

into American waters are continued. In this section armed merchantmen are now included.

It is made automatically unlawful for American citizens to travel on belligerent vessels after the President has proclaimed the existence of war.

A new provision is added prohibiting the arming of American merchantmen. The Latin American exception is retained.

The only substantial differences in the McReynolds bill are the following:

First, the cash and carry provision providing for the divestment of American interest before goods are shipped out of the country is not made automatic but may be applied by the President in his discretion.

Second, the provision making it unlawful for American citizens to travel on belligerent vessels is not made automatic but may be invoked by the President in his discretion.

It is on this discretionary question that the two houses will need to reach some compromise agreement. It is to be hoped that, as in the last two years, the need for compromise will induce the insertion of a provision limiting the period during which the act is to remain in force. On March 10, Representative Shanley announced that he would introduce such a proposal.<sup>20</sup> This provision, however, will be of no avail unless, in the meantime, a thorough study of the numerous unsolved problems is made either by an official government commission (by analogy to the official group now considering revision of the nationality laws) or by an outside group of experts (by analogy to the method used in studying the administrative reorganization of the government).

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#### "NON-INTERVENTION" AND PERSONAL FREEDOM

The State Department has recently announced its decision not to issue passports to Americans wishing to travel abroad unless they take an oath not to visit Spain, and this restriction was at first extended even to members of hospital units desiring to assist the Spanish Government or the forces in insurrection against it.<sup>1</sup> This latter prohibition has recently been rescinded so that Americans bent upon the humanitarian purpose of aiding the wounded may proceed to Spain and undertake their philanthropic work.<sup>2</sup>

This control of the movements of an American citizen abroad through the effect of the issuance of a conditional passport, presumably with the penalty of refusal of a renewal of the passport should the prohibition be violated, certainly constitutes a serious interference with the liberty of the individual, and can only be justified if it is shown to be necessary for the conservation of the superior interests of the citizens of the United States as a whole. This step is along the same line as that taken by the Department of State when American residents of Spain were notified that they must withdraw from that coun-

<sup>20</sup> New York Times, March 11, 1937. Mr. Fish was in accord; *ibid.*, March 13.

<sup>1</sup> Dept. of State Press Releases, March 13, 1937, p. 139.

<sup>2</sup> *Ibid.*, March 20, 1937, p. 154.

try and that the United States would not be responsible for the protection of those who should choose to remain in disregard of the notice requiring their withdrawal. Of similar purport is our legislative and executive action withdrawing the protection of our Government from those who ship supplies to Spain.

These separate steps are said to be in conformity with the so-called policy of non-intervention in Spain, and to constitute an acquiescence in the similar policy adopted by the "non-intervention committee" of European Powers that has thrown a cordon about the Spanish frontiers and Spanish waters. When, however, one or more governments restrict the ordinary commercial and social intercourse with a state that has been duly recognized and has enjoyed constant economic and social relations with its neighbors, it is hardly appropriate to designate such a course as "non-intervention"; it is more properly to be considered as a policy of non-intercourse, and must be regarded as constituting a negative interference and disregard of the rights of that member state of international society. The measures so taken may however be justified, when necessary, in order to prevent a general conflagration; and it is for the society of states in the exercise of their high discretion to decide when such extreme measures are necessary.

In the absence of any organized international government, the decision as to what measures it may be necessary to take for the security of international society must devolve on the states in conclave assembled, and this collective decision remains the only justification for any action taken by way of international police. In view of the present very delicate situation in Europe, this extraordinary act of interference on the part of the non-intervention (really an intervention) committee with the rights of an independent member of international society may well be justifiable on that ground, and the same justification would apply equally to our own negative acquiescence in the regulations which the committee has adopted. The unprejudiced observer may, however, question whether third states, separately and in conference assembled, have been sufficiently vigilant in their efforts to put a stop to the inhumane conduct of hostilities. If there is any truth in the tales of atrocities reported in the press, every state and every individual is obligated to use his influence to the utmost in preventing the continuance of such violations of the laws of civilized warfare.

It is furthermore necessary that we proceed with great caution in any added restriction of the rights and freedom of action of individuals in the sphere of international relations. No doubt our Government is justified in prohibiting individuals from committing acts which may involve us in hostilities and endanger the security of the whole nation, but it may be asked whether our security may not be amply protected without such drastic measures as have been adopted. Even though we may be warranted in prohibiting Americans from entering the zone of hostilities, we have to remember the assistance we received from liberty-loving foreign officers who, like Lafayette, joined our

Revolutionary forces under Washington when we were struggling to achieve our independence. Do we really wish to join in the general movement which is tending to exalt nationalism and to extend an ever increasing control over our nationals when abroad? Is this not inconsistent with our professions of democracy and freedom of the individual?

It would seem that we are at present passing through a phase in which we are ready to adopt any measure, however impracticable, arbitrary, and specious, which will hold out the lure of preserving us from becoming involved in another conflict. It might well be argued that any and all of these measures would be justified if they were really adequate to achieve the end in view; but the surest course to preserve the peace of the United States is for us to preserve the liberties of our people and at the same time to remember the obligations which we owe to international society and the preservation of world peace. This means that we should do our part in aiding those who are attempting to organize effective action against any would-be aggressor. It is absolutely contrary to American national psychology to persevere in an attitude of indifference. Sooner or later, American public opinion will come to recognize fully our obligation to coöperate with other states for the purpose of ensuring collective security and in order that we may, one and all, aid in building a defence against unnecessary war. Such action, if taken betimes, will be the best means to prevent our being drawn into a war in the wake of a rising tide of national emotion, when the cost of our intervention may be disastrously great and when the efficacy of our coöperation may be correspondingly diminished.

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