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THE EMBARGO ON SPAIN

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BY JOHN Q. TILSON

Former Majority Leader U. S. Congress

"We have learned that when we deliberately try to legislate neutrality, our neutrality laws may operate unevenly and unfairly—may actually give aid to an aggressor and deny it to the victim. The instinct of self-preservation should warn us that we ought not let that happen anymore."

PRESIDENT ROOSEVELT IN HIS MESSAGE
TO CONGRESS, JANUARY 4, 1939

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The embargo against arms shipments to Spain rests upon the Presidential Proclamation of May 1, 1937, issued pursuant to the amended Neutrality Act of that date (50 Stat. 121). In order to determine the procedures for lifting that embargo we must consider the language of the statute itself. The statute provides:

"Whenever the President shall find that a state of civil strife exists in a foreign state and that such civil strife is of a magnitude or is being conducted under such conditions that the export of arms, ammunition or implements of war from the United States to such foreign state would threaten or endanger the peace of the United States, etc." — (Section 1 (c)).

After thus defining the conditions under which the President may impose an arms embargo, the statute goes on to define the conditions upon which the President is authorized or required to terminate such an embargo. This is the language of the statute:

"Whenever, in the judgment of the President, the conditions which have caused him to issue any proclamation under the authority of this section have ceased to exist, he shall revoke the same, and the provisions of this section shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed, or forfeitures incurred, prior to such revocation." (Section 1 (g)).

The questions, then, are: (1) What were the conditions which caused the President to issue his Proclamation and (2) have those conditions ceased to exist? If those conditions have ceased to exist the language and intent of the statute are clear as to what must then be done. The statute says that the President "*shall* revoke" the Proclamation.

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Address delivered by Col. John Q. Tilson, former majority leader of the House of Representatives, at the Lawyers Conference to lift the embargo, held by the Lawyers Committee on American Relations with Spain, Hotel Mayflower, Washington, D. C., November 19-20, 1938.

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Therefore, whether or not we believe the President's Proclamation of May 1, 1937, was wise or unwise, we must consider what precisely were the conditions which moved the President to issue this Proclamation. I think many of us will admit that on May 1, 1937, many reasonable men did believe that the arms embargo was our wisest course.

Let us put ourselves back in those days to size up the situation as it then appeared. When we have done that it will be time to consider how far that situation in the spring of 1937 has changed in the ensuing nineteen months.

First, we recall there was in operation on May 1, 1937, a non-intervention agreement which in terms prohibited shipment of munitions to the Loyalist forces and to the insurgents. This agreement was for a time implemented by a Four Power Naval Patrol. In theory the British and French fleets were supposed to blockade the Rebel coast while the German and Italian fleets were blockading the Loyalist coast. Under the circumstances the President, perhaps, had a right to assume that shipment of arms from the United States to Spain would run afoul of those international arrangements and would involve this country in dangerous complications. At the same time it was possible to hope in the spring of 1937 that if the United States withheld arms shipments from Spain, Germany and Italy would also withhold the arms shipments upon which Franco's chances of victory depended. The result of a complete arms embargo by all foreign powers would be that the Spaniards would settle the war themselves. Military experts now agree that under such conditions the Spanish Government would have been assured of victory.

Before we turn to consider what has happened to this picture of a world arms embargo during the last nineteen months, let us look at the other aspects of the scene that existed on May 1, 1937, when the President imposed the present arms embargo against Spain. Prior to that time, Italy and Germany, during the first few months of the conflict, continued to insist that they were in no way involved in it. The governments of Germany and Italy insisted officially and publicly that there were no German and Italian troops whatsoever in Spain, and that these governments could not assume responsibility for any individual Germans or Italians who might have volunteered for service with the Insurgents.

We all know now what many of us believed then, that the actual facts were different, and that the German and Italian governments were very much involved in not only the conduct of the Spanish rebellion, but also in its origin.

Nevertheless, when the President's Proclamation was issued these matters were in dispute. No official or semi-official disclosures had been made that hostilities in Spain were really a German and Italian invasion. Therefore, the President, perhaps, had a right then to assume he was acting in a spirit of impartiality and neutrality when he imposed an embargo against both sides in the Spanish civil war, while neglecting to impose any embargo upon arms to Germany and Italy.

Third, most of us assumed in the spring of 1937 that shipments of munitions to Spain would endanger American shipping, but that if we prohibited arms exports to Spain our ships would be safe in European waters. But that was before the days of open piracy and unrestricted bombardment of peaceful neutrals by the Spanish insurgents and their allies.

Fourth, most of us thought, in the spring of 1937, that the Spanish war was a purely European affair and that no matter which side emerged victorious, in the end that victory would not threaten the peace of the American continents. We thought then that we could afford to pursue a hands-off policy without endangering the cause of peace and democracy in the Western Hemisphere.

To summarize then, these were the four premises of the President's Proclamation:

1 — The agreement of twenty-seven great powers to stop munitions shipments into Spain.

2 — The denial by Germany and Italy of any measure of participation in the Spanish struggle.

3 — The distinction drawn by international law and common practice, between shipments of munitions and shipments of commodities not primarily of military importance.

4 — The apparent isolation of the Spanish conflict from events in this hemisphere.

Perhaps these premises of action represented facts at an early stage of the Spanish conflict, and the President assumed that these premises would continue to represent realities.

At each point these premises of action of May 1, 1937, have proved illusory. Therefore it is our national duty now to acknowledge the error, to admit that we were misled in those days by the pretense of European non-intervention, and to recognize that a national policy, based on false assumptions, must be revised when experience shows those assumptions to be false.

It takes courage to admit an error that has entailed so much of human suffering. We have the right to hope that our government possesses that degree of courage. Legislatures are wont to recognize defects in their own enactments. Courts in recent years have again and again exhibited the courage to recognize that some of their past decisions have been erroneous. The Executive should do the same. All of us here know that if the President considers and acts upon the record of the past two years he will recognize that the premises upon which our embargo policy was promulgated have all turned out to be erroneous.

Consider the first and most important of those premises. In the spring of 1937 we believed in the Non-Intervention Agreement. We thought that France, at least, and Great Britain meant business when they instituted a naval patrol of the Insurgent coast. We know better now. The naval patrol was officially abandoned a few months after its inauguration. Portugal demanded the removal of observers from the Portuguese-Spanish border and the demand was promptly granted. Italian and German shipments of arms to Franco steadily increased to a point where even the Italian and German governments stopped trying to hide them. We all know now that Germany and Italy are and have been shipping arms to the Spanish Insurgents. The State Department must know it because in the public hearings before the House Committee on Naval Affairs of the past session of Congress considering the Naval Appropriations Bill (H. R. 9218, at page 789) I find this statement:

"Admiral Cook — The reports we get from Spain, where it is reported that modern Italian and German bombers as well as Russian bombers have been operating, have indicated that even these large modern bombing planes must have a pursuit escort."

The reports that Admiral Cook gets from Spain are available to the officials of all our government departments. The press of this country, and indeed even the press of Germany, and Italy, show clearly that German and Italian munitions are today Franco's chief support.

When we thought in the spring of 1937 that an arms embargo by this country would facilitate the perfecting of a world arms embargo, and would insure a purely Spanish settlement of a purely Spanish conflict, we were mistaken. Today we know better. There is no world arms embargo and if we continue a policy based on that exploded premise our error ceases to be an honest one.

Consider in the second place what has happened to our assumption in the spring of 1937 that this was a purely Spanish civil war that we were dealing with. Since that time a number of fancy lies have exploded along with a lot of German and Italian bombs. Signor Mussolini has been bargaining with Mr. Chamberlain many months now over the number of Italian troops he is to withdraw from Spain, and whether he is to withdraw them before or after the end of the war. Whatever we may think of this bargaining at least it shows one thing clearly: that those Italian soldiers in Spain are not volunteers in any sense, but are soldiers subject to orders of the Italian government. Otherwise how could the Italian government agree to recall them? Here, at least is a definite repudiation of the official Italian lie of the spring of 1937 that Italy was not involved in the Spanish conflict.

Shall *we* continue to act on the basis of that lie when the Italians, themselves, have given it up?

I do not wish to express an opinion on the technical question of whether Italy and Germany are officially at war with Spain from the standpoint of international law. There are obvious difficulties in the way of the United States taking the view that a state of war exists when the three nations concerned deny it. But whatever may be the technical consideration on that point, nobody denies the elementary fact that German and Italian troops are invading Spain. It follows from this fact that an arms embargo against Spain which does not apply equally against Germany and Italy is a cruel mockery of neutrality and of our avowed impartiality.

If the President thought in the spring of 1937, as he perhaps had a right to think then, that this embargo against Spain was a neutral and impartial act, intervening experience has demolished that assumption.

Consider, again, how time has dealt with the assumption that stopping arms shipments to Spain was necessary to insure the safety of our peaceful shipping. We assumed in those days that neutral ships loaded with wheat, potatoes and medical supplies would not be molested. We know better now. We know that in effect today the German and Italian air forces with Franco — I won't say *under* Franco — perhaps over Franco would be more accurate — will attack unprotected neutral ships suspected of traveling to and from Spain *regardless* of their cargo. And so our arms embargo is not serving the purpose originally imagined, of protecting American ships.

As a matter of fact there is no reason why American shipping should be endangered at all if the arms embargo is lifted. The President, could, by Executive agreement with the Spanish republic, provide that upon the lifting

of the arms embargo all arms shipments to Spain should be carried in Spanish ships and even that title to all shipments must pass before they leave American shores. Such a cash and carry agreement would eliminate any possible basis for the argument that lifting the embargo now would involve American shipping in a serious war danger. Juridical authority sustaining the Executive power to make such an agreement, is abundant.

There is another point worth noting in speaking of the so-called war danger involved in shipping arms to Spain. That is this: For two and one-half years a republic to the south of us has been shipping munitions to Spain, openly and on the basis of recognized obligations under international law. Yet Mexico has not been threatened with war by Franco, by Hitler or by Mussolini. We know that Mexico is far more vulnerable to attack by the Fascist powers than is the United States. Is it likely that the Fascist powers which do not dare to say "boo" when Mexico ships arms to Spain will rise up and go to war against the United States if the United States does the same thing?

And finally, there is the fourth assumption of our Spanish policy in the spring of 1937 which experience has shown to be as hollow as the others. We assumed in those days that what happened in Spain was no affair of this hemisphere. Now we know better as to that too. We know of the German and Italian boasts of world empire. We know of the attempted German *coup d'etat* in Brazil. We know of Fascist penetration up and down Latin America, and we know that a German-Italian victory in Spain means that Germany and Italy will play a dominant role in the affairs of this continent.

For that reason the fate of that European nation which to the greater part of this continent is the mother country means more to us than the fate of any other country in Europe. We cannot any longer comfort ourselves with the thought that Spain's troubles are not ours. The cause of peace and democracy in this nation is linked with the cause of peace and democracy in this entire hemisphere, as President Roosevelt has recently declared. It is time then that we abandoned a policy towards Spain which puts the Fascist powers in a position to control the destinies of Latin America.

With these things in mind, I look to the White House and say:

"Mr. President, yours is the responsibility for lifting or continuing the arms embargo against the Spanish republic. The premises of action which induced you, in the best of good faith, to issue your proclamation of May 1, 1937, are gone now. Now, nothing remains except the stark reality that our

arms embargo against Spain endangers the peace of the United States and undermines the principles of international morality upon which the hope of world peace rests. Mr. President, you have heartened the peace-loving peoples of the world by your declarations of support for international morality in these trying months. We now respectfully urge that in the cause of world peace and international morality which you have so splendidly championed before the world, you lift this embargo against the struggling Spanish democracy now. The conditions from which your Spanish embargo proclamation emerged do not exist today. The mandate of Congress is that when the conditions that caused you to issue your proclamation have ceased to exist, the embargo proclamation should be revoked. History and a grateful humanity will honor you for such an action. Your contribution to the peace and progress of our unhappy time will be immeasurably increased thereby. Your friends and critics alike will honor you if you make it clear to the world that the United States will play no dishonorable role in the heroic struggle of the Spanish people to defend their liberty and independence. Your friends and critics alike will honor you if you make it clear to the world that the United States will fulfill its moral obligations towards a sister democracy battling for its life, and in a real sense, our own too, against brutal Fascist terror."