

## THE UNITED STATES AND THE SPANISH CIVIL WAR

The attitude of the Government of the United States toward the civil war which has been raging for some months in Spain, was stated to be that of "maintaining a completely impartial attitude" in an instruction sent on August 7 last by the Acting Secretary of State, Mr. William Phillips, to all representatives of the United States in Spain. In this instruction, Mr. Phillips summed up the Government's position as follows:

It is clear that our Neutrality Law with respect to embargo of arms, ammunition and implements of war has no application in the present situation, since that applies only in the event of war *between or among nations*. On the other hand, in conformity with its well-established policy of non-interference with internal affairs in other countries, either in time of peace or in the event of civil strife, this Government will, of course, scrupulously refrain from any interference whatsoever in the unfortunate Spanish situation. We believe that American citizens, both at home and abroad, are patriotically observing this well-recognized American policy.<sup>1</sup>

As this issue of the JOURNAL goes to press, the Department of State has made public a telegram sent December 29 to the American Embassies in Paris, London, Berlin, Rome, Moscow, and Valencia, explaining that the Department had, with great reluctance, issued a license for the exportation of a shipment of airplanes and engines to the port of Bilbao in Spain, which is the principal port of entry held by the forces of the Spanish Government. The American diplomatic representatives were authorized to bring the facts in the Department's telegram orally to the attention of the governments to which they were accredited. The Department's telegram reads as follows:

The Department yesterday found itself obliged to grant two licenses for the exportation to the port of Bilbao in Spain of a shipment of airplanes and engines to the total value of \$2,777,000. As you recall the joint resolution of Congress now in effect providing for an embargo against the shipment of arms, ammunition and implements of war to "belligerent countries" does not apply to the present civil strife in Spain as it is applicable to wars between nations. The present authority for the issuing of licenses contains the following provision: "Licenses shall be issued to persons who have registered as provided for except in cases of export or import licenses where exportation of arms, ammunition or implements of war would be in violation of this Act or any other law of the United States or of a treaty to which the United States is a party, in which cases licenses shall not be issued." As none of these exceptions exist in the case of the Spanish situation the right to a license could not be denied.

Since the beginning of the disturbance in Spain many inquiries have been received as to the attitude of this Government toward shipments of arms, ammunition and implements of war, including aircraft, to Spain. Heretofore in all such cases the inquirers have patriotically refrained from requesting licenses for such shipments upon receiving an explana-

<sup>1</sup> Department of State Press Release, Aug. 11, 1936.

tion of this Government's attitude and policy of scrupulous non-intervention in the Spanish situation. Thus with the coöperation of arms manufacturers and exporters this Government has so far been able to carry out its policy of non-interference in the Spanish situation. Mr. Robert Cuse insisted upon his legal rights in the face of an explanation of this Government's non-involvement policy and with full understanding thereof. The Department sincerely regrets the unfortunate non-compliance by an American citizen with this Government's strict non-intervention policy.

In view of the fact that most of the airplanes and airplane engines and parts composing the shipment, licenses for which have been granted as mentioned above, are not of new manufacture and will therefore require overhauling and reconditioning, it is not expected that any of this shipment will leave the United States during the next two months and that the entire shipment will not be completed before six months from now.<sup>2</sup>

It is indeed an unusual occasion in the history of the United States that its Government should feel called upon to offer an explanation—and in an apologetic tone—of an exportation of war materials to another country. The novelty of this event can be pointed to without the slightest inference of disparagement of the policy of the United States towards wars in other lands, for from the very beginning of its national existence, this Government has taken the lead in formulating the laws of neutrality and non-intervention as they exist today. The contribution of the United States to the development of this branch of international law is well known and generously acknowledged.<sup>3</sup>

The Neutrality Act passed by the United States Congress on June 5, 1794, revised and supplemented from time to time to meet conditions arising out of foreign wars, and also out of insurrections in America, provides a code of legislation to enable the United States to fulfill its obligations under international law and generally to preserve friendly relations with other governments.<sup>4</sup> The trade by private citizens in munitions of war not being prohibited by international law, and being subject only to the risk of capture and confiscation by the enemy, the United States had never enacted a general prohibition of such trade. The Government of the United States has consistently upheld the right of its citizens to engage in the trade as permitted by international law, and its diplomatic correspondence is filled with the defense of this right by American Secretaries of State.

As indicated by the present announcements of the Department of State, the provision of the Neutrality Act of 1935, amended and extended to May 1, 1937, forbidding the export of war materials to two or more nations at war, is

<sup>2</sup> State Dept. Press Release, Dec. 30, 1936. On Jan. 5 the State Department made known that it was obliged to grant licenses to another exporter to ship war supplies valued at \$4,500,000 to the port of Valencia, in the control of Spanish Government forces. *Washington Post*, Jan. 6, 1937.

<sup>3</sup> See, for example, the English author, Hall, *International Law* (8th ed.), pp. 515–16.

<sup>4</sup> The Code of Laws of the United States of America in force Jan. 3, 1935, Title 22, Chap. 5.

not involved in the shipment of the prohibited articles to Spain. But Section 2 of that Act enacts a permanent policy of governmental control over the exportation and importation of arms, munitions and implements of war. The execution of this section is vested in a National Munitions Control Board, of which the Secretary of State is the chairman and executive officer, and it is a provision of this section of the Act which the Department quotes as requiring it to issue licenses for the exportation of war materials to Spain.

An explanation of the official action of the Government in issuing such licenses was no doubt thought necessary because of the widespread resentment among the people of the United States of the part which many Americans believe the munitions merchants play in war, coupled with a strong popular feeling that the American trade in arms and munitions contributed to drawing the United States into the World War. The explanation was sent to foreign governments probably because the exportations permitted by the official licenses are contrary to the policy of coöperation of the President and the Department of State in the maintenance of international peace. Such an international coöperative policy was manifested by Secretary of State Stimson in 1932 when he went as far as he could under the treaties to which the United States is a party, to curtail the hostilities in Manchuria.<sup>5</sup> It was again strikingly manifested during the Chaco war, when, upon the recommendation of Secretary of State Hull, Congress enacted the Joint Resolution, approved May 28, 1934, by which the President was authorized to place an embargo upon arms and munitions of war to Bolivia and Paraguay, which he promptly did.<sup>6</sup> Secretary Hull's recommendation was made in response to a communication from the committee of the League of Nations appointed by the Council to find a solution of the Chaco dispute. In his letter of May 22, 1934, addressed to the Chairman of the Committee on Foreign Affairs of the House of Representatives, Mr. Hull stated: "The United States should be willing to join other nations in assuming moral leadership to the end that their citizens may no longer, for the sake of profits, supply the belligerent

<sup>5</sup> On January 6, 1933, Secretary Stimson recommended that Congress be requested to "confer upon the President authority in his discretion to limit or forbid, in coöperation with other producing nations, the shipment of arms and munitions of war to any foreign State when in his judgment such shipment may promote or encourage the employment of force in the course of a dispute or conflict between nations." In support of this recommendation Secretary Stimson added: "There are times when the hands of the Executive in negotiations for the orderly settlement of international differences would be greatly strengthened if he were in a position in coöperation with other producing nations to control the shipment of arms. The United States should never, in justice to its own convictions and its own dignity, be placed in such a position that it could not join in preventing the supply of arms or munitions for the furtherance of an international conflict while exercising its influence and prestige to prevent or bring to an end such a conflict." (Senate Document No. 169, 72d Cong., 2d sess.) President Hoover transmitted this recommendation to Congress on January 10, 1933, but all general legislation on this subject failed until the enactment of the Neutrality Law of Aug. 31, 1935. For a summary of the action of Congress on President Hoover's recommendation, see *Editorial Research Reports*, 1933, Vol. 1, pp. 344-348.

nations with arms and munitions to carry on their useless and sanguinary conflict."<sup>7</sup>

The Neutrality Law of 1935<sup>8</sup> was hastily enacted during the Italo-Ethiopian war in response to an overwhelming demand that the United States remain neutral in future European wars. The law as enacted was insufficient to enable the United States Government to cooperate as fully as some of the European Foreign Offices wished in the application of the League of Nations' sanctions against Italy. It will be recalled that Congress, when passing the Act of 1935, declined to vest authority in the President to prohibit the exportation to belligerents of raw materials essential for the prosecution of war, but the President when issuing his proclamation on October 5, 1935, placing an embargo upon the exportation of arms, ammunition and implements of war to Italy and Ethiopia as authorized by the Neutrality Act, at the same time made a statement which contained a warning "that any of our people who voluntarily engage in transactions of any character with either of the belligerents do so at their own risk."<sup>9</sup> The President amplified this warning on October 30, 1935, in the course of which he made the following statement:

This Government is determined not to become involved in the controversy and is anxious for the restoration and maintenance of peace.

However, in the course of war, tempting trade opportunities may be offered to our people to supply materials which would prolong the war. I do not believe that the American people will wish for abnormally increased profits that temporarily might be secured by greatly extending our trade in such materials; nor would they wish the struggles on the battlefield to be prolonged because of profits accruing to a comparatively small number of American citizens.<sup>10</sup>

The Secretary of State, also, as in the present case of non-prohibited shipments to Spain, used moral suasion with American exporters to make effective the Government's policy.<sup>11</sup>

<sup>6</sup> The Joint Resolution of May 28, 1934, reads as follows:

"That if the President finds that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reestablishment of peace between those countries, and if after consultation with the governments of other American Republics and with their cooperation, as well as that of such other governments as he may deem necessary, he makes proclamation to that effect, it shall be unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions of war in any place in the United States to the countries now engaged in that armed conflict, or to any person, company, or association acting in the interest of either country, until otherwise ordered by the President or by Congress." (U. S. Statutes at Large, Vol. 48, Pt. 1, p. 811.)

<sup>7</sup> Department of State Press Releases, May 26, 1934, pp. 301-303.

<sup>8</sup> Printed in this JOURNAL, Supp., Vol. 30 (1936), p. 58. The Joint Resolution of Feb. 29, 1936, amending and extending the law, is printed in the same volume, p. 109.

<sup>9</sup> Dept. of State Press Releases, Oct. 5, 1935, p. 255.

<sup>10</sup> Dept. of State Press Releases, Nov. 2, 1935, p. 338.

<sup>11</sup> *Ibid.*, Oct. 10 and 30, 1935, pp. 303, 339.

While the present case does not involve the coöperation of the United States with the League of Nations, it does happen to involve an American policy which conforms to a certain European policy with respect to Spain. This policy was formulated by France, with the support of Great Britain, and has for its object the prevention of the spread of the Spanish civil war into a general European conflagration through the intervention of other Powers. It involves the prohibition of "the exportation, direct or indirect, the reëxportation and transit, of arms, munitions and materials of war, as well as air craft, assembled or unassembled, and of all ships of war, destined for Spain, the Spanish possessions, or the Spanish zone of Morocco." Although all the governments of Europe have made declarations in conformity with this French proposal of August 15 last, which have been published and constitute the so-called "non-intervention agreement,"<sup>12</sup> there has been but slight real agreement between France, Great Britain and Soviet Russia, on the one hand, and Germany, Italy and Portugal, on the other, because of important reservations made by the latter group. These three Powers objected to the French proposal on the ground that it did not go far enough to prevent foreign interference in Spain by prohibiting subscriptions of funds and the departure of volunteers for Spain. The French Government was apparently unable to accept these reservations because of popular sympathy in France for the Spanish Leftist Government. In this attitude, France was supported by the Government of Great Britain. The *London Times* dismissed the reservations of Germany, Italy and Portugal as a waste of time and as "making it harder for M. Blum to resist the arguments of many of his supporters that the legal government of Spain should be allowed to purchase arms and munitions in France." It observed: "The French are a democratic people; their sympathies are on the whole with the Spanish Left. If individual Frenchmen of the Popular or Unpopular Front decide to risk their skins in Spanish quarrels or to subscribe to the funds of either combatant, it is hard to see how their Government can be expected to do more than prevent the organized enlistment of volunteers and restrict subscriptions, as they seem willing to do, to those raised for humanitarian objects."<sup>13</sup>

An International Committee for the Application of the Agreement regarding Non-Intervention in Spain was set up in London, but it has been unable to do more than exchange information concerning the legislative and other measures taken by the participating governments to give effect to the non-intervention agreement.<sup>14</sup> There have been numerous charges before the committee of breaches of the agreement, with denials and counter-charges, while men and supplies have continued to pour into Spain to augment the forces of both sides. The foreign "volunteers" have become so formidable

<sup>12</sup> See texts in *L'Europe Nouvelle*, Sept. 26, 1936, Supplement. English texts of German and Italian replies are in the *London Times*, Aug. 19 and 22, 1936, and the Portuguese reply is in the *London Times*, Sept. 11, 1936.

<sup>13</sup> *Ibid.*, Aug. 15, 1936, p. 11.

<sup>14</sup> See British Parliamentary Command Papers, No. 5300.

that Great Britain and France are now reported to have reopened negotiations to prevent the continuance of this form of "non-intervention."<sup>15</sup>

The United States already has upon its statute books special legislation to discourage the fomenting and support from this country of insurrections in American countries and in China. Two days after the declaration of war by the United States against Spain in 1898, the Congress, on April 22, adopted a Joint Resolution authorizing the President, in his discretion, to prohibit the export of coal or other material used in war, from any sea-port in the United States.<sup>16</sup> That act was obviously a measure of self-defense to prevent supplies of coal and other war materials from reaching the Spanish fleet and armed forces in the Spanish possessions, but it was to remain in effect until otherwise ordered by Congress, and on October 14, 1909, it was invoked by President Theodore Roosevelt to prohibit the exportation of arms, ammunition and munitions of war of every kind, to the Dominican Republic, then in the throes of revolution.<sup>17</sup> During the prolonged revolution in Mexico, Congress enacted a new law, approved March 14, 1912, which read as follows:

That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.

The law was amended on January 31, 1922, to include "any country in which the United States exercises extraterritorial jurisdiction."<sup>18</sup> It has been invoked on a number of occasions, but only to prevent arms from reaching revolutionary forces, except in the case of the Huerta Government in Mexico in 1914, when President Wilson lifted the embargo and allowed arms to be sent to Huerta's opponents.<sup>19</sup> On several occasions the United States Government has sold surplus army rifles, machine guns and ammunition to other American governments for use in suppressing revolutions. Such sales were made in 1917 to the Government of Cuba,<sup>20</sup> in 1921 to the Government of Nicaragua,<sup>21</sup> in 1923 to the Obregon Government in Mexico,<sup>22</sup> and again to

<sup>15</sup> Washington Post, Dec. 31, 1936, and Jan. 6, 1937. The replies of Germany and Italy to the new Franco-British proposals to curb the flow of foreign volunteers to Spain are printed in the New York Times, Jan. 8, 1937, p. 8. These governments reiterate the attitude taken in their replies to the original French proposal last August.

<sup>16</sup> United States Statutes at Large, Vol. 30, p. 739.

<sup>17</sup> For President Theodore Roosevelt's proclamation see Messages and Papers of the Presidents, Vol. XIV, p. 6968.

<sup>18</sup> The law as it now stands is reproduced in the Code of Laws of the United States of America, Title 22, Chap. 5, Sec. 236.

<sup>19</sup> See Editorial Research Reports, "Arms Embargoes and the Traffic in Munitions," Vol. I, 1933, No. 18, pp. 342-344.

<sup>20</sup> New York Times, Feb. 14, 1917, p. 1.

<sup>21</sup> *Ibid.*, Mar. 24, 1927, p. 1.

<sup>22</sup> *Ibid.*, Dec. 30, 1923, p. 1.

the Government of Nicaragua in 1927.<sup>23</sup> During President Harding's administration he refused a request of a European Government for the purchase of surplus American army rifles. In doing so, he wrote letters to the Secretary of War and the Secretary of the Navy in which he expressed the hope that it will be their policy "not only to make no sales of war equipment to any foreign power but that you will go further and make certain that public sales to our own citizens will be attended by proper guarantees that such supplies are not to be transferred to any foreign power." He added that he would "gladly waive aside any financial advantage that might attend such sales to make sure that none of our surplus equipment is employed in encouraging warfare any place in the world."<sup>24</sup>

In the application of the arms embargoes to China, Cuba, Honduras, and Nicaragua, the regulations of the Secretary of State covering the international traffic in arms require approval of the diplomatic representatives of those governments in Washington before permits for the exportation may be issued.<sup>25</sup>

The President, in his annual message delivered to Congress on January 6, 1937, requested "an addition to the existing Neutrality Act to cover specific points raised by the unfortunate civil strife in Spain." On the same afternoon, the Congress passed a Joint Resolution which provides

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.<sup>26</sup>

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.

The Joint Resolution was approved by the President on January 8, 1937, and went into effect at 12:30 p.m. on that day.<sup>27</sup>

It will be noted that this resolution is not an amendment of the Neutrality Act of 1935 nor of the Act of 1912 relating to civil strife. It is a law applicable to Spain alone and, in this respect, resembles the Joint Resolution of May 28, 1934, passed especially to cover the war in the Chaco, except that the present resolution concerning Spain does not require a Presidential proclamation to make the embargo effective. But the President is given authority to end the embargo by proclaiming that conditions which gave rise to it have ceased to exist.

<sup>23</sup> New York Times, Mar. 24, 1927, p. 1.

<sup>24</sup> President Harding's letters are in the New York Times, Dec. 30, 1923, p. 15.

<sup>25</sup> Department of State Publication No. 787, p. 17.

<sup>26</sup> Proclamation in Dept. of State Press Releases, April 18, 1936, pp. 311-313.

<sup>27</sup> Public Resolution No. 1, 75th Cong., 1st Sess.

Congress is apparently not ready to amend the Neutrality Act of 1935 so as to make it applicable to civil strife, nor the Act of 1912 covering domestic violence in American countries so as to make it applicable to revolutions in all countries of the world.

GEORGE A. FINCH

#### BELGIUM AND NEUTRALITY

It is of first importance to a state that its territory be not invaded by the forces of any other. When that territory separates and constitutes the pathway between that of states which embark upon war against each other, the burden of maintaining inviolability is heavy and may prove to be insurmountable. The experience of Belgium during the World War is illustrative. Inasmuch as its territory afforded the army of a neighboring country an easy avenue of approach to a hostile objective, the temptation to seize the strategic advantage proved to be irresistible, and despite the prohibitions of the treaties of 1839,<sup>1</sup> Belgium found its domain invaded and occupied by the forces of a state which was one of the guarantors of its supposedly neutralized status. The experience caused Belgium to realize that its neutralized status, with all that neutralization implied, was an inadequate safeguard. Accordingly, it was led to share the common confidence of the Principal Allied Powers in the superiority and efficacy of a different plan. Belgium experienced little if any difficulty in securing from numerous other countries which had been parties to the treaties of 1839 acknowledgment that it should no longer be regarded as a neutralized state.<sup>2</sup> The policy exemplified in the organization of the League of Nations, with its ban upon wars, save under rare conditions when they were to be regarded as excusable, and with its arrangements for collective security for the benefit of a non-aggressive member guilty of no untoward conduct, seemed to offer a promising means of lessening the danger of future attacks upon Belgian soil. Moreover, a Belgium that was to participate in the common effort to maintain peace and even to penalize a Covenant-breaking belligerent seemed to be better off, and on the whole not more exposed to attack, than under the previous régime. It was perhaps natural that in September, 1920, the Belgian and French Governments through an exchange of notes gave approval to a so-called Military Understanding signed by their respective military representatives on September 7 of that

<sup>1</sup> See treaty concluded by Austria, France, Great Britain, Prussia and Russia with The Netherlands, De Martens, *Nouveau Recueil de Traités*, XVI, 770; treaty between Belgium and The Netherlands, relative to the separation of their respective territories, *id.*, 773; treaty concluded by Austria, France, Great Britain, Prussia and Russia, with Belgium, *id.*, 788. These treaties were signed on April 19, 1839.

<sup>2</sup> It is unnecessary here to discuss the method by which Belgium became free from the status from which it sought to be unshackled, notwithstanding the fact that certain parties to the treaties of 1839, such as The Netherlands and Russia, did not become parties to any arrangement acknowledging such a change of status. The attainment of that freedom did not necessarily imply or involve termination of the treaties in which the neutralization of Belgium had been registered.