of
15 port or from the jurisdiction of the United States shall be
16 fined not more than \$10,000 or imprisoned not more than five
17 years, or both; and, in addition, such vessel, her tackle,
18 apparel, furniture, equipment, and the arms, ammunition, and
19 implements of war on board shall be forfeited to the United
20 States.

21 When the President finds the conditions which have
22 caused him to issue his proclamation have ceased to exist,
23 he shall revoke his proclamation, and the provisions of this
24 section shall thereupon cease to apply.

1 SEC. 4. Whenever, during any war in which the United
2 States is neutral, the President, or any person thereunto
3 authorized by him, shall have cause to believe that any
4 vessel, domestic or foreign, whether requiring clearance or
5 not, is about to carry out of a port of the United States, or its
6 possessions, men or fuel, arms, ammunition, implements of
7 war, or other supplies to any warship, tender, or supply ship
8 of a foreign belligerent nation, but the evidence is not deemed
9 sufficient to justify forbidding the departure of the vessel as
10 provided for by section 1, title V, chapter 30, of the Act
11 approved June 15, 1917 (40 Stat. ; U. S. C., title 18,
12 sec. 31), and if, in the President's judgment, such action
13 will serve to maintain peace between the United States and
14 foreign nations, or to protect the commercial interests of the
15 United States and its citizens, or to promote the security
16 of the United States, he shall have the power and it shall be
17 his duty to require the owner, master, or person in command
18 thereof, before departing from a port of the United States,
19 or any of its possessions, for a foreign port, to give a bond
20 to the United States, with sufficient sureties, in such amount
21 as he shall deem proper, conditioned that the vessel will not
22 deliver the men, or the cargo, or any part thereof, to any
23 warship, tender, or supply ship of a belligerent nation; and,
24 if the President, or any person thereunto authorized by him,
25 shall find that a vessel, domestic or foreign, in a port of the

1 United States, or one of its possessions, has previously cleared
2 from such port during such war and delivered its cargo or
3 any part thereof to a warship, tender, or supply ship of a
4 belligerent nation, he may prohibit the departure of such
5 vessel during the duration of the war.

6 SEC. 5. Whenever, during any war in which the United
7 States is neutral, the President shall find that special restric-
8 tions placed on the use of the ports and territorial waters
9 of the United States, or of its possessions, by the submarines
10 or armed merchant vessels of a foreign nation will serve S. J. Res. 60
(Clark et al.)
11 to maintain peace between the United States and foreign
12 nations, or to protect the commercial interests of the United
13 States and its citizens, or to promote the security of the
14 United States, and shall make proclamation thereof, it shall
15 thereafter be unlawful for any such submarine or any S. J. Res. 60
(Clark et al.)
16 merchant vessel equipped with armament or carrying
17 armament which may be installed on the high seas to
18 enter a port or the territorial waters of the United States
19 or any of its possessions, or to depart therefrom, except
20 under such conditions and subject to such limitations as
21 the President may prescribe: *Provided, however, That any* S. J. Res. 60
(Clark et al.)
22 *order made or action taken under authority of this section*
23 *shall apply without discrimination to all belligerent*
24 *nations which may be engaged in such war. When, in*
25 *his judgment, the conditions which have caused him to*

1 issue his proclamation have ceased to exist, he shall revoke
2 his proclamation and the provisions of this section shall
3 thereupon cease to apply.

4 SEC. 6. Whenever, during any war in which the United
5 States is neutral, the President shall find that the mainte-
6 nance of peace between the United States and foreign
7 nations, or the protection of the lives of citizens of the
8 United States, or the protection of the commercial interests
9 of the United States and its citizens, or the security of the
10 United States requires that the American citizens should
11 refrain from traveling as passengers on the vessels of any
12 belligerent nation, he shall so proclaim, and thereafter no
13 citizen of the United States shall travel on any vessel of
14 any belligerent nation except at his own risk, unless in
15 accordance with such rules and regulations as the President
16 shall prescribe and thereafter it shall be unlawful for
17 any citizen of the United States to travel on any vessel
18 of any nation declared in the proclamation provided for
19 in section 1 of this Act to be a belligerent or to be a
20 state wherein civil war exists: and thereafter no citizen
21 of the United States shall travel on any vessel of any
22 belligerent nation except at his own risk, and no pass-
23 port issued by the Secretary of State or anyone acting
24 under his authority shall be valid for use by any person
25 for travel from the United States on any such vessel

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(Pittman)

S. J. Res. 60
(Clark et al.)

1 unless in accordance with such rules and regulations as the
2 President shall prescribe: *Provided, however,* That the pro-
3 visions of this section shall not apply to a citizen traveling
4 on the vessel of a belligerent whose voyage was begun in
5 advance of the date of the President's proclamation, and who
6 had no opportunity to discontinue his voyage after that date:
7 *And provided further,* That they shall not apply under ninety
8 days after the date of the President's proclamation to a citizen
9 returning from a foreign country to the United States or to
10 any of its possessions. When, in the President's judgment,
11 the conditions which have caused him to issue his proclama-
12 tion have ceased to exist, he shall revoke his proclamation
13 and the provisions of this section shall thereupon cease to
14 apply.

15 **Sec. 6-A.** Whenever the President shall have issued a
16 proclamation or proclamations as provided in section 1, it
17 shall thereafter be unlawful for any American vessel other
18 than vessels of war engaged in commerce with a belligerent
19 country to be armed or to carry any armament, arms,
20 ammunition, or implements of war except small arms and
21 ammunitions therefor and other weapons as the President
22 may publicly designate to be in possession of the officers of
23 such vessels deemed by the President necessary for the
24 preservation of discipline aboard such vessels and until
25 said proclamation or proclamations are revoked.

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(Pittman)

1 SEC. 7. In every case of the violation of any of the
2 provisions of this Act where a specific penalty is not herein
3 provided, such violator or violators, upon conviction, shall
4 be fined not more than \$10,000 or imprisoned not more
5 than 5 years, or both.

6 SEC. 8. If any of the provisions of this Act, or the
7 application thereof to any person or circumstance, is held
8 invalid, the remainder of the Act, and the application of such
9 provision to other persons or circumstances, shall not be
10 affected thereby.

11 There is hereby authorized to be appropriated from time
12 to time, out of any money in the Treasury not otherwise
13 appropriated, such amounts as may be necessary to carry out
14 the provisions and accomplish the purposes of this Act.

15 Sec. 9. The Secretary of State shall promulgate such
16 rules and regulations not inconsistent with the provisions
17 of this resolution as he shall deem necessary for the
18 administration and enforcement of the provisions of this
19 resolution.

1 **TEXT OF S. J. RES. 47**2 **(Thomas of Utah)**

3 *Resolved by the Senate and House of Representatives*
4 *of the United States of America in Congress assembled,*
5 That (a) whenever the President shall find (1) that there
6 exists a state of war between or among two or more
7 foreign countries; (2) that there exists in any foreign
8 country a state of civil strife; or (3) that the declaration
9 of such a state of war or the commencement of such a
10 state of civil strife is imminent, and that the exportation
11 of arms, ammunition, implements of war, or commodities
12 of war to any such foreign country will endanger the
13 neutrality of the United States, the President may pro-
14 claim such facts, and it shall thereafter be unlawful to
15 export any arms, ammunition, implements of war, or
16 commodities of war from any place in the United States
17 to any place in any such foreign country, or to any other
18 foreign country for transshipment to, or for the use of,
19 any such foreign country or either of the opposing forces
20 therein, as the case may be.

21 (b) The President, by proclamation, shall definitely
22 enumerate the arms, ammunition, implements of war, or
23 commodities of war, the export of which is prohibited by
24 this joint resolution.

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(Thomas of
Utah)

1 (c) The President may, from time to time, by proc-
2 lamation, extend such embargo upon the export of arms,
3 ammunition, implements of war, or commodities of war
4 to other foreign countries as and when they may become
5 involved in such war or civil strife.

6 (d) Whoever, in violation of any of the provisions of
7 this section, shall export, or attempt to export, or cause to
8 be exported, either directly or indirectly, arms, ammuni-
9 tion, implements of war, or commodities of war from the
10 United States shall, upon conviction thereof, be fined not
11 more than \$10,000 or imprisoned not more than five years,
12 or both, and the property, vessel, or vehicle containing
13 the same shall be subject to the provisions of sections 1
14 to 8, inclusive, title 6, chapter 30, of the Act approved
15 June 15, 1917 (40 Stat. 223-225; U. S. C., 1934 ed., title 22,
16 secs. 238-245). Should the violation be by a company,
17 association, or corporation, each officer or agent thereof
18 participating in the violation may be liable to the penalty
19 herein prescribed.

20 (e) In the case of the forfeiture of any arms, ammu-
21 nition, implements of war, or commodities of war by
22 reason of a violation of this joint resolution, no public or
23 private sale shall be required; but such arms, ammunition,
24 implements of war, or commodities of war shall be deliv-
25 ered to the Secretary of War for such use or disposal
26 thereof as shall be approved by the President.

1 (f) When in the judgment of the President the con-
2 ditions which have caused him to issue any such proclama-
3 tion have ceased to exist, he shall proclaim such fact, and
4 the prohibitions hereof shall thereupon cease to apply.

S. J. Res. 47
(Thomas of
Utah)

5 (g) Any license for the exportation of any such arms,
6 ammunition, implements of war, or commodities of war
7 to a foreign country to which any proclamation issued
8 under this section relates, shall be deemed to be canceled
9 as to all exportations to such foreign country during the
10 period that such proclamation is in effect.

11 (h) As used in this joint resolution—

12 (1) The term "United States", when used in a geo-
13 graphical sense, includes the several States, the Terri-
14 tories, the insular possessions of the United States (in-
15 cluding the Philippine Islands), the Canal Zone, and the
16 District of Columbia;

17 (2) The term "commodities of war" includes, but
18 without limitation, commodities which have been declared
19 to be contraband by any such foreign country or bellig-
20 erent therein, commodities which the President deems to
21 be essential to the prosecution of a war, and commodities
22 the nonexportation of which would contribute to the cessa-
23 tion of hostilities and the making of warfare more diffi-
24 cult; and

1 (3) The term "person" includes an individual, part-
2 nership, company, association, or corporation.

3 Sec. 2. (a) Whenever the President shall have issued
4 his proclamation as provided for in section 1 of this joint
5 resolution, it shall thereafter during the period of such
6 war or civil strife be unlawful for any person within
7 the United States to purchase, sell, or exchange bonds,
8 securities, or other obligations of the government of any
9 belligerent country, or of any political subdivision thereof,
10 or of any person acting for or on behalf of such govern-
11 ment, issued after the date of such proclamation, or to
12 make any loan or extend any credit to any such govern-
13 ment or person: *Provided*, That if the President shall find
14 that such action will serve to protect the commercial or
15 other interests of the United States or its nationals, he
16 may, in his discretion, and to such extent and under such
17 regulations as he may prescribe, except from the oper-
18 ation of this section ordinary commercial credits and
19 short-time obligations in aid of legal transactions and of a
20 character customarily used in normal peacetime commer-
21 cial transactions.

22 (b) The provisions of this section shall not apply to a
23 renewal or adjustment of such indebtedness as may exist
24 on the date of the President's proclamation.

1 (c) Whoever shall violate the provisions of this sec-
2 tion or of any regulations issued hereunder shall, upon
3 conviction thereof, be fined not more than \$50,000 or im-
4 prisoned for not more than five years, or both. Should
5 the violation be by a company, association, or corporation,
6 each officer or agent thereof participating in the violation
7 may be liable to the penalty herein prescribed.

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8 (d) When the President shall have revoked his pro-
9 clamation as provided for in section 1 of this joint resolu-
10 tion, the prohibitions of this section and of any regulations
11 issued by the President hereunder shall thereupon cease
12 to apply.

13 Sec. 3. (a) Whenever the President shall issue the
14 proclamation provided for in section 1 of this joint res-
15 olution, thereafter it shall be unlawful for any American
16 vessel to carry any arms, ammunition, implements of
17 war, or commodities of war to any port of any such
18 foreign country named in such proclamation as being
19 at war, or in state of civil strife, or to any neutral port
20 for transshipment to, or for the use of, any such foreign
21 country or either of the opposing forces therein, as the
22 case may be.

23 (b) Whoever, in violation of the provisions of this sec-
24 tion, shall take, attempt to take, or shall authorize, hire, or
25 solicit another to take any such vessel carrying such cargo

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(Thomas of
Utah)

1 out of port or from the jurisdiction of the United States
2 shall be fined not more than \$10,000 or imprisoned not
3 more than five years, or both; and, in addition, such vessel,
4 her tackle, apparel, furniture, equipment, and the arms,
5 ammunition, implements of war, and commodities of war
6 on board shall be forfeited to the United States.

7 (c) When the President shall have revoked his pro-
8 clamation, the prohibitions of this section shall thereupon
9 cease to apply.

10 Sec. 4. Whenever, during any war, including a state
11 of civil strife within a country, in which the United
12 States is neutral, the President, or any person thereunto
13 authorized by him, shall have cause to believe that any
14 vessel, domestic or foreign, whether requiring clearance or
15 not, is about to carry out of a port of the United States,
16 or its possessions, men or fuel, arms, ammunition, imple-
17 ments of war, commodities of war or other supplies to
18 any warship, tender, or supply ship of any such foreign
19 nation, but the evidence is not deemed sufficient to jus-
20 tify forbidding the departure of the vessel as provided for
21 by section 1, title V, chapter 30, of the Act approved June
22 15, 1917 (40 Stat. 221; U. S. C., 1934 ed., title 18, sec. 31),
23 and if, in the President's judgment, such action will serve
24 to maintain peace between the United States and foreign
25 nations, or to protect the commercial interests of the

1 United States and its citizens, or to promote the security S. J. Res. 47
2 of the United States, he shall have the power and it shall (Thomas of
3 be his duty to require the owner, master, or person in Utah)
4 command thereof, before departing from a port of the
5 United States, or any of its possessions, for a foreign port,
6 to give a bond to the United States, with sufficient sure-
7 ties, in such amount as he shall deem proper, conditioned
8 that the vessel will not deliver the men, or the cargo, or
9 any part thereof, to any warship, tender, or supply ship
10 of any such foreign nation; and, if the President, or any
11 person thereunto authorized by him, shall find that a ves-
12 sel, domestic or foreign, in a port of the United States, or
13 one of its possessions, has previously cleared from such
14 port during such war, including a state of civil strife
15 within a country, and delivered its cargo or any part
16 thereof to a warship, tender, or supply ship of any such
17 foreign nation, he may prohibit the departure of such
18 vessel during the duration of such war or civil strife.

19 Sec. 5. Whenever, during any war, including a state
20 of civil strife within a country, in which the United
21 States is neutral, the President shall find that special
22 restrictions placed on the use of the ports and territorial
23 waters of the United States, or of its possessions, by
24 the submarines of a foreign nation will serve to main-
25 tain peace between the United States and foreign nations,
26 or to protect the commercial interests of the United States

S. J. Res. 47
(Thomas of
Utah)

1 and its citizens, or to promote the security of the United
2 States, and shall make proclamation thereof, it shall
3 thereafter be unlawful for any such submarine to enter
4 a port or the territorial waters of the United States or
5 any of its possessions, or to depart therefrom, except
6 under such conditions and subject to such limitations
7 as the President may prescribe. When, in his judgment,
8 the conditions which have caused him to issue his procla-
9 mation have ceased to exist, he shall revoke his proclama-
10 tion and the prohibitions of this section shall thereupon
11 cease to apply.

12 Sec. 6. Whenever, during any war, including a state
13 of civil strife within a country, in which the United
14 States is neutral, the President shall find that the main-
15 tenance of peace between the United States and foreign
16 nations, or the protection of the lives of citizens of the
17 United States, or the protection of the commercial inter-
18 ests of the United States and its citizens, or the security
19 of the United States requires that the American citizens
20 should refrain from traveling as passengers on the vessels
21 of any belligerent nation, he shall so proclaim, and there-
22 after no citizen of the United States shall travel on any
23 vessel of any belligerent nation except at his own risk,
24 unless in accordance with such rules and regulations as
25 the President shall prescribe; *Provided, however, That the*

1 provisions of this section shall not apply to a citizen
2 traveling on the vessel of a belligerent whose voyage was
3 begun in advance of the date of the President's procla-
4 mation, and who had no opportunity to discontinue his
5 voyage after that date: *And provided further*, That they
6 shall not apply under ninety days after the date of the
7 President's proclamation to a citizen returning from a
8 foreign country to the United States or to any of its
9 possessions. When, in the President's judgment, the
10 conditions which have caused him to issue his proclama-
11 tion have ceased to exist, he shall revoke his proclamation
12 and the provisions of this section shall thereupon cease
13 to apply.

14 Sec. 7. This resolution shall not apply to an American
15 republic or republics engaged in war against a non-Amer-
16 ican state or states, provided the American republic is
17 not cooperating with a non-American state or states in
18 such war.

19 Sec. 8. (a) In any case where the United States is a
20 party to an international agreement or treaty calling for
21 joint neutral action or consultation before action, the
22 President shall communicate with the countries party to
23 such agreement or treaty prior to the issuance of a proc-
24 lamation provided for by this joint resolution.

S. J. Res. 47
(Thomas of
Utah)

1 (b) The President shall notify all countries of the ac-
2 tion taken by the United States and shall include in such
3 notification a declaration that the neutrality of the United
4 States will be impartially enforced against all countries
5 and factions participating in such war or civil strife.

6 Sec. 9. Section 2 of the joint resolution (Public Reso-
7 lution Numbered 67, Seventy-fourth Congress) approved
8 August 31, 1935, as amended, is hereby amended by in-
9 serting after the words "implements of war" wherever
10 they appear in such section, the words "or commodities
11 of war".

12 Sec. 10. If any of the provisions of this joint resolu-
13 tion, or the application thereof to any person or circum-
14 stance, is held invalid, the remainder of the resolution,
15 and the application of such provision to other persons or
16 circumstances, shall not be affected thereby.

17 Sec. 11. This joint resolution shall take effect May
18 2, 1937.

TEXT OF S. 1249

(Lewis)

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That in all conflict, military or political, within or between
4 foreign nations, that does not involve the interests of the
5 United States, the policy of the United States of America
6 shall be complete neutrality.

7 That to achieve this end the President of the United
8 States is hereby authorized to list and publicly announce
9 such articles of trade and commerce as shall be forbidden
10 to shipment to the warring sections as violation of neu-
11 trality.

12 That the President is hereby authorized to forbid or
13 restrict by Executive order such dealings in finance and
14 such travel of American citizens to war zones as violate
15 neutrality.

16 That the President is hereby authorized to limit,
17 suspend, or withdraw any part of the lists proclaimed
18 or prohibitions as to finance or travel or add to the list
19 of either whenever the circumstances or conditions from
20 time to time authorize, justify, or call for such action.

21 That all orders of the President shall be reported
22 to Congress and shall be subject to its supervision and
23 jurisdiction.

- 5.1249 (Lewis) 1 **That all Acts or parts of Acts of Congress in conflict**
2 **with this policy, as expressed, shall be treated as not in**
3 **force pending the administering of the Executive orders.**

[COMMITTEE PRINT]

FEBRUARY 5, 1937

75TH CONGRESS }
1ST SESSION }

S. J. RES.

JOINT RESOLUTION

Providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war.

By Mr. _____

JANUARY —, 1937

Read twice and referred to the Committee on
Foreign Relations

PSF: Neutrality

April 20, 1937

CONFIDENTIAL MEMORANDUM FOR SENATOR ROBINSON

I did not get a chance last night to speak to you about the Neutrality Bill. I hope you can persuade Key to yield just as far as possible to the House bill. We have not got much time as the present law expires May first. I really believe a word from you to Key would help. You can use my name if you think it advisable.

F. D. R.

mal/tmb

PSF: Neutrality

FELIX MORLEY, EDITOR OF THE WASHINGTON POST AND FORMER FOREIGN CORRESPONDENT, SUGGESTED TO THE HOUSE FOREIGN AFFAIRS COMMITTEE THIS MORNING THAT PRESIDENT ROOSEVELT MIGHT LEGALLY IGNORE MANDATORY NEUTRALITY LEGISLATION.

"YOU WILL RECALL," MORLEY TOLD THE COMMITTEE, "THAT AS RECENTLY AS DEC. 21, 1936, THE SUPREME COURT REFERRED TO 'THE PLENARY AND EXCLUSIVE POWER OF THE PRESIDENT AS THE SOLE ORGAN OF THE FEDERAL GOVERNMENT IN THE FIELD OF INTERNATIONAL RELATIONS--A POWER WHICH DOES NOT REQUIRE AS A BASIS FOR ITS EXERCISE AN ACT OF CONGRESS.'

"THOSE WORDS CERTAINLY SEEM TO INDICATE THAT CERTAIN FORMS OF MANDATORY NEUTRALITY LEGISLATION COULD, IN AN EMERGENCY, BE PROPERLY IGNORED BY THE CHIEF EXECUTIVE."

MORLEY ASSERTED THAT INELASTIC NEUTRALITY LEGISLATION "ESTABLISHES AN EXCEEDINGLY RISKY POLICY...SOMETHING LIKE CHOOSING A PROFESSION FOR YOUR SON BEFORE YOU KNOW THE DIRECTION OF HIS INTERESTS."

AN INFLEXIBLE NEUTRALITY POLICY, HE ASSERTED, ACTUALLY ENCOURAGES AGGRESSION AND SERVES AS FORMAL ADVANCE NOTICE THAT THE UNITED STATES "WILL MAKE NO DISTINCTION BETWEEN AGGRESSORS AND THEIR VICTIMS, NO MATTER HOW MORALLY HEINOUS THE AGGRESSION."

4/20--R1151A

(1937)

PSF
BUREAU OF THE BUDGET
WASHINGTON

Neutrality

Page 571
Date 7/4/37

APR 30 1937

MEMORANDUM FOR THE PRESIDENT:

Herewith are two proposed Proclamations, presented by the Secretary of State through the Attorney General, entitled (1) "Enumeration of Arms, Ammunition, and Implements of War", and (2) "Export of Arms, Ammunition, and Implements of War to Spain".

These proclamations have my approval as to form.

x 161
x 206
x 422
x 178
x 156

D. W. Hill

Acting Director.

Enclosures.



Office of the Attorney General
Washington, D.C.

April 30, 1937.

Through the Bureau of the Budget.

The President,

The White House.

My dear Mr. President:

I am herewith transmitting (1) a proposed proclamation entitled "Enumeration of Arms, Ammunition, and Implements of War, and (2) a proposed proclamation entitled "Export of Arms, Ammunition, and Implements of War to Spain".

The proposed proclamations are presented by the Secretary of State and are explained in detail in his accompanying letter to you of this date.

Authority for the proclamations is contained in Senate Joint Resolution 51, passed by the Congress this date, and herewith transmitted for your consideration and signature. It is contemplated that the Joint Resolution be approved by you before issuance of the proclamations.

The proposed proclamations have my approval as to form and legality, subject to your approval of the said Joint Resolution.

Respectfully,

Wm. C. Clegg
Attorney General.

RECEIVED
APR 30 1937
BUREAU OF THE BUDGET

APR 30 1937

My dear Mr. McIntyre:

On April 30, 1937, by direction of the President, you sent to me, with request for advice as to whether there is any objection to its approval, the following resolution:

- S. J. Res. 51, Joint Resolution To amend the joint resolution entitled "Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war", approved August 31, 1935, as amended.

I am transmitting herewith a letter from the Secretary of State under date of April 30, 1937, in which he states that he recommends approval of the resolution and that the Secretary of War and the Acting Secretary of the Navy concur in that recommendation.

The resolution will not involve any substantial additional cost.

I recommend approval of the above-mentioned resolution, which is returned herewith.

Very truly yours,

(Signed) D. W. BELL

Acting Director.

Mr. M. H. McIntyre,
Assistant Secretary to the President,
The White House.

Enclosures.

FJB/abp

April 30 1937

My dear Mr. President:

I transmit herewith for your consideration and, if you approve, your signature, S. J. Res. 51 amending the Neutrality Act of August 31, 1936, together with two drafts of Proclamations drawn up in pursuance of its provisions.

The Joint Resolution contains the rigid provisions in respect to arms embargoes to which you have already expressed objection, and other features which cannot be considered entirely satisfactory. Nevertheless its purposes are excellent and most of its provisions are calculated, at least in some degree, to further those purposes. Therefore, in consideration of all the circumstances, I recommend that you give it your approval.

I have consulted the Secretary of War and the Acting Secretary of the Navy, and they concur in this recommendation.

The President,

The White House.

In view of the fact that some of the most important provisions of the Neutrality Act of August 31, 1935, as amended February 29, 1936, will expire at midnight on May 1, 1937, I assume that if you approve this joint resolution you will wish to sign it before that time.

Of the two Proclamations which are enclosed, that relating to Spain has been drafted pursuant to Section 1 (c) and (d). The joint resolution of January 8, 1937, prohibiting the exportation of arms, ammunition, and implements of war to Spain, or to any other foreign country for transshipment to Spain, is still in effect. If you approve this bill, the provisions of that joint resolution will be effective concurrently with the provisions of this joint resolution. The provisions of the joint resolution now before you are more extensive than those of the joint resolution of January 8 in that the former merely prohibited the exportation of the arms, ammunition, and implements of war listed in your Proclamation of April 10, 1936, whereas under this joint resolution the President is authorized, within the limits defined by Section 1 (d), to add to the list of articles which it is prohibited to export. Moreover, upon the issuance of a proclamation prohibiting the exportation of arms to a state in which civil strife exists, there become automatically operative Board's recommendation that it be approved.

the

the provisions of Section 3 in regard to financial transactions, the provisions of Section 6 prohibiting American vessels from carrying arms, ammunition, and implements of war to the state named in the proclamation, the provisions of Section 9 in regard to travel by American citizens, and the provisions of Section 10 in regard to the arming of merchant vessels. In view of the fact that conditions in Spain have not materially altered since you approved the joint resolution of January 8 and in view of the clear intent of Congress, as expressed during debate on the bill by the Chairman of the House Committee on Foreign Affairs, that the more extensive provisions of this new bill should be made applicable to Spain, I have assumed that if you approve the bill you will wish to issue immediately thereafter such a proclamation as I submit herewith for your consideration.

The other proclamation has been drafted pursuant to Section 5 (k) - the section relating to the registration of manufacturers, exporters, and importers of arms, ammunition, and implements of war and the issuance of export and import licenses. The list of arms, ammunition, and implements of war contained in this Proclamation was unanimously approved by the National Munitions Control Board at the meeting held in the Department of State today. As Chairman of the Board, I was directed to submit it to you with the Board's recommendation that it be approved.

The

The lists of arms, ammunition, and implements of war are identical in the two draft proclamations. The additions to previous lists which you have proclaimed heretofore were recommended by the Board on the basis of the experience of the Office of Arms and Munitions Control in the administration of the system of licenses during the last year and a half and in order to facilitate the efficient administration of the prohibition of exports to Spain.

Should you approve this bill and these Proclamations, I should appreciate it if you would return the signed originals to me together with the warrants for affixing the Great Seal to the Proclamations.

I venture to request that if these documents meet with your approval you inform me by telegram that they have been signed in order that I may be in a position to give appropriate information to the press.

Faithfully yours,

CordeH Hull

Enclosures:
S. J. Res. 61;
2 Draft Proclamations

File
Neutrality Res

THE WHITE HOUSE
WASHINGTON

20

April 30, 1937

H. S. M.

I understand the President wishes to sign this resolution and the accompany proclamations tomorrow, Saturday, May first, and that he will want to indicate the hour of approval. Previous neutrality provisions will not be effective after midnight tomorrow.

Please have us advised promptly of the President's action.

H. F. C

PSF: Neutrality

THE WHITE HOUSE
WASHINGTON

Box 160

9/19 [1937]

MEMO FOR THE PRESIDENT:

Attached is self-explanatory.
Jim dictated it over the 'phone.
He said that he had read it to
Cordell Hull.
Thought you might be interested
in seeing it.

MHM

WASHINGTON
EDDIE THOMAS
THE WHITE HOUSE

THE WHITE HOUSE
WASHINGTON

9/19/37

James Moffett, 'Phoning from N Y City:

"This came through in Chinese Private Code from Dr. H. H. Kung, VP and Min. of Finance of China:

"Please transfer the following to Mr. Jas. A. Moffett with my compliments:

"Knowing your stand for justice and fair play, will appreciate your views on the announcement of your Govt forbidding American ships to deliver Chinese purchases, particularly the abandonment at San Pedro of 19 commercial airplanes which were shipped from an Atlantic port a month ago on the SS Wichita.

"Have been informed Wichita, after abandoning Chinese planes carried full load of scrap steel for Japan.

"My people have always admired and have been inspired by the American traditional stand for freedom of the high seas and freedom of trade as witnessed by the open door policy.

"No war has been declared and American ships are only unlawfully threatened with searching.

"At Washington conference, America sponsored the 9 power treaty to respect the sovereignty and integrity of China.

"Is America now in hasty retreat from her traditional policy because the lawless invader threatens and shakes a finger at her?

"America's action is really helping Japan and hurting China. It is not neutral at all. I am sure the American people have no such intention.

... following to Mr. ...
... Mr. ...
... Mr. ...
... Mr. ...
... Mr. ...

WASHINGTON
JAN 21 1941

THE WHITE HOUSE
WASHINGTON

-2-

"It has also another damaging effect as the League of Nations and European powers are considering China's appeal and rallying to international law and international treaties.

"If America wants neutrality, she should not do so at China's expense. She should be neutral and should not help the aggressor.

"The Pacific will not be at peace and America cannot escape war by retreating. China's case is a sad example.

"China is fighting an undeclared war, not only for her own existence but for the peace of the Pacific and the world. Only the existence of China as an independent nation can maintain the peace of the Pacific.

"China's willingness to resist invasion is demonstrated by the record of the last two months. China will win in the end if the world is not disappointed.

"Is America going to surrender to an invader her business interests which her great pioneers and statesmen, including ancestors of President Roosevelt, have built? Will America support and uphold international law and treaties?

"Will appreciate your views which, if cabled, will be treated strictly confidential."

End

DEPARTMENT OF STATE
—
THE SECRETARY

PST
Neutrality

December 11, 1937.

MEMORANDUM FOR THE PRESIDENT

The attached statement setting forth the reasons for your refusal to put the neutrality act into effect has been prepared for Senator Key Pittman to offer as a part of his speech on this subject a little later on.

It is very important, therefore, that you do not let any other senators see it or otherwise make it public.

I am sending this in accordance with our conversation, that you might read it and refresh your memory on the chief points involved, preparatory to your conversation with Senator Nye when he calls upon you. I wish when you get through with it you would cause it to be returned to me, to be in turn delivered to Senator Pittman.

Truel

PSF:
Neutrality

Since the beginning of the present armed controversy in the Far East, many commentators have discussed the President's decision not to make concrete application of the existing Neutrality Act to that unfortunate conflict. Two principal questions have arisen in this connection. First, whether or not, in the light of the provisions of the Act itself, the President possesses legal discretion as to the application of the Act under the particular circumstances which have attended the Far Eastern controversy. And second, if he does possess such discretion, whether or not, in view of all the attendant circumstances, he has been wise in his decision not to invoke the Act.

There can be no reasonable doubt that the President does possess discretion in the application of the Neutrality Act under certain circumstances. Designed as it was to apply to manifold, wholly unpredictable, and complicated future military conditions and controversies, the Act was necessarily drafted in somewhat general terms. It partakes in part of neutrality legislation and in part of legislation on subjects, not, strictly speaking, pertaining to neutrality, but nevertheless involved in the protection of this country and its nationals against the dangers of war. Most of the supporters of the Act were visualizing its application to
conditions

conditions entirely unlike those obtaining in the Far Eastern area.

The Act provides:

"Whenever the President shall find that there exists a state of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export * * * arms, ammunition or implements of war from any place in the United States" etc. etc.

This language differs from that contained in the Act of August 31, 1935, which provides:

"That upon the outbreak or during the progress of war between or among two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export arms" etc.etc.

This language of the Act can only mean that, in the absence of a formal declaration of war by the parties to a conflict, the determination of whether or not "there exists a state of war between, or among, two or more foreign states" clearly rests in the sound discretion of the President. The exercise of his authority in this respect must of necessity be in the light of the governing facts and circumstances as they affect the application of the policy and purpose of the Act, namely, to safeguard the country and its nationals.

In the present Far Eastern controversy, both parties have refrained from making a formal declaration of war.

Under

Under these circumstances, the President was confronted from the outset with the alternatives of giving a narrow, purely legalistic characterization to the conflict and putting the Neutrality Act immediately into application; or, on the other hand, of exercising his unquestionable legal right of discretion under the terms of the Act, in the light of his broad responsibilities in the domain of foreign affairs.

Both reason and fact are overwhelmingly in support of the conclusion that, in declining to characterize the fighting -- which, all alike agree, has been and is in existence in China -- as constituting a state of war within the contemplation of the Neutrality Act, the President has conscientiously and wisely sought to perform his grave duties and responsibilities from the standpoint of the safety and the best interests of our country and of our nationals abroad.

The Neutrality Act was designed primarily to keep this nation out of war by (1) avoiding danger to American seamen and shipping inherent in areas supposedly rendered dangerous by military operations; (2) obviating danger to this country and its nationals in connection with large scales of arms, munitions, and implements of war to belligerent countries; and (3) escaping the danger arising from travel by our
nationals

nationals on vessels of belligerent countries.

It is well to bear in mind that none of these three groups of contemplated dangers, from which the Neutrality Act was primarily intended to safeguard this country and its nationals, has thus far arisen as regards the situation in the Far East. On the other hand, there is every reason to believe that many factors bearing upon these dangers would have been greatly intensified if the Neutrality Act had been applied in the existing circumstances.

For a period of twenty-five years and more, there have been periodical clashes, confined to local situations, or to segments of China on one side and the Japanese on the other. Such occasional fighting has often been vigorous but of such a nature that almost overnight the differences have been composed. The present conflict in China began under such circumstances that, judging by the conduct and utterances of spokesmen for both sides and by previous occurrences, no one could predict how soon or how suddenly it might end by agreement.

The normal diplomatic relations between Japan and China have continued despite the fighting.

The fact that fighting takes place under such conditions is far from being the sole criterion of whether or not a state of war exists. There are many extremely important factors

factors which are ordinarily present as a part of the vital conditions considered in a full sense as constituting a state of war. Among these are the following: a belligerent blockade, the extent and effects of which during the World War are still fresh in our memory; the trouble-breeding subject of contraband lists which were expanded by belligerents beyond recognition during the World War; assertion of the doctrine of continuous voyage, which, too, was stretched during the World War beyond any prior conceived notion of the subject; search and seizure of merchant vessels and their cargoes, likewise arbitrarily expanded to the great annoyance of and interference with neutral commerce; and the subjecting of neutrals to vexatious Prize Court proceedings with respect to ships and cargoes seized upon any pretext whatsoever.

All these are regarded as rights and privileges which customarily accrue to a belligerent when a state of war exists. They constitute the most disrupting results of war which in the past have affected neutrals.

These disruptive practices have not thus far been brought into operation in the Far Eastern conflict. On the other hand, their inauguration might easily have been precipitated by a declaration on the part of the President that a state of war exists.

These

These practices might have been applied only to American nationals, since we would have stood alone in announcing the existence of a state of war. The whole structure of commercial intercourse and other international relationships in the Far East might have been disrupted -- and all to no purpose.

To visualize clearly the ensuing chaos which might have immediately followed our declaration that a state of war exists in the Far East, we have but to recall the devastating and dangerous effects arising from the exercise of these and numerous other so-called rights and practices under an assertion of belligerent rights. In invoking the Neutrality Act, our Government would have, on its own individual responsibility, thrown open this Pandora's Box, with grave possibilities of aggravating the difficulties and dangers which were beyond the powers of anyone to foresee.

There were ten thousand Americans located in China at the beginning of the present difficulty. Had the President proclaimed the existence of a state of war and hence an embargo under the Neutrality Act, many of these citizens might have been left helpless amidst dangerous surroundings, while other civilized nations continued to furnish protection to their nationals against mob and similar violence.

Enough

Enough of bitter criticism of this country and its people has cropped out from time to time upon mere rumors or intimations of an American embargo against China and Japan to make clear the wave of criticism and denunciation which would have arisen had we taken formal steps under the Neutrality Act. This would have resulted from the fact that our motives would have been wholly misunderstood, especially since other nations had not taken such action, but, on the contrary, they and their nationals were following in a large sense their normal courses and pursuits. Our action would have been construed in the Far East and probably in other quarters as based more upon fear than upon other considerations, with the result that the prestige and influence of this great nation in all international councils would have been greatly impaired.

Thus the real question confronting the President has been whether he should invoke the Neutrality Act in the Far Eastern situation, contrary to his deep conviction that to do so would be detrimental to our interests, would endanger rather than safeguard the safety of our nationals, and would threaten the peace of our country and of the world rather than contribute toward its preservation; or whether he should refrain from invoking the Act and thereby avoid aggravating the inherent dangers of the situation.

It is altogether clear that for the President to rush our Government further into the extremely complicated Far Eastern situation with its variety of angles, by giving an unnecessarily narrow and legalistic characterization to the fighting, regardless of the real objective of the Neutrality Act, would have been to ignore his constitutional responsibilities in the domain of the foreign relations of our Government. He might have so acted, in order to say to possible critics that he exercised not the slightest degree of discretion in dealing with this delicate and extremely difficult situation, regardless of the whole tenor of the facts and circumstances and of the real objective of the Neutrality Act. Instead, he preferred to proceed with great caution and with the broadest possible view of the situation, in the light of its realities, and primarily and paramountly from the standpoint of the safety of this country and of its nationals abroad.

Another vital phase of the situation was and is the fact that this Government is a co-signatory, with Japan and seven other countries, of the Nine Power Pact, which carries an obligation on each party to communicate with the other parties whenever a situation arises involving the application of the stipulations of the treaty. Clearly such a conference as has been held falls within the scope
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of the treaty. The immediate application of the Neutrality Act would have created, to say the least, a psychological condition in the Far East if not elsewhere, which would have from the beginning rendered even less promising any efforts looking to a solution. To pursue with respect to the Nine Power Pact any other course than that which we have pursued, would have been wholly inconsistent with our policy of scrupulous treaty observance.

Shall it be said that the President, merely in order to avoid possible though clearly unfounded criticism of his exercise of the right of discretion, should have brushed aside all of the foregoing facts, circumstances, and factors, which govern the entire situation as it relates to the question of the existence of a state of war and the application of our Neutrality Act to it? Rarely was discretion -- sound and legal discretion under the Neutrality Act itself, as well as under the President's general constitutional responsibilities -- more needed or more wisely exercised, from the standpoint of the spirit and objective of our Neutrality Act -- namely, the protection from danger of our nationals abroad, and the safety of our people at home.

PSF: Neutrality

DEPARTMENT OF STATE

THE SECRETARY

November 18, 1938.

MEMORANDUM FOR THE PRESIDENT

I herewith enclose Act of Congress imposing an embargo on shipments of arms, ammunition and implements of war to Spain. This makes it clear, I think, that only Congress can change our embargo policy as contained in this act.

C.H.

RECORDED BY THE SECRETARY

JANUARY 10 1937

THE SECRETARY

DEPARTMENT OF STATE

Enlarge on ARMS to Spain

[PUBLIC RESOLUTION—No. 1—75TH CONGRESS]

[CHAPTER 1—1ST SESSION]

[S. J. Res. 3]

JOINT RESOLUTION

To prohibit the exportation of arms, ammunition, and implements of war from the United States to Spain.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That during the existence of the state of civil strife now obtaining in Spain it shall, from and after the approval of this Resolution be unlawful to export arms, ammunition, or implements of war from any place in the United States, or possessions of the United States, to Spain or to any other foreign country for transshipment to Spain or for use of either of the opposing forces in Spain. Arms, ammunition, or implements of war, the exportation of which is prohibited by this Resolution, are those enumerated in the President's Proclamation No. 2163 of April 10, 1936.

Licenses heretofore issued under existing law for the exportation of arms, ammunition, or implements of war to Spain shall, as to all future exportations thereunder, ipso facto be deemed to be cancelled.

Whoever in violation of any of the provisions of this Resolution shall export, or attempt to export, or cause to be exported either directly or indirectly, arms, ammunition, or implements of war from the United States or any of its possessions, shall be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

When in the judgment of the President the conditions described in this Resolution have ceased to exist, he shall proclaim such fact, and the provisions hereof shall thereupon cease to apply.

Approved, January 8, 1937, at 12.30 p. m.