

plish that end by the exaction of the maximum of labor and the issuance of cheapest rations, thereby placing upon the prisoner the burden of obtaining by his own excessive labor the plain necessities of life. The departure expressed in the Hague Regulations from the old practice which found expression in Article XXIV of the treaty between the United States and Prussia, of September 10, 1785, placing the burden of maintenance of both officers and men who were taken prisoners on the state to which they belonged, is not believed to have been a step forward.

Assurance of observance of international regulations during long periods of internment requires more than the protestations of the captor state that it is fulfilling its legal obligations. In the course of the present War both Germany and Great Britain acquiesced in a plan permitting the inspection and supervision of relief of prisoners held by each respectively, and that by appropriate American diplomatic and consular officers. In consequence, constant and numerous inspections of prison camps have been made and conditions therein rigidly examined and reported on.

The proven value, if not the necessity, of inspection and relief, through neutral agencies, emphasizes the importance of general international agreement contemplating their use in the event of war, and establishing the right of a belligerent to avail itself thereof. By no other process can inhumane treatment on the part of a captor in any form be so readily detected, or so fairly estimated. From no other source can there emanate criticisms or suggestions better calculated to ameliorate the condition of prisoners, or to abate just causes of complaint.

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#### PROPOSED AMENDMENTS TO THE NEUTRALITY LAWS OF THE UNITED STATES

In his masterly treatise on international law, the late Mr. W. E. Hall felt himself justified in saying:

The policy of the United States of 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative international custom has up to the present time advanced. In the main however it is identical with the standard of conduct which is now adopted by the community of nations. (Hall's International Law, 4th ed., § 213, p. 616.)

The modern doctrine of neutrality may therefore be considered as the gift of the United States to a war-ridden world.

But the neutrality laws (passed during Washington's administration, revised, with slight additions, in 1818, incorporated in the Revised Statutes in 1878, Sections 5281 to 5291, and reissued, with only verbal changes, in the Penal Code of the United States, Sections 9 to 18) may well be defective from the national if not from the international point of view, because the world in which we are living is in reality a new world and the conditions of warfare are vastly different from what they were in the days of Washington, and indeed from what they were supposed to be by the well informed layman on August 1, 1914.

The United States was apparently the first nation to accept its neutral duties and to state them in the form of a municipal act, prescribing pains and penalties upon persons within its jurisdiction who should violate the neutrality laws. These statutes were no doubt enacted, as stated by Mr. Hall, because President Washington and his advisers believed that the duty of the United States as a neutral was as stated in the statutes. It was a frank recognition of the fact that international law is a part of the law of the land and that the government, as well as its citizens and persons within its jurisdiction, are subject to the law of nations.

But while the law of nations is admitted to form part of our law and to be the measure of our duties as well as of our rights in matters international, and while the United States as such is bound by its provisions, the administration is not in a position to punish acts committed by persons within American jurisdiction, unless the act in question has been made a crime by municipal statute, a penalty affixed to its commission, and a court constituted in which the defendant may be tried. It thus happens that the United States may be liable under international law for an act which it should have prevented, but which, by the absence of municipal statute, it could neither prevent nor punish if committed. There was doubt whether or not the duties incumbent upon the United States and upon its citizens or persons subject to its jurisdiction could be proclaimed by the President and prosecutions instituted in the courts upon the proclamation, or whether a statute was required. The doubt was resolved in favor of a statute in the case of *United States v. Hudson*, 7 Cranch, 32, decided by the Supreme Court in 1812.

The question was whether there was a common law of crimes in the absence of statute, or in other words, whether the court would take

jurisdiction of an act alleged to be a crime merely because it was such a crime under the common law, or whether the court required an act of Congress in order to assume jurisdiction. The court held, per Mr. Justice Johnson, that:

The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offence.

As the result of this decision, which is neither questioned nor overruled, the United States may well find itself in the embarrassing position that it will be held liable internationally for the commission of an act which, if committed by one of its citizens or persons within its jurisdiction, its courts cannot punish; because, while international law is a part of our law, binding alike upon the government and persons within its jurisdiction, the law of nations, in so far as it penalizes an action and in this respect stands upon the same footing, will not be administered in a criminal offense unless a statute has been passed in accordance with the holding of the Supreme Court in the case of *United States v. Hudson*.

The law of nations prescribes the duty incumbent upon the United States. An act of Congress, however, is required to make the offense a municipal crime and to penalize its commission. The failure on the part of the United States to enact such legislation does not free it from the consequences, because the law of nations taxes it with the duty, and if it fails to perform the duty it does not and should not escape the consequences.

Shortly after the outbreak of the great war the government was much impressed by the fact that merchant vessels were accused of violating the neutrality laws. It would have been a simple matter to withhold the clearance to the master of the vessel, which he must have in order legally to leave American ports. There was such grave doubt as to whether the duty to give the clearance upon compliance with the statute was not mandatory, even although the collector was convinced of the falsity of the statement, that a Joint Resolution was passed by Congress specifically investing the government with power to withhold clearances to vessels suspected of violating the neutrality laws of the United States. The Joint Resolution dealt also with some other matters, as will be seen from its text, which is here quoted in full:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this resolution, and during*

the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation.

In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel shall severally be liable to a fine of not less than \$2,000 nor more than \$10,000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States.

That the President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

That the provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States.

Approved, March 4, 1915.

The course of the war has shown the government that more radical legislation is necessary in behalf of its neutrality as well as in defense of its sovereign rights from attack within its proper jurisdiction. As the result of the experience had since the outbreak of the war, the Attorney General of the United States, the Honorable Thomas W. Gregory, has recommended a series of statutes, some eighteen in number, which, if they be made the basis of bills and enacted into law by Congress, will enable the United States more easily to perform its duties as a neutral to the belligerents and will protect it from acts committed within its jurisdiction which, if unpunished, might compromise its neutrality and would seriously disturb the domestic peace of the United States.

The Department of Justice recently issued a pamphlet containing the recommendations of the Attorney General for legislation amending the criminal and other laws of the United States with reference to neutrality and foreign relations. The legislation which the Attorney General recommends is grouped under eighteen headings, and as they are in each case a summary statement of what the statute should contain, they are here quoted in full as the briefest statement of the proposed legislation.

I. An act making it a crime willfully to interfere with or prevent, or to attempt to interfere with or prevent, or to conspire to interfere with or prevent, the exportation to foreign countries of articles from the United States, by injury to or destruction of such articles, or of the buildings or places in which they are stored, produced, or manufactured, or of the instrumentalities of transportation used or intended to be used in the course of such exportation, or by means of any other violence or threat of violence to person or property.

II. An act making it a crime to set fire to any vessel engaged in foreign commerce of the United States, or her cargo, or to tamper with the motive power or instrumentalities of navigation of such vessel, or to place bombs or explosives in or upon such vessel, or to do any other act to such vessel while within the jurisdiction of the United States (or if she is entitled to fly the flag of the United States while she is on the high seas), with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended to take place within the jurisdiction of the United States or after the vessel shall have departed therefrom; or to attempt or to conspire to do any such act with such intent.

III (a). An act authorizing the detention by the President of the United States, or by any official duly empowered by him, of any vessel, American or foreign, by withholding clearance, or in the case of American vessels that do not require clearance, by a formal notice forbidding departure, in any case in which he or the official duly empowered by him has reasonable cause to believe that fuel, arms, ammunition, men, supplies, dispatches, or information are to be carried to a warship or to a tender or supply ship of a foreign belligerent nation in violation of the obligations of the United States as a neutral nation; also penalizing the departure or attempted departure of any such vessel without clearance or after receipt of the said formal notice forbidding departure.

III (b). An act authorizing, during a war in which the United States shall be neutral, the detention by the President of the United States, or by any official duly empowered by him, of any armed vessel owned wholly or in part by American citizens, or of any vessel, American or foreign, that has not entered the ports of the United States as a public vessel, and that is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person or persons having charge of such vessel shall furnish proof satisfactory to the President of the United States, or to the official duly empowered by him, that the vessel will not be employed by the said owners, or master, or person or persons having charge thereof, to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, and that the said vessel will not be sold or delivered to any belligerent by them or any of them within the jurisdiction of the United States or, having left that jurisdiction, upon the high seas; this act also to contain provisions making violations a crime.

III (c). An act making it a crime during a war in which the United States is a neutral, for any person to send or attempt or conspire to send or take part in the sending out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation or to an agent, officer, or citizen of such nation, or with

reasonable cause to believe that the said vessel shall or will be employed in the service of any such belligerent nation, after its departure from the jurisdiction of the United States.

IV. (a) An act authorizing the collectors of customs, or other officers duly empowered by the President, at any time during a war between foreign nations or between factions within a foreign country, to inspect any foreign private vessels within the jurisdiction of the United States for the purpose of investigating and detecting any use or attempted use of such vessel in violation of the statutes or treaties of the United States or of its obligations as a neutral nation; also making it a crime to prevent or obstruct such inspection by the collector or by such other officer, or to deceive or attempt to deceive such other officer;

(b) An act making it a crime to allow vessels in our ports to be used as a place of resort for persons conspiring or preparing the means to commit any violations of the laws of the United States.

(c) An act providing that during a war in which the United States is a neutral, the master's manifests and the shipper's manifests shall contain statements, in addition to those now required by law, to the following effect: That the cargo or any part of the cargo is or is not to be delivered to other vessels in port or transhipped on the high seas, and if it is to be so delivered or transhipped stating under oath the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transhipped and the name of the person, corporation, or vessel, or government, to whom the delivery or transshipment is to be made; also making similar provisions apply to American vessels which do not require a clearance leaving the ports of the United States; also providing that the collector of customs shall have authority to withhold clearance, or in the case of American vessels not requiring a clearance to forbid them departure by a formal notice if, in his opinion, there is reasonable cause to believe that the master's or shipper's manifest is false; also providing that the provisions of Revised Statute 4200 as to requirement of an oath to manifests be still in force; also making it a crime for any such vessel to depart without clearance or after such formal notice.

V. (a) An act requiring applications for passports to be under oath, and authorizing the Secretary of State by regulation to require proof by affidavit of such facts as he may deem desirable, and making false statements in any such application or affidavit, perjury;

(b) An act making criminal the fraudulent obtaining, transfer, or use of passports, and the alteration or forgery of passports issued.

VI. An act making criminal the fraudulent use, or application, or counterfeiting of the seal of any executive department or government commission.

VII. An act amplifying the rather restricted provisions of the Radio Act with reference to the powers of the President to censor or prescribe the manner in which wireless messages, and also cablegrams, shall be transmitted to belligerent countries or ships upon the high seas, or otherwise.

VIII. An act amending section 13, Federal Penal Code, so as to read as follows:

Whoever within the territory or jurisdiction of the United States begins, or sets on foot, or furnishes money, or provides or prepares the means for, or who takes part in or attempts to take part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince

or state, or of any colony, district, or people with whom the United States are at peace, shall be fined, etc.

IX. An act authorizing the seizure and detention or retention of arms and munitions of war which are being exported, or which the government has reason to believe are about to be exported, in violation of any embargo on export of arms and munitions of war, in pursuance of the joint resolution of March 14, 1912, or of any similar future legislation, or in connection with violations of the law as to military expedition under Penal Code, section 13:

X. An act making it a crime for any person belonging to the armed land or naval forces of a belligerent nation, who is or shall be interned within the jurisdiction of the United States, to leave or attempt to leave said jurisdiction or to leave or attempt to leave the limits within which freedom of movement is allowed, unless authority therefor has been granted by the proper official of the United States Government, or to overstay leave of absence granted, under penalty of arrest and return to the place of internment and close confinement for a period of time within the discretion of the Government of the United States; and also making it a crime for any person within the jurisdiction of the United States and subject thereto to aid or entice any interned person so to escape or attempt to escape.

XI. An act making it a crime to swear falsely in any affidavit which the affiant has knowledge or reason to believe will or may be used to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any dispute or controversy with the United States or to defeat any measure of the Government of the United States in relation to such dispute or controversy.

XII. An act making it a crime to obtain, without lawful authority, or to communicate to a foreign government or any officer or agent thereof, or to any other person, any facts or information relative to the national defense obtained by virtue of employment in the service of the United States, or obtained from unlawful access to government papers or other property, or by fraud upon or connivance with a Government official or employee, or otherwise unlawfully obtained or retained.

XIII. An act making it a crime to mint or print or otherwise manufacture in the United States for any faction or body of insurgents within a country with which the United States is at peace, such faction or body of insurgents not being recognized by the United States as a government, any gold or silver or other coins or paper money intended to be issued and used as currency or any securities to be issued by such faction or body of insurgents in such other country; and further making it a crime to counterfeit within the United States any gold or silver or other coins or paper money intended to be used as currency or securities issued for or by such faction or body of insurgents.

XIV. An act making it a crime for two or more persons to conspire in the United States to injure or destroy within any foreign country the property of a foreign country with which the United States is at peace, or of any subdivision or municipality thereof, when such injury or destruction is an offense under the laws of such foreign country of the grade of felony or infamous crime, and when one or more of such parties to such conspiracy do in the United States any act to effect the object of the conspiracy.

XV. An act making it a crime within the jurisdiction of the United States falsely to assume or pretend to be a diplomatic or consular or other official of a foreign

Government duly accredited to the Government of the United States, with intent to defraud such foreign government or any person, and to take upon himself to act as such, or in such pretended character to demand or obtain from any person or from such foreign government or any officer thereof any money, paper, document, or other valuable thing.

XVI. An act to prevent aliens other than diplomatic or consular officers or attachés from acting in the United States as the agent of a foreign government without prior notification to and consent of the Government of the United States.

XVII. An act providing that it shall be lawful for the President of the United States to employ the land and naval forces thereof to detain any vessel, public or private, foreign or domestic, in compliance with, or in order to prevent the violation of, the international obligations of the United States relating to neutrality, or to enforce any or all other obligations imposed upon the United States by the law of nations, by treaties or conventions to which the United States is a party, or by the statutes of the United States.

XVIII. An act authorizing the issue of search warrants in the enforcement of criminal laws relating to foreign relations and the observance of neutral obligations, and of other criminal law.

In submitting the recommendations to the Foreign Relations Committee of the Senate and the Foreign Affairs Committee of the House, and to the Judicial Committee of each body, the Attorney General states the reasons which have caused him, acting on behalf of the United States, to request legislation of this kind and at this time from the Congress. Thus, he says:

The following recommendations for new legislation are made as a result of the experience of the Department of Justice and of the State Department during the past three years in the administration of law in connection with the relations of this country with Mexico and with the problems arising out of the European war.

Many acts committed in the United States in serious violation of its sovereignty and against its peace and the safety of its citizens are not now punishable by any Federal criminal law; others are punishable only under unsatisfactory statutes passed in relation to conditions altogether different from those now prevailing.

The present laws relating to neutrality are clearly defective. In some cases, no statutory provision whatever is made for the observance of obligations imperatively imposed by international law upon the United States; in other cases, inadequate provision is made.

In my opinion, the passage of the new legislation herewith submitted is required for the protection of the United States and its citizens and for the fulfillment of the duty owed by the United States to other nations with which it is at peace.

The general recommendations set forth in this memorandum have been submitted to the State Department and have been concurred in by the Secretary of State and by the Joint State and Navy Neutrality Board.

JAMES BROWN SCOTT.