Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

THE NEUTRALITY LAWS

OF THE

UNITED STATES

BY

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PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.
1913.

INTRODUCTORY NOTE.

The following report on the neutrality laws of the United States was prepared by Dr. Charles G. Fenwick, pursuant to a resolution of the Board of Trustees of the Carnegie Endowment for International Peace "that the Division of International Law, be, and it is hereby, directed to examine and report to the Board upon the neutrality laws of the United States, and to suggest in their report improvements tending to make them more efficient."

The report thus prepared was submitted to and approved by the Board of Trustees at its meeting in 1913, and it was directed that the report be "published and sent to such persons and authorities as may seem appropriate or desirable, and that their suggestions and criticism be invited."

It will be observed that the report does not attempt to outline and define the rights and duties in general of neutral nations as they exist in international law, but rather to show, by a detailed and careful examination of the statutes of the United States and of their official interpretation, the compliance of this country with its conception of neutral rights and duties, as defined by the law of nations. An introductory chapter explains the character and scope of neutrality laws in general; a second chapter sketches the history and development of the neutrality laws of the United States; a third chapter sets forth the authoritative interpretation of the present neutrality laws as determined by judicial construction; a fourth chapter deals with the limitations of the neutrality laws of the United States; and the report ends with an appendix containing the statutes, resolutions, and proclamations necessary to an understanding of the text.

Particular attention is called to the amendments suggested by Dr. Fenwick as calculated to make the neutrality laws more efficient, and to the draft of a statute to effect this purpose.

As the neutrality laws of the United States cannot well be understood without a knowledge of the circumstances which suggested their enactment, this report is commended not merely to all those interested in the rights and duties of neutral nations, but especially to those who desire in the future, as in the past, that the policy of the United

States in regard to neutral rights and duties, adopted after great thought and deliberation, may continue to serve as a model to the nations.

JAMES BROWN SCOTT,
Director of the Division of International Law and Secretary of the Carnegie Endowment for International Peace.

WASHINGTON, D. C., *December 11, 1913.*

NOTE

The reader will note that in Chapters III and IV the discussion of the interpretation and the deficiencies of the neutrality laws of the United States is based upon their provisions as quoted from the *Revised Statutes* of 1878, although many of the adjudged cases were anterior to that date, and although Congress reenacted the neutrality laws in Secs. 9-18 of the *Act to codify, revise and amend the penal laws of the United States,* approved March 4, 1909 (*U. S. Statutes at Large,* vol. 35, p. 1088). The differences between the wording of the *Revised Statutes* on the one hand and the Act of 1818 and the Code of 1909 on the other being very slight, this method of treatment has seemed both the most lucid and convenient.

Attention is called to the legislation enacted by Congress on this subject since the publication of this volume, viz., the Act of May 7, 1917, and Title V of the Act of June 15, 1917 (*U. S. Statutes at Large,* vol. 40, pp. 39 and 221).

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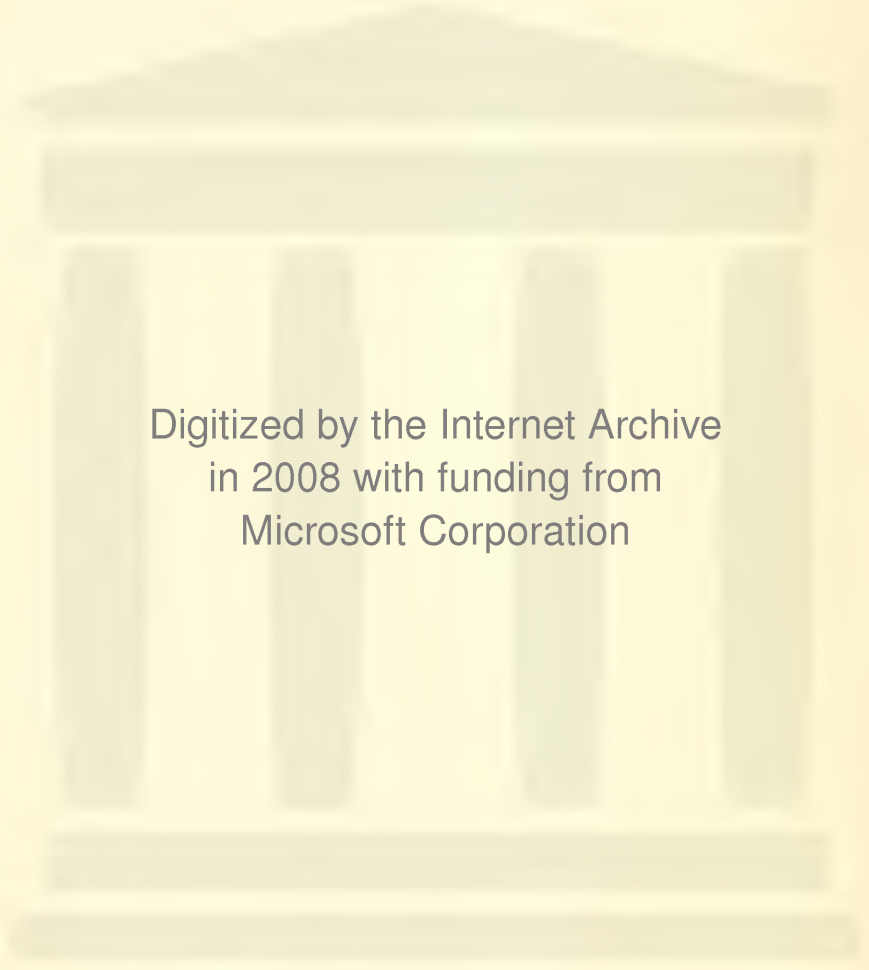

PREFACE.

The present study of the neutrality laws of the United States has a threefold object in view: to show the traditional policy of the United States with respect to neutrality laws, to state the precise scope of those laws, and to criticise them according to the standard of international law. As an introduction to the study it was thought advisable to show the position which neutrality laws hold in the general field of international law. It is not an uncommon error to confuse municipal neutrality laws with the international law of neutrality, to mistake the legislation by which a state gives effect to its international obligations for the obligations themselves. This error has been particularly noticeable in the recent discussion concerning a resolution of Congress empowering the President to prevent the export of arms and ammunition from the United States to Mexico. The historical sketch of the several neutrality acts passed by Congress, and of the neutrality proclamations issued in accordance with them, is presented with the object of showing at once the traditional policy of the United States in framing legislation to meet its international obligations, and the changes in the law which have been brought about by the necessity of adapting it to existing conditions. The succeeding chapter states the authoritative interpretation of the present neutrality laws as determined mainly by judicial, and in part by executive, construction. In consideration of the special object in view in the preparation of this study, it was thought advisable to separate the statement of the actual restrictions imposed by the present laws from the criticism of the deficiencies of those laws, in spite of the fact that this has necessitated repetition to some slight extent. Following the criticism of the present neutrality laws is a draft of a new neutrality code embodying the results of the investigation, and introducing amendments intended to meet the deficiencies of the existing law and to bring it more in accord with the recognized obligations of the United States.

While the study is therefore, by its purpose, largely technical in character, the subject with which it deals is one of such great interest and importance as to commend itself to the attention of the general public. The neutrality laws of the United States hold a significant place in the legal and political history of the country; controversies

have ranged around them, and they have more than once been the subject of sharp diplomatic discussions, while not a few of the important decisions of the Supreme Court of the United States have been based upon violations of the several neutrality acts.

Moreover, with the exception of Great Britain, no other country has enacted similar municipal legislation of so comprehensive a character, in the interest of enforcing upon its citizens and others within its jurisdiction, the observance of the duties of neutrality. Most of the continental countries have adopted certain general provisions against foreign enlistment and against acts which may compromise the neutrality of the state; but they have not thus far seen the need of enacting penal legislation of the definite and precise character of that adopted by the United States and Great Britain. It is true that in the case of the latter countries special circumstances formed the proximate occasion for the adoption of their neutrality acts; but, on the other hand, it can hardly be denied that municipal neutrality legislation, as a means of giving effect to international obligations, has been greatly neglected. In consequence of the rules relating to the rights and duties of neutral powers in land and maritime war, adopted at the Second Hague Conference of 1907 (Conventions V and XIII), it is all the more imperative that the states of the world should amend their neutrality legislation so as to enable them to meet the obligations which they have thus defined for themselves. In view of this fact, the experience of the United States may not only be of interest, but of service as well, to states contemplating the adoption of new or the amendment of existing neutrality laws.

C. G. F.

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CHAPTER I.

THE CHARACTER AND SCOPE OF NEUTRALITY LAWS.

Divisions of international law.

International law deals with the relations between states. It consists in those generally accepted rules of conduct which nations consider so far binding upon themselves in their relations with one another as to lead them actually to abide by them in their general practice. The traditional division of these rules by writers of international law has separated them into two general classes, those dealing with the relations of states in time of peace, and those regulating the conduct of states in time of war. The rules belonging to this latter class possess, in the history of international law, a far more important place than the rules prevailing between nations at peace. The reason for this apparently unnatural emphasis upon the rules of war is evident when we consider that, until within modern times, nations have been much more ready to cut the Gordian knot of disputed rights by a resort to armed force than to discuss amicably the justice of the right in question.

Law of war.

But even in their resort to armed force as the arbiter of their quarrels, civilized nations have recognized that there was a limit to the extent to which that force might be applied. If, in principle, the object of war is to overcome the opposition of one who refuses to grant us our rights, and if war is a means, not an end, if it is entered upon from necessity, not from choice, it follows that the operations of war are justified only in so far as they tend in fact towards the attainment of that object. But whether this principle was dimly or clearly present to the conscience of warring nations, the widespread misery, both on the part of the combatants themselves and on the part of non-combatants, attending the resort to armed force as a means of obtaining rights and redressing wrongs, forced upon civilized nations a recognition of the necessity of limiting, as far as possible, the accidental suffering caused by war, if the inherent and inevitable suffering could not be avoided. There has thus grown up between nations the apparently paradoxical system of rules called the "law of war."

From a scientific point of view the rules of international law might more properly be divided into the rules defining the fundamental

rights and duties of nations, and the rules relating to the procedure adopted by nations for the assertion of rights and the redress of wrongs. The former division would embrace the old "law of peace," the latter the old "law of war" with such other methods of procedure of a pacific character which have come in recent years to commend themselves to the moral sense of civilized nations. Taken thus, war may be regarded as an international method of procedure for the enforcement of rights and for the redress of wrongs. However improper a method it may be at times from the standpoint of justice and morality, international law recognizes it as a legal means of coercing an alleged offender.

Law of neutrality. Divisions.

In thus acknowledging the legality of war, international law at the same time recognizes that the existence of war not only affects the rules normally prevailing between the parties to the conflict, but that it imposes new duties upon other states not themselves involved in the war. These new duties imposed upon states not involved in the war are deducible from the nature of the remedy resorted to by the parties to the conflict. War is the settlement of an international dispute on the basis of superior physical force. It is evident that states not parties to the dispute must either maintain an attitude of neutrality or else be drawn themselves in the conflict. Assuming, then, a desire on the part of third parties to keep aloof from the war, certain obligations necessarily devolve upon them. These obligations are based upon a two-fold principle: First, that neutrality demands an entire abstinence from all direct participation in the conflict; and secondly, that it demands an attitude of absolute impartiality towards the belligerents in all matters not connected, or only indirectly connected, with the war.

Duty of abstention.

With regard to the first point it must be observed that to abstain from all participation in the conflict is something more than the mere impartial treatment of the contending parties, which would not be contravened by giving equal help to both. The principle of abstention is based upon a recognition that while it may be theoretically possible to give equal help to both contending parties, it is practically impossible to do so. Assistance of a certain kind to one party might be of far greater help to him than similar assistance might be to the other party. Moreover, the obligation of abstention from participation in the war imposes upon the neutral state active as well as passive duties. It is not merely sufficient for the neutral state to refrain from giving help to either of the parties by any positive acts of assistance on its own part, but it must take active steps to

prevent either of the belligerent parties from gaining an advantage over the other by making use of the territory of the neutral state, and to prevent private persons, whether aliens or its own citizens, from coöperating with a belligerent in the use of neutral territory for hostile purposes.

Duty of impartiality.

With regard to the second point, it must be observed that war does not interrupt, in principle, the previous friendly relations between belligerent and neutral states. But in so far as the friendly relations of times of peace incidentally produce effects which in time of war would amount to assistance from the neutral to the belligerent state, they must necessarily to that extent be interrupted. There are, however, certain acts of friendliness on the part of neutral towards belligerent states, such as the furnishing of war-ships with limited supplies of food, coal, etc., which are permitted in spite of the fact that they involve a certain amount of *indirect* assistance to the belligerent. Just where the line is to be drawn between direct and indirect assistance, and accordingly just what acts of friendliness are still permissible on the part of neutrals towards belligerents, has not been determined by any principle but has been worked out synthetically by the practice of nations. But whatever the neutral is permitted to do, it must do with equal readiness for both belligerents; the strictest impartiality is here the test of neutrality.

Growth of law of neutrality.

It will not be assumed that the two fundamental principles of neutral duty just defined have always been recognized by nations. Universally as they are accepted to-day, they have won their position in the body of international law only after centuries of dispute between belligerents and neutrals. The history of the development of the rights as well as of the duties of neutral nations forms one of the most striking instances of the growth of law between nations. We are not here concerned with the rights of neutral states except in so far as they are connected with the fulfilment of neutral duties; it is merely sufficient to note the significant fact that the neutral states which have been most energetic in the assertion of the rights of neutrality have been generally those most ready to fulfill its duties. A brief sketch of the growth of the recognition of neutral duties will be here in place, in so far as it is necessary to throw light upon the meaning of the two fundamental principles above stated.[1]

[1]For a history of the growth of the law of neutrality with respect to neutral rights as well as neutral duties, see Hall, *International Law* (6th ed.), 571-587. An earlier and carefully reasoned chapter of the same work discusses the growth of the underlying principles of neutrality, 71-81. See also Walker, *The Science of International Law*, 374-526.

17th century. As late as the year 1625 the rights and duties of neutral states were so imperfectly defined that in his famous treatise on the Law of War and Peace Grotius did not deem it necessary to consecrate more than a brief chapter to the status of those whom he described by the expressions *qui in bello medii sunt; qui extra bellum sunt positi.* In his statement of the duties of those who are at peace with the belligerent parties he shows himself so far dominated by the customs of his age that he takes it for granted that the neutral state should pass upon the justice of the war in progress, and modify its neutral conduct accordingly. "It is," he says, "the duty of neutrals to do nothing which may strengthen those who are prosecuting an unjust cause, or which may impede the movements of him who is carrying on a just war. . . . But if the cause is a doubtful one they must manifest an impartial attitude towards both sides, in permitting them to pass through the country, in supplying their troops with provisions, and in not relieving the besieged."[1] It is evident that the concept of a legal status of neutrality, in which a neutral state, acknowledging the sovereignty and equality of the states in conflict, regulates its conduct irrespective of its sympathy for or its belief in the justice of the cause of either of them, had not yet come to be understood. In fact, until the close of the seventeenth century the greater part of the duties of a neutral state were determined not by fixed international custom but by treaties between individual states, by which each state sought to prevent third parties from giving help to the enemy in the event of a possible war.[2] How little the principle of absolute abstention on the part of neutrals from all participation in the war was recognized may be seen in the fact that it was not regarded at that period as inconsistent with neutrality for a neutral state not only to grant an impartial permission to both belligerents to raise troops within its territory, but to grant this permission to one belligerent, while refusing it to the other, in cases where the neutral state had, prior to the war, entered into a treaty stipulating that such levies might be raised. As for the modern duty imposed upon neutral states of actively preventing violations of their sovereignty by the belligerents and of seeking redress for such violations after they have taken place, powerful belligerents were so in the habit of performing acts of war within the territory

[1] *De Jure Belli et Pacis,* lib. III, cap. XVII, 3.

[2] Hall cites a number of such treaties ranging in date from the treaty between England and Denmark in 1465 down to the treaty between the same powers in 1686. *Op. Cit.,* 572-573.

of neutrals that there was little thought of the injured belligerent holding the neutral to account for them.[1]

18th century. Vattel.

The middle of the eighteenth century marks a decided growth in the recognition of the rights of neutral states, but it was not until the close of the century that the standard of neutral duty rose appreciably higher. As regards the rights of neutral states, in consequence of a better recognition of the principle of territorial sovereignty there were fewer instances of the violation of the sovereignty of neutral states by the commission of hostilities by belligerents within neutral territory; and we find Wolff stating, in 1749, that "no one may raise troops in a foreign country without the consent of the sovereign; and he who presumes to do so violates the Law of Nations, and therefore does an injury to the foreign state."[2] But in the matter of neutral duties it was still possible, in 1737, for a writer of such good judgment as Bynkershoek to think that "the purchase of soldiers among a friendly people is as lawful as the purchase of munitions of war,"[3] and that if help has been promised by a state to an ally, and the latter goes to war with a friendly state, the neutral state must stand by its promise.[4] Vattel, writing in 1758, qualified his general statement that a neutral state must give no help to either party by the condition, "if it is not bound [by treaty] to do so," upon which he comments as follows: "When a sovereign furnishes the moderate assistance which he owes in virtue of a former defensive alliance, he does not become a party to the war: accordingly, he may acquit himself of his obligation and maintain, in other respects, a strict neutrality;"[5] and he attempts to justify this preference of one belligerent over the other on the ground that the neutral state "might have reasons" for confiding its troops to one belligerent rather than to the other. Another exception to the general rule that a neutral must give no help to either party is made with respect to loans of money. Vattel holds that the practice is lawful "so long as it appears that the nation is lending its money solely for the purpose of obtaining interest," and a similar discrimination, as in the case of levies of troops, in favor of one belligerent over the

[1] Hall quotes several proclamations of neutral states in the 17th century to prove that, in spite of the frequent violations of neutral sovereignty, "the right of a sovereign to forbid and to resent the performance of acts of war within his lands or waters was theoretically held as fully then as now to be inherent in the fact of sovereignty." *Op. Cit.*, 576.

[2] *Jus Gentium*, s. 754; Phillimore, *International Law*, III, §CXLIV.

[3] *Quaestionum Juris Publici*, lib. I, cap. XXII.

[4] *Ibid.* cap. IX.

[5] *Le Droit des Gens*, liv. III, cap. VII, §§104-105.

other is justified by the principle that a nation has the right to lend its money "where it thinks it has good security."[1]

But putting these inconsistent exceptions aside Vattel is to be credited with having formulated in clear terms the two fundamental principles of neutral duty: First, that the mere impartial treatment of the belligerent parties in the sense of giving equal help to both is not sufficient to comply with the duties of neutrality. A nation must abstain from helping either party; for, as Vattel justly observes, "the same number of troops, the same quantity of arms, munitions, etc., furnished under different circumstances, do not amount to equivalent help." Secondly, in all matters not connected with the war, a neutral state must not refuse to one of the belligerents what it grants to the other.[2]

Neutral duties become more definite.

The subsequent history of the law of neutrality shows us an increasingly better understanding of the force of the two principles formulated by Vattel, and of their proper application to the disputes arising between belligerents and neutrals. Gradually it came to be generally recognized that a neglect on the part of neutral states to prevent the arming and equipping of cruisers in their ports by private persons, in the interest of belligerents, was in violation of the duties of neutrality.[3] By the year 1788 we find Sweden declaring that the justification of a treaty obligation, offered by Denmark in explanation of the fact that certain of its troops were acting as auxiliaries of Russia against Sweden, was a "doctrine which His Swedish Majesty cannot altogether reconcile with the Law of Nations and the rights of Sovereigns."[4] It was left for the United States, in 1794, by the enactment of municipal legislation for the better fulfilment of its neutral duties, to formulate into a consistent system the most enlightened usages, and to set a new standard of the obligations incumbent upon the status of neutrality.[5]

But it is evident that the standard set by the United States in 1794 could not be expected to form a permanent code of neutrality. It was a statement of principle as applied to existing circumstances, and was necessarily limited to the continuance of those

[1] *Le Droit des Gens,* liv. III, cap. VII, §110.

[2] *Ibid.* liv. III, cap. VII, §104.

[3] Hall refers to a series of neutrality edicts issued after the outbreak of the war between England and France in 1778 as illustrating an attempt on the part of certain maritime states to fulfill their duties in this respect. *Op. Cit.,* 584,

[4] The declaration is quoted in full by Phillimore, III, §CXL.

[5] The character and effects of this legislation on the part of the United States will be treated in full in the following chapter.

circumstances, or similar ones. In the course of time new conditions arose which required a more careful analysis of the general principles of neutral duty, in order to secure a more consistent application of them to the actual situation. The consideration of these new deductions from the fundamental principles of neutrality, and of the different rules which have been adopted in consequence, will find its proper place in a subsequent chapter.

Analysis of neutral duties. Passive duties.

In the light of the fundamental principles determining the status of neutrality we may proceed to analyse the ways in which a neutral state may act in violation of it. It was stated above that the obligation of abstaining from all participation in a war imposes upon neutral states both active and passive duties. The passive duties are fulfilled by the merely negative attitude of non-intervention in the war on the part of the neutral state. Here we immediately meet with the distinction between acts of a state in that sovereign and corporate capacity in which it maintains public relations with other states and acts of the citizens or subjects of the state, who as a body constitute the state, but whose actions as individuals cannot be imputed to the governmental organs of the state. Setting aside for the moment the acts of citizens of the state, and considering only the acts of the state in its corporate capacity, it is the accepted rule that a state cannot furnish aid, whether directly or indirectly, to either of the parties at war. How far this general rule must be modified, with respect to indirect aid, by the continuance by the neutral state towards the belligerents of certain acts of comity shown by all states in time of peace, is still one of the debated questions of international law. A fairly satisfactory compromise was reached by the Powers at the Second Hague Conference by the adoption of rules fixing certain limitations upon the asylum which may be granted to belligerent war-ships in neutral ports, and defining in fairly exact terms the amount of supplies and fuel which may be shipped in neutral ports, and the extent to which repairs may be carried out therein.[1] In so far as these acts of courtesy, which may under certain circumstances enable a belligerent to resume hostilities and therefore constitute indirect assistance to him, are impartially shown to both belligerents, they cannot be said to constitute an interference by the neutral in the war.

Acts of individuals excepted.

Passing from the consideration of acts of a state in its corporate capacity to acts of individual citizens or subjects of the state, we find a different rule applicable to them. It is clear that however much

[1] See below, pp. 143-145.

the state itself may desire to maintain an attitude of non-interference in a foreign war, it cannot exercise such an effective control over its citizens as to prevent them, as individuals, from giving direct or indirect assistance to either of the belligerents. In the first place, the jurisdiction of a state is limited to its own dominions,[1] and it would not have the right, even if it had the power, to exercise a control over the acts of its subjects in other countries. Hence, a neutral state cannot be held accountable by a belligerent even for acts of direct hostility committed by its citizens against the belligerent, provided those acts do not take their inception upon the territory of the neutral state. In the second place, even within their own dominions, where they are supposed to exercise a certain measure of control over the acts of their subjects, neutral states have been unwilling to restrict the ordinary commercial undertakings of their citizens merely because those undertakings happen, in time of war between two foreign countries, to result in direct or indirect assistance being given to one of the parties to the disadvantage of the other. A statement of Jefferson has been frequently quoted as illustrating the position taken by neutral states on this subject. In a letter to the French minister, on May 15, 1793, Jefferson said: "We have answered [to Great Britain], that our citizens have always been free to make, vend, and export arms; that it is the constant occupation and livelihood of some of them. To suppress their callings, the only means, perhaps, of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle, and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, has not required from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent Powers on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned, and that the purchases of arms here may work no inequality between the parties at war, the liberty to make them will be enjoyed equally by both."[2]

Corresponding right of belligerents.

The latter part of Jefferson's remarks shows that while on the one hand neutral states have successfully vindicated their claim to be

[1]The jurisdiction of a state over its merchant vessels on the high seas is of too limited a character to constitute an exception to the principle, in so far as responsibility for acts committed by such vessels is concerned.

[2]*Am. State Papers, For. Rel.*, I, 147.

released from the duty of interfering with the ordinary commercial avocations of their citizens, on the other hand belligerent states have obtained the recognition of their paramount claim to restrict neutral commerce when direct or indirect assistance might result to the enemy therefrom. It is clear that a large part of the commerce which would normally be carried on between a neutral state and a belligerent state, if the latter were at peace, may prove a serious obstacle to the other belligerent in the conduct of military operations. Supplies of munitions of war, and even supplies of food, whatever be the mercantile basis upon which they are furnished by a neutral citizen to the army or navy of a belligerent, are none the less embarrassing to the other belligerent; and since neutral states have been unwilling to assume the obligation of preventing such supplies from being given, whether from a recognition of their own inability to meet the situation or from an unwillingness to impose an undue burden upon their citizens, the belligerent has been left to apply the necessary remedy.[1] It thus happens that a certain part of the trade of neutral citizens with the belligerents, while not forbidden by the municipal law of their own state, is subject to the penalty of capture and confiscation by the injured belligerent. The circumstances under which this right of capture and confiscation may be exercised by a belligerent have been a traditional subject of dispute between belligerent and neutral states. For while belligerent states have been left free to deal directly with the offending neutral citizen, neutral states have been vigilant to see that the belligerent does not act arbitrarily in enforcing his rights.

Active duties, with regard to—

The active duties of a neutral state are deducible from the principle that if a nation cannot give help to the belligerents without compromising its neutrality, it must prevent them or persons in their interest from making any use of its territory which would give one of the belligerents an advantage over the other. Behind this duty of preventing any use of its territory in favor of either belligerent stands the sovereign right of a state over the domain subject to its jurisdiction. But this right is at the same time the source of its responsibility. It follows therefore that in time of war between two foreign countries a neutral state must actively exert certain rights which lie more or less dormant in time of peace. The neutrality of a state would with reason be regarded as fraudulent if, while professing an attitude of non-interference in the war, it should permit any use to be made of its territory for hostile purposes. The belligerents cannot

[1]Hall, *Int. Law*, 75.

be allowed to commit any act of war against each other within the jurisdiction of the neutral, nor may they make preparations for war therein, nor make the neutral territory a starting point for hostile expeditions or a base of military or naval operations.

1. Acts of the belligerents themselves;

But the neutral state must not only prevent belligerents from compromising its neutrality by acts committed within its jurisdiction; it must also prevent private persons, whether aliens or its own citizens, from assisting in the perpetration of such violations of its sovereignty. Here we are immediately confronted with the distinction which will lead us to an understanding of the character and scope of what are called "neutrality laws." With respect to acts committed by the belligerents themselves in violation of neutral territory, it is evident that the neutral state, while standing responsible to the injured belligerent for such violations of its sovereignty, cannot proceed to punish the offenders by reason of the fact that the public vessels of a belligerent are not subject to the jurisdiction of the neutral state even when within its territorial waters, nor are the officers in command of the armed forces of a belligerent state, nor the members constituting those forces, amenable to the civil or criminal jurisdiction of the neutral state.[1] All that the neutral state can do is to make complaint through diplomatic channels and to obtain redress directly from the state in whose service the offenders have acted.[2]

2. Acts of individuals in their interest.

But it is otherwise with respect to the acts of private individuals who attempt to coöperate with a belligerent in violating the sovereignty of the neutral state. Here the neutral state is free to take whatever steps it pleases to prevent such individuals from compromising its neutrality. Accordingly, it may pass laws defining the acts which it regards as compromising its neutrality and providing punishment for the commission of them. The acts must, of course, be committed within the jurisdiction of the neutral state, for it is only over such acts that the state is supposed to have control. Beyond the jurisdiction of the state its citizens may commit hostile acts against a belligerent without consequent responsibility in international law devolving upon the neutral state. The remedy of the belligerent in this

[1]An exception to this rule, in cases where individual officers or members of a foreign army or navy become guilty of crimes committed independently of their official position, does not affect the principle involved.

[2]The neutral state can, however, take direct action against the officers in such cases to the extent of refusing to grant the asylum which it might otherwise give to the offending vessel or army, and of refusing to recognize, in so far as they may come within its jurisdiction, the legality of property rights acquired in consequence of a violation of its sovereignty.

case is upon the individuals personally who, by their own act, have forfeited the protection of their state. An exception to the responsibility of a neutral state for acts committed within its jurisdiction is to be found in the general admission that no state can exercise so extensive and thorough a supervision over what is done within its territory as to prevent the commission of carefully concealed acts. A further exception is that the jurisdiction ordinarily exercised by a nation over its merchant vessels on the seas does not impose upon it the obligation of punishing hostile acts committed by such vessels.

Neutrality laws. Their character.

Legislation of this character, which is enacted by a state to prevent individuals within its jurisdiction from compromising the neutrality of the state during a war between two foreign powers, is known in the United States as a "neutrality act,"[1] and the provisions of such an act may be called "neutrality laws." Neutrality laws are thus purely domestic regulations and form no part of the body of international law.[2] In point of comprehensiveness they represent the extent to which the state considers it necessary to adopt penal measures to effectively prevent persons within its jurisdiction from coöperating with a belligerent in the use of its neutral territory for hostile purposes. In this connection it matters not whether the individuals who render such assistance to a belligerent do so from feelings of hostility towards the other belligerent, or merely from commercial motives; it is the act itself which the injured belligerent will properly complain of, not the motive with which the act is done.

Their proper scope.

Such being the character of neutrality laws, we may now inquire into their proper scope. Inasmuch as neutrality laws are municipal in character and are binding only within the jurisdiction of the state enacting them, they may be looked upon as embodying the concept of international duty as understood by the individual state, together with such additional restrictions as the state may choose to impose upon its citizens from motives of policy. Whether the state has understood its duty correctly or not is a further question. Accordingly, in some cases neutrality laws may go beyond the requirements of the international obligations of the state by restricting the action of its

[1]English writers, in referring to such legislation, generally employ the term "Foreign Enlistment Act," owing to the fact that the first British act for the purpose of fulfilling the obligations of Great Britian as a neutral was based, to some extent, upon earlier British acts for the prevention of the enlistment of British subjects in foreign armies.

[2]It is important to observe the distinction between "neutrality laws" and the "law (or laws) of neutrality." The latter term should be confined to the international law covering the whole field of the relations between belligerents and neutrals.

If in excess of international law, no resulting obligation.

citizens to a greater extent than international law demands. Such excess of legislation should not, in principle, increase the obligations of the neutral state from the point of view of international law, so long as it is enforced in favor of both belligerents equally. There is some danger, however, lest the municipal laws of a state be regarded as defining the standard according to which foreign nations may hold that state accountable for alleged breaches of neutrality.[1] In the Case of the United States, presented to the Tribunal of Arbitration at Geneva, it was argued by the United States that "Great Britain was bound to perform all the duties of a neutral towards the United States which are indicated in this statute [The British Foreign Enlistment Act of 1819]."[2] To this it was replied in the British Counter Case, first, that even on the assumption that municipal laws of that character were founded upon conceptions of international obligation, the state should still be judged by the actual law of nations and not by its conception of that law, and secondly, that the assumption was not a true one, since municipal laws, being enacted primarily to secure the interests of the state itself, may frequently prohibit, for reasons of expediency, acts not prohibited by the law of nations.[3] However, the danger of being held accountable for its own conception of neutral duty would appear to be more than counterbalanced by the advantages to a state of pursuing a liberal policy in the matter of neutral duties, especially in cases where the principle of responsibility is clear, but where the application of the principle to concrete circumstances is not capable of being, or has not been, fixed by international practice.[4]

[1]Hall lays much stress upon this danger, pointing out that if a law has been administered for some time by the courts of a state, and insensibly becomes to the majority of the people their standard of right, "a tendency will in time grow up to act according to its provisions irrespectively of the obligations which it imposes. So long also as the law is administered at all, foreign nations will each expect to reap the full benefit which has accrued to another from its operation; and any failure on the part of the neutral government to make use of its powers gives a ground for suspecting unfriendliness, which the belligerent cannot be expected in the heat of war to estimate at its true value." *Op. Cit.*, 608, note.

[2]*Papers Relating to the Treaty of Washington*, I, 48.

[3]*Ibid.* III, 210. In addition, reference may be made to the suggestion of Hall, that "it may be more convenient to discourage the inception of acts, which would only in the later stage become international wrongs, than to deal with them when ripe." *Op. Cit.*, 608, note.

[4]It was upon this principle that the British Neutrality Laws Commission of 1867 framed the report which formed the basis of the Foreign Enlistment Act of 1870. "In making the foregoing recommendations," the Commissioners said, "we have not felt ourselves bound to consider whether we were exceeding what could actually be required by International Law, but we have no hesitation in stating our opinion that if those recommendations should be adopted, the Municipal Law of this realm available for the enforcement of neutrality will

Accordingly, while a state will naturally seek, in framing its neutrality code, to conform to the obligations of international law, it may find it expedient, especially where it has particular reasons for maintaining an unassailable position of neutrality, to make its municipal laws more stringent than is required by a faithful compliance with international law.

If narrower, no lessening of obligation.

Just as the municipal laws of a state may exceed the actual requirements of international law, so, on the other hand, they may be narrower and less comprehensive than those requirements. In such cases the neutral state is, of course, not released from responsibility for acts committed by its citizens or others within its jurisdiction, by which its neutrality is compromised. This point was forcibly urged by the United States before the Geneva Arbitration Tribunal in the following terms:

> It must be borne in mind, when considering the municipal laws of Great Britain, that, whether effective or deficient, they are but machinery to enable the Government to perform the international duties which they recognize, or which may be incumbent upon it from its position in the family of nations. The obligation of a neutral state to prevent the violation of the neutrality of its soil is independent of all interior or local law. The municipal law may and ought to recognize that obligation; but it can neither create nor destroy it, for it is an obligation resulting directly from International Law, which forbids the use of neutral territory for hostile purpose. The local law, indeed, may justly be regarded as evidence, as far as it goes, of the nation's estimate of its international duties; but it is not to be taken as the limit of those obligations in the eye of the law of nations.[1]

Summary.

To sum up, we find that the basic principle of neutrality, by which a neutral state is bound to refrain from interfering in a war between two powers at peace with the neutral state, imposes both active and passive duties. The passive duties are fulfilled if the neutral state faithfully refrains, in its corporate capacity, from giving either direct or indirect assistance to either belligerent, with the exception that it may continue to render certain of the courtesies shown in time of peace, provided it render them impartially to both belligerents. The active duties require the neutral state to take measures to prevent any

[1] *Papers Relating to the Treaty of Washington*, I, 47.

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derive increased efficiency, and will, so far as any defects therein have attracted our notice, have been brought into full conformity with Your Majesty's international obligations." *Report of the British Neutrality Laws Commission*, No. 69.

use of its territory for hostile purposes. If the belligerents themselves are the guilty parties in such violations of neutral territory, the neutral state must obtain redress from them through diplomatic channels. If private individuals, whether citizens of the neutral state or aliens, are the guilty parties, by attempting to assist either belligerent in making unlawful use of neutral territory, the neutral state must make every reasonable effort to thwart their plans, and must inflict appropriate penalties where the acts have been committed. The laws which the neutral state may make for this purpose are called "neutrality laws." They define the acts which the neutral state believes will compromise its neutrality, and provide the means for prosecuting and punishing those who commit such acts. They are strictly domestic laws and have no direct international effect. They may or may not conform by their terms to the requirements of the international obligations devolving upon the state, which continue the same whatever be the character of the legislation which each state may adopt to enable itself to comply with them. Inasmuch as they do not apply to the belligerents themselves directly, they must be supplemented, when the occasion arises, by instructions to the proper officers of the state, pointing out the restrictions to be placed upon the grant of asylum to belligerent vessels in the ports of the neutral state. These administrative instructions, being of a temporary character, are generally not made part of a permanent neutrality act. In the United States, where the executive department is unable to make use of the military and naval forces of the state except as authorized by Congress, it is customary to include among the provisions of neutrality acts a grant of power to the president to call the armed forces of the country to his aid when necessary to vindicate the neutrality of the United States.

CHAPTER II.

THE HISTORY AND DEVELOPMENT OF THE NEUTRALITY LAWS OF THE UNITED STATES.

Neutral policy of the United States.

The Neutrality Act passed by the Congress of the United States on June 5, 1794, marks an epoch in the history of the relations between belligerent and neutral nations. It was the result of a distinct policy adopted by the United States in its relations to the states of Europe. When the thirteen colonies succeeded in establishing their independence they found themselves in an unique position. They stood forth as the single independent state in the new world; and although they were surrounded on all sides by the colonies of European states, they were separated from the actual centers of European domination by the formidable barrier of an ocean. It was but natural, therefore, that they should adopt a policy of detachment from the political alliances by which the balance of power was being maintained in Europe. Their geographical position enabled them to do so, and their political principles put them out of sympathy with the system of aggression on the one hand, and of self-defense on the other, which kept Europe in the state of an armed camp. This policy of detachment from the political system of Europe found a strong advocate in President Washington. In his farewell address, delivered September 17, 1796, he sums up the principles which guided him throughout his administration:

> The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.
>
> Europe has a set of primary interests, which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities.[1]

[1] *Am. State Papers, For. Rel.*, I, 37.

Treaty obligations towards France.

It was the war of 1793 between France and the Allied Powers which gave definite form to the policy of the United States, and led to the passage of the Neutrality Act in the following year. During the dark hours of the American Revolution the colonies had accepted aid from France at the price of an alliance by which the United States guaranteed to France for all time "the present possessions of the Crown of France in America." A Treaty of Amity and Commerce, concluded at the same time [February 6, 1778], bound the United States to admit into its ports French ships with their prizes of war, and at the same time to exclude from its ports the ships of war of other nations when carrying prizes captured from France. A discrimination was also made in the more favorable treatment to be accorded to French vessels of war in the matter of asylum in the ports of the United States. How could the United States be faithful to its treaty obligations to France and yet save itself from being drawn into the war? The position would have been a very delicate one had the United States been obliged to carry out the guarantee of the French possessions in America. Fortunately the operations of the war centered in Europe rather than on the American continent, and France did not demand the fulfilment of the territorial guarantee. In other respects, however, it was soon evident that France expected not only the sympathy of the United States but a certain amount of actual assistance and support of a not directly hostile character, which was quite in conformity with the loose ideas of neutrality at that time entertained in Europe.

Sympathy with French Revolution.

Judging from the enthusiasm with which the news of the French Revolution had been received in America, France might well have had reason to expect substantial help from the United States. The celebration in New York on December 27, 1792, the "Civic Feast" in Boston on January 27, 1793, the liberty-caps displayed on private houses, the cockades worn on hats, the widespread adoption of the title of "Citizen" instead of Mr. or Sir, made it seem as if the cause of the French republic had been adopted without reserve by its sister republic across the ocean.[1] When the news reached New York, in the spring of 1793, that the King of France had been beheaded and that the new republic was at war not only with Austria and Prussia, but with England and Spain as well, the question of helping France began to assume a more serious aspect. A war with England and Spain would mean for the United States the destruction of trade, a heavy public debt, and danger to the country both on the west and south.

[1]See J. B. McMaster, *A History of the People of the United States,* II, 89-94.

Men who had accused the government of lukewarmness in its sympathy for the revolution in France now began to count the cost, and it needed only the report of the wholesale massacre in Paris to persuade them that they were justified in abandoning any idea of taking sides in the war. There still remained, however, a large party of Republicans in Philadelphia and throughout Pennsylvania who were strongly in favor of giving active assistance to France. Throughout the summer of 1793 the question of neutrality became the line of party division between the Republicans and the Federalists, until it was difficult to say whether the sympathy exhibited by the former for France was in all cases real, and not in large part a sentiment played upon by party leaders for the sake of discrediting the Federalists who were represented as friends of monarchy and despotism.

Washington's proclamation of neutrality.

On April 22, 1793, Washington, acting on the advice of his cabinet, issued a proclamation of neutrality, the text of which reads as follows:

> Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, of the one part, and France on the other; and the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent Powers:
>
> I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those Powers respectively; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.
>
> And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the *modern* usage of nations, will not receive the protection of the United States, against such punishment or forfeiture; and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the courts of the United States, violate the law of nations, with respect to the Powers at war, or any of them.[1]

Neutrality edicts of this character had been frequently issued since the beginning of the century, many of them setting forth more specifically certain acts, such as the arming of privateers, prohibited to the subjects of the states issuing the edict.

[1] *Am. State Papers, For. Rel.*, I, 140.

Violations of American neutrality.

On May 15th, Jefferson, as Secretary of State, wrote to the French minister, M. Ternant, to the effect that he had received a memorial from the British minister, in which the latter "complains that the consul of France, at Charleston, has condemned, as legal prize, a British vessel, captured by a French frigate, observing that this judicial act is not warranted by the usage of nations, nor by the stipulations existing between the United States and France." Assuming the truth of the fact, Jefferson called upon the French minister to "interpose efficaciously to prevent a repetition of the error" by the same or any other French consul. Jefferson next called the attention of the minister to the report that a French privateer fitted out at Charleston had captured a British vessel and brought it into the port of Philadelphia, with the observation that without further evidence he would not impute to the public authority of France so serious an act as the arming of men and vessels within United States territory. Jefferson then informed the minister that the capture of the British ship *Grange* by a French frigate within the Delaware was an unlawful act, having been committed within the jurisdiction of the United States, and that, consequently, the United States called upon the French government to release the crew and to restore the vessel and its cargo to their former owners.[1]

Genet's justification of them.

Shortly after this letter M. Genet succeeded M. Ternant as Minister of France. Previously to his arrival in Philadelphia M. Genet, on landing at Charleston, S. C., had distributed commissions for the fitting out of French privateers in that port. On May 27th he wrote to Jefferson, answering the latter's letter of May 15th to M. Ternant. In this letter M. Genet defended the act of the French consul in setting up a prize court, on the ground that the power was conferred by the Treaty of Commerce of 1778, which provided that the officers of the port should not make examination of the lawfulness of prizes brought by French ships of war into American ports. The conclusiveness of M. Genet's argument is not very evident. The United States might, without derogation of its sovereignty, allow the validity of French prizes to pass unquestioned, but it could not permit a French consul to exercise judicial authority in one of its ports. M. Genet likewise admitted that several vessels had been armed and commissioned at Charleston, but defended the acceptance of the commissions on the ground that the commanders of the vessels, whether French or American, "knew only the treaties and the laws of the United States,

[1] *Am. State Papers, For. Rel.*, I, 147. The illegality of the capture of the *Grange* was subsequently admitted by M. Genet and the restoration of the vessel effected.

no article of which imposes on them the painful injunction of abandoning us in the midst of the dangers which surround us." Similarly he defended the arming of vessels on the ground that "liberty consisted in doing what the laws did not prohibit," and that there was no law forbidding such measures.[1]

Jefferson's reply.

Jefferson replied to his letter on June 5th. He informed Genet that the President had decided, after mature consideration, "that the arming and equipping vessels in the ports of the United States, to cruise against nations with whom we are at peace, was incompatible with the territorial sovereignty of the United States; that it made them instrumental to the annoyance of those nations, and thereby tended to compromit their peace; and that he thought it necessary, as an evidence of good faith to them, as well as a proper reparation to the sovereignty of the country, that the armed vessels of this description should depart from the ports of the United States." Continuing the same line of argument, Jefferson set forth in clear and simple terms the principles of neutrality as understood by the President: "After fully weighing again, however, all the principles and circumstances of the case, the result appears still to be, that it is the *right* of every nation to prohibit acts of sovereignty from being exercised by any other within its limits, and the *duty* of a neutral nation to prohibit such as would injure one of the warring Powers; that the granting military commissions, within the United States, by any other authority than their own, is an infringement on their sovereignty, and particularly so when granted to their own citizens, to lead them to commit acts contrary to the duties they owe their own country; that the departure of vessels, thus illegally equipped, from the ports of the United States, will be but an acknowledgment of respect, analogous to the breach of it, while it is necessary on their part, as an evidence of their faithful neutrality. On these considerations, sir, the President thinks that the United States owe it to themselves and to the nations in their friendship, to expect this act of reparation on the part of vessels, marked in their very equipment with offence to the laws of the land, of which the law of nations makes an integral part."[2]

French rights under treaty.

Genet's reply, dated June 8, 1793, written in a decidedly caustic tone, took up the question of sovereignty and disposed of it by asserting the principle that a nation at war has the right of arming in the neutral state "unless by treaty, or particular laws of this State, that right be confined to a single nation, friend, or ally, and express-

[1] *Am. State Papers, For. Rel.*, I, 149.
[2] *Ibid.* 150.

ly interdicted to others. This is exactly the case in which we are."[1] The treaty rights referred to by Genet were those accruing to France under the Treaty of Amity and Commerce of 1778.[2] Art. 17 of that treaty made it lawful for French ships of war and privateers to bring their prizes into the ports of the United States and to depart with them at any time without being subject to search or detention, whereas, on the contrary, no shelter or refuge was to be given to vessels which had made prize of the subjects or property of France. Art. 22 made it unlawful for foreign privateers, other than those of France, to "fit their ships" in the ports of the United States or to sell or to exchange prizes which they had captured, or even to purchase provisions in excess of a fixed amount. On July 17th Jefferson replied to Genet's claim of rights under treaty, in the following terms: "None of the engagements in our treaties stipulate this permission [to arm vessels]. The 17th article of that of commerce, permits the armed vessels of either party to enter the ports of the other, and to depart with their prizes freely: but the entry of an armed vessel into a port, is one act; the equipping a vessel in that port, arming her, manning her, is a different one, and not engaged by any article of the treaty."[3]

Jefferson then went on to prove that the position taken by the United States was in conformity with "the law of nature and the usage of nations," quoting the authority of Vattel to that effect. In reply Genet referred sarcastically to the aphorisms of Vattel which, he said, Jefferson brought forward "to justify or excuse infractions committed on positive treaties." "It is incontestable," he said, "that the treaty of commerce (Art. XXII) expressly authorizes our arming in the ports of the United States, and interdicts that privilege to every enemy nation."[4] The fallacy of Genet's argument was too evident for further discussion, but in a letter of August 16th to Mr. Morris, minister of the United States to France, Jefferson exposed it in detail: "Mr. Genet says, that the 22d article of our treaty allows him *expressly* to arm in our ports . . . Does the negative to the enemies of France, and silence as to France herself, imply an affirmative to France? Certainly not: It leaves the question, as to France, open and free to be decided according to circumstances; and if the parties

[1] *Am. State Papers, For. Rel.*, I, 151.

[2] Malloy, *Treaties*, etc., *between the United States and Other Powers* (1776-1909), 468.

[3] *Am. State Papers, For. Rel.*, I, 154.

[4] *Ibid.* 155.

had meant an affirmative stipulation, they would have provided for it expressly; they would never have left so important a point to be inferred from mere silence, or implication. . . . And, since we are bound by treaty to refuse it [the right to arm] to the one party, and are free to refuse it to the other, we are bound by the laws of neutrality to refuse it to that other."[1]

Restitution of prizes demanded.

On August 7th Jefferson wrote to Genet informing him that the President considered the United States as bound "pursuant to positive assurances, given in conformity to the laws of neutrality, to effectuate the restoration of, or to make compensation for, prizes which shall have been made, of any of the parties at war with France, subsequent to the 5th day of June last, by privateers fitted out of our ports."[2] Accordingly, Genet was requested to effect restitution of all prizes taken by such privateers and brought into the ports of the United States subsequent to that date, and was warned that the United States would not only prevent the future fitting out of privateers in its ports, but would refuse asylum to such as had been at any time so fitted out, and would cause restitution of prizes brought by such privateers within its ports. In a letter of September 5th to the British minister, Jefferson explained that "having, for particular reasons, forborne to use *all the means in our power*[3] for the restitution of the three vessels mentioned in my letter of August 7th, the President thought it incumbent on the United States to make compensation for them."[4] But inasmuch as after August 7th the President was determined to effect restitution "by all the means in our power," no compensation would then be due to the other belligerents.

Preventive measures.

In the meantime the government was taking active steps to prevent violations of the neutrality of the United States. On June 1st Genet complained of the arrest of Gideon Henfield, an American citizen serving on board the *Citizen Genet,* the French privateer referred to in Jefferson's letter of May 15th, and requested his "immediate releasement."[5] Jefferson replied that Henfield would be tried in due course

[1] *Am. State Papers, For. Rel.,* I, 168.

[2] *Ibid.* 167.

[3] The italics referred to the expression used in treaties of the United States with France (1778), the Netherlands (1782) and Prussia (1785) in which each of the contracting parties agrees to defend and protect "by all the means in their power" the vessels belonging to the subjects of the other in their territorial waters, and to cause such vessels to be restored to their rightful owners when they have been captured within the jurisdiction of the contracting parties.

[4] *Ibid.* 174.

[5] *Ibid.* 151.

for the offense with which he was charged, and he enclosed an opinion of Attorney General Randolph to the effect that Henfield was indictable at common law for disturbing the peace of the United States and punishable for having violated the treaties of peace between the United States and the Powers at war with France.[1] On June 7th the sale of the prizes captured by the French privateer, *Citizen Genet,* was interfered with by a deputy marshal of the District Court for the District of Pennsylvania. On June 8th a French vessel called the *Republican,* which had been armed for war in the port of New York, was detained by order of Governor Clinton, acting under instructions from the President. On June 21st the French consul at New York entered a vigorous protest against the assumption by the District Court of New York of jurisdiction over a French prize, the decision of which was pending in the French Consular Court.[2]

Hamilton's instructions to the collectors of customs.

In spite of the determined stand taken by the government, privateers continued to be fitted out in American ports. Governor Moultrie was secretly in sympathy with France and took little trouble to execute the orders of the President. Jefferson, relying upon a very doubtful promise from Genet, allowed the *Petit Democrat* an opportunity to slip out from the port of Philadelphia. Jefferson had indeed, at heart, very little sympathy with the measures that were being taken, and urged Madison to attack the President's proclamation of neutrality as being unconstitutional.[3] More effective measures were necessary, and on August 4th, Hamilton, as Secretary of the Treasury, issued a series of instructions to the collectors of customs at the chief ports of the United States. The instructions called upon the collectors to be vigilant in detecting any acts in violation of the laws of neutrality, and to give immediate notice of such attempts to the proper authorities. No asylum was to be given to vessels, nor to their prizes, of either of the powers at war with France, in accordance with the Treaty of 1778 with France, nor to armed vessels which had been originally fitted out in any port of the United States by either of the parties at war. The purchase of contraband articles, as merchandise, was to be free to both parties. The names of citizens of the United States in the service of either of the parties were to be notified to the local state governor. Vessels contravening these regulations were to be refused clearance. Vessels, except those in the immediate service of foreign governments, were to be examined as to their military equip-

[1] *Am. State Papers, For. Rel.,* I, 151-152.
[2] *Ibid.* 153.
[3] McMaster, II, 114-119.

ment upon entering and upon leaving port. In order to guide the collectors in this duty a schedule of rules which had been adopted by the President was transmitted to them. These rules were declared to be "deductions from the laws of neutrality, established and received among nations." The following acts were declared unlawful: The arming and equipping of vessels in the ports of the United States, by any of the belligerent parties, for military service; equipments of every kind of privateers of the powers at war with France; equipments of the vessels of any of the belligerent powers, which were of a nature solely adapted to war, with a qualified exception in favor of French vessels in conformity with Art. XIX of the Treaty of 1778. The following acts were declared lawful: equipments of merchant vessels by either of the belligerent parties for the accommodation of them as such; equipments of the public vessels of war of any of the belligerents, when such equipments were in themselves doubtful as being applicable either to commerce or war, except when the foreign vessel was bringing into port a prize captured from France, in accordance with Art. XVII of the treaty; similar equipments of vessels fitted for merchandise and war; enlistments, by vessels of either of the parties, of citizens of their own nationality, except where such vessels had been fitted out in United States ports contrary to the above rules, and except privateers of powers at war with France or vessels carrying prizes captured from France.[1]

It is to be noted that the above instructions distinctly prohibit any interference with commerce in contraband, which is free both to the parties at war and to citizens of the United States. In the case of the latter, however, the government withdraws its protection from them and abandons them to the penalties of capture and confiscation authorized by the laws of war. Moreover, the instructions make no mention of the distribution of commissions authorizing persons in the name of France to fit out privateers, since that act was regarded by the government not merely as a violation of the law of nations in regard to neutrality, but as an infringement of the sovereignty of the United States to which, apart from considerations of neutrality, the United States would not submit. The instructions issued by Hamilton had the desired effect, and there is no evidence that after August 7, 1793, other privateers were fitted out in the ports of the United States.

Necessity of penal legislation.

It was evident, however, that legislation on the part of Congress was necessary to complete and strengthen the measures taken by the

[1]For the text of the instructions, see App., p. 170.

administration. In July, 1793, Gideon Henfield was indicted at common law for enlisting on the French privateer, *Citizen Genet,* in violation of the treaties of the United States. The jurisdiction of the federal courts in criminal cases had not yet been asserted, but the administration urged the trial of the case. The judges ruled that the act of which Henfield was accused was a crime, and they charged the jury to that effect. But popular sentiment in favor of France was running high at that time, and the jury promptly returned a verdict of acquittal.[1] On August 21st the French Vice Consul at Boston, M. Duplaine, with a body of armed men, forcibly rescued a vessel named the *Greyhound* from the hands of the United States Marshal who had seized the vessel by order of the circuit court for that district.[2] But, in spite of the grave character of the offense, the grand jury of Philadelphia refused to find a true bill against him. In addition to the failure on the part of the government to punish the enlistment of individual citizens in the service of France, throughout the summer of 1793 rumors were constantly being received that armies were being organized in the South and West by the agents of Genet. One army was preparing, it was said, to lay siege to New Orleans, then in the possession of Spain, while another was planning to march across Georgia and invade the Floridas. Governor Shelby, of Kentucky, refused to prosecute the alleged offenders, and replied to Jefferson that all citizens had a right to leave the state, and that there was nothing to prevent them from taking arms and ammunition with them.

Washington's address to Congress.

On December 3, 1793, President Washington, in his annual address at the opening of Congress, reviewed the policy which the government had attempted to follow and called upon Congress to enact appropriate legislation:

> As soon as the war in Europe had embraced those Powers with whom the United States have the most extensive relations, there was reason to apprehend that our intercourse with them might be interrupted, and our disposition for peace drawn into question by the suspicions too often entertained by belligerent nations. It seemed, therefore, to be my duty to admonish our citizens of the consequences of a contraband trade, and of hostile acts to any of the parties; and to obtain, by a declaration of the existing legal state of things, an easier admission of our right to the immunities belonging to our situation. Under these impressions, the proclamation which will be laid before you was issued.

[1] Wharton's *State Trials,* 49.
[2] *Am. State Papers, For. Rel.,* I, 178-182.

In this posture of affairs, both new and delicate, I resolved to adopt general rules, which should conform to the treaties, and assert the privileges, of the United States. These were reduced into a system, which will be communicated to you. Although I have not thought myself at liberty to forbid the sale of the prizes, permitted by our treaty of commerce with France to be brought into our ports, I have not refused to cause them to be restored when they were taken within the protection of our territory, or by vessels commissioned or equipped in a warlike form within the limits of the United States.

It rests with the wisdom of Congress to correct, improve, or enforce, this plan of procedure; and it will probably be found expedient to extend the legal code and the jurisdiction of the courts of the United States to many cases which, though dependent on principles already recognized, demand some further provisions.

Where individuals shall, within the United States, array themselves in hostility against any of the Powers at war; or enter upon military expeditions or enterprises within the jurisdiction of the United States; or usurp and exercise judicial authority within the United States; or where the penalties on violations of the law of nations may have been indistinctly marked, or are inadequate: these offences cannot receive too early and close an attention, and require prompt and decisive remedies.

Whatsoever those remedies may be, they will be well administered by the judiciary, who possess a long established course of investigation, effectual process, and officers in the habit of executing it.

In like manner, as several of the courts have doubted, under particular circumstances, their power to liberate the vessels of a nation at peace, and even of a citizen of the United States, although seized under a false color of being hostile property, and have denied their power to liberate certain captures within the protection of our territory, it would seem proper to regulate their jurisdiction in these points; but if the Executive is to be the resort in either of the two last mentioned cases, it is hoped that he will be authorized by law to have facts ascertained by the courts, when, for his own information, he shall request it.[1]

His second proclamation of neutrality.

On March 24, 1794, Washington issued a second proclamation of neutrality directed against the military expeditions which were being formed in Kentucky.[2] The warning contained in the proclamation is more specific than that in the proclamation of the preceding year. Instead of the general statement in the earlier document, that prosecutions would be instituted against all persons who should violate

[1] *Am. State Papers, For. Rel.*, I, 21.

[2] For the text of the proclamation, see App., p. 172.

the law of nations, the President mentions the different acts of either enlisting others or enrolling oneself in such expeditions.

Act of June 5, 1794.

The desired legislation was furnished on June 5, 1794. In the debates before the House of Representatives preceding the adoption of the act, the discussion was mainly confined to the advisability of adopting a provision forbidding the sale within the United States of vessels or goods captured from a prince or state with whom the United States was at peace, when the vessel or goods had been captured by the enemies of such prince or state, unless the vessel or goods should first have been carried to a port or place within the territory of the state to which the captors belonged. The question was whether the Treaty of 1778 with France restrained the United States from forbidding the sale within its ports of prizes captured by France, and if not, whether it was expedient to refuse France the privilege of selling her prizes in American ports. But in spite of the urgent pleas made in favor of the provision, it was ultimately rejected.[1] The act which finally passed embodied the instructions issued by Hamilton to the collectors of customs, and supplemented them in accordance with the recommendations contained in the President's message.[2] The provisions of the act are as follows:[3]

Summary of its provisions.

Sec. 1 prohibits the acceptance by citizens of the United States within the territory or jurisdiction of the United States of commissions to serve a foreign prince or state.

Sec. 2 prohibits all persons within the territory or jurisdiction of the United States from enlisting or hiring other persons to enlist in the service of any foreign prince or state. An exception is made of citizens of a foreign state who are transiently within the United States, and a further exception exempts from punishment under the statute such persons as, within thirty days after enlistment, discover upon oath the person by whom they were enlisted.

Sec. 3 prohibits the fitting out and arming of vessels within the ports of the United States with intent that such vessels shall be used in the service of a foreign prince or state in a war against a prince or state with whom the United States are at peace; also the issuance or delivery of a commission to such vessel for the aforesaid purpose.

[1] *Annals of Congress,* 3rd Cong., 745-757.

[2] The bill passed the House of Representatives by a vote of 48 to 38. In the Senate the opposition of the Republicans was even stronger, and it was only by the deciding vote of the Vice-President that the bill was passed to the third reading. *Annals of Congress,* 3rd Cong., 67, 757.

[3] The text of the act is given in full in the App., p. 173.

Sec. 4 prohibits all persons from increasing or augmenting within the territory or jurisdiction of the United States the force of any ship of war in the service of a foreign prince or state.

Sec. 5 prohibits all persons from setting on foot directly or indirectly within the territory or jurisdiction of the United States any military expedition or enterprise to be carried on against the territory of a foreign prince or state with whom the United States are at peace.

Sec. 6 confers jurisdiction upon the district courts to hear complaints in cases of captures made within the territorial waters of the United States.

Sec. 7 empowers the President of the United States in all cases in which the foregoing provisions shall be violated to employ such part of the land or naval forces of the United States as shall be judged necessary to enforce the provisions in question.

Sec. 8 confers similar powers upon the President to compel the departure from the United States of any foreign vessel which by the law of nations or the treaties of the United States ought not to remain within the United States.

Sec. 9 provides that the act shall not be so construed as to prevent the prosecution of treason and piracy as defined by treaty or by law of the United States.

Sec. 10 provides that the act shall be in force during the term of two years and from thence to the end of the next session of Congress.

The act was entitled "An Act in addition to the act for the punishment of certain crimes against the United States." It was continued in force for a period corresponding to its original duration by the Act of March 2, 1797, and was made permanent by the Act of April 24, 1800.

High standard of neutrality set by it.

The scope of the act was not only more comprehensive than any of the previous temporary neutrality edicts issued by the nations of Europe earlier in the century, but it went considerably beyond what was considered the duty of a neutral nation. It was the first attempt ever made on the part of a neutral nation to pronounce definitely that certain acts would be considered by it a violation of neutrality, and to incorporate those acts into its criminal code and enforce their observance in favor of any friendly prince or state without distinction. No higher tribute to the statesmanship of Washington and his advisers could be paid than that rendered by Mr. Canning in 1823 in a speech before the House of Commons against the repeal of the British Foreign Enlistment Act of 1819. "If I wished," he said, "for a

guide in a system of Neutrality, I should take that laid down by America in the days of the presidency of Washington and the secretaryship of Jefferson."[1] In later years an eminent writer on international law, Mr. W. E. Hall, gave the following estimate of the high standard of neutral duty adopted by the United States:

> The policy of the United States in 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.[2]

First conviction under it.

The first conviction under the Neutrality Act was that of Étienne Guinet who was indicted under Sec. 3 of the act "for being knowingly concerned in furnishing, fitting out and arming *Les Jumeaux* in the port and river Delaware with intent that she should be employed in the service of the French Republic, to cruise, or commit hostilities, upon the subjects of Great Britain, with whom the United States are at peace." The facts of the case were as follows: The vessel entered the port of Philadelphia and registered at the custom-house as a merchantman. The owners then employed a carpenter who opened up new port-holes and made other preparations for an increase of armament. The suspicions of the government being aroused, the Secretary of War ordered that all the recent equipments of a warlike nature should be dismantled. The vessel then cleared from port, but when about sixty miles below Philadelphia she stopped and took on board cannon, ammunition and a number of men. When a further effort was made to obtain more guns from Philadelphia, the authorities were informed and a cutter was sent to arrest the vessel, which however escaped. The trial of Guinet was held in the Circuit Court for the District of Pennsylvania. In his charge to the jury, Justice Patterson said: "Converting a ship from her original destination, with intent to commit hostilities; or in other words, converting a merchant ship into a vessel of war, must be deemed an original outfit; for the act would otherwise become nugatory and inoperative. It is the conversion from the peaceable use, to the warlike purpose, that con-

[1] Phillimore, III, §CXLVII.
[2] *International Law,* 587.

stitutes the offense." The jury recommended a verdict of guilty and Guinet was sentenced to imprisonment for one year and a fine of $400.[1]

Case of the *Cassius*.

In several cases the district courts restored prizes to their owners where it was proved that the captor had illegally augmented its force in the ports of the United States.[2] The case of the *Cassius* deserves special mention because of the discussion to which it was subjected in connection with the fitting out of Confederate ships in English ports during the Civil War in the United States. This vessel was at first named *Les Jumeaux* and the history of its acts in the port of Philadelphia has been described above in the trial of Étienne Guinet. After escaping from the Delaware the vessel proceeded to San Domingo and was there sold by her owners to the French government. Her armament was completed, and she was regularly commissioned as a ship of war under the name of *Le Cassius*. Some months later, she captured the brig *William Lindsay* and took it into a French port where it was regularly condemned as a prize of war. In August, 1795, she came to Philadelphia and upon her arrival at that port was libelled by the owners of the captured brig. Following the issue by the District Court of Pennsylvania of a process of attachment against the *Cassius*, a motion for a prohibition upon the District Court was filed in the Supreme Court of the United States. The question before the court was not whether the vessel had been illegally fitted out in the ports of the United States in violation of the neutrality act, but whether the decision of a foreign prize court could, at the instance of the owners of the captured vessel, be reviewed in the courts of the United States, and whether, in such cases, the public vessels of war of a belligerent are amenable to suit before the tribunals of a neutral power. The Supreme Court decided both points in the negative, and the prohibition was accordingly issued.[3] The vessel was, however, immediately held to answer for an information which had been filed against it in the Circuit Court of the United States on the ground that it had been illegally armed within the jurisdiction of the United States and was therefore subject to forfeiture. The government refused to take the case from the judiciary and the proceedings dragged on until the following April, when an effort was made to obtain evidence from the French minister of the *bona fide* transfer of the vessel

[1] *United States v. Guinet*, 2 Dallas, 321.

[2] See *The Nancy*, 4 Fed. Cases, No. 1,898; *The Betty Carthcart*, 17 Fed. Cases, No. 9,742.

[3] *United States v. Peters*, 3 Dallas, 121.

to the French government. In October, 1796, the Circuit Court dismissed the proceedings upon the technical ground that jurisdiction properly belonged to the District Court.[1] The French minister refused to acknowledge property in the vessel with the intention of holding the United States government responsible for the loss. Just what answer the court would have given to the question, whether the subsequent transfer of the vessel to the French government should exempt it from confiscation because of illegal acts committed before the transfer, it is difficult to say. The action of the government in refusing to interfere to take the vessel from the custody of the judiciary would seem to indicate that it favored holding the vessel responsible; and this attitude is supported by Mr. Pickering, Secretary of State, in a letter of October 1, 1795, to the French minister on the ground that otherwise "the design of the law, the prevention of illegally fitting out privateers, would generally be defeated; transfers would be promptly made, on purpose to evade the law."[2] It may be suggested that as forfeiture of the vessel immediately operated upon the conviction of the person concerned in the unlawful act of arming it, the principle could be advanced that no subsequent transfer could be valid under the circumstances.

Act of June 14, 1797.

On May 16, 1797, shortly after his accession to the presidency, John Adams delivered an address to Congress in which he called attention to the fact that, under the guise of armed merchantmen, privateers were being fitted out in the ports of the United States. "It remains," he said, "for Congress to prescribe such regulations as will enable our seafaring citizens to defend themselves against violations of the law of nations [in the form of piracy], and at the same time restrain them from committing acts of hostility against the Powers at war." In addition, he mentioned "that some of our citizens resident abroad, have fitted out privateers, and others have voluntarily taken the command, or entered on board of them, and committed spoliations on the commerce of the United States."[3] In response to the call of the President, on June 14, 1797, Congress passed a bill entitled "An Act to prevent citizens of the United States from privateering against nations in amity with, or against citizens of the United States." The act goes a step further than the Act of 1794, first, by providing punishment for acts committed "without the limits of" the United States, and secondly, by inserting the clause "or upon the citizens of

[1] 14 Fed. Cases, No. 7,743.
[2] *Am. State Papers, For. Rel.*, I, 634.
[3] *Ibid.* I, 41.

the United States, or their property" after the clause "to cruise or commit hostilities, upon the subjects, citizens or property of any prince or state with whom the United States are at peace."[1]

The position of the United States in relation to the wars between France and Europe remained for more than a decade a source of great anxiety to the several cabinets which succeeded to that of Washington. Evident as were the sympathies of Jefferson with the French republic in 1793, his attitude had changed notably by the time of his election to the presidency. Relations with France had become greatly strained during the year 1797 owing to the attempt on the part of the French Directory to intimidate the American envoys. Republican sympathy for France yielded before the Federal cry of "Millions for defense, but not one cent for tribute!" Under successive decrees issued by the French Directory between 1793 and 1799, American commerce had been subjected to embargoes in French ports and to ruinous restrictions in trade; and although a convention was concluded with Napoleon as First Consul in 1799, securing better terms for neutrals, no indemnity was obtained for the losses suffered by American merchants.

Jefferson's policy in 1803.

In 1803 war again broke out between France and England. The Republicans had come into power, but there was no clamor for an alliance with France. In his message to Congress on October 17, 1803, Jefferson expressed his "gratitude to that kind Providence which, inspiring with wisdom and moderation our late legislative councils while placed under the urgency of the greatest wrongs, guarded us from hastily entering into the sanguinary contest." He then proceeded to outline the attitude of neutrality which the government intended to pursue.

> In the course of this conflict let it be our endeavor, as it is our interest and desire, to cultivate the friendship of the belligerent nations by every act of justice and of innocent kindness; to re-

[1]For the text of the Act, see App., p. 176.

As far as regards the act of privateering against citizens of the United States it would seem that there were already in existence laws which covered that act. Sec. 9 of an "Act for the punishment of certain crimes against the United States," passed on April 30, 1790, provided that "if any citizen shall commit any piracy or robbery aforesaid, or any act of hostility against the United States, or any citizen thereof, upon the high sea, under colour of any commission from any foreign prince, or state, or on pretence of authority from any person, such offender shall, notwithstanding the pretence of any such authority, be deemed, adjudged and taken to be a pirate, felon, and robber, and on being thereof convicted shall suffer death." Sec. 8 of the same Act was sufficiently broad to have included the act of cruising or committing hostilities against citizens of the United States independently of any assumed commission from a foreign state; and it was so interpreted in the case of *United States v. Palmer,* 3 Wheat., 610.

> ceive their armed vessels with hospitality from the distresses of the sea, but to administer the means of annoyance to none; to establish in our harbors such a police as may maintain law and order; to restrain our citizens from embarking individually in a war in which their country takes no part; to punish severely those persons, citizen or alien, who shall usurp the cover of our flag for vessels not entitled to it, infecting thereby with suspicion those of real Americans and committing us into controversies for the redress of wrongs not our own; to exact from every nation the observance toward our vessels and citizens of those principles and practices which all civilized people acknowledge; to merit the character of a just nation, and maintain that of an independent one, preferring every consequence to insult and habitual wrong. Congress will consider whether the existing laws enable us efficaciously to maintain this course with our citizens in all places and with others while within the limits of our jurisdiction, and will give them the new modifications necessary for these objects.[1]

Neutrality in relation to South American colonial wars.

The wars of the South American provinces to secure their independence opened up a new period in the history of the neutrality laws of the United States. The collapse of the Spanish monarchy in 1808 and the establishment of Joseph Bonaparte upon the throne loosened the bond between the Spanish colonies and their mother country, and one after another they threw off their allegiance and set up independent governments of their own. For fifteen years the struggle continued, and it was natural that the sympathies of the United States as a nation, and especially of its citizens as individuals, should have gone out to those who were following the example set by the United States in 1776. It was doubtless in many cases not only the cause of liberty which induced American adventurers to take part in the struggle, but the opportunity thereby offered of sharing in the rich harvest of plunder to be obtained by preying upon the commerce of Spain. While the government of the United States strictly refrained from giving any aid to the struggling colonies, it found great difficulty in preventing individual citizens from taking up the cause of the revolutionists.

Miranda's expedition.

In 1806, two years before the overthrow of the Bourbon dynasty, a serious complication had arisen between the United States and Spain growing out of the alleged failure on the part of the United States to observe its duties as a neutral. Francesco de Miranda, a native of Caracas, had for many years been endeavoring to obtain the support of England, France and the United States for the furtherance of his

[1]Richardson's *Messages*, I, 361.

schemes for the liberation of the South American colonies. In February, 1806, a military expedition organized in New York by Miranda set sail in a ship named the *Leander* and proceeded to the northern coast of South America. On April 1st of the following year the expedition encountered the Spanish fleet, and two schooners accompanying the *Leander* were captured. On board these schooners were thirty-six Americans, who were convicted of piracy by a Spanish tribunal and imprisoned at Carthagena. On September 16, 1808, these prisoners presented a petition to Congress stating that they had been entrapped into the service of General Miranda by assurances from him that they were to be employed in the service of the United States under the authority of the government; moreover, they had no opportunity, they said, to escape from the service of Miranda once they were on board the ship.[1] The release of the prisoners was secured at the intervention of the government. In the meantime, Samuel Ogden, the owner of the *Leander,* and Colonel W. S. Smith, surveyor of the port of New York, were prosecuted for violating the Neutrality Act of 1794 by setting on foot an armed expedition. The defendants set up the allegation that the expedition had been begun with the knowledge of the government, and they summoned as witnesses the Secretary of State and other officers. The court refused to enforce the summons on the ground that the act of the defendants was equally in violation of the statute, whether sanctioned by the President or not. In spite of the evidence produced and of the charge of the judge against the defendants, the jury returned a verdict of not guilty.[2] On November 27th of the same year (1806), President Jefferson issued a proclamation declaring that information had been received of preparations for an expedition against the dominions of Spain and warning all persons against taking any part in it. The proclamation was a public answer to the charges made against Jefferson that the expedition led by Miranda had been organized with the knowledge and sympathy of the executive.

Neutrality proclamation of 1806.

Seven years later, on September 1, 1815, when the revolutionary wars of the South American colonies were at their height, President Madison issued a proclamation directed to the same end as that of Jefferson. The Bourbon dynasty had been restored, and diplomatic relations were renewed between the United States and Spain in December of the same year. The Spanish minister, Luis de Onis, who had long been resident in the United States as a private citizen and

Proclamation of 1815.

[1] *Am. State Papers, For. Rel.,* III, 257.

[2] *United States v. Smith, 27* Fed. Cases, No. 16,342a.

Complaints of Spain.

who had kept a record of violations of the neutrality laws, now began to force these facts upon the attention of the administration. In a letter addressed to the Secretary of State on December 30, 1815, he instances a long series of breaches of neutrality. It was, he said, "universally public and notorious" that bands of insurgents in the province of Louisiana kept up an "uninterrupted system of raising and arming troops to light the flame of revolution in the kingdom of New Spain;" enlistments were being publicly made, and arms transported. There was, he said, at that time a minister of the insurrectionary Mexican Congress in New Orleans who had delivered fifteen hundred blank commissions to be given to officers recruited in the United States. He then requested the President to give orders that the collectors of customs should refuse to admit into the ports of the United States vessels bearing the flag of the insurrectionary colonies.[1] In his reply on January 19, 1816, Secretary of State Monroe called attention to the fact that Spain had long neglected to indemnify the United States for the losses suffered by its merchant marine at the hands of Spain. Moreover, there was no evidence forthcoming of any such expeditions as those complained of; there was nothing in the law of nations to require the United States to punish Spanish citizens for crimes committed outside the jurisdiction of the United States. In reply to the demand that the ships of the insurgents be excluded from the ports of the United States, Monroe informed the minister that, owing to the frequent changes of the ruling authority in the Spanish colonies, the President had given orders to the collectors of customs "not to make the flag of any vessel a criterion or condition of its admission into the ports of the United States."[2] In order to ascertain the facts of the case, Monroe applied to the United States district attorney in Louisiana, who answered that while attempts at arming and increasing the force of vessels had been frequent, they had been "in no instance successful, except where conducted under circumstances of concealment that eluded discovery and almost suspicion, or where carried on at some remote point of the coast beyond the reach of detection or discovery." He enclosed a list of eight persons who had been prosecuted during the year 1815, of six vessels libelled for illegal outfits, and of nine vessels restored to their owners because the ships which captured them had been armed or had increased their force within the waters of the United States.[3]

[1] *Am. State Papers, For. Rel.*, IV, 423.
[2] *Ibid.* 425.
[3] *Ibid.* 432.

Complaints of Portugal.

On December 20th of the same year, the Portuguese minister, Correa de Serra, wrote to Monroe complaining that privateers were being fitted out in American ports and were in many cases officered and manned by Americans. While acquitting the government of any neglect to punish the offenders, he suggested that the difficulty lay in the failure of the law of 1794 to provide measures of prevention. "I am," he said, "persuaded that my magnanimous sovereign will receive a more dignified satisfaction and worthier of his high character, by the enactment of such laws by the United States as, insuring the respect due to his flag in the future, would show their regard for His Majesty, than in the punishment of a few obscure offenders."[1]

Need of further legislation.

On December 26, 1816, President Madison communicated the following message to Congress:

> It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace towards belligerent parties, and other unlawful acts on the high seas, by armed vessels equipped within the waters of the United States.
>
> With a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in a course of equipment, with a warlike force, within the jurisdiction of the United States; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions proper for the cases of merchant vessels furnished with the defensive armaments usual on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws, and which the law of nations does not require the United States to prohibit.[2]

In response to the call from the President, Mr. Forsyth, the Chairman of the Committee on Foreign Relations of the House of Representatives, inquired of the Secretary of State what information had been given to the Department of State of the arming of vessels of war in the ports of the United States, what prosecutions had been commenced under the existing laws, what persons prosecuted had been discharged "in consequence of the defects of the laws now in force,"

[1]See note by A. H. Dana in his edition of Wheaton's *International Law*, 541.
[2]*Am. State Papers, For. Rel.*, IV, 103.

and what those defects were. On January 6, 1817, the Secretary of State, Mr. Monroe, replied as follows:

Monroe's recommendations.

> Having communicated to you, verbally, the information asked for by your letter of the 1st instant, except so far as relates to the last inquiry it contains, I have now the honor to state, that the provisions necessary to make the laws effectual against fitting out armed vessels in our ports, for the purpose of hostile cruising, seem to be—
>
> 1st. That they should be laid under bond not to violate the treaties of the United States, or the obligations of the United States under the law of nations, in all cases where there is reason to suspect such a purpose on foot, including the cases of vessels taking on board arms and munitions of war, applicable to the equipment and armament of such vessels, subsequent to their departure.
>
> 2d. To invest the collectors, or other revenue officers where there are no collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law: the detention to take place until the order of the Executive, on a full representation of the facts had thereupon, can be obtained. The statute book contains analogous powers to this above suggested. (See particularly the eleventh section of the act of Congress of April 25, 1808.)
>
> The existing laws do not go to this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive, where there is reason to suspect an intention to commit the offence. They rest upon the general footing of punishing the offense merely where, if there be full evidence of the actual perpetration of the crime, the party is handed over, after the trial, to the penalty denounced.[1]

Four days later Mr. Monroe supplemented the above letter by another in which he details some of the methods by which the existing laws of neutrality were being evaded. Vessels had been armed and equipped in the ports of the United States and, after clearing from the port as merchant vessels, had hoisted the flag of the insurgent colonies; foreign vessels had entered the ports of the United States and had augmented their armaments "with pretended commercial views" and had taken on board citizens of the United States as passengers who, on their arrival at a neutral port, assumed the character of officers and soldiers in the service of the insurgents.[2]

[1] *Am. State Papers, For. Rel.,* IV, 103.
[2] *Ibid.* 104.

Bill to prevent sale of armed vessels.

On January 24th Mr. Forsyth presented a draft of a bill incorporating the suggestions contained in the President's letter of January 6th, and introducing a further clause prohibiting the sale of vessels of war. In presenting the report of the committee Mr. Forsyth said: "There was no provision in either [the Act of 1794 or the Act of 1797] to forbid a citizen from arming and equipping a vessel within the United States, and then selling it to a foreigner to be taken out of the United States and used contrary to law. In other words, the citizen and foreigner may do that conjointly which neither of them could separately do under the former laws. To remedy that defect, the first section of the bill now before the House was framed."[1]

The original title of the bill was as follows:

> A bill to prevent citizens of the United States from selling vessels of war to the citizens or subjects of any foreign Power, and more effectually to prevent the arming and equipping vessels of war in the ports of the United States intended to be used against nations in amity with the United States.

Sec. 1 read as follows:

> *Be it enacted, etc.,* That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming any private ship or vessel of war, or sell the said vessel, or contract for the sale of the said vessel, to be delivered in the United States, or elsewhere, to the purchaser, with intent or previous knowledge that the said vessel shall or will be employed to cruise or commit hostilities. . . .[2]

Requirement of bond.

Sec. 2 embodied the suggestion contained in Monroe's letter of January 6th, that armed vessels should be laid under bond in cases where there was reason to suspect that they would be used in violation of the neutrality of the United States, but made the requirement of bond guarantee not only that the owners themselves of the armed vessel would not use the vessel to commit hostilities upon the subjects or property of a foreign prince or state, but also that no persons *to whom the owners might sell* or pretend to sell the vessel should employ it for such purpose. In explaining this section Mr. Forsyth said: "The present laws were defective in not authorizing the interference

[1] *Annals of Congress,* 14th Cong., 2nd Sess., 719.
[2] *Ibid.* 768.

of the Executive to prevent the commission of the offence nor unless there was sufficient proof to justify punishment for commission of the offense." Why, it was asked, was the provision made general, thus including all armed ships, whether there was reason to suspect hostile intentions on their part or not?[1] Because, said Mr. Forsyth, the Committee was unwilling to throw on the collectors of customs the responsibility of making discriminations. "But," he continued, "inasmuch as it was obvious that the evil would not wholly be remedied, without some discretionary power being vested in the collectors, that discretion was given in the third section, to restrain from sailing any vessel in such condition as that, though not armed, they may be as soon as they leave the waters of the United States."[2] Thus Sec. 3 embodied Monroe's suggestion "to invest the collectors, or other revenue officers where there are no collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law." Sec. 4 merely prohibited, "under any pretext whatever," the arming and equipping of foreign vessels or the increasing of their force in the ports of the United States.

Detention of vessels.

Opposition to the bill.

In the debates before the House of Representatives strong opposition was manifested both against the general principle of preventative measures, as being in excess of the standard of neutral duty acted upon by other nations, and against the provisions of the 2nd and 3rd sections of the bill in particular. Warm sympathy with the cause of the South American colonies in their struggle for independence, and sharp antagonism towards Spain from the states bordering on the Mississippi, because of the injuries received from her in the past, confused the issue and prevented a consideration of the bill upon its own merits as a measure in accordance with the acknowledged obligations of neutrality. With respect to the 2nd section it was urged by Mr. Clay, Speaker of the House, that "it was not incumbent upon us, as a neutral Power, to provide, after legal sale had been made of an armed vessel to a foreign subject, against an illegal use of the vessel." If an American citizen may lawfully sell an armed vessel to a foreign subject, other than a subject of Spain, "on what ground," he said, "is it possible, then, to maintain that it is the duty of the American citizen to become responsible for the subsequent use which may be made of

[1]It was common at that period for vessels engaged in foreign trade, especially those engaged in the East India trade, to carry more or less armament for protection against the privateers and pirates that infested the trade routes.

[2]*Annals of Congress,* 14th Cong., 2nd Sess., 719.

such vessel by the foreign subject"?[1] A similar argument was made by Mr. Calhoun, who suggested, in addition, that the purchaser himself be required to give bond that he would not violate the neutrality of this country.[2] The result was that an amendment to this section was agreed upon excluding the reference to "any person to whom they may sell." With respect to the 3rd section there were vigorous denunciations of what was considered the arbitrary power given to collectors of customs to detain vessels at their discretion. On the other hand, Mr. Lowndes thought that "the committee had not gone far enough in amending the act of '94," and that "the law of '94, applying only to the case of war between two independent States, it ought, no doubt, to be extended to comprehend the contest referred to between Spain and her colonies."[3]

Act of March 3, 1817.

In its amended form the bill was sent to the Senate, where it met with still further alterations. The first of these alterations was the omission from Sec. 1 of the clause relating to the sale of vessels. This provision formed one of the chief objects of the bill in the mind of Mr. Forsyth, and its rejection by the Senate was destined to impair seriously the strength of the contentions made by the United States in the Alabama controversy with Great Britain fifty years later.[4] The bill as amended by the Senate finally became an act on March 3, 1817. The act bore as its title, "An Act more effectually to preserve the neutral relations of the United States."[5] In addition to Secs. 2 and 3, which were wholly new, the act supplemented the Act of 1794 by the introduction into Secs. 1 and 4 of the clause "foreign prince, state, colony, district, or people" to replace "foreign prince or state" in the corresponding sections of the Act of 1794, as describing the parties in whose service the vessel must not be fitted out and armed, nor its force augmented, and against whom hostilities must not be committed. It was, in consequence, no longer possible to offer, in defense of a prosecution for violation of the Act of 1794, the plea that the vessel was armed in the service of *insurgent colonies* which could not properly be brought under the designation "foreign prince or state"; nor, on the other hand, could hostilities be committed against such insurgent colonies be any longer excused on the ground that they

[1] *Annals of Congress,* 14th Cong., 2nd Sess., 741.
[2] *Ibid.* 747.
[3] *Ibid.* 755.
[4] See below, p. 113, note 3.
[5] 3 Stat. L., 370.

were not committed against any foreign prince or state.[1] The act was limited in duration to the term of two years.

Act of April 20, 1818.

On April 20, 1818, the existing neutrality acts were, with some amendments, codified into a single act which repealed all former acts. The new act was entitled, "An Act in addition to the 'Act for the punishment of certain crimes against the United States,' and to repeal the acts therein mentioned." The provisions of the act are as follows:[2]

Sec. 1 embodies Sec. 1 of the Act of 1794, with the addition that the "commission to serve a foreign prince or state" is enlarged to include "a foreign prince, state, colony, district, or people" and must be exercised against a "prince, state, colony, district, or people" with whom the United States are at peace.

Secs. 2, 3, 5 and 6 embody Secs. 2,[3] 3,[4] 4,[5] and 5 of the Act of 1794 with a similar extension of the words "foreign prince or state." Secs. 1 and 4[6] of the Act of 1817 are thus reenacted.

Secs. 4 reenacts that part of the Act of June 14, 1797, which makes criminal the arming of vessels without the limits of the United States with intent to commit hostilities upon the citizens of the United States. The omission of that part of the Act of 1797 which related to hostilities committed upon the "subjects, citizens or property of any prince or state with whom the United States are at peace" marks the abandonment of an attempt on the part of the United States to control the

[1]For an instance in which such a plea was sustained, see the case of *Gelston v. Hoyt,* 3 Wheat., 246. See below, p. 74.

[2]For the full text of the act, see App., p. 176.

[3]With the omission, however, of the proviso of Sec. 2 of the Act of 1794 to the effect that persons would be exempt from punishment under the statute if within thirty days after enlistment they should discover upon oath the persons by whom they were enlisted.

[4]The clause "within any of the ports, harbors, bays, rivers, or other waters" of the Act of 1794 was changed to "within the limits of the United States" in the Act of 1818. The penalty was made ten thousand dollars instead of five thousand dollars.

[5]With the addition of the clause "or by changing those on board of her for guns of a larger calibre" to replace the word "size" in the clause "by adding to the number or size of the guns of such vessel."

[6]By what was clearly an oversight, Sec. 4 of the Act of 1817 failed to prohibit a foreign prince or state from augmenting the force of their ships of war to commit hostilities against a colony, district, or people. An attempt was made to remedy the defect in December, 1817, when it was asserted in the House of Representatives that "the vessels of Old Spain might now enter our harbors and increase their force, while those of the colonies were prohibited from so doing." *Annals of Congress,* 15th Cong., 1st sess., 519. The defect was finally remedied in the Act of 1818.

acts of its citizens committed outside of its jurisdiction against others than its own citizens.[1]

Secs. 7, 8 and 9 embody Secs. 6, 7 and 8 of the Act of 1794.

Secs. 10 and 11 reenact Secs. 2[2] and 3[2] of the Act of 1817 requiring vessels to give bond and empowering collectors to detain suspicious vessels.

Sec. 12 repeals the previous Acts of 1794, 1797 and 1817.

Sec. 13 reenacts Sec. 9 of the Act of 1794.

Revised Statutes, Secs. 5281-5291

The Act of 1818 represents the present law of the United States upon the subject of neutrality. The provisions of the act are now contained in the Revised Statutes of the United States under Secs. 5281-5291. Apart from certain verbal alterations required by the form of the Revised Statutes, the only change in arrangement consists in including the original Secs. 7 and 8 under Sec. 5287, and in making a new section (5291) of the proviso contained in the original Sec. 2.

On March 3, 1819, Congress passed "An Act to protect the commerce of the United States and to punish the crime of piracy" which has been referred to as supplementing the Act of 1818, but which is connected with that act only by the circumstances of its origin, not by the subject matter with which it deals.

Canadian rebellion of 1837.

In the autumn of 1837, when the relations between the United States and Great Britain were already greatly strained by disputes over the northeast and northwest boundaries between the United States and Canada, the people of Lower and Upper Canada rose in rebellion against Great Britain and appealed to the citizens of the United States

[1]In explaining the provisions of the bill which, in an amended form, became later the act of 1818, the Chairman of the Committee on Foreign Relations said that the bill "removed certain provisions of the Act of 1797, which bore exclusively on that cause [of the South American patriots], denouncing the severest penalties against those who aid them." *Ibid.* 1404. A motion then made, in favor of the omission from the bill of a provision making it penal for any citizen to fit out or arm, without the jurisdiction of the United States, any vessel with intent to commit hostilities upon the subjects of a friendly state, is thus described: "This motion produced a good deal of debate, principally on the expediency of striking out the whole section, and on the impropriety of still retaining a feature in the bill which would admit the possibility of a crime so monstrous and improbable as that of citizens going abroad to commence war upon the citizens and commerce of their own country, and which, even if committed, would be punishable either as treason or piracy." *Ibid.* 1404.

[2]With the omission, however, of the clause "or in aiding, or coöperating in any warlike measure" which followed the clause "that the said ship or vessel shall not be employed by such owners in cruising or committing hostilities," in the Act of 1817.

across the border for aid in their revolt. Public feeling in the United States along the border was aroused; mass meetings were held and votes of sympathy passed; volunteer companies were organized and drilled; arms and ammunition were collected and subscriptions of money were raised. Navy Island on the Canadian side of the Niagara River was occupied by the patriots, and volunteers from the United States crossed over in large numbers to join their ranks. Prompt action was taken by the government. On December 7th, the Secretary of State wrote to the governors of Vermont, New York, and Michigan requesting them to secure the arrest of all persons engaged in preparations of a hostile character against the territory of Great Britain.[1] On the night of December 28th, an English officer at the head of a party of loyalist volunteers crossed the Niagara River and captured a small steamer called the *Caroline* moored at Schlosser on the American side of the river. Several Americans were either killed or wounded in the affray. After the crew and passengers had been dispersed, the vessel was set on fire and turned adrift in the current just above the falls.

Van Buren's proclamation and request for legislation.

The excitement created along the American border was intense, and the local authorities found it difficult to restrain the citizens from resorting to arms to revenge the invasion of American territory. General Winfield Scott was ordered to repair without delay to the Canadian frontier and assume military command there. On January 5th, President Van Buren issued a proclamation in which, after adverting to the fact that, notwithstanding the proclamations of the state governors, arms and ammunition were being procured in the United States and a military force organized, he gave warning that "any persons who shall compromit the neutrality of this Government by interfering in an unlawful manner with the affairs of the neighboring British Provinces will render themselves liable to arrest and punishment under the laws of the United States, which will be rigidly enforced."[2] On the same day, the President sent a special message to Congress in which he called the attention of Congress to the fact that "recent experience on the southern boundary of the United States and the events now daily occurring on our northern frontier have abundantly shown that the existing laws are insufficient to guard against hostile invasion from the United States of the territory of friendly and neighboring nations." His comment on the laws was as follows: "The laws in force provide sufficient penalties for the punishment of such offenses after they have been committed, and provided the parties can be found, but

[1] See McMaster, *A History of the American People*. VI, 434-436.
[2] Richardson's *Messages*, III, 481.

the Executive is powerless in many cases to prevent the commission of them, even when in possession of ample evidence of an intention on the part of evil-disposed persons to violate our laws." He then declared "that the Executive ought to be clothed with adequate power effectually to restrain all persons within our jurisdiction from the commission of acts of this character" and recommended "a careful revision of all the laws now in force."[1]

Act of March 10, 1838.

Two months later, on March 10, 1838, Congress passed an act intended to supplement the Act of 1818.[2] Sec. 1 of the act empowers and requires the officers of the United States therein enumerated "to seize and detain any vessel or any arms or munitions of war which may be provided or prepared for any military expedition or enterprise against the territory or dominions of any foreign prince or state, or of any colony, district, or people conterminous with the United States and with whom they are at peace" and to "retain possession of the same until the decision of the President be had thereon, or until the same shall be released as hereinafter directed." Sec. 2 authorizes and requires the several officers "to seize any vessel or vehicle, and all arms or munitions of war, about to pass the frontier of the United States for any place within any foreign state, or colony, conterminous with the United States, where the character of the vessel or vehicle, and the quantity of arms and munitions, or other circumstances shall furnish probable cause to believe that the said vessel or vehicle, arms or munitions of war are intended to be employed by the owner or owners thereof, or any other person or persons, with his or their privity, in carrying on any military expedition or operations within the territory or dominions of any foreign prince or state, or any colony, district or people conterminous with the United States, and with whom the United States are at peace, and detain the same until the decision of the President be had for the restoration of the same, or until such property shall be discharged by the judgment of a court of competent jurisdiction." A provision, however, is added:—"That nothing in this act contained shall be construed to extend to, or interfere with any trade in arms or munitions of war, conducted in vessels by sea, with any foreign port or place whatsoever, or with any other trade which might have been lawfully carried on before the passage of this act, under the law of nations and the provisions of the act hereby amended." Succeeding sections provide the procedure neces-

[1]Richardson's *Messages*, III, 399.

[2]For the text of the act, see App., p. 179.

sary to the carrying out effectively of the foregoing sections. The act is limited by its terms to a period of two years.

It will be observed that the act, although not framed in clear and precise terms, makes a considerable advance in some respects over the Act of 1818. It not only enlarges the preventive powers of the government, but makes the scope of their exercise more comprehensive. The Act of 1818 permitted the detention of a vessel only when manifestly built for warlike purposes and when carrying a cargo consisting principally of arms and munitions of war. The Act of 1838 empowers the officers of the government to detain "any vessel" prepared for a military expedition against the territory of a foreign state conterminous with the United States; arms or munitions of war may be detained in a similar case (Sec. 1). Moreover, not only vessels but *vehicles* may be detained, as well as arms and munitions of war, when about to pass the frontier under circumstances furnishing probable cause that the articles are to be used in carrying on a military expedition against the territory of a state conterminous with the United States (Sec. 2). Sec. 2 appears to add nothing to Sec. 1, for it would seem that if the officer detaining the vessel, vehicle, etc., that is about to pass the border, is able to find evidence of a probable intent to employ them wrongfully he might equally well assert that they were prepared for a military expedition.

Van Buren's second proclamation.

On November 21st of the same year, the President issued a second proclamation reiterating the "solemn warning" given in the previous proclamation.[1] The occasion which called forth the proclamation was an attempted invasion of Canada on the part of members of a society called the "Hunters." A force crossed the border from Ogdensburg, but their expedition utterly failed owing to the action of the United States officials in cutting off their supplies and seizing their steamboats.

During the summer of 1841, public feeling against England was greatly aroused along the Canadian border as a result of the trial of Alexander McLeod, a Canadian, for the murder, in 1837, of a member of the crew of the *Caroline*. The Hunters' lodges were again active in endeavoring to further the revolt against Great Britain. On

Proclamation of 1841.

September 25th, President Tyler issued a proclamation in which, after adverting to the fact that "it has come to the knowledge of the United States that sundry secret lodges, clubs, or associations exist on the northern frontier; that the members of these lodges are bound

[1]Richardson's *Messages*, III., 482.

together by secret oaths; that they have collected firearms, and other military materials, and secreted them in sundry places; and that it is their purpose to violate the laws of their country, by making military and lawless incursions, when opportunity shall offer, into a territory of a power with which the United States are at peace," he admonishes "all such evil-minded persons of the condign punishment which is certain to overtake them; assuring them that the laws of the United States will be rigorously executed against their illegal acts."[1]

Proclamation of 1849 against filibustering.

From 1849 to 1851 there were several filibustering expeditions organized in the United States for the aid of insurgents in Cuba. Two of these were under the Spanish general, Narcisco Lopez. Moreover, a strong pro-slavery interest on the part of the southern states advocated the acquisition of the island and was responsible for the encouragement given to expeditions in violation of the neutrality laws of the United States. On August 11, 1849, President Taylor issued a proclamation in which he announces that "there is reason to believe that an armed expedition is about to be fitted out in the United States with an intention to invade the island of Cuba or some of the Provinces of Mexico." In view of the situation, the usual warning is given that all who participate in the enterprise will be subject to the heavy penalties of the neutrality laws and will forfeit a claim to the protection of their country.[2] Nevertheless, in May of the following year, Lopez left New Orleans in a steamer with about 500 men.

Proclamations of 1851.

A similar proclamation was issued by President Fillmore on April 25, 1851, in which he states that "it is believed that this expedition is instigated and set on foot chiefly by foreigners who dare to make our shores the scene of their guilty and hostile preparations against a friendly power."[3] Once more, however, Lopez succeeded in leaving New Orleans in August, 1851, with a body of 400 men.

On October 22d following, the President issued a second proclamation specifically directed against an expedition which he had reason to believe was being fitted out against Mexico.[4] In his inaugural address on December 2, 1851, President Fillmore, after describing the expedition led by Lopez and the melancholy result which attended it, speaks of the judgment passed upon the expedition by the "indignant sense of the community." "If we desire," he said, "to maintain our

[1] Richardson's *Messages*, IV, 72.

[2] *Ibid.* V, 7.

[3] *Ibid.* V, 111.

[4] *Ibid.* V, 112.

respectability among the nations of the earth, it behooves us to enforce steadily and sternly the neutrality acts passed by Congress and to follow as far as may be the violation of those acts with condign punishment * * *. You will consider whether further legislation be necessary to prevent the perpetration of such offenses in future."[1] Further legislation was, however, not enacted.

Walker's expeditions.

In the year 1853 an expedition was organized in San Francisco for the purpose of invading the Mexican possessions in Lower California. The leader of the filibusters was the famous William Walker, whose expeditions against Mexico and Central America defied the neutrality laws of the United States until his death in 1860. On January 18, 1854, President Pierce issued a proclamation in view of the information received by him of this and other prospective expeditions.[2] Again on May 31st of the same year he issued a second proclamation, warning persons not to engage in a military expedition which, it was reported, was being organized and fitted out for the invasion of Cuba.[3]

Proclamations of 1854-1855.

The following year Walker undertook to lead an expedition from San Francisco to support the cause of one of the belligerent factions in Nicaragua. This expedition brought forth a third proclamation from President Pierce.[4] Walker succeeded in making himself President of Nicaragua for a time, but was driven from the country in 1857. On returning to the United States, he organized a fresh expedition at New Orleans directed against Mexico, Nicaragua and Costa Rica. On November 10th, he was arrested and held to bail, but on the very next day he embarked for Nicaragua with 300 unarmed followers. The expedition failed because of the forcible interference of Commodore Paulding, but Walker was soon at work preparing for a fresh invasion. In view of the information which he said had reached him "from sources which I cannot disregard," President Buchanan issued a proclamation on October 30, 1858, a portion of which is important as showing the detailed information possessed by the government of the projected expedition. "The leaders of former illegal expeditions of the same character have openly expressed their intention to renew hostilities against Nicaragua. One of them, who has already been twice expelled from Nicaragua, has invited through the public newspapers American citizens to emigrate to that Republic, and has designated Mobile as the place of rendezvous and departure and San Juan del Norte as the port to which they are bound. This

Proclamation of 1858.

[1] Richardson's *Messages*, V, 113.
[2] *Ibid.* V, 271.
[3] *Ibid.* V, 272.
[4] *Ibid.* V, 388.

person, who has renounced his allegiance to the United States and claims to be President of Nicaragua, has given notice to the collector of the port of Mobile that two or three hundred of these emigrants will be prepared to embark from that port about the middle of November."[1] In spite, however, of the call upon the officers of the government to be vigilant in suppressing the illegal enterprises, Walker and his filibusters in fact embarked at Mobile the following December, and again in November, 1859, though each time without reaching their destination.

Decision in the case of the *Meteor.*

In March, 1866, a decision was rendered in the District Court for the Southern District of New York which is important both because of the general discussion of the extent of the duties of a neutral which followed it, and because it was partly instrumental in bringing about an attempted revision of the Neutrality Act of 1818.[2] On January 23, 1866, the steamship *Meteor,* lying in the port of New York, was libelled by the District Attorney for having been fitted out with intent to be employed in the service of the government of Chile to commit hostilities against the subjects of Spain. It appeared from the evidence that the vessel had been built for the purpose of offering her to the United States government for use in pursuing Confederate cruisers. Before she was finished the need no longer existed, and the owners of the vessel later offered her for sale. An accredited agent of Chile, in New York, desired to purchase steamers of that kind, but was unable to pay the cost price demanded by the owners, and the negotiations thus fell through. Owing to the furnishing of the vessel by the owners with coal and provisions, which it was alleged was done in pursuance of an agreement of sale to the government of Chile, a case was made out against the vessel and she was condemned and forfeited. The opinion in the case was rendered by Judge Betts, and his decision practically forbade the sale of armed vessels to a belligerent, whether the vessel should be delivered in the United States or sent out under contract of delivery in a foreign port. It is true that on appeal to the Circuit Court a decree was entered reversing the decision of the District Court[3] on the ground that there was not sufficient evidence to warrant the conclusion reached in the lower court, but in the meantime the influence of the decision had made itself felt in Congress.

[1] Richardson's *Messages,* V, 496.

[2] *The Meteor.* 17 Fed. Cases, No. 9,498. For a discussion of this case under other aspects, see Chap. III, pp. 70-72.

[3] 26 Fed. Cases, No. 15,760.

Fenian invasions of Canada. Proclamations of 1866 and 1870.

Shortly after the above decision was rendered a second event took place which further influenced the action of Congress in favor of a revision of the neutrality laws. In May, 1866, an Irish-American revolutionary secret society under the name of the Fenian Brotherhood, which had been founded in 1858 to promote a world-wide league of Irishmen against British rule in Ireland, set on foot an expedition against Canada. On the night of May 30, 1866, a body of men, about 1,000 in number, crossed the Niagara river and captured Fort Erie, but they were soon routed by a battalion of Canadian volunteers. Several days later, on June 6, President Johnson issued a proclamation in which he recites that "certain evil-disposed persons . . . have provided and prepared, and are still engaged in providing and preparing, means for a military expedition and enterprise" to be carried on against Canada, and he concluded with the usual admonition and warning.[1] The proclamation was, it is true, somewhat tardy, and it was believed by some that President Johnson was not indisposed to turn the movement to account in retaliation for the depredations of the *Alabama* and other Confederate cruisers fitted out in English ports. In answer to the charge, there should be consulted a letter of Secretary of State Seward to Charles Francis Adams, minister to England, in which Mr. Seward recounts the steps taken by the government to thwart the expedition.[2] In fact, the remnant of the forces routed by the Canadians surrendered to the United States war-ship *Michigan* on June 3rd.

In April, 1870, a second expedition organized in the United States by the Fenians crossed the Canadian frontier near Franklin, Vermont, but it was easily dispersed by Canadian troops, and the leader of the expedition, John O'Neill, was promptly arrested by the United States authorities, acting under the orders of General Grant. On May 24th, the President issued a proclamation directed to the same end as that of President Johnson in 1866.[3]

Attempted revision of neutrality laws.

Following the suppression of the Fenian invasion of Canada, the Committee on Foreign Relations of the House of Representatives undertook to revise the neutrality laws of the United States. The original bill, introduced on June 20, 1866, was in the form of an amendment to the Act of 1818, and merely provided that the Act of 1818 should not be so construed as to prohibit citizens of the United States from selling vessels, ships or steamers built within the limits of the

[1] Richardson's *Messages,* VI, 433.
[2] *For. Rel.,* 1866-67, Pt. 1, 126.
[3] Richardson's *Messages,* VII, 85.

United States, or materials and munitions of war, the growth or products thereof, to inhabitants of other countries or to governments not at war with the United States. On July 26th the Committee, of which General Banks was the chairman, reported a wholly new bill, which it offered as a substitute for the Act of 1818.[1] The report accompanying the bill is a curious mixture of law and sentiment.[2] On the point of sentiment, irritation against Great Britain because of her alleged neglect to observe the duties of a neutral during the Civil War, and sympathy with the Fenian movement in favor of Irish independence, figure prominently in it, and references are made which suggest a regret on the part of the chairman that the execution of the existing neutrality laws had hampered Chile in her war with Spain in 1865. On the point of law, the report attempts to show that the Act of 1818 was not justified by the principles of international law nor by corresponding legislation on the part of other nations. The following general statements from the report will exhibit the opinion held by the committee:

> There is nothing at this time which can justly compel the United States to enact, maintain, or enforce principles of neutrality which are not accepted or acted upon by other States. The duty that neutrality imposes is reciprocal and not arbitrary. * * * Its restrictions [those of the British act of 1819] upon British subjects are nominal compared with those of the American statute. * * * The American statute is not demanded by international or natural law. * * * We can no longer stand bail for the peace of the world.[3]

Reactionary character of the bill.

The chief features of the bill were as follows: The third section of the Act of 1818 was altered so as to nullify the interpretation of

[1] *Congressional Globe,* 39th Cong., 1st Sess., July 26, 1866.

[2] See *House Report No. 100,* 39th Cong., 1st Sess.

[3] In the debate upon the bill on the following day, General Banks gave two statements of the object of the bill. He first said that "the object of the Committee has been to scale the neutrality act of 1818 to the standard of the foreign enlistment act enacted by Great Britian in 1819," which was regarded as much less severe in its restrictions than the American statute. He later said that "the first object of this bill is to return to the early policy of the Government. Its provisions are substantially those of the Act of 1794, enacted under the administration of Washington. Of the ten sections of this act, all are retained in this bill with one exception. Its passage will bring our legislation back to the policy of Washington's administration. The Acts of 1797, 1817, and 1818 were departures from the policy of the Government, the principles of international law, and the legislation of every other Government. This bill strikes from the statutes enacted since 1794, the unnecessary, unusual, and onerous restrictions and prohibitions upon the commerce of the country and the power of its people." *Congressional Globe,* 39th Cong., 1st Sess., 4194, 4197.

the court in the case of the *Meteor* by requiring that a person, to be guilty under the particular clause of the act, must be knowingly concerned in the furnishing, fitting out *and* arming of a vessel, not merely in the furnishing, fitting out *or* arming, as provided by the Act of 1818. Sec. 4 of the Act of 1818 was omitted bodily, as likewise Sec. 6 relating to the preparation of military expeditions.[1] Sec. 7 of the Act of 1818 was weakened by excepting its application to military expeditions. Secs. 10 and 11, relating to the bonding of vessels and their detention by the collectors of customs, were bodily omitted, and in place of the latter section was substituted a section providing that collectors of customs might seize vessels violating Sec. 3 and prosecute them in like manner as vessels are prosecuted for violation of the revenue laws. It will be remembered that Secs. 10 and 11 of the Act of 1818 first appeared in the Act of 1817, as an amendment to the Act of 1794, and were later incorporated into the Act of 1818.[2] A new section (10) was introduced which, because of the importance of the subject with which it deals in the history of the neutral relations of the United States, is here reproduced in full as amended before the third reading:

> Sec. 10. *And be it further enacted,* That nothing in this act or any other existing law shall be so construed as to prohibit citizens of the United States from selling vessels, ships, or steamers built within the limits thereof, or materials, or munitions of war the growth or product of the same, to inhabitants of other countries or to Governments not at war with the United States: *Provided,* That the operation of this section of this act shall be suspended by the President with regard to any classes or purchases whenever or wherever the maintenance of friendly relations with any foreign nation may, in his judgment, require it.

Justification offered.

The comment of the Committee upon the omission of the important Secs. 10 and 11 of the Act of 1818 and upon the insertion of the new section relating to the sale of vessels is as follows:

> These stringent provisions are not now necessary for the reason given for the passage of the law [of 1818], to prevent the exportation of arms by force, in such a manner as to complicate the government with nations at war with each other but at peace with the United States; neither is it demanded by any just interpretation of our duty to other nations under the law of nations, treaty stipulations, or reciprocal municipal regulations. The

[1] See above, p. 40.
[2] See above, p. 41.

repeal or modification of these provisions will be, in the judgment of your committee, for the interest of public peace. Their effect now is to perpetuate the subjugation of States without naval force to the will of dominant maritime nations. It may reasonably be assumed that the late bombardment of the South American cities on the Atlantic coast by Spain, which has been universally condemned, would not have occurred but for the stringent execution of the provisions of this law by our government. Had the South American governments been supplied with materials for defence, from the abundant resources of the United States, this invasion of the American waters by the Spanish navy would not have been contemplated. Ships are articles of commerce; they are in no liberal or just sense contraband of war, nor are the materials of which they are made. The recent improvements in naval architecture are such as to diminish the distinctions between merchant vessels and ships-of-war, and to facilitate the adaptation of one to the purposes of the other. A strong-built, swift-sailing merchant vessel or steamer could be made with a single gun an effective war vessel. To prohibit our citizens from building such vessels or selling materials for their construction at a time when all nations except our own are at war, because they may be employed for hostile purposes by foreign subjects, or to demand bonds in double the amount of vessel, cargo, and armament, and to require officers of the customs to seize and detain them whenever cargo, crew, or "other circumstances" shall render probable a suspicion that they are to be so used, and where American citizens are part owners only, is substantially to deprive them of their rights to engage in the construction of vessels or to furnish materials therefor. Considering the limitless capacity of the country in this respect, it is a privilege that ought not to be surrendered except upon grounds of absolute necessity and justice.[1]

By the enactment of Sec. 10, the possibility of another decision similar to that of Judge Betts in the case of the *Meteor* would have been forestalled.

Failure of the bill.

The bill passed the House by a vote of 123 to 0, 63 not voting. On being sent to the Senate it was read twice and then referred to the Committee on Foreign Relations, whence it is not known to have ever emerged. Accordingly, it seems hardly profitable to discuss the ill-considered statements of the chairman of the House committee that the bill was a return to the principles of the original Neutrality Act of 1794, and that it substantially stood on a par with the British Foreign Enlistment Act of 1819.

[1] *House Report No. 100,* 39th Cong., 1st Sess.

Revolution in Cuba. Complaints of Spain.

In 1868 began the long revolution in Cuba known as the "Ten Years' War." Once again, adventurers from the United States went over to join the insurgent ranks, and efforts were made to recruit additional forces and establish a base of supplies in the United States. On September 18, 1869, Mr. M. Lopez Roberts, Spanish minister at Washington, wrote to Mr. Fish giving details of the unneutral acts which the United States was permitting to be committed within its territory. Certain Cuban malcontents, he said, had established themselves in the United States, especially in New York, and were endeavoring by every means in their power to gain the sympathies of the American people; associations were being publicly organized in many ports, enlistments of men were taking place during whole weeks, and filibustering expeditions were departing in broad daylight.[1] Mr. Fish replied on October 13th that he was "forced to admit with regret" that an unlawful expedition had succeeded in escaping from the United States and landing on the shores of Cuba, but that its departure had been accompanied with such secrecy as to have escaped detection on the part of the government officials. As for the other complaints presented by Mr. Roberts, there were constitutional limits which prevented the government from attempting to suppress freedom of speech and from instituting unreasonable searches and seizures.[2]

Grant's message and proclamation.

In his annual message of December 6, 1869, President Grant admits that "the people and government of the United States entertain the same warm feelings and sympathies for the people of Cuba in their pending struggle that they manifested throughout the previous struggles between Spain and her former colonies in behalf of the latter."[3] On October 12, 1870, the President issued a proclamation directed both against the Fenians and against the agents of the Cuban insurgents.[4] The war in Cuba, owing to the non-recognition by Spain of the insurgents as belligerents, was conducted on both sides with such ferocity and with such disregard for the laws of war that it was difficult for the United States not to intervene, and certainly very difficult to thwart every attempt on the part of Cuban refugees in the United States and of its own citizens to give assistance to the rebels.

On August 22, 1870, President Grant issued the usual formal procla-

[1] *House Ex. Doc. No. 160,* 41st Cong., 2d Sess., 133.
[2] *Ibid. loc. cit.*
[3] Richardson's *Messages,* VII, 27.
[4] *Ibid.* 91.

mation of neutrality with respect to the Franco-Prussian war.[1] This was followed, on October 8th, by a second proclamation of a new character.[2] The disputes with Great Britain arising out of the use of British ports as a base of naval supply for Confederate vessels had taught the United States several lessons, and it was to be expected that the United States would enforce the principles, the alleged violation of which constituted its claim against England for indemnity. The proclamation of October 8th, after reciting that subsequent information gave reason to apprehend an abuse of the hospitality of the ports of the United States by belligerent cruisers, declares that any use of the territorial waters of the United States by vessels of either belligerent for the purpose of preparing for hostile operations or as posts of observation must be regarded as in violation of the neutrality of the United States. The proclamation then proceeds to announce the proposed enforcement of the rule that the vessels of one belligerent must not leave a neutral port until twenty-four hours after the prior departure of a vessel of the other belligerent. Asylum in the ports of the United States is limited to a stay of twenty-four hours. The supplies which may be taken in by a belligerent vessel are limited to "provisions and such other things as may be requisite for the subsistence of her crew" and to "so much coal as may be sufficient to carry such vessel, if without sail power, to the nearest European port of her own country"; moreover, no coal shall be again supplied to the same vessel until after the expiration of three months from the time when coal was last supplied.

Proclamation relating to Franco-Prussian war.

It will be observed that the proclamation recognized the new order of things introduced by the use of steam vessels in maritime warfare. The twenty-four hours rule, though not generally or continuously accepted, had been known to international usage since 1759. The limitation of asylum to a stay of twenty-four hours was first introduced by Great Britain in the neutrality regulations of 1862, in order to preclude a repetition of the method by which the United States corvette *Tuscarora* had for several weeks prevented the departure from Southampton of the Confederate cruiser *Nashville*. The requirement of a three months' interval between successive supplies of coal repeats a rule fixed by Great Britain in the same regulations. The above rules are embodied in the Convention relating to the Rights and Duties of Neutral Powers in Maritime War, adopted by the Second Hague

[1] Richardson's *Messages,* VII, 86.
[2] *Ibid.* 89.

Conference of 1907, and will be considered more in detail in that connection.

Expeditions in aid of Cuban insurgents.

In 1884 President Arthur, in his annual message to Congress on December 1st,[1] referred to the prosecutions which had been instituted by the government against persons who had attempted to aid revolutionists in both Haiti and Cuba. With respect to Haiti these prosecutions were, said the president, "in all cases successful." With respect to Cuba, the president was at least able to say that "in the only instance where these precautionary measures were successfully eluded, the offenders, when found in our territory, were successfully tried and convicted." Earlier in the year the Spanish minister at Washington had written to the Secretary of State, Mr. Frelinghuysen, stating that "a certain turbulent minority of Spaniards, born in Cuba, take refuge in this country for the purpose of conspiring, without molestation."[2] Ten days later, on March 27th, the Spanish minister referred to "advices received by him to the effect that Carlos Agüero is organizing an expedition at Key West; he has a force of one hundred armed men, together with bomb-shells and other destructive materials which are to be used against us."[3] On April 14th he again wrote that he had just received a communication from the Spanish consul at New Orleans stating that "a new expedition is being prepared there which will set out from the Gulf in the course of a week, or sooner, with the purpose of effecting a landing in Cuba."[4] Further complaints followed. In each of these cases energetic measures were taken by the Secretary of State to prevent any violation of the neutrality of the United States.[5] Agüero did, it is true, escape from the United States, but, as far as could be learned, not under circumstances amounting to an "armed expedition." On October 29th the Secretary of State was able to quote to the Spanish minister a letter from the United States district attorney at Key West to the effect that "there have been no attempts to violate the neutrality laws here since the trial and conviction here of those arrested for assisting the 'Agüero expedition,' and I am satisfied there will not be any further attempts made here."[6] In consequence of the difficulties attending the prosecution of offenders, President Arthur, in the message above referred to, called the attention of Congress to the need for further legislation:

[1] Richardson's *Messages,* VIII, 235.
[2] *For. Rel.,* 1884, 502.
[3] *Ibid.* 505.
[4] *Ibid.* 507.
[5] *Ibid.* 493-495.
[6] *Ibid.* 521.

Arthur's request for legislation.

> I recommend that the scope of the neutrality laws of the United States be so enlarged as to cover all patent acts of hostility committed in our territory and aimed against the peace of a friendly nation. Existing statutes prohibit the fitting out of armed expeditions and restrict the shipment of explosives, though the enactments in the latter respect were not framed with regard to international obligations, but simply for the protection of passenger travel. All these statutes were intended to meet special emergencies that had already arisen. Other emergencies have arisen since, and modern ingenuity supplies means for the organization of hostilities without open resort to armed vessels or to filibustering parties.
>
> I see no reason why overt preparations in this country for the commission of criminal acts, such as are here under consideration, should not be alike punishable, whether such acts are intended to be committed in our own country or in a foreign country with which we are at peace.
>
> The prompt and thorough treatment of this question is one which intimately concerns the national honor.[1]

Insurrection in Cuba. Proclamations of 1895-1896.

An insurrection broke out in Cuba again in 1895. From the start the United States government realized that, as in previous wars, attempts would be made by the insurgents to obtain active assistance from the neighboring shores of this country.[2] In his message of December 2, 1895, President Cleveland refers to the contest as "arousing sentimental sympathy and inciting adventurous support among our people," and as therefore entailing "earnest effort on the part of this Government to enforce obedience to our neutrality laws and to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty."[3] Although the insurgents had no standing in international law, the President had thought it proper to issue, on June 12, 1895, the formal proclamation of neutrality issued when two recognized nations are at war.[4] This was followed, on July 27, 1896, by a second proclamation in which the President calls attention to the fact that the neutrality laws of the United States had, since the date of his former proclamation, been the subject of authoritative exposition by the judicial tribunal of last resort

[1] Richardson's *Messages,* VIII, 235.

[2] A tabular list of the military expeditions set on foot in the United States to commit hostilities against Cuba from 1895-1897, together with the judicial proceedings instituted by the United States courts against the offenders, may be found in Carlisle, *Report to the Spanish Minister, Don E. Dupuy de Lome,* June, 1897.

[3] Richardson's *Messages,* IX, 262.

[4] *Ibid.* 591.

on the point as to what constituted a "military expedition or enterprise";[1] moreover, there was reason to believe that the citizens of the United States failed to apprehend the meaning and operation of the neutrality laws.[2]

Neutrality in Russo-Japanese war.

On February 11, 1904, a week after the outbreak of the Russo-Japanese war, a proclamation of neutrality was issued by President Roosevelt. After reciting the acts forbidden by the neutrality laws of the United States, as in the proclamation of President Grant during the Franco-Prussian war, the proclamation sets forth the rules relating to belligerent asylum, etc., embodied in President Grant's second proclamation of October 8, 1870.

Proclamation of 1905.

In 1905, when the Dominican Republic was threatened with a revolutionary outbreak, the United States government sought to aid the authorities of the republic in preventing the import of arms and munitions into the country. After consulting the Dominican Republic, President Roosevelt issued, on October 14, 1905, a proclamation forbidding "the export of arms, ammunition and munitions of war of every kind, from any port in the United States or in Porto Rico to any port in the Dominican Republic."[3] The proclamation was based upon the authority of a joint resolution of Congress passed at the beginning of the Spanish war, authorizing the President, at his discretion, to prohibit the export of coal or other material from any seaport of the United States.[4] The joint resolution of 1898 was a war measure intended to conserve to the United States the supplies of war material manufactured in the country, and it had no connection whatever with the obligations of neutrality. Accordingly, it did not justify, except in the letter, the proclamation of 1905, applying it to totally different conditions.

Insurrection in Mexico. Alleged violations of neutrality.

In November, 1910, an insurrection broke out in Mexico, which is still in progress [1913], though under changed conditions. Francisco Madero, who had been imprisoned during the elections of the previous July, in which he was opposition candidate to President Diaz, was released from prison on October 9th and fled to Texas in disguise. He immediately collected a body of followers who were opposed to the administration of Diaz, and started a revolution to overthrow the government. On November 16, 1910, the Mexican

[1]The decision referred to is that of *Wiborg v. United States,* 163 U. S., 632; see below, p. 87.

[2]Richardson's *Messages,* IX, 694.

[3]For the text of the proclamation, see App., p. 182.

[4]For the text of the joint resolution, see App., p. 182.

government complained that Madero and his friends were actively preparing from San Antonio, Texas, as a center, a movement directed against the Mexican government, and that arms supposed to be intended for this purpose had been located in American territory.[1] On November 19th it was complained that bands of revolutionists were being recruited in various places along the frontier, especially at Naco, El Paso, Presidio, Boquilla and Eagle Pass. On November 23rd it was complained that an American agent of Madero had left St. Louis, Mo., with recruits for the rebel army in Mexico. On December 30th it was reported that an individual domiciled in Dallas, Texas, was directing shipments of arms between El Paso and Eagle Pass, Texas. On December 31st it was reported that an armed body of revolutionists was said to be located between Sanderson and Del Rio, Texas. Investigation was made of these and other specific complaints, but in most cases it was found that the complaint was without foundation. During the course of the insurrection the Mexican frontier bordering on the United States was frequently the scene of battle, and the United States government found it necessary to send troops to the Texan border in order to prevent hostilities from crossing the boundary line and to enforce the observance of the neutrality laws of the United States. While the rebel forces were in possession of Juarez, the border town immediately south of El Paso, Texas, a regular trade in arms and ammunition was carried on across the frontier. Men, women and children came over from Mexico to purchase arms from the United States and returned with them freely back to Mexico. Mexican merchants in sympathy with the rebels bought war supplies in the United States and had them shipped to Mexico like other merchandise. El Paso thus became practically a base of supplies for the rebel forces.

After conducting a guerilla warfare with varying success for six months, Madero succeeded in forcing Diaz to resign on May 25, 1911, and was himself elected president the following October. Less than three months after the inauguration of Madero a second revolution broke out, and under the leadership of General Orozco, a former lieutenant of Madero, the rebels successfully resisted the federal government. Juarez was captured by the rebels and again El Paso became the market for arms. On March 2, 1912, President Taft issued a proclamation directed in the usual terms against acts within the jurisdiction of the United States in favor of the insurgents.

Proclamation of March 2, 1912.

[1] *Memorandum of the Department of State,* March 14, 1912.

Joint resolution of March 14, 1912.

But it was evident that legislation was needed to check the unrestricted shipment of arms from the border towns of the United States into Mexico. Accordingly, on March 14, 1912, upon the motion of Senator Root, Congress passed the following joint resolution:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States, approved April twenty-second, eighteen hundred and ninety-eight, be, and hereby is, amended to 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.
>
> SEC. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both.

The joint resolution thus empowers the President to recognize the existence of conditions under which the act makes it unlawful to export any arms or munitions of war to the country designated. It is a distinct advance over the joint resolution of 1898, not only in that it was framed to meet the neutral obligations of the United States, but because it imposes a specific penalty upon offenders; and it thus takes its place as a permanent amendment to the Neutrality Act of 1818.

Proclamation giving effect to it.

In pursuance of the power conferred upon him, President Taft issued, on the same day, a proclamation announcing the existence in Mexico of the conditions described in the joint resolution of Congress, and the consequent applicability of the terms of the resolution.

In the preceding sketch of the historical development of the neutrality laws of the United States, and of the successive proclamations calling the attention of the public to the determination of the government to enforce them under the special circumstances, no attempt has been made to state the technical interpretation of the several acts by judicial decision, or to enter upon a discussion of the extent to which the neutrality laws of the United States are adequate to meet the present international obligations of the nation. Each of these subjects will be considered in separate chapters.

CHAPTER III.

THE AUTHORITATIVE INTERPRETATION OF THE NEUTRALITY LAWS OF THE UNITED STATES.

In this chapter the attempt will be made to set forth the precise scope of the neutrality laws of the United States by an examination of the technical interpretation given them in the decisions of the federal courts, the opinions of the Attorneys General, the correspondence of the State Department with foreign governments, and other official documents. Before taking up the individual sections of the Revised Statutes, attention may be called to certain points of general criticism.

Rule of strict construction.

The neutrality laws, in so far as their provisions are penal in character, are subject to the rule governing all criminal statutes, that they must be interpreted within the strict limits of the wording of the statute, and are to be construed in favor of the accused, who is given the benefit of any doubts as to their meaning. In the case of the *Three Friends,*[1] the District Court, in commenting upon an extension of the statute to a case to which it was clearly desirable to apply it, said: "This statute is a criminal and penal one, and is not to be enlarged beyond what the language clearly expresses as being intended. It is not the privilege of courts to construe such statutes according to the emergency of the occasion, or according to temporary questions of policy, but according to principles considered to have been established by a line of judicial decisions."

The principle is sound, although the application of it was overruled on appeal. The rule of strict construction does not, however, forbid a construction of the statute in connection with and in the light of other provisions of other statutes relating to international subjects, when such provisions throw light upon the probable intent of the language used.[2] Moreover, since the authority of Congress to enact criminal statutes for the preservation of the neutral relations of the United States with other nations is based upon the clause of the Constitution empowering Congress to define and punish offenses against the law of nations, it is permissible to resort to the rules of

[1]78 Fed. Rep., 175; see also *The Carondolet,* 37 Fed. Rep., 799; *The Itata,* 56 Fed. Rep., 505.

[2]See *The Itata,* 56 Fed. Rep., 505.

international law to obtain light on the construction of the municipal statutes enacted to give effect to that law.

In the following examination of the scope of the neutrality laws the chief stress will be laid upon the positive character of the laws, as prohibiting certain definite acts, and only incidental reference will be made to the acts not covered by them, since these latter will form the subject of a separate chapter. The laws will be examined section by section, in the order of their position in the Revised Statutes.

Accepting a Foreign Commission.

Sec. 1 of Act of April 20, 1818.

Sec. 5281. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and imprisoned not more than three years.

Applies to citizens only.

The law is limited in its applicaton to citizens of the United States and does not apply to all persons indiscriminately. A foreigner not owing allegiance to the United States could accept a commission in the service of his own country or any other country without being liable to prosecution.

Proof of overt act essential.

In order to constitute the offense as defined, the commission must be *accepted and exercised.* The two acts go together and the mere acceptance alone of a commission is not sufficient to subject a citizen to prosecution. In a charge to the grand jury delivered in 1838 by Judge McLean at the time of the insurrections in Canada, it is stated that "some overt act, under the commission, must be done; such as raising men for the enterprise, collecting provisions, munitions of war, or any other act which shows an exercise of the authority which the commission is supposed to confer."[1] It would seem, however, that the mere acceptance of a commission might properly have been held as equivalent to an enlisting of oneself in the service of a belligerent, and so forbidden under Sec. 5282.

By whom commission may be conferred.

The clause "to serve a foreign prince, state, colony, district, or people," as was pointed out in the preceding chapter, was added by way of amendment to the original Act of 1794 which read, "to serve a foreign prince or state." It was meant to be all-comprehensive, so as to include any political body in whose service a commission might

[1] 30 Fed. Cases, No. 18,265.

be accepted against a friendly state. The comprehensive interpretation placed upon this clause has been generally given with reference to indictments under Sec. 5283, and will be discussed in that connection. It may be observed, however, that in the charge to the grand jury referred to above, Judge McLean held that "the commission may be conferred by any district of country, or association of people, whose right to confer it shall be recognized by the person appointed. And it is immaterial whether the commission has been conferred by the popular voice, or by the representatives of such district, or association of people." Accordingly, the acceptance and exercise of a commission to serve a body of insurgents who are sufficiently organized to issue such a commission would come within this interpretation of the statute.[1]

Passing now to a consideration of the section as a whole, it may appear that inasmuch as the words "accepts and exercises a commission" require some overt act done in pursuance of the commission, the offender could equally well be prosecuted under subsequent sections which define the acts held to be in violation of the neutrality of the United States by whomsoever committed. There are, however, certain acts which might be performed in the service of a belligerent by a person holding a commission under such belligerent, but which are not covered by other sections of the statute. In the exercise of a commission a person would be subject to prosecution for collecting money, arms, or provisions in the interest of the belligerent he is serving; whereas these same acts, if performed independently of a commission, would not be unlawful. Whether owing to the difficulty of proving the acceptance of a commission, or from the fact that the acts committed in the exercise of a commission have been connected with military expeditions and were, therefore, indictable under Sec. 5286, there has been apparently but one prosecution by the United States under the section here considered.[2]

Enlisting in Foreign Service.

Sec. 5282. Every person who, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond

Sec. 2 of Act of April 20, 1818.

[1]This holding was later denied by the court in the case of the *Carondolet*, 37 Fed. Rep., 799, but still later reaffirmed in the case of the *Three Friends*, 166 U. S. 1; see below, pp. 75-76.

[2]In 1797, Isaac Williams was tried in the District Court of Connecticut for accepting a commission under the French republic, and, under the authority thereof, committing acts of hostility against Great Britain. The defendant's plea that he had expatriated himself was overruled and he was found guilty, fined and imprisoned. 2 Cranch, 82, note.

> the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars, and imprisoned not more than three years.

Offenses created.

The law applies to all persons within the territory or jurisdiction of the United States and makes no discrimination between citizens and aliens. Three distinct offenses are created, the first consisting in the act by which a person enlists or enters himself in the service of a foreign state, the second and third, which are coupled together, consisting in the acts of hiring or retaining others to enlist in the said service, or to go beyond the limits of the United States with intent to be so enlisted. The technical interpretation to be placed upon the terms of this section is set forth very clearly in two opinions rendered in the year 1855. At that time, Great Britain was employing agents to carry on a recruiting service in the United States with the object of increasing the ranks of her army in the war against Russia.[1] In order to avoid prosecution under the above section of the neutrality laws, the attempt was made in some cases to carry persons to Halifax under false pretenses, and in other cases to persuade persons to leave the United States without receiving pay with the understanding that they would be paid upon the performance of the service desired. In the case of *United States v. Hertz*,[2] the judge, in charging the jury, said: "Every resident of the United States has a right to go to Halifax and there to enlist in any army that he pleases; but it is not lawful for a person to engage another here to go to Halifax for that purpose." That is to say, with respect to the enlisting of oneself in the service of a foreign state, the act of enlistment, to constitute an offense, must take place within the jurisdiction of the United States, while with respect to the hiring of others to enlist, the offense is complete if the person so hired leaves the United States "having the intention to enlist when he arrives out, and that intention known to the party hiring him, and that intention being a portion of the consideration before he hires him." With respect to the method of hiring or retaining, the judge stated that "the hiring or retaining does not necessarily include the payment of money on the part of him who

Leaving country with intent to enlist no offense.

[1] See the message of President Pierce to Congress on December 31, 1855, Richardson's *Messages*, V, 333; also, *Papers Relating to the Treaty of Washington*, I, 534-626.

[2] 26 Fed. Cases, No. 15,357.

hires or retains another. He may hire or retain a person with an agreement that he shall pay wages when the service shall have been performed." Likewise, "a person may be hired or retained to go beyond the limits of the United States, with a certain intent, though he is only to receive his pay after he has gone beyond the limits of the United States with that intent." It is not necessary that the consideration of the hiring shall be money.

What constitutes *hiring* and *retaining*.

In the case of *United States v. Kazinski*,[1] the word "retains" was declared to be equivalent to "an 'engaging' of one party by the other, with the consent and understanding of both." The element of consent is thus commented upon: "To constitute the offence of enlisting here, it requires the consent of the party enlisting; and so also the hiring or retaining a person to go abroad with intent to be enlisted, requires assent and intent on the part of the person hired or retained." The act of hiring or retaining may be performed by agents, but it must be shown that the agents are employed for this specific purpose and are acting under the defendant. The captain of a vessel might be aware that the passengers he is transporting for hire were leaving the United States for the purpose of enlisting abroad, but this knowledge on his part would not constitute an offense under the statute. With respect to the evidence required in proof of an intent to enlist, it may be gathered from the conduct and declarations of the person both within the United States and after he has reached the foreign country.[2] With respect to the testimony admissible, it was held in both of the above cases that in a prosecution for retaining others to enlist, the persons so retained could testify to an intent to enlist in a foreign country without thereby incriminating themselves. "It is the law of the land that, where two or more persons combine together to do an unlawful act, the acts of each may be given in evidence for the purpose of explaining the general transaction."[3]

It would seem that the act of enticing others by false pretences to leave the United States with the intent on the part of the person enticing them that they shall enlist when abroad, but without intent on their part so to enlist, does not apparently come within the statute. In the case of *United States v. Kazinski* it was held that "the hiring and retaining here, and the intent with which they were so hired or retained, must be proved. These parties may have been deceived and betrayed in their supposed voyage to Halifax to obtain work. If the

[1] 26 Fed. Cases, No. 15,508.
[2] *United States v. Hertz*, 26 Fed. Cases, No. 15,357.
[3] *Ibid.*

defendants [Kazinski *et al.*] induced them to go, they are not to be excused; but they are liable in some other form,—not in this, if at all."

Enlistments for land service included.

In the same case it was argued by counsel for the defendants that the purpose of this section was to prevent only enlistments for marine service; and that the word "soldier" was limited by the following words "on board a vessel of war, letter of marque, or privateer." But against this position the judge held that "ordinarily the words of limitation following would qualify all the words preceding; but here 'soldier' must be taken in its ordinary sense, as one enlisted to serve on land in a land army." It would seem that this interpretation might be justified by the actual words of the statute. The repetition of the word "as" before "a marine or seaman" should properly be taken as limiting the clause "on board of any vessel" to the clause "as a marine or seaman." It appears, moreover, that this was the interpretation placed upon the words by the framers of the original Act of 1794.[1] The second section of the Act of 1794 was spoken of as punishing a man "for enlisting in a foreign service," without any qualification. By comparing Sec. 2 of the Act of 1818 with the corresponding section of the Act of 1794 it will be found that the latter, unlike the former, has no comma between the word "seaman" and the clause "on board of any vessel of war."

Methods of *retaining.*

In August of the same year in which the above decisions were rendered, an elaborate opinion on the subject of foreign enlistments in the United States was given by Attorney General Cushing. Attention may be called to a paragraph in which a very broad interpretation is put upon the word "retains." "It is," he said, "possible, also, that he [the British minister] may have supposed that a solemn contract of hiring in the United States is necessary to constitute the offence. That would be mere delusion. The words of the statute are 'hire or retain.' It is true, our act of Congress does not expressly say, as the British act of Parliament does, 'whether any enlistment money, pay, or reward shall have been given and received or not,' (Act 59 Geo. III, ch. 69, s. 2;) nor was it necessary to insert these words. A party may be retained by verbal promise, or by invitation, for a declared or known purpose. If such a statute could be evaded or set at naught by elaborate contrivances to engage without enlisting, to retain without hiring, to invite without recruiting, to pay recruiting money in fact, but under another name of board, passage money, expenses, or the like, it would be idle to pass acts of Congress for the punishment of this or any other offence."[2]

[1] *Annals of Congress*, 3rd Cong., 746.
[2] 7 Op. Atty. Gen., 377.

Inasmuch as it is not an offense against the neutrality laws of the United States for individual citizens to leave the country with intent to enlist in a foreign army when they have arrived abroad, it is permissible for them, as a necessary condition of their departure, to go in company with one another, provided they are not so organized as to constitute an "armed expedition" within the terms of Sec. 5286.[1] They may even charter a steamer for the purpose of facilitating their passage abroad, if, in other respects, their acts are innocent.[2]

Service on commercial vessels.

The statute requires that the enlistment as a marine must be to serve on board of any "vessel of war, letter of marque or privateer," so that it would seem to be lawful for American sailors to engage their services upon belligerent commercial vessels. In an opinion rendered in 1796, Attorney General Lee held that if foreign sovereigns "purchase ships in the United States, and load them with provisions for the use of their fleets or armies, those ships are to be considered as commercially employed," and "if they be not *attached* to the naval or military expeditions, as part thereof, in accompanying the fleet, or closely following the army from place to place, for the purpose of furnishing [them with] supplies, there can be no pretext for restraining the American sailors from hiring on board of them, for the purpose of gaining a support in their customary way of occupation."[3]

It may be noted that the act of soliciting others to go without the limits of the United States to enlist in the service of a foreign state is not covered by the statute. It is difficult to see how a mere solicitation, unaccompanied by a contractual agreement of any kind, whether executed or executory, could be prohibited consistently with the freedom of speech guaranteed by the Constitution, unless the act itself of going without the limits of the United States to enlist in such service were to be made criminal.[4]

Arming Vessels against People at Peace with the United States.

Sec. 3 of Act of April 20, 1818.

Sec. 5283. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of

[1] *United States v. Nunez*, 82 Fed. Rep., 599.
[2] *United States v. O'Brien*, 75 Fed. Rep., 900.
[3] 1 Op. Atty. Gen., 63.
[4] See Chap. IV, pp 126-127.

> any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Distinct offenses created.

This section, like the preceding one, applies to all persons within the limits of the United States without discrimination between citizens and aliens. The distinct acts which it enumerates as criminal are well defined in the case of the *Meteor*.[1] In January, 1866, this vessel was libeled by the United States for forfeiture for having been fitted out in the service of the government of Chile to commit hostilities against the government of Spain. The owners sought to prove that the mere furnishing and fitting out of a vessel, provided it were not armed, was not sufficient to constitute an offense under the statute. The court described the several offenses constituted by the statute as follows: "The offences set out in the section must have been committed within the limits of the United States, and are properly classified thus: First. The fitting out and arming by any person of any vessel, with the intent on the part of such person, that she shall be employed in the service of any foreign state, or of any people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any people, with whom the United States are at peace. Second. The attempting by any person to fit out and arm any vessel with the like intent. Third. The procuring by any person to be fitted out and armed, any vessel with the like intent. Fourth. The being knowingly concerned by any person in the furnishing of any vessel with the like intent. Fifth. The being knowingly concerned by any person in the fitting out of any vessel with the like intent. Sixth. The being knowingly concerned by any person in the arming of any vessel with the like intent. Seventh. The issuing or delivering by any person of a commission, within the territory or jurisdiction of the United States, for any ship or vessel, to the

[1] 17 Fed. Cases, No. 9,498. On appeal to the Circuit Court, the decision of the District Court was reversed as to the sufficiency of the evidence, without, however, impairing the definition quoted in the text.

intent that she may be employed as aforesaid. If any one of these offences has been committed, the vessel in respect to which it is committed is, with her tackle, etc., to be forfeited."

Arming vessel not necessary.

With respect to the above classification, it will be noted that under the first three headings the two acts of fitting out and arming are joined together as one act, so that it would seem to follow that the mere fitting out alone, whether directly done or attempted to be done, or procured to be done, could not be considered as a separate offense if the vessel were not armed. This conclusion was maintained in an earlier case, but was later repudiated. In the case of *United States v. Skinner,*[1] decided in 1818, it was held that "no offence could be committed against the third section of the act, unless the vessel was armed, as well as fitted out, with intent to be employed, etc." And since the case of the principal must govern that of the accessory, it was held "those, therefore, who were knowingly concerned in the furnishing, fitting out, or arming of such ship or vessel, must also be considered as innocent, until an actual armament took place, or this absurdity would result, that one man might have a vessel built and fitted out for this purpose without being guilty of any offence, while the whole penalty of the law might be incurred by a person who should furnish her with a single suit of sails, or a cable." But in the case of *United States v. Quincy,* decided in 1832,[2] a contrary decision was rendered on the latter point. The defendant was charged with being "knowingly concerned in the fitting out of a certain vessel called the *Bolivar,*" etc. In answer to the contention of the defendant's counsel that the fitting out must be of a vessel armed and in a condition to commit hostilities, otherwise the minor actor might be guilty where the greater was not, the court held: "If this construction of the act be well founded, the indictment ought to charge that the defendant was concerned in fitting out the *Bolivar,* being a vessel fitted out and armed, etc. But this, we apprehend, is not required. It would be going beyond the plain meaning of the words used in defining the offence." In the case of the *Meteor,*[3] referred to above, the court denied the necessity of the double act of fitting out *and* arming even in the case of the principal actors directly engaged in preparing the vessel. The court reasoned as follows: "The mischief against which the statute intended to guard was not merely preventing the departure from the United States of an armed vessel, but the departure of any vessel intended to be em-

[1] 27 Fed. Cases, No. 16,309.
[2] 6 Pet., 445.
[3] 17 Fed. Cases, No. 9,498.

ployed in the service of any foreign power, to cruise or commit hostilities against any foreign power with whom the United States are at peace. The neutrality of the government of the United States, in a war between two foreign powers, would be violated quite as much by allowing the departure from its ports of an unarmed vessel with the clear intent to cruise or commit hostilities against one of the belligerents, as it would be by permitting the departure from its ports of an armed vessel with such intent. . . . It would be a very forced interpretation of the statute to say that it was not an offence against it to knowingly fit out a vessel with everything necessary to make her an effective cruiser, except her arms, and with the intent that she should become such a cruiser, because it could not be shown that there was any intent that she should be armed within the United States." The court then went on to quote an *obiter dictum* from the case of *United States v. Quincy*[1] to the effect that "it is true, that with respect to those who have been denominated at the bar the chief actors, the law would seem to make it necessary that they should be charged with fitting out and arming. The words may require that both shall concur, and the vessel be put in a condition to commit hostilities in order to bring her within the law; but an attempt to fit out and arm is made an offense. This is certainly doing something short of a complete fitting out and arming. . . . Any effort or endeavor to effect it will satisfy the term of the law." This interpretation of the statute, though doubtless required by the new conditions which had arisen at the time that the decision was rendered, was not in accord with the intention of the framers of the act, and was scarcely the strict interpretation proper to a penal statute. The court, in fact, admitted in both cases that "the act in this respect may not be drawn with very great perspicuity."[2]

It is not necessary, of course, that the vessel shall have been originally built with the object of being used to commit hostilities. In the case of *United States v. Guinet*[3] the court held that "converting a ship from her original destination, with intent to commit hostilities; or in other words, converting a merchant ship into a vessel of war, must be deemed an original outfit; for the act [of 1794] would otherwise, become nugatory and inoperative."

Extent of equipment.

With respect to the extent of equipment necessary to constitute a fitting out of the vessel, it will be seen from the opinion above quoted

[1] 6 Pet., 445.
[2] 17 Fed. Cases, No. 9,498.
[3] 2 Dall., 321. See above, p. 28.

that complete equipment is not necessary. Later decisions interpret the statute even more liberally. In the case of the *City of Mexico,*[1] decided in 1886, the court said: "This vessel was furnished and fitted out, in the usual acceptation of the terms, provided with the necessary supplies, and put in a condition for proceeding to sea, within the United States. Whether she was well furnished or thoroughly fitted out is not the question, if she was so supplied as to proceed on her way." In the case of the *Laurada,*[2] decided in 1898, the court held that "it is not necessary to a forfeiture that the furnishing, fitting out or arming of a vessel for the prohibited purpose should be completed within the limits of the United States. It is sufficient that, by prearrangement within the limits of the United States, the vessel having been procured here, the furnishing, fitting out or arming is to be effected or completed after she has gone beyond those limits." It might even happen that a vessel which had not actually been armed within the limits of the United States could be held to have been so armed if its armament were furnished it on the high seas under an agreement to that effect made within the United States. In the case of the *Carondolet,*[3] decided in 1889, it was held, though as an *obiter dictum,* that "when the arming is on the high seas, through another vessel, proof that both were despatched from our ports as parts of a concerted scheme made here, is justly held proof of 'an attempt, within the limits of our jurisdiction, to fit out and arm' the vessel with intent to commit hostilities, and hence within the statute." In this connection it may be noted that arms and ammunition on board a vessel intended for the equipment of another vessel which has been fitted out in violation of our neutrality laws are subject to seizure, even though the delivery has never been completed;[4] but the vessel transporting such arms and ammunition is not liable to forfeiture.[5]

Intent required by statute.

The next point to which attention must be drawn is the *intent* with which the several acts above defined must be performed. The statute requires that the acts of fitting out and arming, etc., must be done with intent to commit hostilities, thus distinguishing between the ordinary business of ship-building and the unlawful practice of preparing vessels to be used against a friendly state. The question as to the existence of this intent has been a source of much difficulty for the

[1] 28 Fed. Rep., 148.
[2] 85 Fed. Rep., 760.
[3] 37 Fed. Rep., 799.
[4] *United States v. 214 Boxes Arms,* etc., 20 Fed. Rep., 50.
[5] *The Itata,* 56 Fed. Rep., 505.

courts, as must happen in all cases where the act contains nothing in itself that is unlawful, from which the existence of the criminal intent might be inferred. The intent must be to commit hostilities against a friendly state. How far can this intent be said to be present, constructively, in the mind of one who fits out and arms a vessel for commercial purposes? In the proceedings before the District Court in the case of the *Meteor*[1] above referred to, the counsel for the claimants (owners) laid great stress upon the fact that citizens of a neutral country have an acknowledged right to sell in their own ports, to either belligerent, arms and munitions of war, and that this right included the right to sell a vessel of war, whether armed or unarmed. In support of this contention, the claimants relied upon the decision of the court in the case of the *Santissima Trinidad*,[2] decided in 1822. In that case, it was held by Justice Story, though as an *obiter dictum*, that "there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit; and which only exposes the persons engaged in it to the penalty of confiscation." In answer to this contention the court pointed out that the case of the *Santissima Trinidad* involved the sale of a vessel in a foreign port, whereas the sale of the *Meteor* took place in a port of the United States, and that there was lacking in the latter case the element of "commercial adventure" present in the former. In illustration of what was not a "commercial adventure," the court referred to the case of the *Gran Para*,[3] decided at the same term as the case of the *Santissima Trinidad*, in which Chief Justice Marshall found a violation of Sec. 5283 in the fact that the vessel in question "was purchased, and that she sailed out of the port of Baltimore, armed and manned as a vessel of war, for the purpose of being employed as cruiser against a nation with whom the United States were at peace." The conclusion reached by the court was that "the sale of a fully armed vessel of war in the United States to a belligerent government, or to a subject or citizen of such government, may be, as a naked act, lawful and no offence against the law of nations or the statutory law of the United States; but, if such vessel passes virtually, and to all practical intents and purposes, in the United States, into the control of the belligerent power, or of its subject or citizen, with the intent on the part of those con-

Distinction between commercial and hostile intent. Case of the *Meteor*.

[1] 17 Fed. Cases, No. 9,498.
[2] 7 Wheat., 283.
[3] *Ibid.* 471.

cerned in putting the vessel under such control that she shall be employed in the service of the belligerent power, to cruise or commit hostilities against the subjects, citizens or property of a power at war with such belligerent and at peace with the United States, the neutrality of the United States is compromised, and the neutrality law of the United States is violated. * * * The intent is, under the third section, the thing which marks the offense."[1] That is to say, a sale is legal, but if the vendee takes possession of his property and the vendor is aware that the vendee will use the vessel for the purpose for which it is adapted, the sale is illegal. Knowledge on the part of the vendor of the probable ultimate use of the vessel is made equivalent to intent on his part that the vessel shall be so used. The intent of the vendor is thus made constructively hostile by reason of the intent of the vendee.

This was putting a serious strain upon the meaning of the word "intent." Sec. 5283 was originally framed to check the practice of privateering, and the clause describing the intent which must accompany the act of fitting out and arming a vessel was regularly interpreted to create a distinction between the *animus vendendi,* the lawful intent of building and fitting out armed vessels for sale, and the *animus belligerandi,* the unlawful intent of building and fitting out armed vessels to cruise as privateers against a friendly state.[2]

Reversal of decision of lower court.

On appeal to the Circuit Court a decree was entered reversing the decision of the District Court.[3] The conclusions reached by the Circuit Court were in part as follows:

> 1. Although negotiations were commenced and carried on between the owners of the *Meteor* and agents of the government of Chile for the sale of her to the latter, with the knowledge that she would be employed against the government of Spain, with which Chile was as war, yet these negotiations failed, and came to an end, from the inability of the agents to raise the amount of the purchase money demanded; and if the sale of the vessel in its then condition and equipment, to the Chilean government, would have been a violation of our neutrality laws, of which it is unnecessary to express any opinion, the termination of the negotiation put an end to this ground of complaint.
>
> 2. The furnishing of the vessel with coal and provisions for a voyage to Panama, or some other port of South America, and

[1] 17 Fed. Cases, No. 9,498.

[2] See *La Conception,* 6 Wheat., 235; *The Bello Corrunes,* 6 Wheat., 152; *The Santissima Trinidad,* 7 Wheat., 283; *United States v. Quincy,* 6 Pet., 445.

[3] 26 Fed. Cases, No. 15,760.

> the purpose of the owners to send her thither, in our judgment, was not in pursuance of an agreement or understanding with the agents of the Chilean government, but for the purpose and design of finding a market for her; and that the owners were free to sell her on her arrival there to the government of Chile, or of Spain, or of any other government or person with whom they might be able to negotiate a sale.

During the trial of the case Justice Nelson, after stating the interpretation which Judge Betts had put upon the word "intent," said: "I cannot imagine a sale to a government at war that can be upheld upon that doctrine; because, while as a mere commercial transaction the sale of a war vessel is conceded to be legal, yet if you connect with it that the vessel is known to be used by the belligerent against his enemy, then it is illegal. That I understand to be the doctrine of Judge Betts. I do not see, therefore, but that he virtually annuls the right to sell."

Time of forming and character of intent.

With respect to the time of forming and the fixity of the intent, it is stated by the court in the case of *United States v. Quincy*[1] that whereas the preparations, according to the very terms of the act, must be made within the limits of the United States, "it is equally necessary that the intention with respect to the employment of the vessel should be formed before she leaves the United States. And this must be a fixed intention; not conditional or contingent, depending on some future arrangements. This intention is a question belonging exclusively to the jury to decide. It is the material point on which the legality or criminality of the act must turn; and decides whether the adventure is of a commercial or warlike character." Accordingly, acts done in pursuance of an intent not formed until after the vessel had left the limits of the United States were held not to constitute an offense under the statute.[2]

But while the unlawful intent must exist during the time that the vessel is being fitted out and armed, it is not necessary that it be proximate and definite in character, that is, one with an immediate and specific object in view. In 1848, during the course of an armistice in the hostilities between Germany and Denmark, the German government purchased and fitted out a war vessel in the port of New

[1]6 Pet., 445. See also an opinion of Attorney General Legare, 3 Op. Atty. Gen., 741.

[2]See *The Laurada*, 98 Fed. Rep., 983, affirming 85 Fed. Rep., 760. See also the early case of *Moodie v. The Alfred*, 3 Dall., 307, in which it was held that a vessel which had been built in New York for use as a privateer in case of war between the United States and Great Britian, and which was afterwards sold to a French citizen and used by him as a privateer, could not be condemned under the statute.

York. The German minister contended that the vessel did not come within the provisions of Sec. 3 of the Act of 1818, because its proximate intent was not to commit hostilities against Denmark, but to repair to Bremerhaven and there await orders. The opinion of the Attorney General being asked, Mr. Johnson replied that "any intent, direct or contingent, . . . is within the act. . . . The warlike purpose of the vessel is not disclaimed; but, because there is no actual present intent to cruise, &c., and because she may reach the place of her first destination without meeting an enemy, and peace may be restored before she receives orders to cruise, the intent of her equipment is innocent. Such is not the meaning of the law."[1] It is not, of course, necessary that the intention should be carried into execution; the fact that it is defeated by subsequent events does not purge an offense which was previously consummated.[2]

What acts constitute "hostilities."

The determination of what acts are necessary to constitute the "hostilities" which the vessel is fitted out to commit shows another instance of a liberal interpretation of the law. Apart from the act of directly making war upon the enemy, it has been held that a vessel may be guilty of complicity in the acts of violence of those whom it is transporting. In the case of the *Mary N. Hogan,*[3] the court considered that there was sufficient ground to show an intent to commit hostilities from the evidence that "though the *Hogan* was wholly unadapted to effective naval operations against any considerable organized opposition, she could be of the greatest service to the insurgents by her light draught and considerable speed in landing or taking off men at unprotected points on the coast of Hayti by watching her opportunities of running in and out, as well as in offensive demonstrations against defenseless parts of the island, with little to fear from the slight naval resources of the lawful government." In the case of the *City of Mexico,*[4] the court held that a vessel must be considered as committing hostilities when it is part and portion of a hostile expedition either by carrying troops, not as mere passengers, but for the purpose of making, if necessary, a forcible landing for them, or by acting as a base of supplies for the expedition. "It matters but little," it was said, "in the effect of her hostilities, whether she throw shot and shell from her ports, or despatch boat-loads of

[1] 5 Op. Atty. Gen., 92. See Dana's *Wheaton,* 560, note.
[2] See *United States v. Quincy,* 6 Pet., 445.
[3] 18 Fed. Rep., 529.
[4] 28 Fed. Rep., 148.

armed men from her gang-ways." In the case of the *Laurada*,[1] it was definitely stated that "the term 'hostilities' is certainly not expressly limited in its scope by the section to strictly maritime warfare, and may include all hostilities for which a vessel is adapted;" and, as in the preceding case, it was held to be of little importance whether the vessel carried guns suitable for naval engagements, or had a crew armed with rifles and ammunition to effect a hostile and violent landing of a military expedition. But while it may be granted that it would have been well had the penalty of the forfeiture of the vessel been imposed for complicity in the military expeditions forbidden by Sec. 5286, it seems clear that in the original intention of Sec. 5283 the actual commission by the vessel itself of hostilities was contemplated.

Bodies to which statute is applicable.

We next pass to a consideration of the political bodies in whose service the forbidden acts are committed and against whom they are committed. The words are, "in the service of any foreign prince or state, or of any colony, district or people . . . against 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." It has been pointed out before[2] that they are an extension of the words "foreign prince or state" found in the Act of 1794. The case of *Gelston v. Hoyt*,[3] decided in 1818, illustrates the limited application of the Act of 1794. In that case the vessel was seized for forfeiture by the United States officers on the ground that an attempt had been made to fit out and arm the vessel with the intent that it should be employed in the service of that part of the island of San Domingo which was then under the government of Petion, to commit hostilities against that part of the island which was under the government of Christophe. The court held that the Act of 1794 did not apply to a new government unless it had been recognized by the United States or by the government of the country to which the new state formerly belonged, so that the plea of the United States officers which set up a forfeiture under that act in fitting out a vessel to cruise against such new state was bad in that it did not aver such recognition. After the passage of the Act of 1818 there could be no doubt that bodies of insurgents whose belligerency had been recognized by the United States were included under the words "colony, district, or people" in whose service a vessel might not be employed

[1] 85 Fed. Rep., 760. See also the decision in the case of *United States v. 214 Boxes Arms*, etc., 20 Fed. Rep., 50.

[2] See Chap. II, p. 40.

[3] 3 Wheat., 246.

to commit hostilities against a friendly state, and against whom the hostilities were not to be committed.[1]

Distinction in interpretation of terms.

In respect to bodies of insurgents who have not been recognized as belligerents it is important to note that there is a distinction in principle between the use of the words "of any foreign prince or state, or of any colony, district, or people" as describing the political bodies for whose service a vessel may not be fitted out and armed and the use of the same words as describing the political bodies against whom the vessel is intended to commit hostilities. In the latter case, *foreign prince, state, colony, district, or people,* describe the political bodies towards whom the United States is under an obligation to observe the status of neutrality, and in this connection the words are perhaps more comprehensive than necessary. From the point of view of international law the obligations of the United States do not extend to the repression of acts committed within its jurisdiction against bodies of insurgents who have not been recognized as belligerents, nor, legally speaking, even to the repression of acts committed against communities whose *de facto* belligerency has been recognized, but who are not yet legal persons in international law. On the other hand, the friendly relations of the United States would be compromised if hostilities were to be committed within its jurisdiction in the service of any political bodies or persons whatsoever against a recognized foreign state.

Comprehensive interpretation.

As illustrating the comprehensive meaning attached to the words "colony, district, or people" when they refer to political bodies in whose service a vessel may not be fitted out and armed, we have the case of the *Three Friends*[2] decided in 1897. In November, 1896, the steamer *Three Friends* was seized and libeled on behalf of the United States for having been fitted out and armed in the service of "a certain people" then engaged in armed resistance to the King of Spain in the island of Cuba. On behalf of the owners it was argued that the words "colony, district, or people" applied only to recognized insurgents, and that since the insurgents in Cuba had not yet been recognized by the United States, there was no offense under the statute. Chief Justice Fuller, in delivering the opinion of the court, argued that the word "state" might with reason be held to include recognized belligerents, leaving the words "colony, district, or people" to be applied to unrecognized belligerents. However, even if the word "state" admitted of a less liberal signification, why should the meaning of the words "colony, district, or people" be confined

[1] See Chap. II, p. 39.
[2] 166 U. S., 1.

only to parties recognized as belligerents? "The word 'people' . . . taken in connection with the words 'colony' and 'district' covers in our judgment any insurgent or insurrectionary 'body of people acting together, undertaking or committing hostilities,' although its belligerency has not been recognized."

Restrictive interpretation.

As illustrating the less comprehensive meaning of the words "colony, district, or people" when used to describe the political bodies against whom hostilities must not be committed we have the case of the *Carondolet*, decided in 1889.[1] In August, 1888, the existing government in Haiti was overthrown and the President of the republic deposed and banished. On December 8th of the same year, President Cleveland in his message to Congress said that "the tenure of power [in Haiti] has been so unstable amid the war of factions that has ensued since the expulsion of President Salomon that no government constituted by the will of the Haytian people has been recognized as administering responsibly the affairs of that country." On February 18, 1889, the *Carondolet* was libeled for forfeiture for having been fitted out and armed to aid a faction led by Hippolyte against a faction led by Legitime, in the struggle for supremacy then going on in Haiti. In the opinion of the court it was stated as an *obiter dictum* that "there can be no obligation of neutrality except towards some recognized state or power, *de jure* or *de facto*. Neutrality presupposes at least two belligerents; and, as respects any recognition of belligerency, i. e., of belligerent rights, the judiciary must follow the executive. To fall within the statute, the vessel must be intended to be employed in the service of a foreign prince, state, colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of another, with which the United States are 'at peace.' The United States can hardly be said to be 'at peace,' in the sense of the statute, with a faction which they are unwilling to recognize as a government; nor could the cruising, or committing of hostilities, against such a mere faction well be said to be committing hostilities against the 'subjects, citizens, or property of a district or people,' within the meaning of the statute. So, on the other hand, a vessel, in entering the service of the opposite faction of Hippolyte, could hardly be said to enter the service of a foreign 'prince or state, or of a colony, district, or people,' unless our government had recognized Hippolyte's faction as at least constituting a belligerent, which it does not appear to have done." On this latter point only the opinion of the court was overruled by the case

[1] 37 Fed. Rep., 799.

of the *Three Friends,* referred to above. In the same year, and with reference to the same warring factions in Haiti, it was held in the case of the *Conserva*[1] that in order to justify the forfeiture of a vessel under Revised Statutes, Sec. 5283, the fact must be shown that the government against which it is alleged the vessel is intended to commit hostilities has been recognized by the United States.[2]

In a dissenting opinion in the case of the *Three Friends,* Justice Harlan argued that the words "colony, district, or people," where they first appear in Sec. 5283, cannot have a different meaning from the same words in the subsequent clause "colony, district, or people, with whom the United States are at peace"; and that the United States cannot properly be said to be "at peace" or not "at peace" with insurgents who have no government except on paper and no power of administration and who are merely nomads. The argument was anticipated by Chief Justice Fuller, who pointed out that the words as used in the two connections are "affected by obviously different considerations," and that "if the necessity of recognition in respect to the objects of hostilities, by sea or land, were conceded, that would not involve the concession of such necessity in respect of those for whose service the vessel is fitted out." The interpretation of Chief Justice Fuller is certainly the one more in accord with the international obligations of the United States.

Duties of neutrality do not apply to unrecognized insurgents.

It does not follow that because the courts have been willing to interpret the phrase "colony, district or people" so as to include bodies of unrecognized insurgents, they thereby intend that the international law of neutrality is to apply to such insurgents. The Neutrality Act is a municipal statute, and the judicial interpretation of its terms does not necessarily imply corresponding obligations in international law. The obligation acknowledged by the United States to prevent its territory from being made the starting point of expeditions in the interest of a body of unrecognized insurgents, should be classed not as an obligation devolving at international law upon the status of neutrality, but as an obligation resulting from the status of peace be-

[1] 38 Fed. Rep., 431.

[2] In 1869, an opinion was rendered by Attorney General Hoar to the effect that the provisions of Sec. 3 of the Act of 1818 were not applicable to the case of certain gunboats which were being built in New York for the Spanish government and which there was reason to believe were to be employed by that government against insurgents in Cuba. When a nation undertakes to procure vessels for the purpose of enforcing its own recognized authority within its own domains, "in a legal view," said the Attorney General, "this does not involve a design to commit hostilities against anybody." 13 Op. Atty. Gen., 177.

tween the United States and the state against which such an expedition is directed; and it will be shown below[1] that Sec. 5286 has been held to apply to cases of expeditions setting out from the United States against a foreign state when there were no conditions of domestic insurrection in that state. In this sense it is possible to explain such statements as that of Attorney General Harmon to the effect that "the rules of international law with respect to belligerent and neutral rights and duties do not apply to the present case. Neither Spain nor any other country has recognized the Cuban insurgents as belligerents."[2] But it is submitted that the Attorney General went too far in holding that when a state of war is declared by another country, the United States must of its own motion use due vigilance to prevent, within its borders, the formation or departure of any military expedition intended to take part in such war; but on the other hand, when a state of war is not so declared, "it is by no means certain that knowledge of the existence of a mere insurrection, even when its location or alleged motives may be thought likely to lead to violations of our laws in its behalf, imposes any general duty of watchfulness, the neglect of which would be just ground of complaint by the nation involved which does not itself acknowledge a state of war."[3]

Forfeiture of vessel.

With respect to the specific punishment appointed for the persons concerned in the forbidden acts and for the vessel which is their instrument, it may be observed that there is no necessity of joint condemnation at the same time of both persons and vessel. In the case of the *Three Friends,* it was held that "the contention that forfeiture under United States Revised Statutes Sec. 5283 depends upon the conviction of a person or persons for doing the acts denounced is untenable. This suit is a civil suit *in rem* for the condemnation of the vessel only, and is not a criminal prosecution. The two proceedings are wholly independent and pursued in different courts, and the result in each might be different."

Arming Vessel to Cruise Against Citizens of the United States.

Sec. 4 of Act of April 20, 1818.

Sec. 5284. Every citizen of the United States who, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming any pri-

[1] See p. 82.
[2] 21 Op. Atty. Gen., 267.
[3] *Ibid.* 271-272.

vate vessel of war, or privateer, with intent that such vessel shall be employed to cruise, or commit hostilties, upon the citizens of the United States, or their property, or who takes command of, or enters on board of any such vessel, for such intent, or who purchases any interest in any such vessel, with a view to share in the profits thereof, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years. And the trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Has no connection with neutrality.

This section, as was pointed out in Chapter II,[1] is based upon the Act of June 14, 1797. In the Act of 1818 that part of the Act of 1797 which related to hostilities committed upon the "subjects, citizens, or property of any prince or state with whom the United States are at peace," was omitted. The rest of the Act was retained, in spite of the fact that with the above clause omitted it had become practically meaningless. A person who fits out and arms a vessel with intent that the vessel shall be employed to commit hostilities upon the citizens of the United States is an accomplice in the crime of piracy, and may be prosecuted accordingly, whether or not he is a citizen of the United States, and whether the fitting out and arming of the vessel took place within or without the jurisdiction of the United States. In any case, the offense defined by the statute as it now stands has no connection with violations of the neutrality of the United States; accordingly, the prohibition of it does not properly come within the scope of laws intended to give effect to the obligations of the United States as a neutral state.[2]

Augmenting Force of a Foreign Vessel of War.

Sec. 5 of Act of April 20, 1818.

Sec. 5285. Every person who, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district or people, or belonging to the subjects or citizens of any such prince, or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on

[1]See p. 30.
[2]See Chap. IV, p. 141.

board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars and be imprisoned not more than one year.

Proof of *intent* not necessary.

By way of general comment upon this section it is to be observed that as far as the act itself of increasing or augmenting the force of a foreign ship of war is concerned, it might properly be included within the meaning of the term "fits out and arms," used in Sec. 5283. But inasmuch as the ship of war to which the statute applies must be at the time of its arrival in the United States either in the service of a foreign prince or state, etc., or the property of the subjects or citizens of a foreign prince or state, etc., the same being at war with any foreign prince or state, etc., with whom the United States are at peace, it is seen that there is no necessity of proving the *intent* which constitutes the gravamen of the offense under Sec. 5283. The criminal intent is to be presumed from the fact that the vessel whose force is augmented is clearly to be used to commit hostilities against a foreign state with whom the United States are at peace. It is the absence, therefore, of the necessity of proving with what intent the prohibited acts are done which distinguishes Sec. 5285 from Sec. 5283.

Offenses created.

Moreover, this section was designed to provide specifically for definite offenses which were being committed at the time of the passage of the original Act of 1794. Three offenses are defined: the act of increasing or augmenting the force of a ship of war, the act of procuring such increase or augmentation, and the act of being knowingly concerned in such increase or augmentation. The different acts may take any one of three definite forms: an addition to the existing number of guns; the substitution of guns of a larger caliber; and the addition of equipment solely applicable to war. A strict interpretation of the statute would seem to require that any addition to the force of the vessel which does not take one of the above three forms could not be prosecuted under Sec. 5284; but it will be seen below that the courts regarded the three forms of augmentation of force as descriptive rather than as restrictive.

Restitution of prizes.

In a number of early cases, prizes captured by foreign privateers which had augmented their force within the United States were restored to their owners.[1] As the prohibited acts were set forth in definite terms, there was little difficulty in passing upon what should constitute an increase or augmentation of force. In one case it was held that

[1]See *The Nancy*, 4 Fed. Cases, No. 1,898; *The Betty Carthcart*, 17 Fed. Cases, No. 9,742.

the repairing of the waist of the vessel, and the cutting of two ports in it for guns, was not sufficient to constitute an offense under Sec. 5285.[1] In the case of *Moodie v. The Phoebe Anne,*[2] the court refused to restore a British vessel brought as prize into the port of Charleston by a French privateer which had previously made certain repairs in that port, the repairs having been of a purely nautical character. The fact that the guns had been taken out during the course of repairs and then replaced was held not to constitute an augmentation of force.[3] In the case of the *Alerta v. Moran,*[4] the court did not consider that the augmentation of the force of foreign ships of war need necessarily take one of the forms mentioned in the statute. It was held that the act of shipping on board certain persons "as an addition to the crew of the privateer" constituted an illegal increase of the force of the vessel [*L'Epine*] and therefore invalidated whatever prizes might be made by the vessel after her departure from the United States. A similar decision was rendered in the case of the *Santissima Trinidad.*[5] The court held that "there was an illegal augmentation of the force of the *Independencia* in our ports by a substantial increase of her crew; and this renders it wholly unnecessary to enter into an investigation of the question, whether there was not also an illegal increase of her armament." In 1844 an opinion was rendered by Attorney General Nelson, in which he held that the commanders and officers of vessels of other nations found to have violated this section of the statute were amenable to the criminal jurisdiction of the United States courts and might be successfully prosecuted.[6]

Military Expeditions Against People at Peace with the United States.

Sec. 2586. Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides

Sec. 6 of Act of April 20, 1818.

[1]See *The Brothers,* 17 Fed. Cases, No. 9,743.

[2]3 Dall., 319.

[3]See also an opinion of Attorney General Nelson, in 1844, to the effect that the repair of the bottoms, copper, etc., of certain Mexican war steamers in the port of New York did not constitute an increase or augmentation of their force within the meaning of the act of 1818. 4 Op. Atty. Gen., 336.

[4]9 Cranch, 359.

[5]7 Wheat., 283.

[6]4 Op. Atty. Gen., 336. "I am further of opinion, that the steamers themselves are not subject to seizure by any judicial process under the act of Congress; but that their commanders and officers are amenable to the criminal jurisdiction of our courts for violations of the statute in question. The very purpose of the act would be defeated were it otherwise; and there is no principle of which I am aware which exempts from responsibility for criminal acts, within our jurisdiction, the commanders or officers of ships-of-war of other nations with whom we are at peace." The opinion of the attorney general is not in accord with international law of the present day. See Moore, II, §256.

> or prepares the means for, any military 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 deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

Bodies to which applicable.

Before considering the different acts which constitute an offense under this section, attention must be called to the fact that there is no mention in the statute of the foreign political bodies in whose service the military expedition might be set on foot. Hence, in the case of expeditions in the service of insurgent bodies in revolt against a state with which the United States might be at peace, no question could arise as to whether the insurgents had been recognized by the United States as belligerents, so that the earlier interpretation of that point in Sec. 5283 had never any application to this section. The statement made in the recent case of *Wiborg v. United States,*[1] that the operation of the statute was "not necessarily dependent on the existence of such state of belligerency," must be assumed to have been made with reference to the political bodies in whose service the expedition was set on foot; and was evidently not meant to apply to political bodies against whom the expedition was organized, since in a later case[2] Chief Justice Fuller, who delivered both opinions, deliberately refrained from holding that there was no necessity of recognizing a status of belligerency with respect to the parties against whom hostilities are committed.

The statute, indeed, does not by its terms require the existence of a state of war in a foreign country. Hence, although it was originally enacted as part of a general act in fulfilment of the neutral duties of the United States, it has been made to apply to cases where armed expeditions were set on foot in the United States for the invasion of a foreign state, even when there were no conditions of domestic insurrection in such foreign state. In the case of *United States v. O'Sullivan,*[3] it was contended by the defendants that the Neutrality Acts of 1794 and 1818 were "intended to have operation only in case of war between nations in amity with the United States" and consequently that they did not apply to an expedition not set on foot in the interest of one belligerent party against another. In answer, the

[1] 163 U. S., 632.
[2] *The Three Friends,* 166 U. S., 1.
[3] 27 Fed. Cases, No. 15,974.

court held that the Act of 1794 "was called for and always accepted and enforced as a law, no less of non-interference by our citizens—by military expeditions against nations at peace with all the world, than one prohibiting acts of hostility in favor of any belligerent power against another at peace with the United States."[1]

Distinct offenses created.

The offenses under the statute are defined disjunctively. A very careful analysis of the several acts which constitute an offense was made in a charge to the grand jury by Judge McLean,[2] delivered in 1851 with reference to a recent military expedition against Cuba. "To 'begin' the military expedition . . . is to do the first act which may lead to the enterprise. The offense is consummated by any overt act which shall be a commencement of the expedition, though it should not be prosecuted. . . . To set it on foot may imply some progress beyond that of beginning it. Any combination of individuals to carry on the expedition is 'setting it on foot,' and the contribution of money or anything else which shall induce such combination, may be a beginning of the enterprise. 'To provide the means for such an enterprise,' is within the statute. To constitute this offense, the individual need not engage personally in the expedition. If he furnish the munitions of war, provisions, transportation, clothing, or any other necessaries, to men engaged in the expedition, he is guilty."[3] However, in an indictment for any of the above acts the principle holds that some overt act is necessary to secure conviction. In the case of *United States v. Lumsden,*[4] the court stated that "no proposition can be clearer than that some definite act or acts, of which the mind can take cognizance, must be proved to sustain the charges against these defendants. Mere words, written or spoken, though indicative of the strongest desire and the most determined purpose to do the forbidden act, will not constitute the offense." Some "distinctive substantive fact" must be proved. Moreover, it was held that

[1]See also a letter of Secretary of State Bayard on July 31, 1885, to the Spanish minister, in which he says that "the phrase 'neutrality act' is a distinctive name, applied for convenience sake merely, as is the term 'foreign enlistment act' to the analogous British statute. The scope and purpose of the act are not thereby declared or restricted. The act itself is so comprehensive that the same provisions which prevent our soil from being made a base of operations by one foreign belligerent against another likewise prevent the perpetration within our territory of hostile acts against a friendly people by those who may not be legitimate belligerents, but outlaws in the light of the jurisprudence of nations. There is and can be no 'neutrality' in the latter case." *For. Rel.,* 1885, 776-777. The same point is made in an opinion of Attorney General Harmon, 21 Op. Atty. Gen., 267.

[2]30 Fed. Cases, No. 18,267.

[3]*Ibid.*

[4]26 Fed. Cases, No. 15,641.

if the proof shows "that means were procured, to be used on the occurrence of some future contingent event, no liability is incurred under the statute." The following acts, among others, have been held to come within the statute: The enlistment of men for the expedition,[1] the contribution of money, clothing, provisions, arms, etc.,[2] the furnishing of transportation for the troops so collected.[3]

What constitutes a "military expedition."

With respect to the determination of what constitutes a military expedition or enterprise, there are a number of cases setting forth in detail the precise acts and the circumstances under which they must be performed. The two important points requiring determination are, first, what number of men and what extent of organization among them is necessary to constitute an "expedition"; and secondly, how far must this body of men have arms and ammunition in their possession in order to stamp the expedition as a "military" one? On the first point, we have the case of *United States v. Ybanez,*[4] decided in 1892, holding that "this statute does not require any particular number of men to band together to constitute the expedition or enterprise one of a military character. There may be divisions, brigades, and regiments, or there may be companies or squads of men. Mere numbers do not conclusively fix and stamp the character of the expedition as military or otherwise. A few men may be deluded with the belief of their ability to overturn an existing government or empire, and, laboring under such delusion, they may enter upon the enterprise."[5] In the case of *United States v. Wiborg,*[6] it was held that "it is not necessary that the men shall be drilled, put in uniforms, or prepared

[1] 30 Fed. Cases, No. 18,267.

[2] *United States v. O'Sullivan,* 27 Fed. Cases, No. 15,975.

[3] *United States v. Murphy,* 84 Fed. Rep., 609.

[4] 53 Fed. Rep., 536.

[5] In contrast with this decision there is an opinion rendered in 1894 by Attorney General Olney. In a letter replying to a request from the Spanish minister for the prosecution of Ochoa, who was charged with having organized a gang of bandits in the United States to commit depredations against Mexico, the acting Secretary of State of the United States quoted an opinion of the Attorney General to the effect that "this law [the Neutrality Act] clearly is directed against the invasion of foreign territory by *organized military bodies* for the purpose of conducting military operations against the foreign government in its political capacity," the conclusion being that the law was not applicable to common criminals like Ochoa and his associates. Later, however, when the Spanish minister had pointed out that persons had, on previous occasions, been tried and sentenced by the Federal courts for leading expeditions similar to that of Ochoa, the attorney general signified his readiness to prosecute such persons upon being furnished with tangible evidence of a violation of the neutrality laws. *For. Rel.,* 1894, 428; Moore, *Int. Law Digest,* VII, 933-934.

[6] 73 Fed. Rep., 159.

for efficient service; nor that they shall have been organized as or according to the tactics or rules which relate to what is known as infantry, artillery or cavalry; it is sufficient that they shall have combined and organized here to go there and make war on the foreign government, and have provided themselves with the means of doing so."[1]

Common hostile intent necessary.

It is an essential element of this organization that there shall be a common intent on the part of all the members. This intent must, of course, be a hostile one, as is indicated by the words of the statute qualifying the object of the expedition as one "to be carried on from thence [the United States] against the territory or dominions of any foreign prince or state." In the case of *United States v. O'Sullivan,*[2] it was held that before the jury can convict under Sec. 5286 it must have been shown "that the design, the end, the aim, and the purpose of the expedition, or enterprise, was some military service, some attack, or invasion of another people or country, state, or colony, as a military force."

How far expedition must be armed.

With regard to the second point, that the body of men thus organized must be to some extent armed, recent decisions are somewhat conflicting. It would seem that without arms and ammunition no expedition, however well organized and with whatever hostile purpose, could properly be said to be military in character; and as in all of the early cases the expeditions were in fact armed, the question whether it was necessary that they should be armed was not presented to the courts. But more recently, in the case of *United States v. Wiborg,*[3] the court ventured the assertion that "whether such provision [of the means of carrying on war], as by arming, etc., is necessary need not be decided in this case. I will say, however, to counsel that were that question required to be decided I should hold that it is not necessary." As against this *dictum,* there is the case of *United States v. Hart,*[4] in which the court held that one of the essential elements of a military body was "arms; such arms as are appropriate to the enterprise; such as will enable the body to do the military work contemplated." But in a case arising out of an indictment of the same person the following year,[5] the court held that "it is not necessary that the arms shall be carried upon their persons here, or on their way; it is sufficient that arms have been provided for their use when occasion requires."

[1] See also *United States v. Hughes,* 75 Fed. Rep., 267.
[2] 27 Fed. Cases, No. 15,975.
[3] 73 Fed. Rep., 159.
[4] 74 Fed. Rep., 724.
[5] 78 Fed. Rep., 868.

What number of men necessary.

It will be seen that in determining what conditions are required to constitute a body of men a "military expedition," the courts have been embarrassed by the necessity of not infringing upon the acknowledged right of citizens to leave the United States to enlist in foreign armies and to transport arms and ammunition in the ordinary course of commerce. The line has been in many cases difficult to draw. In the case of *United States v. Hart,*[1] the court said: "As this is lawful for one man [to leave the United States to enlist abroad], so it is lawful for ten men or for twenty or a hundred men. It is a necessary incident to this lawful right, that men may go abroad for this purpose in any way they see fit; either as passengers by a regular line steamer, or by chartering a steamer, or in any other manner they choose, either separately or associated; so long as they do not go as a military expedition, nor set on foot a military enterprise, which Sec. 5286 prohibits." And with respect to the transportation of arms and ammunition, the court held: "If, however, the expedition or enterprise was designed only to transport munitions of war as merchandise to Cuba, though for the use of the insurgent army, and at the same time to transport a body of men as individuals to Cuba, who wished to enlist there, and that was all, then it was not a military expedition or enterprise under this statute; it would not be so unless the men had first combined or agreed to act together as a military force, or contemplated the exercise of military force in order to reach the insurgent army."[2]

What organization necessary.

The statute provides that the military expedition must be one "to be carried on from thence [the United States] against the territory or dominions of a foreign prince, state, . . ." These words would seem to require that the organization of the expedition must be more or less complete before the expedition leaves the United States; but here again the courts have not applied the rule of strict interpretation. In the case of *United States v. Hart,*[3] the court held: "I only

[1]74 Fed. Rep., 724.

[2]In an opinion rendered in 1895 with reference to shipments of arms into Cuba, Attorney General Harmon pointed out how an apparently commercial transaction might take on a hostile character. "If, however," he said, "the persons supplying or carrying arms and munitions from a place in the United States are in any wise parties to a design that force shall be employed against the Spanish authorities, or that, either in the United States or elsewhere, before final delivery of such arms and munitions, men with hostile purposes toward the Spanish Government shall also be taken on board and transported in furtherance of such purposes, the enterprise is not commercial, but military, and is in violation of international law and of our own statutes." 21 Op. Atty. Gen., 267.

[3]74 Fed. Rep., 724.

repeat that while it is not necessary in my judgment that all the elements of a military expedition—soldiers, officers, a military organization, arms and equipments—should exist or be supplied at the time when the vessel sails, it is necessary that there should be a combination for those purposes, that these should have been within the understanding and intent of the parties and that some of these things should be consummated here. The most essential thing would seem to be a combination for some kind of military organization, some enrolment, some enlistment, or some agreement which bound the men to act together as a body for military service." In a later case, *United States v. Murphy*,[1] the court went so far as to say: "Nor is it necessary that all of the persons composing the military enterprise should be brought in personal contact with each other within the limits of the United States; nor that they should all leave those limits at the same point. It is sufficient that by previous arrangement or agreement, whether by conversation, correspondence or otherwise, they become combined and organized for the purposes mentioned, and that by concerted action, though proceeding from different portions of this country, they meet at a designated point either on the high seas or within the limits of the United States." The case of *Wiborg v. United States*[2] may be cited as a typical example showing the evidence which a court would consider conclusive of the existence of a military expedition. The plaintiff in error was indicted for having been engaged, as captain of a steamer, in a military expedition against the island of Cuba, then belonging to Spain. The court summed up the facts of the case as follows: "This body of men went on board a tug loaded with arms; were taken by it thirty or forty miles and out to sea; met a steamer outside the three-mile limit by prior arrangement; boarded her with the arms, opened the boxes and distributed the arms among themselves; drilled to some extent; were apparently officered; and then, as preconcerted, disembarked to effect an armed landing on the coast of Cuba. The men and the arms and ammunition came together; the arms and ammunition were under the control of the men; the elements of the expedition were not only 'capable of proximate combination into an organized whole,' but were combined or in process of combination; there was concert of action; they had their own pilot to the common destination; they landed themselves and their munitions of war together by their own efforts."

Wiborg v. United States.

[1] 84 Fed. Rep., 609.
[2] 163 U. S., 632.

Enforcement of Foregoing Principles.

Secs. 7-8 of Act of April 20, 1818.

Sec. 5287. [The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.] In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this Title; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to the execution of the prohibitions and penalties of this Title, and to the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

Grounds of jurisdiction.

The first sentence of this section figured as Sec. 6 of the original Act of 1794 and as Sec. 7 of the Act of 1818. It refers merely to a question of jurisdiction, and its place in the neutrality code may be explained as the result of the adoption by Congress of the recommendation made by Washington in his annual address on December 3, 1793, in which he said that, owing to disputes as to the power of the courts to effect the reparation of certain captures, "it would seem proper to regulate their jurisdiction in these points." The captures referred to are not the prizes which might be taken by American ships in the event of a war, but are the prizes taken by one belligerent from the other where the title is not valid because of the illegality of the capture within the territorial waters of the United States. In the case of the *Alerta*,[1] decided in 1815, the court clearly explained the character of the jurisdiction assumed by the United

[1] 9 Cranch, 359.

States over prizes brought into its ports by foreign vessels of war. "The general rule is undeniable, that the trial of captures made on the high seas, *jure belli,* by a duly commissioned vessel of war, whether from an enemy or a neutral, belongs exclusively to the courts of that nation to which the captor belongs. To this rule there are exceptions which are as firmly established as the rule itself. If the capture be made within the territorial limits of a neutral country into which the prize is brought, or by a privateer which had been illegally equipped in such neutral country, the prize courts of such neutral country not only possess the power, but it is their duty to restore the property so illegally captured to the owner. This is necessary to the vindication of their own neutrality."

Extension of jurisdiction over other prizes.

It will be observed that the justification offered by the court for the restoration of prizes captured by a belligerent within the territorial waters of the United States was likewise extended to cover the case of prizes captured, not within the jurisdiction of the United States, but by privateers which had been illegally fitted out in the ports of the United States. In fact, immediately upon the passage of the Act of 1794 and without any special grant of jurisdiction from Congress, the District Courts assumed jurisdiction over prizes captured on the high seas by privateers which had either been fitted out and armed in the United States in violation of Sec. 5283, or which had increased their force within the United States in violation of Sec. 5285.[1] Even before the passage of the Act of 1794, in the case of *Glass v. The Betsey,*[2] it was argued by counsel for the defendants that the District Courts had no jurisdiction in cases of captures made on the high seas by foreign privateers; that if the property of an American citizen was involved, "his application ought to be made to his government; the injury he complains of, being of national not of judicial, inquiry." But the court held that jurisdiction in such cases properly belonged to the district courts which were competent to inquire and to decide whether restitution could be made "consistently with the laws of nations and the treaties and laws of the United States." Jurisdiction in such cases is entirely distinct from an inquiry into the validity of the capture, *jure belli,* on the high seas of a neutral ship by a duly commissioned vessel, whether privateer or public vessel of war, in the service of a foreign state. In the case of the *Invincible,*[3] the court

[1] See *The Nancy,* 4 Fed. Cases, No. 1,898; *The Betty Carthcart,* 17 Fed. Cases, No. 9,742; *Talbot v. Jansen,* 3 Dall., 133.

[2] 3 Dall., 6.

[3] 1 Wheat., 238.

explained the basis of the jurisdiction of the District Courts in the following terms: "Every violent dispossession of property on the ocean is, *prima facie,* a maritime tort; as such, it belongs to the admiralty jurisdiction. But sitting and judging, as such courts do, by the law of nations, the moment it is ascertained to be a seizure by a commissioned cruiser, made in the legitimate exercise of the rights of war, their progress is arrested; for this circumstance is, in those courts, a sufficient evidence of right. That the mere fact of seizure as prize does not, of itself, oust the neutral admiralty court of its jurisdiction, is evident from this fact that there are acknowledged cases in which the courts of a neutral may interfere to devest possessions, to wit, those in which her own right to stand neutral is invaded."

Jurisdiction taken merely to vindicate sovereignty.

In the case of *La Amistad de Rues,*[1] the court passed upon the question whether, if it were established that there had been an illegal augmentation of the force of the capturing vessel, a decree condemning the captain of the privateer to pay damages to the owner of the vessel for the loss occasioned by the capture had been rightfully made by the lower court. The court said: "We entirely disclaim any right to inflict such damages; and consider it no part of the duty of a neutral nation to interpose, upon the mere footing of the law of nations, to settle all the rights and wrongs which may grow out of a capture between belligerents." But if the property has been captured within the jurisdiction of the neutral, the neutral "may, indeed, inflict pecuniary, or other penalties, on the parties for any such violation; but it then does it professedly in vindication of its own rights, and not by way of compensation to the captured. When called upon by either of the belligerents to act in such cases, all that justice seems to require is, that the neutral nation should fairly execute its own laws, and give no asylum to the property unjustly captured. It is bound, therefore, to restore the property if found within its own ports; but beyond this it is not obliged to interpose between the belligerents." In other words, where vessels have been fitted out and armed, or have increased their force, in violation of the neutrality of the United States, the courts of the United States will intervene to effect a restitution of prizes captured by such vessels, not because the capture is illegal as between the captor and the former owner, but because the neutral state has the right to vindicate its own sovereignty by divesting possession of property acquired as the result of a violation of its sovereignty. In this connection the captures made

[1] 5 Wheat., 385.

by a duly commissioned privateer in the service of a belligerent enjoy the same immunity from the jurisdiction of neutral states as do those of the public vessels of the belligerent; and it is immaterial in whom the property of the offending privateer is vested.[1]

President may not employ civil officers.

The second sentence, which completes the section, confers upon the President the power to employ the land and naval forces of the United States for two purposes, either to take possession of or detain a vessel which has violated Secs. 5283 and 5285, in order to enforce the penalties of the act and to restore any prizes which such vessel may have taken, or to prevent the carrying on of a military expedition in violation of Sec. 5286. In the case of *Gelston v. Hoyt*,[2] an opinion was rendered by Justice Story setting forth the circumstances which will justify the seizure of a vessel by subordinate officers of the chief executive. In that case certain customs officers of the port of New York, acting upon the express authorization of the President, seized a ship for having been fitted out and armed in violation of Sec. 5283. When an action of trespass was brought by the owner of the ship against them, the officers entered the plea, among others, that they had taken possession of the ship by virtue of instructions of the President. To this the court replied as follows: "The argument is, that as the President had authority by the act to employ the naval and military forces of the United States for this purpose, *a fortiori,* he might do it by the employment of civil force. But upon the most deliberate consideration, we are of a different opinion. The power thus entrusted to the President is of a very high and delicate nature, and manifestly intended to be exercised only when, by the ordinary process or exercise of civil authority, the purposes of the law cannot be effectuated. It is to be exerted on extraordinary occasions, and subject to that high responsibility which all executive acts necessarily involve . . . Surely it never could have been the intention of Congress that such a power should be allowed as a shield to the seizing officer, in cases where that seizure might be made by the ordinary civil means. One of the cases put in the section is, where any process of the courts of the United States is disobeyed and resisted; and this case abundantly shows that the authority of the President was not intended to be called into exercise, unless where military and naval force were necessary to insure the execution of the laws." It would seem to follow from this holding of the court that executive action to prevent violations of the act must, in all cases, be subsequent

[1] 1 Wheat., 238.
[2] 3 Wheat., 246.

to judicial procedure against the offenders. In other words, a warrant must first issue from the courts for the arrest of offenders against the act, or for the seizure of the vessel alleged to be forfeited, and only when such warrant shall have been disobeyed or resisted, shall it be lawful for the President to employ the military and naval forces of the United States to ensure the execution of the laws. This same position was taken by Attorney General Nelson in an opinion rendered in 1844, in which he says that "the authority of the President to employ the naval forces of the United States, conferred by the 8th section of the act, will be dependent upon the resistance to the execution of the process of the courts of the United States on board of the steamers, and to the refusal of their commanders, if their force has been augmented or increased, to discharge therefrom such augmentation or increase."[1]

Courts may take preventive measures.

There is apparently no power conferred upon the President to take steps to prevent an intended violation of the law where there has been no overt act. It is, however, within the competence of the federal courts to take action in such cases. Sec. 727 of the Revised Statutes confers upon the federal courts the "authority to hold to security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States." In 1854, when funds were being collected in the United States in aid of Cuban insurgents by the issuance of bonds payable in the name and upon the pledge of the insurgent government, if successful, Quitman and others concerned in the proceedings refused to answer questions put to them by a grand jury charged with inquiring into the existence of an organization in violation of the neutrality laws of the United States. On the ground of the refusal of the parties to testify, the court held that bonds should be required of them to observe the neutrality laws of the United States. In the course of the opinion rendered, the court said: "The president of the United States has admonished the country that there is danger of a violation of these important statutes, and the grand jury, after a patient investigation, certify that this

[1] 4 Op. Atty. Gen., 336. In a more recent opinion, Attorney General Harmon held that the President, being a coördinate authority with the judiciary, would not be precluded from employing the military and naval forces of the United States, in a proper case, by the action of the judiciary. "Occasions may be imagined," he said, "when the summary process of martial law might perhaps be resorted to against the persons composing such a body. But in all such cases as those which have come to the notice of the Government these conditions do not exist, and the judicial authority is the only one which can be properly or efficiently invoked." 21 Op. Atty. Gen., 273.

admonition has a legitimate foundation. Public rumor has attached suspicion to the name of the defendant, according to the certificate. I will say with the Chief Justice of England, already quoted, 'We should be poor guardians of the public peace, if we could not interfere until an actual outrage had taken place, and, perhaps, fatal consequences ensued.' "[1]

Compelling Foreign Vessels to Depart.

Sec. 5288. It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States. Sec. 9 of Act of April 20, 1818.

Statute directed against belligerents themselves.

This section relates to the duty of the President to see to the fulfilment of the neutral duties of the United States in cases requiring state action with respect not to citizens of the state but to the belligerent powers directly. Apart from the obligation to prevent individual citizens or persons within its jurisdiction from coöperating with, or otherwise giving help to, either of the belligerent powers, a neutral state must be ready to take direct action against the belligerent powers themselves, when necessary to prevent them from making any use of its territory for the actual commission of hostile operations or for the preparation of the means of future combat. But inasmuch as the public vessels of a belligerent are not subject to the jurisdiction of the neutral state, the only direct action which the neutral can take against them is to refuse to grant them the asylum of its ports. In the United States it will devolve upon the President, as chief executive, to see that the United States shall not fail in its obligations on any point, which, as in this instance, involves the action of the administrative organs of the state. For the due performance of this duty the President may at times require the power to call the military and naval forces of the United States to his aid.

Obligation under "laws of nations."

In the present instance the President is empowered to employ the military and naval forces of the United States to compel the departure of foreign vessels from the United States, both in the case where the United States is under an international obligation to refuse asylum to them, and in the case where the United States is under a similar obligation by treaty. With respect to the obligations of the United States

[1] *United States v. Quitman*, 27 Fed. Cases, No. 16,111.

under the "laws of nations," it may be said that at the period of the passage of the Act of 1794 the President was under obligation to refuse asylum to and compel the departure of foreign vessels in the following cases: (1) where vessels had been originally armed and fitted out in any port of the United States by either of the parties at war; (2) where vessels in the service of either of the parties at war had received in the ports of the United States equipments of a nature solely adapted to war; (3) where privateers, holding commissions from either belligerent, had been fitted out or armed in the ports of the United States;[1] (4) where vessels in the service of or holding commissions from either belligerent had violated the sovereignty of the United States by committing hostilities within the territorial waters of the United States.[2] The obligation of the President to compel the departure of foreign vessels in the above cases rests upon the principle that any deliberate failure on the part of a neutral state to enforce respect for its sovereignty as against both belligerents impartially would be equivalent to giving assistance to the favored belligerent, and consequently would be contrary to strict neutrality.

Executive action auxiliary to judicial procedure.

It must be observed that Sec. 5288 evidently contemplated action on the part of the President only in cases in which the District Courts would be unable to proceed against the vessel in question because of the fact that it was in the public service of one of the parties at war and therefore not subject to the jurisdiction of the courts, or in cases

[1]The acts mentioned under 1, 2, and 3 are declared unlawful by Hamilton in his *Instructions to the Collectors of Customs,* issued on August 4, 1793, in which he said that the rules laid down "had been adopted by the President as deductions from the laws of neutrality, established and received among nations." See above, pp. 22-23. App., p. 170.

[2]Vattel, writing in 1758, illustrates the principle that a neutral state must resent the commission of hostilities within its territory by a belligerent, by citing the action of the Governor of Bergen in Norway, who, in 1666, fired upon the English fleet when it pursued and attacked the Dutch fleet in that port. *Le Droit des Gens,* Liv. III, Chap. VII, §132.

Azuni, writing in 1795, cites certain rules concerning the asylum which may be given to belligerent vessels in neutral ports, which rules he says, "have been long in practice in the most frequented ports of Europe." These rules require not only that belligerent vessels in neutral ports shall refrain from the commission of hostilities and from increasing their armament or military stores, but that they shall not in any way make use of neutral ports as a point of attack against the enemy. *Principes du Droit Maritime,* Tome 2, Chap. V, Art. I.

In a circular of April 16, 1795, addressed by Mr. Randolph, Secretary of State, to the governors of the several states, it is stated that "as it is contrary to the law of nations that any of the belligerent Powers should commit hostility on the waters which are subject to the exclusive jurisdiction of the United States, so ought not the ships of war, belonging to any belligerent Power, to take a *station in those waters in order to carry on hostile expeditions from thence.*" *Am. State Papers, For. Rel.,* I, 608.

in which the District Courts, for lack of evidence or other reasons, might be unable to issue a process against the vessels or their owners. Only as thus interpreted can Sec. 5288 be reconciled with Sec. 5287 which, as it has been shown, contemplated action on the part of the President merely as auxiliary to judicial procedure against persons violating the law.

Changes in the law as to asylum.

The rules of international law with respect to the asylum which may be granted by neutral states to belligerent vessels of war have been greatly modified during the one hundred and nineteen years since the passage of the original Neutrality Act. They first received greater precision as a result of the controversies between the United States and Great Britain growing out of the Civil War. The proclamation of neutrality issued by President Grant in 1870[1] on the outbreak of the Franco-Prussian war states the law as understood by the United States at that time. At the present day the Convention relating to the Rights and Duties of Neutral Powers in Maritime War, adopted by the Second Hague Peace Conference in 1907, embodies the rules of international law on that subject. It will be more convenient, however, to discuss in a later chapter[2] the new duties devolving upon the President as a consequence of this convention.

Obligation under "treaties."

With respect to the obligation of the United States under "treaties," it is clear that Sec. 5288 was framed in view of the Treaty of Amity and Commerce concluded between the United States and France in 1778. Art. XVII of the treaty provided that no shelter or refuge should be given in the ports of the United States to vessels which had made prize of the subjects, people, or property of either of the parties; Art. XXII provided that foreign privateers, holding commissions from any prince or state at enmity with either of the contracting parties should be denied any privilege in the ports of either of the parties, except the concession of purchasing such provisions as should be necessary to carry them to the next port of the state from which they had commissions.[3] The Treaty of 1778 was abrogated by an act of Congress approved July 7, 1798, so that after that date the reference in Sec. 5288 to "treaties" ceased to have any application.

Discretionary power of President.

It will be observed that Sec. 5288 leaves it to the discretion of the President to decide when a proper case shall have arisen calling for

[1] Richardson's *Messages*, VII, 89.

[2] See below, pp. 150-152.

[3] The operation of this article might perhaps have been limited on one point by Art. XVIII of the Treaty of 1785 between the United States and Prussia, and by Art. XVII of the Treaty of 1782 between the United States and the Netherlands.

the action contemplated by the statute. Inasmuch as the statute is not penal in character, there was no need of defining more exactly the circumstances under which foreign vessels were to be refused asylum. Moreover, since the conduct of foreign relations is intrusted to the executive department of the United States government, it was proper that in questions relating to the obligation of treaties and to the interpretation of the rules of international law the President should be left free to decide upon the proper action to be taken.

Armed Vessels to Give Bond on Clearance.

Sec. 10 of Act of April 20, 1818.

Sec. 5289. The owners or consignees of every armed vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against 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.

This section, as was pointed out in Chapter II, first appeared as Sec. 2 of the Act of March 3, 1817, and was reenacted as Sec. 10 of the Act of April 20, 1818. The general purpose of its enactment has been explained above[1] as being a response to the demand that the laws providing for the punishment of offenses already committed be supplemented by other measures of a preventive character. Owing to the fact that it was customary at the period of the passage of the Act of 1817 for vessels engaged in trade with distant foreign ports to carry a certain amount of armament for self-protection against pirates, the circumstance of a vessel leaving port armed was not in itself conclusive evidence that the vessel was to be used in the service of a belligerent.

Guarantee relates to acts of owners only.

It will be observed that one of the conditions of requiring bond is that the vessel must be owned "wholly or in part" by citizens of the United States. Foreign owned vessels are consequently not affected by the statute. Moreover, there is a still further limitation upon the scope of the statute in the fact that the bond merely guarantees that the vessel will not be employed by the *owners themselves* to commit hostilities against a friendly state. Both these restrictions clearly indicate, apart from the historical evidence to the same effect, that the object of Sec. 5289 was to prevent privateering on the part of citizens of the United States.

[1]See p. 36.

Giving bond does not entitle to release.

It is evident that it was not the intention of this section that an armed vessel might, by giving bond, be thereby entitled to clearance. Such an interpretation would clearly defeat the purpose of Secs. 5283 and 5285. It would make it possible for a vessel, which had been armed with intent to commit hostilities against a friendly state, to be bonded by the very persons who were engaged in fitting it out for an unlawful purpose, in cases where the actual money cost of the expedition might be of little consideration to the persons engaged in it. In the case of the *Mary N. Hogan,*[1] where the owner offered bond for the release of a vessel seized for forfeiture under Sec. 5283, the court said: "It is clearly not the intention of Sec. 5283, in imposing a forfeiture, to accept the value of the vessel as the price of a hostile expedition against a friendly power, which might entail a hundredfold greater liabilities on the part of the government. No unnecessary interpretation of the rules should be adopted which would permit that result; and yet such might be the result, and even the expected result, of a release of the vessel on bond. The plain intent of Sec. 5283 is effectually to prevent any such expedition altogether, through the seizure and forfeiture of the vessel herself." This decision is quoted with approval in the case of the *Three Friends,*[2] in which the court explained that Secs. 938-941 of the Revised Statutes, providing for the release upon bond of vessels seized for violation of the revenue laws, etc., did not apply to cases of seizure for forfeiture under any law of the United States, which cases are distinctly excepted from the provisions of Sec. 941.

Detention by Collectors of Customs.

Sec. 11 of Act of April 20, 1818.

Sec. 5290. The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners 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 until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

Like the preceding section, this section passed from the temporary Act of 1817 into the permanent Act of 1818. It supplements Sec. 5289

[1] 17 Fed. Rep., 813.
[2] 166 U. S., 1.

by conferring a discretionary power upon the collectors of customs enabling them to detain vessels in cases indicating a probable intention on the part of the owner of the vessel to commit hostilities against a friendly state. It will be noted that the description of the character of the vessel which may be detained is not an "armed vessel" as in Sec. 5289, but one "manifestly built for warlike purposes." The debates in the House of Representatives preceding the adoption of the Act of 1817 show that the two terms were not meant to be synonymous, and that the intention of the framers of the Act was to prevent vessels from leaving port which, though without any appearance of armament upon their decks, might have such complete equipment for war that as soon as they were on the high seas they could be converted into privateers.[1] Accordingly, unarmed vessels which would escape the requirement of giving bond under the terms of Sec. 5289 might, under the circumstances defined, be subject to detention under Sec. 5290.

Comprehensiveness of terms.

Two conditions are imposed before a vessel manifestly built for warlike purposes can be detained, namely, that the cargo of the vessel shall consist principally of arms and munitions of war, and that the number of men shipped on board or other circumstances shall render it probable that the vessel is to be used for an unlawful purpose. The detention of the vessel must, therefore, be justified by evidence of the probable unlawful intent,—a point which the law leaves it to the discretion of the collectors of customs to determine. In the case of *Hendricks v. Gonzalez*,[2] the court held that it is not sufficient to justify a collector of customs in refusing clearance to a vessel under Sec. 5290 because it is the purpose of her intended voyage to transport arms and munitions of war for the use of an insurrectionary party in a country with which the United States are at peace; the transportation of arms, etc., from a neutral port to a belligerent country not being a violation of the duties of a neutral state, although such contraband merchandise is subject to the penalty of a confiscation by the other belligerent. When the circumstances do not justify detention of the vessel, the owners may bring suit for damages against the collector of customs, even though the latter is acting under specific instructions from the Secretary of the Treasury.

Conditions required for detention.

The detention of the vessel is to remain in force until the decision of the President is had thereon, or until the owner gives bond and security as is required of the owners of armed vessels by Sec. 5289. With respect to the last clause the same observation holds good that

[1] *Annals of Congress*, 14th Cong., 2d Sess., 723.
[2] 67 Fed. Rep., 351.

was made in regard to Sec. 5289, namely, that the mere giving of bond will not constitute a claim for release. Once the probable intent with which the vessel is to be used has justified its seizure, the burden of proof may properly be upon the owners to show that the vessel is not to be used for an unlawful purpose.

Construction of This Title.

Sec. 5291. The provisions of this Title shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States, and [*enlist*] [enlists] or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

Origin of section.

This section, with the exception of the last sentence, figured in slightly altered terms as a proviso appended to Sec. 2 of both the original Act of 1794 and the Act of 1818. Although its position as a separate section in the Revised Statutes would seem to indicate that it applies to the preceding sections as a body, it is actually applicable only to Sec. 5282. It was not thought by the framers of the Acts of 1794 and 1818 that the neutral obligations of the United States extended to the prevention of enlistments in the service of a foreign state, when the persons so enlisting owed allegience to the foreign state as its subjects. In the *Instructions to the Collectors of Customs,* issued by Hamilton on August 4, 1793,[1] it is distinctly stated that "vessels of either of the parties, not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist therein their own subjects or citizens." The reasons for believing that this exception with regard to the illegality of foreign enlistments in the United States is no longer a justifiable one will be explained in a later chapter.[2]

The last sentence of Sec. 5291 figured as Sec. 9 of the Act of 1794.

[1]See App., p. 170.

[2]See below, pp. 156-157.

Its original enactment was evidently due to a desire not to permit persons to escape the penalties attached to treason and piracy because they might at the same time be prosecuted for violating the neutrality laws of the United States. The reference to "treason" would appear to have contemplated the possibility of American citizens accepting commissions to command privateers in the service of a country at war with the United States, or enlisting on board such privateers. The rewards attached to successful privateering were so considerable that it was not improbable that the adventurers who engaged in that practice might in time of war be tempted to accept commissions from a foreign state to prey upon the commerce of their own country. The cases of "piracy" contemplated by Sec. 5291 were closely associated with those of treason, and only differed from the latter in that the acts in question might be performed at a time when there was no actual war in progress between the United States and the country in whose service such citizens of the United States might be serving. In Sec. 9 of the Act for the Punishment of Certain Crimes against the United States, passed on April 30, 1790, it was declared that "if any citizen shall commit any piracy or robbery aforesaid, or any act of hostility against the United States, or any citizen thereof, upon the high sea, under colour of any commission from any foreign prince, or state, or on pretence of authority from any person, such offender shall, notwithstanding the pretence of any such authority, be deemed, adjudged and taken to be a pirate, felon, and robber, and on being thereof convicted shall suffer death."[1] That such cases of piracy did actually occur may be gathered from the address of President Adams to Congress on May 16, 1797, in which he called attention to the fact that "some of our citizens resident abroad, have fitted out privateers, and others have voluntarily taken the command, or entered on board of them, and committed spoliations on the commerce of the United States."[2] Moreover, the United States had agreed by the Treaty of Amity and Commerce concluded with France in 1778 that if any of its citizens should take from any foreign prince or state at war with

Reason for reference to treason and piracy.

[1]It is assumed that the acts contemplated by Sec. 9 must be committed at a time when there is no formal war in progress between the United States and the state from which the offender holds his commission. Otherwise, the offense specified would have been already covered by Sec. 1 of the same Act defining *treason* against the United States. It was a common practice at the period of the passage of the Act of 1794 for governments to issue, in time of peace, letters of marque and reprisal authorizing persons to make captures of the private vessels of another state as a means of redress for injuries received from that state.

[2]*Am. State Papers, For. Rel.*, I, 40. See above, p. 30.

France a commission or letters of marque for arming a ship to act as privateer against the subjects of the King of France or their property, such person should be punished as a pirate. A similar agreement was entered into by the Treaty of Oct. 8, 1782 with the Netherlands, by the Treaty of April 3, 1783 with Sweden, by the Treaty of September 10, 1785 with Prussia, as also by the Treaty of November 19, 1794 with Great Britian, concluded shortly after the passage of the neutrality act of that year.

Joint resolution of March 14, 1912.

In addition to the above sections of the Revised Statutes, there is the joint resolution passed on March 14, 1912,[1] which may be regarded as an amendment to the act of April 20, 1818. It is not known, however, that any cases have as yet been prosecuted under this resolution.

[1]See above, p. 58.

CHAPTER IV.

THE DEFICIENCIES OF THE NEUTRALITY LAWS OF THE UNITED STATES.

Character of amendments suggested.

While the historical sketch of the neutrality acts of the United States, presented in Chapter II, showed that the United States has the honor of having set a standard to the world of municipal legislation directed to the fulfilment of the international obligations of a neutral state, the judicial interpretation of the existing neutrality laws, presented in Chapter III, has made it clear that there are serious deficiencies in those laws. These deficiencies are due partly to the introduction into international relations of stricter principles of neutral duty, and partly to the fact that changes in the methods and instruments of warfare during a period of nearly one hundred years have resulted in requiring a new application of principles of neutral duty which were equally recognized in 1818 as they are to-day. In the course of pointing out these deficiencies it will be found convenient to suggest certain recommendations by way of amendment to individual sections of the Neutrality Act. These recommendations will be in accordance with the principles of neutral duty accepted by nations at the present day, irrespective of the fact that the practice of nations may not yet have defined all the applications of those principles to possible circumstances, or that other nations may have failed as yet to enact legislation similar to that adopted by the United States for the enforcement of those principles within its own dominions.[1]

[1]It may be observed in this connection that Great Britian and the United States are the only countries which have adopted neutrality legislation of a comprehensive character, defining in detail the acts which the state believes to be contrary to the duties of neutrality and providing specific punishment for them. The states of continental Europe have been satisfied with legislation drawn up in very general terms; France has, among the articles of her *Code Pénal*, two general provisions which have been interpreted so as to cover the obligations of neutrality, and which have formed the basis for similar legislation in Italy, Prussia, Russia, Spain and other countries. Arts. 84 and 85 of the *Code Pénal* read as follows:

> ART. 84. Whoever, by hostile acts not approved by the government, shall have exposed the state to a declaration of war, shall be punished with banishment; and if war has resulted, with deportation.
>
> ART. 85. Whoever, by acts not approved by the government, shall have exposed the French to reprisals, shall be punished by banishment.

These articles come under the general heading "Crimes and Offenses against the Safety of the State," and it should be noted that they were not originally

Certain unneutral acts outside the scope of neutrality laws.

It will serve to prepare the way for a just estimate of the deficiencies of the present neutrality laws of the United States if consideration is first given to certain classes of acts which might of their nature seem to deserve to be included in a neutrality code, but which international custom has decided need not be so included. It was pointed out in Chapter I[1] that a neutral state, owing to the fact that it cannot exercise an effective control over its citizens beyond its own dominions, may not be held accountable by a belligerent even for acts of direct hostility committed by its citizens against the belligerent, provided those acts do not take their inception upon the territory of the neutral state. Moreover, neutral states are not called upon to restrict the ordinary commercial undertakings of their citizens merely because those undertakings happen, when war is in progress between foreign countries, to result in direct or indirect assistance being given to one of the parties to the disadvantage of the other. Consequently, in entering upon an examination of the deficiencies of the neutrality laws of the United States, a distinction must be made between those acts of its citizens which the United States, as a neutral state, is not under an obligation to forbid, and which are, therefore, not properly to be included in a neutrality code, and those acts of its citizens which the United States, as a neutral state, is under obligation to forbid, but which, owing to defective legislation, are not actually included in the Act of 1818. We shall begin with a consideration of the acts which a state is not under obligation to forbid.

I.

Trade between neutral citizens and belligerents.

With respect to the trade of neutral citizens with a belligerent it will be remembered that war gives rise to a conflict of rights between bel-

[1]See Chap. I, pp. 7-8.

enacted with the object of preserving the neutrality of the state. In an edition of the *Code Pénal* annotated by E. Garçon, I, 212, the following comment is made upon them.: "In passing them [Arts. 84 and 85], the legislator had not as his direct and principal aim to protect foreign states or individuals, but to prevent acts which are dangerous for France and the French; this explains the gravity of the penalties, and the position of those provisions among crimes against the safety of the state."

It is true that upon the outbreak of a war the neutrality proclamations of European States generally contain prohibitions against the commission of acts in the interest of one belligerent to the injury of the other, but such prohibitions have, as a rule, no penalty attached to them other than a warning of the withdrawal of the protection of the state against repressive measures which may be taken by the injured belligerent. Kleen characterizes these methods of preventing violations of neutrality as being both inadequate and irregular; "They give," he says, "only a very uncertain guarantee of neutrality, which it is scarcely possible to maintain except by municipal legislation penalizing violations and giving to the authorities preventative as well as repressive powers." *Lois et Usages de la Neutralité,* I, 318.

ligerent and neutral states. On the one hand neutral states, being at peace with the parties at war, have a right to continue to maintain commercial relations with them; and on the other hand the belligerents have each the right to put a check to the commerce of neutrals in as far as it may contribute to the strength of the enemy, and thus impede the conduct of hostilities.[1] The result has been a compromise. Neutral states have disclaimed responsibility for the direct or indirect assistance which may be given to one or other of the belligerents by the commercial activities of their citizens. In the first place, as a practical matter, it would be impossible for neutral states effectively to prevent all commerce between their citizens and the parties at war, and in the second place, even could neutral states have done so, they have been unwilling to assume so difficult a task for themselves, or to place so heavy a burden upon their citizens. But, while having successfully vindicated their claim not to be held responsible for the mercantile undertakings of their citizens, neutral states have acknowledged the right of the injured belligerent to capture and confiscate the property of their citizens destined to an enemy port, when the possession of such property would enable the enemy to offer a more effective resistance.

Contraband of war.

What is the character of the commercial property thus held liable to capture and confiscation as being "contraband of war"? In general it may be said to include not only articles such as arms, ammunition and other objects of immediate use in war, but also many articles which form objects of the ordinary commerce in time of peace, when the destination of such articles indicates that they are intended for the use of the military or naval forces of the enemy. As yet there is no fixed rule of international law defining the precise articles which may properly be considered contraband;[2] but as the decision of what is contraband does not fall to the duty of the neutral state, the question is not of importance in connection with a neutrality act.

Traditional policy of the United States.

Commerce in contraband is, accordingly, free to the citizens of a neutral state in so far as the state itself is concerned, while to the belligerent who is injured by such commerce is left the right to confiscate the commodities in question if they can be captured. This doctrine has always been upheld by the United States as being the established rule of international law. It was asserted by Jefferson in 1793,

[1] See above, pp. 8-9.

[2] The Declaration of London of February 26, 1909, offers a classification of contraband and non-contraband articles; but thus far that convention has not been ratified by the great powers as a body.

in answer to the complaints of the British minister that French agents were buying arms in the United States;[1] it was asserted in 1796 by Mr. Pickering, in answer to complaints of the French government,[2] by Mr. Marcy in 1855, during the Crimean war, in answer to complaints of the British government;[3] by Mr. Seward in 1862, in answer to complaints of Mexico;[4] by Mr. Bayard in 1885, in answer to complaints of Colombia;[5] by Mr. Blaine in 1891, in answer to complaints of Chile;[6] by Mr. Olney in 1896, in answer to complaints of Spain;[7] and on many other occasions. Art. 7 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War adopted at The Hague in 1907 embodied an international agreement to the same effect,[8] and thus the doctrine consistently asserted by the United States took its place as a definitely recognized rule of international law.

Circumstances warranting an exception to the rule.

But while a neutral state is under no obligation from the standpoint of international law to prevent commerce in contraband from being carried on by its citizens, it would be unquestionably a friendly act to prohibit such commerce, especially in arms and munitions of war, in certain cases of domestic insurrection where the loss to neutral trade would be insignificant in comparison with the injury which such commerce might cause to the government against which the insurgents are in rebellion. An instance of such action is furnished by the conduct of the United States during the rebellion in Mexico in 1912.[9] In this instance, however, it may well be thought that the action taken by the United States was based upon a desire to prevent the continuance of a trade which practically made the territory of the United States, at many points along the frontier, a base of naval supplies for the insurgent forces; and while the international law of neutrality did not apply to the situation, owing to the fact that Mexico had not declared the existence of a state of war, it devolved upon the United States, as being at peace with Mexico, to forbid a commerce in contraband which directly tended to further revolt in that country.

Belligerent trade in neutral ports.

Just as citizens of a neutral state are free to engage in contraband

[1] See *Am. State Papers, For. Rel.*, I, 147. Moore, *Int. Law Digest*, VII, 955.

[2] *Am. State Papers, For. Rel.*, I, 646. Moore, VII, 955.

[3] *Brit. and For. State Papers*, XLVII, 424. Moore, VII, 957.

[4] Moore, VII, 958.

[5] *For Rel.*, 1885, 238. Moore, VII, 962.

[6] *For. Rel.*, 1891, 314. Moore, VII, 965.

[7] Moore, VII, 965-966.

[8] "A neutral power is not bound to prevent the export or transit, on behalf of either belligerent, of arms, munitions of war, or, in general, of anything which could be of use to an army or fleet."

[9] See above, p. 58.

commerce with a belligerent, subject merely to the penalty of capture and confiscation of their goods by the other belligerent, so they are free to sell their goods in their own ports to merchant vessels of a belligerent state without restriction. Arms, ammunition and equipments of war of every kind may be furnished to such vessels as well as the ordinary objects of trade in time of peace. But while, as a general rule, international law has never required neutral states to forbid belligerent merchant vessels access to their ports, it may be questioned whether an exception to this rule should not be allowed when belligerent merchant vessels carry on in a neutral port such an extensive commerce in articles of war as to constitute the neutral port a base of military supplies. In principle, it would seem that the scale upon which such trade in neutral ports is carried on should not affect its character, that is to say, should not stamp it as being in violation of the duties of the neutral state. On the other hand, as a practical question, it is evident that if a belligerent is allowed to carry on in neutral ports a systematic and wholesale trade in supplies of war, he will possess a sensible advantage over his enemy who may not be in a position to make use of neutral ports, or he will be able to continue a war which his own slender domestic resources would compel him to abandon. In the Case of the United States as presented to the Tribunal of Arbitration at Geneva, the point was made that "while it is not maintained that belligerents may infringe upon the rights which neutrals have to manufacture and deal in such military supplies in the ordinary course of commerce, it is asserted with confidence that a neutral ought not to permit a belligerent to use the neutral soil as the main, if not the only base of its military supplies. . . . The United States confidently submits to the Tribunal of Arbitration that it is an abuse of a sound principle to extend to such combined transactions as those of Huse, Heyliger, Walker, and Fraser Trenholm & Co., the well-settled right of a neutral to manufacture and sell to either belligerent, during a war, arms, munitions, and military supplies."[1]

Case when such trade becomes excessive.

Whatever the justice of the contention of the United States in the individual instance just quoted, it would be very difficult to make it the basis of a standard of neutral obligation either capable of formulation as a principle or of application as a practical rule. Such a standard would impose upon the neutral state the necessity of determining whether under the circumstances one belligerent was being favored at the expense of the other, whether the commerce in contraband had reached the point of being wholesale in amount, and other similar

[1] *Papers Relating to the Treaty of Washington,* I, 125-126.

questions to which no fixed rule could be applied. Accordingly, while circumstances may arise calling for action on the part of a neutral state to restrict the purchase by belligerents of military supplies in its ports, it is neither necessary nor practicable to enact any permanent law on the subject.

Supplies to war vessels limited.

A different case is presented when a belligerent war vessel comes into a neutral port for the purchase of military or other supplies. The furnishing of such supplies by the citizens of a neutral state would be directly subservient to the purposes of aggressive action inasmuch as it would put the belligerent in a position to continue hostilities immediately. Accordingly, belligerent war vessels are denied at the present day the privilege of freely purchasing supplies in neutral ports, and neutral citizens should be prosecuted for selling or delivering supplies to them.[1]

Armed ships excepted from rule of commerce in contraband.

A further exception to the rule that a neutral state is under no obligation to prevent commerce in contraband on the part of its citizens is to be found in the special treatment accorded to ships which have been armed for warlike uses or are suitable for use in time of war. While on the one hand it would seem that a vessel built and equipped for warlike uses should, by its nature, belong to the class of munitions of war which may be freely sold by the citizens of a neutral state to a belligerent, whether within the neutral port, or on the high seas, or in a port of the belligerent, on the other hand it is clear that a war-ship built by a neutral citizen and delivered to a belligerent within or without neutral territory is an instrument of war so powerful and so complete as to practically amount to an armed expedition organized in the neutral port. What, then, is the obligation of a neutral state to prevent its citizens from selling war-ships to a belligerent as distinct from the other objects which constitute contraband of war? The question has been one of long standing controversy and it cannot be said that the law on the subject is as yet settled. Its great importance requires that it be treated somewhat in detail.

Distinctions to be observed

It will be noted at the outset that there are several distinct aspects of the question. First, there is the case of a war-ship which is built by a neutral citizen to the order of a belligerent under a definite contract. In this case the builder is presumably aware of the ultimate purpose to which the vessel will be put, although he may have no special interest in it himself. Secondly, there is the case of a war-ship, not built to order as above, which is sold to a belligerent or to his agents in a neutral port. In this case the seller is likewise presumably aware

[1]This subject is treated of in detail under a subsequent heading, see pp. 143-146.

of the ultimate purposes for which the vessel is intended, although here again he may have no special interest in them. Whether a war-ship so purchased should be allowed to leave the neutral port commissioned and sufficiently manned to be able to commence hostilities immediately, is another question; for to permit the departure of an armed naval expedition would evidently be as much in contravention of the duties of neutrality as to permit the departure of a military expedition by land. Thirdly, there is the case of a war-ship, not built to order, which is taken by a neutral citizen to a belligerent port and there sold to the belligerent. In this case the vessel undertakes its voyage to the belligerent port subject to the risk of capture and confiscation by the other belligerent as contraband. Fourthly, in each of the above cases the vessel, although primarily built for use in war, may at the time of the sale be in fact unarmed, so that while readily adaptable for belligerent purposes, it may not be actually able to commit hostilities at the time of leaving the neutral port. Fifthly, there is the case of vessels built primarily for commercial purposes, but which, by the addition of a small armament, may be converted into light-armed cruisers. This was the type of vessels which were more often used in privateering and which were, in consequence, the ones generally referred to in the opinions given with regard to the right to sell armed vessels. It is unfortunate that, in the discussion which has taken place with respect to the right of neutral citizens to sell armed vessels among other articles which are contraband of war, the distinction between the several kinds of armed vessels and the various conditions under which the sale may take place has often been overlooked.

Purpose of Act of 1794.

Let us first consider the provisions of the Neutrality Act which bear upon the question. It will be remembered that Sec. 3 of the original Neutrality Act of 1794[1] prohibited the fitting out and arming of vessels within the ports of the United States with intent that such vessels should be used in the service of a foreign state to commit hostilities against a state with which the United States were at peace. Apart from historical evidence to the same effect, the wording of the section alone would indicate that the prohibition was directed against the practice of privateering so common at that time. The expression "with intent that such vessel shall be used in the service of" has reference to a deliberate design on the part of the person fitting out and arming the vessel. "Intent" in criminal law is ordinarily interpreted to include some measure of malevolent will on the part of a person engaged in the execution of a specific criminal act. A mere transaction

[1]See Chap. II, p. 26.

of bargain and sale, in which the seller has no other interest than that of profit from the article manufactured, cannot be said to imply an *intent* on the part of the seller that the article shall be used for the commission of definite acts of hostility, merely because he knew in making it that it was adapted to uses of that general kind. Accordingly, it would seem that the sale of an armed vessel to a belligerent in a port of the United States could not properly have been held to subject the vendor to prosecution for violation of the Neutrality Act. That the act of building *to order* a vessel, which it is known that the purchasing belligerent will use to commit hostilities against a friendly state, would have been considered as coming within Sec. 3 of the statute, is not certain. Strictly speaking, the "intent" of a person who is building a vessel to order is merely to produce a vessel which will satisfy the requirements of the contract, and a mere knowledge of the use to which the vessel will be put is not sufficient to constitute an intent on his part that it shall be so used.[1] But while it might not have been possible to convict a person who was merely acting as the commercial agent of a belligerent, it is clear that, as regards the belligerent himself, the construction and fitting out of a vessel in a port of the United States, through the act of an agent, would very properly have been regarded as a violation of the neutrality of the United States by inference from the terms of Sec. 4 of the Act of 1794, which makes it unlawful for any person to increase or augment within the jurisdiction of the United States the force of a ship of war in the service of a belligerent.[2]

Privateering the object in view.

It is not asserted that the prohibition of the sale of an armed vessel to a belligerent in a neutral port should not properly have been included in the Neutrality Act of 1794, but merely that it was not so included or intended to be included. Unquestionably the sale of an armed vessel to a belligerent in a neutral port, even though the vessel should leave the port not in a condition to commence hostilities immediately, might be a far greater measure of assistance to a belligerent than the augmenting and increasing of the force of one of his ships of war, which is forbidden by Sec. 4 of the Act of 1794. But that argument was not urged upon the framers of the Act of 1794, who had before them the practical question of preventing privateering and were not concerned with abstract questions. Why should a belligerent have bought vessels in neutral ports when there were always to be

[1]The doctrine of "constructive intent" would not seem to apply to an act not *per se* criminal.

[2]See Chap. II, p. 27; App., p. 173.

found adventurers who were ready to accept commissions in his service to command privateers, and accomplish the chief design of the belligerent by preying upon the commerce of his enemy?

Failure of bill to prevent sale of war vessels.

In 1817 a bill was presented in the House of Representatives by the Committee on Foreign Relations, the first section of which prohibited citizens of the United States from selling or contracting for the sale of vessels of war to be delivered in the United States or elsewhere with intent or previous knowledge that the vessel should or would be employed to commit hostilities against a friendly state.[1] This would seem to be conclusive evidence of the correctness of the interpretation given above of Sec. 3 of the Act of 1794, namely, that the clause "with intent that such ship or vessel shall be employed in the service of" did not cover the mere sale of armed vessels to a belligerent. The first section of the bill was bodily stricken out by the Senate, and thus the prohibition of the sale of vessels of war was definitely abandoned.

Sec. 2 of the Act of 1817, which later became Sec. 10 of the Act of 1818, requires that owners or consignees of armed vessels leaving the ports of the United States and belonging wholly or in part to citizens thereof, shall give bond that the vessel shall not be employed by such owners to commit hostilities against a friendly state.[2] Here again it is clear that the reference is wholly to the practice of privateering. The owners of the vessel need only give bond that the vessel will not be used *by themselves* to commit hostilities against a friendly state, and there is no evidence of an intention to prohibit the *bona fide* sale of vessels.

Opinions of judicial and executive departments at variance.

The *dicta* of the United States courts and the opinions of the executive branch of the United States government in the matter are considerably at variance, and it is difficult to form any consistent rule out of them. This is partly due to the fact that these *dicta* and opinions were as a rule confined to one aspect of the question, though they have been frequently quoted as applying to the question in general.

Pickering's opinion in 1796.

In 1796 Mr. Pickering, Secretary of State, in a letter to the French minister, M. Adet, says:[3] "I conclude that it is not unlawful for the citizens of the United States to sell or hire their *unarmed* vessels to any of the Powers at war, and to man the vessels so sold or hired, these continuing *unarmed*." The emphasis upon unarmed vessels need

[1] See Chap. II, p. 37.
[2] *Ibid.*; Chap. III, p. 96.
[3] *Am. State Papers, For. Rel.*, I, 646.

not be taken as necessarily excluding the sale, pure and simple, of armed vessels, since Mr. Pickering was defending the right of citizens of the United States to man American vessels which had been purchased by Great Britain for the purpose of transporting flour to England.

Rush's opinion in 1816.

In 1816, during the wars of the South American colonies against Spain, Attorney General Rush rendered an opinion in which he said that he was "aware of no law of the United States that can prevent a merchant or ship-owner selling his vessel and cargo (should the latter even consist of warlike stores) to a citizen or inhabitant of Buenos Ayres, or of any part of South America. Nor will it, do I think, make any difference whether such sale be made directly in a port of the United States, with immediate transfer and possession thereupon; or under a contract entered into here, with delivery to take place in a port of South America."[1] The vessel in question was not armed at the time of the sale, but the Attorney General said that while it would be unlawful for her to seek an armament for hostile purposes, she might take on arms and military stores "for necessary self-defence."

Opinion in case of *Santissima Trinidad.*

In 1822 a decision was rendered by the Supreme Court of the United States in which it was stated as an *obiter dictum* by Mr. Justice Story that "there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit; and which only exposes persons engaged in it to the penalty of confiscation."[2] There can be no question of the truth of this statement at the time at which it was made, but it should be observed that it deals with only one aspect of the question, namely, the sale of armed vessels in belligerent ports.

Clay's opinion in 1827.

In 1827 Mr. Clay, Secretary of State, in letters to the Spanish legation, defended the right of American shipbuilders to sell vessels to belligerent states. On June 9 Mr. Clay wrote to the Spanish chargé as follows: "If vessels have been built in the United States and afterwards sold to one of the belligerents and converted into vessels of war, our citizens engaged in that species of manufacture have been equally ready to build and sell vessels to the other belligerent. In point of fact both belligerents have occasionally supplied themselves with vessels of war from citizens of the United States." Again, on October 31, Mr. Clay wrote to the Spanish minister as follows:

[1] 1 Op Atty. Gen., 190.

[2] *The Santissima Trinidad,* 7 Wheat., 283.

"It may possibly be deemed a violation of strict neutrality to sell to a belligerent vessels of war completely equipped and armed for battle, and yet the late Emperor of Russia could not have entertained that opinion, or he would not have sold to Spain during the present war, to which he was a neutral, the whole fleet of ships of war, including some of the line. But if it be forbidden by the law of neutrality to sell to a belligerent an armed vessel completely equipped and ready for action, it is believed not to be contrary to that law to sell to a belligerent a vessel in any other state, although it may be convertible into a ship of war."[1]

Mr. Clay's doubts as to the propriety of the sale of fully armed vessels to a belligerent appear to have been based upon the general principles of neutral duty, in which estimate he was unquestionably correct, rather than upon a strict interpretation of the neutrality laws of the United States.

Opinion in case of *United States v. Quincy.*

In 1832 the Supreme Court of the United States, in rendering the decision in the case of *United States v. Quincy*,[2] entered into a careful discussion of the "intent" necessary to constitute an offense under Sec. 3 of the Act of 1818. Stress was laid upon the fact that it is *the intent,* that is "the material point on which the legality or criminality of the act must turn; and decides whether the adventure is of a commercial or warlike character"; this intent must be formed before the vessel leaves the United States, and it must be "a fixed intention; not conditional or contingent, depending on some future arrangements." That the intent must be a hostile one may be gathered from the statement of the court that "all the latitude necessary for commercial purposes is given to our citizens, and they are only restrained from such acts as are calculated to involve the country in war." The case before the court was, however, that of a privateer, and while it may be inferred that the court would have recognized as proper a sale of the vessel at the port of destination, no inference can be drawn as to the attitude of the court towards a sale of the vessel within the limits of the United States.

Legare's opinion in 1841.

In 1841, during the war between Mexico and Texas, two vessels of war were built and fitted out in the port of New York for the Mexican service. An opinion was asked of Attorney General Legare by the Secretary of the Treasury as to the proper action to be taken in the case. Mr. Legare, writing under the impression that the vessels were to be delivered to the Mexican government in the

[1]Moore, *Int. Law Digest,* VII, 950, 951.
[2]6 Pet., 445.

port of New York, had "no hesitation in saying that it presents a case clearly within the Act of 1818, not only within the tenth section referred to by that gentleman [the collector of New York], but within the third section."[1] On being informed that the vessels were not to be delivered within the jurisdiction of the United States, and that they were to be sent out of the port unarmed and with every possible precaution to insure their pacific conduct on the high seas, Mr. Legare responded to the question whether the sale of the vessel abroad came within the statute. His reply was as follows: "I confess my present leaning to be, that all equipping, within our jurisdiction, of vessels of war for a belligerent, by an American citizen, knowing the purposes for which they are to be employed, is repugnant to the law of 1818. In other words, that all trading with a belligerent in ships of war ready equipped for service is contrary to our law as it now stands."[2] Mr. Legare admits that his opinion was given without "full and mature consideration," and it is fair to say that he did not distinguish between the actual prohibitions of the Act of 1818, and the prohibitions properly demanded by the law of neutral duty.

State of law in 1861.

It thus appears that, in 1861, at the outbreak of the Civil War, the law in the United States with regard to the *bona fide* sale to a belligerent of armed vessels in a neutral port was in a very uncertain condition.[3] The Neutrality Act of 1818 did not, by its terms, prohibit

[1] 3 Op. Atty. Gen., 739.

[2] *Ibid.* 747.

[3] It may be observed that international law with regard to the same point was equally unsettled at that period. In the Case of the United States presented to the Tribunal of Arbitration at Geneva, it was asserted, in answer to a suggestion that the fitting out and arming of ships of war intended for the service of a belligerent were, before the Treaty of Washington, to be regarded as standing upon the same footing with dealings in articles ordinarily esteemed contraband of war, that the legislatures, executives and judiciaries of both Great Britian and the United States "have joined the civilized world in saying that a vessel of war, intended for the use of a belligerent, is not an article in which the individual subject or citizen of a neutral State may deal, subject to the liability to capture as contraband by the other belligerent." But the assertion was supported by the opinion of but one writer prior to 1861. *Papers Relating to the Treaty of Washington,* I, 81. On the other hand, in the Counter Case presented by Great Britian to the same Tribunal, it was stated that "the arbitrators would search in vain in text-books of acknowledged authority anterior to the civil war, and in the general practice of maritime nations, for any proof or acknowledgment of a duty incumbent on neutral governments to prevent their citizens or subjects from supplying belligerents with ships adapted for warlike use. They would find it, indeed, asserted, on the one hand, that among the duties of a neutral government is that of preventing hostile expeditions in aid of either belligerent from being organized within and dispatched from its territory. They would not, on the other hand, find the sale or delivery to a belligerent by a citizen or subject of the neutral of a vessel adapted for war classed among the acts which the neutral government is bound to prevent, nor would they find any distinction drawn in this

the sale; it merely prohibited citizens of the United States from participating in hostilities against a friendly power, either directly by their own act, or indirectly, by causing the preparation of the instruments of such hostilities. But the spirit of the Act of 1818 unquestionably called for a stricter rule, as did also the fundamental principles of international law. It remained for the events of the Civil War to show the imperative need of modifying existing international custom in accordance with the new conditions of warfare at sea.

Confederate cruisers fitted out in British ports.

We may here briefly review the two chief cases in which Great Britain, by permitting the construction in her ports of vessels intended for the use of the Confederate government, gave rise to the accusation by the United States of a neglect to perform the duties of a neutral state.[1] In the fall of 1861 a contract was entered into by agents of the Confederate government with a British firm for the construction of two vessels later known as the *Alabama* and the *Florida.* Early in 1862 the *Florida* sailed from the port of Liverpool in every respect a man-of-war, except that her armament was not in its place. In June of the same year the *Alabama* left port, a man-of-war by construction, but at the time without armament or fighting crew. In Moelfra Bay, on the English coast, she took on board twenty or thirty men and then sailed to the Azores where she met, by prearrangement, the *Agrippina* and the *Bahama.* From these vessels she obtained her officers, her armament and her coal, and when the transshipment was made the Confederate flag was run up and the commission of Captain Semmes was produced. The damage inflicted upon the commerce of the United States by these two vessels, especially by the former, was very great. In both cases the United States minister had called the attention of the British government to the fact that the vessels were being constructed, and to the circumstances justifying an assumption of the hostile use to which they were to be put. A decision rendered by the Court of Exchequer in 1863 expressed the interpretation placed by British courts upon the British Foreign Enlistment Act of 1819. Proceedings were brought under that act against the *Alexandra,* a gunboat launched at Liverpool, and her hostile character was clearly proven. But the court declared that a ship of war was nothing more than an article of contra-

[1]For details as to the Confederate vessels built or fitted out in British ports, see *Papers Relating to the Treaty of Washington,* IV.

respect between the sale and delivery of a vessel built to order and that of a vessel not built to order." In support of this statement a series of citations from Vattel, Azuni, Lampredi and other writers on international law was presented in an annex at the end of the Counter Case. *Ibid.* III, 217, 395-403.

band trade unless she left port in such a state of completeness of armament as to be able to commence hostilities immediately. Moreover, if a vessel when built might be offered for sale to a belligerent, it might equally well be built to the order of a belligerent.[1]

Evident necessity of stricter rule.

The experience of the Civil War thus demonstrated the necessity of prohibiting the construction for and sale to belligerents, by neutral citizens, of vessels of war, whether delivery be made within the ports of the neutral state or in those of the belligerent, or on the high seas. An armed vessel was clearly too formidable an instrument of war to continue to be placed in the category of contraband articles, which a belligerent might purchase in a neutral port, or which a neutral might take to a belligerent port for sale. Even though the vessel left port with her armament only half completed, and with no larger crew than was necessary to navigate her and without having received a commission, it still remained true that a belligerent could find in such vessel an instrument readily adaptable for immediate use in war. It was then, as it is under present conditions, simply a case where the magnitude of the consequences of an act must be considered as affecting the character of the act; so that while the sale in a neutral port or the export to a belligerent port of ordinary arms and munitions of war need not be forbidden by a neutral state, an exception must be made of armed vessels.[2] The Neutrality Acts

[1] *Attorney General v. Sillem, Exchequer Reports* (Hurlstone and Coltman) II, 431. Chief Baron Pollock put the question to the jury in the following terms: "If you think the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then that is a sufficient matter. But if you think the object really was to build a ship in obedience to an order, and in compliance with a contract, leaving it to those who bought it to make what use they thought fit of it, then it appears to me that the Foreign Enlistment Act has not been in any degree broken." Under this instruction the jury rendered a verdict for the vessel. All attempts to obtain a new trial and to take an appeal to higher courts were alike without success.

[2] Mr. Snow makes the pertinent observation that, "In considering this question, it should be remembered that, by the introduction of steam as the motive power of ships, and of iron and steel as the material of their construction, the conditions of maritime warfare have been very radically changed. What might have been a reasonable rule as applied in the time of sailing ships, might now, in the age of swift ironclads, be intolerably oppressive. In the cases of the *Santissima Trinidad, United States* v. *Quincy,* and the *Meteor,* the courts were dealing with small sailing vessels, which had been converted into privateers, the possession of which by one or the other belligerent made very little difference in the general result of the struggle; whereas, the possession of an ironclad ship might very well turn the scale one way or the other, as indeed it did in the war between Chile and Peru, in 1880-1881. This great power of inflicting injury upon one of the belligerents, it is fair to say, ought not to be permitted to neutral citizens; and the neutral nation is alone in a position to restrain them." *Cases and Opinions on International Law,* 437. Scott, *Cases,* 720. This point seems to have been entirely overlooked by Sir Alexander

of 1794 and 1818, by adopting the "intent" of the person fitting out and arming the vessel as the test of the illegality of the act were able effectively to check, if not wholly prevent, the practice of privateering. But with the disappearance of privateering, and with the changed conditions of maritime warfare as they existed during the Civil War, a new situation was presented. It was no longer sufficient for the neutral state to be satisfied that there was no hostile intent on the part of those who were fitting out or arming a vessel within its jurisdiction. Even if the intent of those fitting out and arming the vessel was a purely commercial one, it was still necessary for the neutral state to inquire into the ultimate destination of the vessel, into the intent of those into whose hands the vessel was to fall. By permitting the mere mercantile transfer by its citizens to a belligerent of vessels fitted out and armed in its ports, a neutral state might be giving a tremendous advantage to one belligerent over the other. What concerned the injured belligerent was the fact that his enemy left the neutral port in possession of a powerful instrument of war, thus constituting the neutral port a point of departure for a hostile expedition, irrespective of any hostile intentions on the part of citizens of the neutral state.[1] The negotiations carried on with a view to the

[1]Mr. Mountague Bernard explains lucidly the point of view of the injured belligerent: "It is," he says, "equally clear that proof of an intention hostile in fact, or constructively hostile, in the builder of a ship or his workmen, or in the maker or purveyor of guns or ammunition, has really little or nothing to do with the question whether the belligerent nation has sustained injury from the neutral. To the United States it was of no consequence at all what were the intentions of Laird or Miller, or their riggers or ship-carpenters, or whether these persons or any of them were animated by partiality to the Confederates, or were merely working, in the exercise of their respective trades, for what they could get. What was of consequence to the United States was the intention with which the vessels were despatched from England by those who had at that time the real control of them. This unquestionably was a matter of the highest consequence, since on this it depended whether they were more or less dangerous, or not dangerous at all, to the American mercantile marine. Nor did it matter to the United States whether the vessels were purchased ready-made or were built to order." *Historical Account of the Neutrality of Great Britain during the American Civil War,* 396-397.

This distinction was overlooked by Mr. Dana who, writing in 1866, based his doctrine upon the old rule of the "intent" of the person fitting out or arming the vessel. "As to the preparing of vessels within our jurisdiction for subsequent hostile operations, the test we have applied has not been the extent and character of the preparations, but the intent with which the particular acts are done. If any person does any act, or attempts to do any act, toward such preparation, with the intent that the vessel shall be employed

Cockburn in his individual opinion rendered as one of the arbitrators at Geneva, in which he said that he was unable to see any difference in principle between "a ship of war and any other article of warlike use." *Papers Relating to the Treaty of Washington,* IV, 347.

settlement of the claims brought by the United States against Great Britain resulted in the formulation of more progressive rules on this point. In the meantime, however, the courts of the United States still enforced the old rule, and the legislature was for a time actively engaged in the preparation of a bill to make it permanent.

Opinion in case of the *Meteor*.

It will be remembered that in the case of the *Meteor*,[1] in 1866, Judge Betts interpreted the word "intent" in Sec. 3 of the Act of 1818 in such a way as to annul practically the right of citizens of the United States to sell armed vessels to a belligerent; and that this interpretation was rejected by Justice Nelson when the case was appealed to the Circuit Court.[2] But while disagreeing with Judge Betts on the point that knowledge of the probable use to which the vessel was to be put constitutes an intent that it shall be so used, Justice Nelson made the following remark as to the legality of building vessels to order. "I agree that if the agents of a hostile government should make a contract to build a ship for service in war, then suspicion would commence in the origin of the contract, and very slight circumstances might go to make out the purpose and the intent." This remark may be interpreted as conceding the abstract right of an American citizen to build a war vessel to the order of a belligerent government, but strictly limiting the exercise of the right to the commercial undertaking and forbidding the least coöperation with the belligerent in the actual disposition of the vessel.

Failure of bill to permit sale of vessels.

On July 25th of the same year the Committee on Foreign Relations of the House of Representatives presented a new neutrality bill which it offered as a substitute for the Act of 1818.[3] Sec. 10 of the new bill provided that nothing in the proposed act should be so construed as to prohibit citizens of the United States from selling vessels built within the United States to governments not at war with the United States. It was fortunate for the United States that this attempt on the part of the House of Representatives at reactionary legislation did not receive the support of the Senate.

Treaty of Washington, 1871.

On May 8, 1871, a treaty between the United States and Great Britain was signed at Washington providing for the settlement by

[1] 17 Fed. Cases, No. 9,498.

[2] *Ibid.* note. See Chap. III, pp. 70-72.

[3] See Chap. II, pp. 48-49.

in hostile operations, he is guilty, without reference to the completion of the preparations, or the extent to which they may have gone." Wheaton, *Int. Law* 562.

arbitration of the claims brought by the United States against Great Britain for indemnity for the losses incurred by the former from Confederate cruisers which had been built or fitted out in British ports. Art. VI of this treaty set forth the three rules agreed upon by the contracting parties as applicable to the settlement of the case. These rules, commonly known as the "Three rules of the Treaty of Washington," are as follows:

Rules adopted.

> A neutral Government is bound—
>
> First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.
>
> Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.
>
> Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.[1]

It was, however, expressly declared in the same article that "Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I, arose," but that "Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules."

Scope of first rule.

It is to be observed that in the first rule the words "is intended to cruise or to carry on war," as describing the use to which the vessel in question is to be put, introduced a much more comprehensive rule as to the vessels whose departure from its ports a neutral government is bound to prohibit. The new rule was unquestionably an advance over the old one, whatever may have been the justice of Great Britain's

[1]Malloy, *Treaties,* etc., *Between the United States and Other Powers* (1776–1909), I, 703.

contention that it did not represent international custom at the time when the events which gave rise to the complaint of the United States took place. Both Great Britain and the United States agreed to observe the three rules as between themselves in the future and to bring them to the knowledge of other maritime powers and to invite them to accede to them. Great Britain has incorporated the first of these rules into her Foreign Enlistment Act of 1870, by which it is made illegal either to build, or agree to build, or cause to be built, or issue or deliver any commission for, or equip or despatch, or cause or allow to be despatched, any ship "with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State."[1] No change was made in the Neutrality Act of the United States in consequence of the new rules, and if the occasion should arise it would still be necessary for the courts to strain the old "rule of intent," as it appears in the Act of 1818, to meet the new duties incumbent upon the United States.

Under the new rule it is no longer a question of the intent of the person arming and equipping the vessel but of the intent of those for whom the vessel is being so armed and equipped. In other words the probable destination or use of the vessel is made the test as to whether it should be permitted to leave port, irrespective of the intent of the ship-builder or temporary owner. The old distinction between the *animus vendendi* and the *animus belligerandi* is thus done away with.

Its adoption by the Hague Conference.

The first rule of the Treaty of Washington was adopted in substance by the Hague Conference of 1907, and appears as Art. 8 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War.

> A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which has been adapted in whole or in part within the said jurisdiction to warlike use.

It will be observed that the above article refers to "any vessel" which the neutral government has reason to believe is intended to

[1] See below, p. 135; App., p. 191.

"cruise, or engage in hostile operations against" a friendly power. These words are not as clear as might be desired. They do not define specifically the status of vessels other than war-ships which are used in naval warfare, such as colliers, repair ships and other fleet auxiliaries, nor do they define the status of vessels which are constructed primarily for purposes of peace but which are susceptible of being readily converted into cruisers by the addition of a small armament.[1]

Summary of present law.

The situation with regard to the duties of a neutral state in the matter of the sale, by a neutral citizen to a belligerent, of vessels capable of being used for warlike purposes may be summed up as follows:

Sale of vessels built to order.

(1) A neutral government is bound by Art. 8 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War to prevent the construction,[2] the fitting out, or the arming, within its jurisdiction, *to the order of a belligerent,* of war-ships (including armed vessels and other craft constructed to take active part in naval warfare), and of merchant vessels which by reason of their size and speed are readily convertible into light-armed cruisers. Accordingly, it is equally incumbent upon the neutral state to prevent the *sale and transfer,* within its jurisdiction, of vessels thus built or armed in violation

[1]In the case of war-ships and other war craft which have, by their nature, but one use, the burden of proof that the vessels under construction are not being built to the order of either belligerent should properly rest upon the builder, who must show a *bona fide* neutral destination; and while Art. 8 offers no test of evidence of hostile destination it would certainly be a wise precaution on the part of the neutral government to regard the absence of a contract with a neutral government as sufficient ground for putting a stop to further acts of the builder. A contract of the builder with neutral citizens would make possible the transfer by the latter to a belligerent of the vessel when sold. In the case of merchant vessels a belligerent would naturally resort to intermediary contracts, so that it would be practically impossible for the neutral state to inquire into their ultimate destination in order to obtain evidence of the real persons for whom the vessel was being built. In this respect the test offered by Art. 8 is not satisfactory. The guilt of the vessel depends upon whether or not it is "intended" to engage in hostilities; it is well known how difficult it is to prove what is "intended" and how many international controversies may arise regarding it. Mr. Hall, in discussing this point, suggests that instead of the "intent" of the parties involved the character of the ship should be made the test as to whether it should be permitted to leave port. The test would unquestionably be an improvement as an alternative to the present one, but it is thought that both tests may be combined, and thus more comprehensive measures of prevention be provided. See below, p. 138.

[2]In the Case of the United States before the Tribunal of Arbitration at Geneva, it was argued on behalf of the United States that the *construction* of a vessel in neutral territory during time of war had been regarded both by the courts and by the Executive as included in the act of fitting out the vessel. In support of this position the counsel referred to the case of *United States v. Quincy,* 6 Pet., 445, and to the action of the President in 1869 in taking possession of certain vessels which were being constructed for the Spanish government. *Papers Relating to the Treaty of Washington,* I, 68.

of its obligations as a neutral. In this case the contract of the belligerent with the builder and the existence of the war may be taken as "reasonable ground" of the intended hostile destination of the vessel.[1]

Sale of vessels when not built to order.

(2) In passing upon the lawfulness of the sale of the above mentioned vessels when already constructed and when not built or fitted out to the order of a belligerent, a distinction must be made between the several classes of vessels:

Within neutral jurisdiction.

(a) A neutral government is bound to prohibit the sale within its jurisdiction of armed vessels and of unarmed vessels constructed primarily for use in war. This obligation is deducible from the general principles of neutral duty as at present understood. A neutral country must not be made the point of departure for hostile expeditions by land or sea.[2] Now a vessel of war, whether its armament be in a greater or less state of completion, or even if it carry no larger crew than is necessary to navigate it, is nevertheless a powerful instrument of war. Its departure under a belligerent flag might be a much more serious matter for the other belligerent than the departure of an armed expedition of men; it would amount in many cases to "organized war."[3] This is equally true even if no transfer of ownership has taken place in the neutral port, and the vessel has sailed out under a neutral

[1]At the Second Hague Conference, during the discussions of the committee entrusted with the formulation of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War, the Brazilian delegate proposed to insert an article providing that "ships of war in course of construction in the shipyards of a neutral country may be delivered with all their armament to the officers and to the crews appointed to receive them, when they have been ordered more than six months before the declaration of war." The proposal was opposed by the Argentine delegate and was rejected by the Examining Committee. *Deuxième Conférence de la Paix, Actes et Documents,* I, 302; III, 597.

On the outbreak of the Spanish-American war two ships which were being built in English shipyards for the United States were prevented by the British government from leaving the country. Moore, *Int. Law Digest,* VII, 861.

[2]This principle appears to be expressed in the second rule of the Treaty of Washington that a neutral state is bound "not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other." It is true that the ordinary acceptation of the term "base of naval operations" would seem to limit it to a place to which a belligerent resorts frequently for the renewal of supplies; but the term is likewise understood at the present day as including a place from which an act of hostility takes its commencement. Hall, 599-600; Walker, *The Science of Int. Law,* 453. By Art. 5 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War, the obligation laid down in the second rule of the Treaty of Washington of not permitting a neutral port to become the base of hostile operations was transferred from the neutral state to the belligerent states. But it is fair to infer that what a belligerent is forbidden to do, a neutral may not help him to do.

[3]The expression occurs in the Case of the United States presented to the Tribunal of Arbitration at Geneva. *Papers Relating to the Treaty of Washington,* I, 81.

flag with a contract of delivery either on the high seas or in a port of the belligerent;[1] and accordingly it would seem that a neutral government is bound to prevent the departure from its ports of an armed vessel under such conditions of prearranged sale and delivery. It may also be said that the sale of armed vessels is forbidden by inference from both the first and the second paragraphs of Art. 8 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War; for why prevent the fitting out and arming of a vessel, or the adaptation of a merchant vessel to warlike use, even when the object of the persons doing so is a purely commercial one, if a vessel already built and fitted out may be sold in a neutral port?

It may be observed, however, that by reason of the changed conditions of modern naval warfare, the sale of armed vessels already constructed and not fitted out to the order of a belligerent has become, in the case of war-ships, a question of little more than academic interest. The construction of a war-ship entails so great an outlay of capital that it is not probable that a builder would construct one except under contract, and accordingly, he would not have a ready-built war-ship on hand for sale unless by reason of a rescission of contract on the part of some neutral state.

Outside neutral jurisdiction.

(b) A neutral government is not bound to prohibit the *export* of armed vessels and of unarmed vessels constructed primarily for use in war when they have not been built to the order of a belligerent, and when there is no prearranged contract of delivery to a belligerent either on the high seas or in a port of the belligerent. This is all that was asserted by Justice Story in the oft-quoted and much criticised *dictum* from his opinion rendered in the case of the *Santissima Trinidad*.[2] The proposition was made with reference to a case not

[1] During the American Civil War it was clearly shown that, though difficult, it was not impracticable for a belligerent who had purchased a vessel in a neutral port to meet the vessel at an appointed place outside the neutral jurisdiction and then transship to it the rest of its armament and its fighting crew, so that the neutral port was thus made practically the starting point of a hostile expedition.

[2] 7 Wheat. 283. "There is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit; and which only exposes the persons engaged in it to the penalty of confiscation."

As an abstract proposition, and within the limits it contains, this *dictum* is still good law, but it has been persistently misinterpreted. The limits of the proposition were carefully explained in the Case of the United States presented to the Tribunal of Arbitration at Geneva. *Papers Relating to the Treaty of Washington*, I, 82. Sir Alexander Cockburn quoted it in his opinion without observing the narrowness of its scope. *Ibid*, IV, 251. Oppenheim refers to it as supporting the right to sell and deliver armed vessels in a neutral as well as in a belligerent port. *Int. Law*, II, 405.

likely to arise even at that time, and wholly imaginary under present conditions. In the first place, as has been pointed out above, warships are invariably built under contract, and in the second place, if we can imagine the owner of a merchant vessel fitting out and arming a vessel within neutral jurisdiction for use as a light-armed cruiser without a contract for the same, on the chance of finding a good market for the vessel in a belligerent port, we cannot imagine the neutral state permitting the departure of such armed vessel from its ports without requiring such proof and security that there is no prearranged sale with delivery on the high seas or in a port of the belligerent, as would make the design of the owner illusory from a commercial point of view.

Sale of merchant vessels.

(c) A neutral government is not bound to prevent the sale within its jurisdiction to a belligerent of unarmed merchant vessels, even though, by reason of their size and swiftness, they are capable of being transformed into light-armed cruisers or of being used as auxiliaries in the service of the belligerent fleet; provided, however, that such merchant vessels do not undergo in the neutral port any changes of a character to adapt them to be used in war. It remains, however, a duty for the neutral state to draw the line between simple commercial vessels and such others as, by reason of armor plates and other equipments for war, are really armed vessels although not actually carrying guns.[1]

Blockade running outside scope of neutrality laws.

Just as a neutral state is under no obligation to prevent commerce in contraband from being carried on by its citizens, so it is under no obligation to prevent the building of blockade runners by its citizens and the employment of them in time of war. Here again the absence of an obligation is based upon the fact that it would impose too heavy a burden upon a neutral state to require it to prevent such acts on the part of its citizens. During the American Civil War the business of running the blockade of the southern ports became a very profitable one, and a number of ships were built and fitted out in Great Britain with that object in view. The British port of Nassau, in the Bahamas, became the center of the contraband trade and the point of departure for blockade runners. The United States protested to Great Britain against the systematic manner in which Brit-

[1]See below, p. 140.

The apparent inconsistency of permitting a merchant vessel to be sold to a belligerent in a neutral port when the same vessel may not be built to the order of a belligerent, while due to the obscure phrasing of Art. 8 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War, has something to be said in its favor. See below, p. 140.

ish capital and British ships were being used to break the blockade of the southern states. In reply, Earl Russell maintained that the British Foreign Enlistment Act of 1819 did not apply to the act of carrying contraband or breaking blockade; that the law of nations had not imposed upon neutral states the duty of preventing such acts, but had left it to the injured belligerent to apply the remedy of capture and confiscation of the cargo of the offending vessel.[1] In commenting upon the reply of Earl Russell, Mr. Mountague Bernard pointedly remarks that "the test of a valid blockade lies in its effectiveness; and this depends on the force which the belligerent is able to concentrate on the blockaded port, and the vigilance and impartiality with which he uses it. If it be eluded and set at naught, he has only himself to blame. But give him a right to call on the neutral to protect him by punishing blockade running as a crime, and he is practically relieved from the necessity of protecting himself."[2]

Loans of money.

A neutral state is, moreover, under no obligation to prevent its citizens from making loans of money to a belligerent power. The neutral state cannot itself make such a loan even on a purely commercial basis, nor can it guarantee a loan made by one of its citizens.[3] But, while it cannot thus give either its material or its moral support to a belligerent, it is not obliged to prevent its subjects from giving such support as an incident of ordinary mercantile transactions.[4] In 1842, Webster, as Secretary of State, emphatically denied

[1] *For. Rel.*, 1862, 93; Moore, *Int. Law Digest*, VII, 975.

[2] *Historical Account of the Neutrality of Great Britain During the American Civil War*, 298.

[3] See Moore, *Int. Law Digest*, VII, 798; Wharton, *Int. Law Digest*, III, 507. In the case of *De Wütz v. Hendricks* (9 Moore, C. P., 586), decided in 1824, it was held in the British Court of Common Pleas that an engagement to raise money, by way of loan, for the purpose of supporting insurgents against a foreign government was contrary to the law of nations, and consequently no right of action could arise out of such a transaction. Scott's *Cases*, 721.

In connection with this subject Moore makes the following pertinent suggestions: "In the war between Great Britain and the South African Republics loans were openly negotiated for the British Government in the United States and elsewhere, and the same thing has taken place in the war between Russia and Japan. We cannot too constantly bear in mind the fact that in dealing with the question of 'unlawfulness' in matters of neutrality, a distinction must be drawn between what is unneutral in a general sense and what is unneutral in the sense of being criminally punishable under the neutrality laws, and that, while a neutral government is not bound to prevent all unneutral acts, it must itself refrain from engaging in them, and that, as a consequence of this duty of abstention, it may well be that its courts should not lend their processes for the purpose of enforcing transactions which, although they may not be penally preventable, may be in their essence unneutral." *Op. Cit.*, VII, 978.

[4] Hall justly observes: "Money is, in theory and in fact, an article of commerce in the fullest sense of the word. To throw upon neutral governments the obligation of controlling dealings not taking place within their territories

the existence of a duty on the part of the United States to restrain loans made by individuals to the government of Texas, then at war with Mexico.[1] In 1885, Mr. Bayard, Secretary of State, in reply to complaints of the Spanish minister that lottery tickets were being sold at Key West for the promotion of filibustering, said that it was not "a principle of international law that a sovereign is bound in any sense to prohibit sales of any kind, on the ground that the proceeds might go to unlawful objects."[2]

Voluntary subscriptions.

Whether voluntary subscriptions by individuals of a neutral state for the use of a belligerent must be prevented by the neutral state is not a matter of settled law or custom. Such subscriptions are undoubtedly inconsistent with the principle of neutrality, for they constitute very important assistance to the belligerent to whom they are given, and they are even more unneutral in character than commerce in contraband, in that there is lacking the element of a mercantile transaction. But it is difficult to see how a neutral state could fairly be charged with responsibility for such subscriptions, since it would be practically impossible to prevent them from being made, owing to the facility with which money can be transferred at the present day.[3]

Expressions of opinion.

A neutral state is under no obligation to prevent its subjects from giving expression to opinions or criticisms or wishes hostile to either of two belligerents, or favorable to subjects in revolt against an existing government. It is only when such expressions of a hostile attitude are followed up by the commission of overt acts that the prohibitions of a neutrality code can be made to operate. Unquestionable as this principle would seem to be, it is reaffirmed here owing to the fact that on several occasions the United States government has been called upon by foreign governments to restrict the right of free speech which citizens of the United States have under the Constitution.[4]

[1] See Hall, *Int. Law*, 591.

[2] *For. Rel.*, 1885, 771.

[3] In 1823 the law officers of the Crown advised the British government that subscriptions by individuals of a neutral nation for the use of a belligerent state were inconsistent with neutrality and contrary to the law of nations, although they might not constitute a just ground for hostilities. Halleck, *Int. Law* (3rd ed. by Baker), II, 164-165. This somewhat inconsistent opinion was based not upon practice but upon theory. See also Hershey, *International Law and Diplomacy of the Russo-Japanese War*, 80-86.

[4] In 1816 Mr. Monroe refused to take action at the request of the French minister to have dismissed a postmaster, who at a public dinner had made statements considered disrespectful to the French government. See Wharton,

would be to set up a solitary exception to the fundamental rule that states are not responsible for the commercial acts of their subjects." *Op. Cit.*, 590-591. See also Lawrence, *Principles of Int. Law*, 521-524.

Enlistments outside neutral jurisdiction.

With respect to enlistments of neutral citizens in the service of a belligerent, it is a well-established principle that a neutral state is not obliged to prevent its individual citizens from leaving the country with intent to enlist in the service of a belligerent when they arrive abroad. If the individuals thus leaving their country have already enlisted or entered into a contract to enlist, the neutral state would of course be bound to take action to prevent their departure.[1] So also the neutral state must prevent their departure in case they have organized to such an extent as to constitute a military expedition.[2] But with this exception, neutral citizens are free to take up the cause of either belligerent without thereby compromising the neutrality of their state. Here again, the smallness of the injury done and the impossibility of preventing the acts in question is sufficient ground for releasing the neutral state from responsibility. The absence of an obligation to prevent its citizens from enlisting in the service of a belligerent has been affirmed by the United States government from the very beginning of the republic.[3] Art. 6 of the Hague Convention relative to the Rights and Duties of Neutral Powers and Persons in War on Land embodies an international agreement to the same effect in the follow-

[1]See Chap. III, p. 62.

[2]See Chap. III, p. 84. In 1870, during the Franco-German war, nearly twelve hundred Frenchmen left New York in two French ships for the purpose of entering the French army. They were not officered or in any way organized; but the vessels carried large stores of rifles and ammunition. The Secretary of State of the United States contended that the ships could not be looked upon as intended to be used for hostile purposes against Germany, the men not being in an efficient state of organization. Hall thinks that "there can be no doubt that the view taken by the Government of the United States was correct." *Op. Cit.*, 603.

[3]In 1793, Jefferson, then Secretary of State, replied to the French minister that the government of the United States will not, at the request of a foreign government, intervene to prevent the transit to the country of the latter of persons objectionable to it, unless they form part of a hostile expedition. Moore, *Op. Cit.*, VII, 917. In 1855, in the case of the *United States v. Hertz* (26 Fed. Cases, 15,357), the court held that it was not an offense against the neutrality laws of the United States for a citizen to leave the country with intent to enlist in foreign military service, and the same principle is reaffirmed in numerous later cases.

Int. Law Digest, III, 505; Moore, *Int. Law Digest*, VII, 979. In 1866 Mr. Seward refused to take action at the request of Great Britain to check the proceedings of Fenian agitators "as long as they confine themselves within those limits of moral agitation which are recognized as legitimate, equally by the laws of the United States and by those of Great Britain." Wharton, III, 507. In 1885 Mr. Bayard, in answer to complaints of the Spanish minister, stated that "the Executive of the United States has no authority to take cognizance of individual opinions and the manifestation thereof, even when taking the shape of revolutionary and seditious expressions directed against our own Government," and that it was "no less incompetent to pass upon the subversive character of utterances alleged to contravene the laws of another land." Moore, VII, 981.

ing terms: "A neutral Power incurs no responsibility from the fact that individuals cross the frontier singly for the purpose of placing themselves at the service of one of the belligerents."

Solicitation of enlistments abroad.

If it is not a criminal offense against the neutrality laws of the United States for individual citizens to leave the country with intent to enlist in the service of a foreign belligerent, so it can be no offense against those laws if persons solicit others to leave the country with that intent. Such solicitation could not be forbidden without impairing the liberty of speech guaranteed by the constitution of the United States.[1]

Transportation of persons.

Moreover, it has been held by the United States courts that it is no offense against the neutrality laws of the United States to transport persons intending to enlist in foreign military service, and land them in the foreign country, provided they do not constitute a military expedition within the terms of Revised Statutes, Sec. 5286;[2] and it would seem that there is no international obligation on the part of a neutral state to prevent the departure of such a vessel. It has also been held that persons desiring to enlist in foreign military service may even charter a vessel to convey them in common to the belligerent country, without violating the laws of the United States.[3] In this latter respect the neutrality laws of the United States may not seem to be in harmony with the general principles of neutral duty; but it would be difficult to meet this particular case without taking the further step of prohibiting the departure of even single individuals.[4]

Departure of large numbers.

Whether a neutral state would be obliged to take action if its subjects should depart to enter the service of a belligerent, either collectively or singly, in such large numbers as to constitute an important addition to the belligerent force, is not a matter of settled law. Here the principle of exemption from responsibility because of the smallness of the injury does not apply, nor would it be impossible for the state to check the exodus of large numbers.[5] But the difficulty of

[1]It is probable, however, that solicitation, if carried to any great extent, would result in some form of organization among those so influenced, contrary to the provisions of Art. 4 of the Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land, up to the standard of which it is desirable to bring the neutrality laws of the United States. See below, p. 130.

[2]*United States v. Kazinski,* 26 Fed. Cases, 15,508; *United States v. O'Brien,* 75 Fed. Rep., 500.

[3]*United States v. O'Brien,* 75 Fed. Rep., 500.

[4]For a discussion of the advisability of such a step, see below, pp. 129-131.

[5]Lawrence thinks that Russia was guilty of a breach of neutrality towards Turkey in 1876 for having made no effort to restrain the "thousands of en-

framing permanent legislation to meet the situation, as well as the small probability of such a situation arising, make it seem wiser not to attempt to extend the United States neutrality laws into that field, but to leave it to Congress to take proper action according to the circumstances.

Provisions of British law.

The British Foreign Enlistment Act of 1870, like its predecessor of 1819, is generally regarded as imposing, on the point of foreign enlistment, heavier restrictions on British subjects than are necessary to meet the requirements of international law.[1] By the Act of 1819[2] it was declared to be a misdemeanor "if any natural-born subject of His Majesty shall, without such leave and license as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, . . . with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever . . ." By the Act of 1870[3] it is an offense against the Act "if any person, without the license of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state . . ."

Thus the mere act of leaving the country with intent to enlist abroad is made an offense against the laws of Great Britain.[4] It must be observed, however, that, while attempting to prevent enlistments outside the jurisdiction of the country, the British Foreign Enlistment Acts of 1819 and 1870 are, in respect to the persons to whom they apply, narrower than the United States Neutrality Act of 1818.[5] The British Act of 1819 applied, as regards the offense of enlisting, only to

[1]See Walker, *The Science of International Law,* 446.

[2]See App., p. 184. The Act of 1819 was frequently referred to by British statesmen as being "bottomed upon" the American Act of 1818. *Papers Relating to the Treaty of Washington,* I, 244.

[3]See App., p. 191.

[4]The provision has, it appears, never been carried into effect. In 1868 Baron Bramwell stated, with reference to that clause of the Foreign Enlistment Act of 1819, that "the present enactment is uselessly extensive. It is true that no mischief has come of it, because it has been a dead letter, though repeatedly violated." *Report of the British Neutrality Laws Commission,* No. 70.

[5]The United States Act of 1818 forbids "any person," whether native or alien, from enlisting within the jurisdiction of the United States in the service of a foreign state. See Chap. III, p. 62. Mr. Bemis points out the serious consequences during the American Civil War of the absence of such a provision from the British act. Bemis, *American Neutrality,* 69.

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thusiastic Russian volunteers," who crossed the southern borders of Russia in order to join the Servian army, then at war with Turkey. *Principles of Int. Law,* 533.

natural-born subjects, and the Act of 1870 only to *British subjects,* so that there is no law against enlistments even within the country by aliens domiciled or otherwise resident in Great Britain.

Advisability of adoption of British rule.

The British Act of 1870, like that of 1819, makes it unlawful for the master or owner of a ship knowingly to take on board, or engage to take on board, or have on board British subjects who are quitting the country with intent to enlist in foreign military or naval service. This provision, while a natural complement of the provision prohibiting subjects from leaving the country with intent to enlist abroad, is, like it, in excess of the requirements of international law. Whether the adoption by other nations of the severe restrictions of the British Act of 1870 in the matter of foreign enlistment, thereby introducing a new rule of international law, would be an improvement in the standard of neutral obligations is open to serious doubt. Art. 6 of the Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land embodies the existing rule that neutral powers incur no responsibility from the fact that individuals cross the frontier singly to enter the service of a belligerent. This article was based upon an article of a French draft presented to the commission of the Second Hague Conference entrusted with the subject of neutral rights and duties.[1] In explaining the draft the French delegate said that it contained "only provisions generally accepted by jurists and consecrated by usage."[2] Similar drafts were presented by the Swiss and Belgian delegates. The German delegate opposed the French proposition on the point in question and offered the following amendment in precisely the opposite sense: "Neutral Powers are bound to prevent persons under their jurisdiction from engaging to perform military service in the armed forces of either of the belligerent parties."[3] This amendment received the support of Austria and Turkey, but was opposed by France, Belgium, Switzerland, Holland, Russia, and Haiti;[4] and it was accordingly abandoned. In proposing it the German delegation explained that there was "no question of imposing upon the neutral state the duty of controlling the intentions of each individual crossing the frontier. But the case can be imagined in which thousands of volunteers might come from the neutral state to join the ranks of one of the belligerents." The Swiss delegate replied that the great fault of the German amendment was that it could not

Debates at Hague Conference of 1907.

[1] *Deuxième Conférence de la Paix, Actes et Documents,* III, 256.
[2] *Ibid.* 180.
[3] *Ibid.*
[4] *Ibid.* 200-204.

be made effective. "We cannot," he said, "ask a state to issue a prohibition which is without any real sanction and which, if not observed, would compromise its authority."[1] The British delegate admitted that the German proposal was in accordance with British municipal law, but thought that "it was not proper to formulate a conventional obligation in that respect." "A prohibition of this kind," he said, "may properly emanate from the sovereign authority of the state, but not from agreements forming part of international law."[2] M. Bourgeois of the French delegation concluded the discussion by observing that: "What Germany wants above all is that the subjects of the neutral state shall not be allowed to cross its frontiers *en masse* in order to put themselves at the service of one of the belligerents. Does the German delegation think that such a contingency could be realized without the neutral state being in complicity with that gathering *en masse?* Just as on the one hand the crossing of the frontier by individuals would be difficult, if not impossible of control, so on the other hand it would be impracticable for large numbers to cross together without a previous organization which would create responsibility on the part of the neutral states."[3] The latter contingency he said was provided for by the preceding clause of the French draft, which later appeared as Art. 4 of the Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land.[4] But it would seem that the assumption of the French delegate that large numbers of persons could not cross the neutral frontier without some form of organization is scarcely tenable. The mere fact of a number of volunteers being in the same railway carriage or in the same steamboat would not appear to constitute an organization such as that contemplated in Art. 4. But granting that the situation which the German amendment attempted to provide for is not adequately met by Art. 4, it nevertheless remains true that it would be practically impossible to determine upon a rule sufficiently definite in character to satisfy the reasonable demands of the belligerents, and at the same time neither to impose too heavy a burden upon freedom of travel in the neutral state, nor pave the way for international disputes as to

Compromise rule.

[1] *Deuxième Conférence de la Paix, Actes et Documents,* III, 201.

[2] *Ibid.* 202.

[3] *Ibid.* 203-204.

[4] "Corps of combatants cannot be formed, nor recruiting offices opened in the territory of a neutral power in the interest of the belligerents." The expression "corps of combatants" would evidently extend to bodies of men in a much less complete state of organization than is required to constitute the "military expedition" against which United States Revised Statutes, Sec. 5286, is directed.

the proper time for the neutral state to take action. It would seem best, therefore, to leave it to the judgment of the neutral state to determine when, by reason of the large numbers of its citizens who are crossing the frontier to enter the service of a belligerent, the time has come for it to take action to prevent such important assistance from being given to one of the warring parties. The rights of neutral states take precedence over the rights of belligerents, and while a neutral state is properly held bound to prevent any violation of its sovereignty in the interest and to the profit of either of the belligerents, it is not bound to disturb its own domestic peace by undue restrictions upon the liberty of its citizens.

II.

Unneutral acts to which laws should be extended.

Having considered the series of acts of neutral citizens which, though of a character injurious to a belligerent power, need not be forbidden by the neutral state according to the standard of international obligation at present accepted, we pass to a consideration of certain other acts injurious to a belligerent power, which a neutral state is bound to forbid, but which are not actually covered by the provisions of the present neutrality laws of the United States. For the sake of clearness and systematic presentation we shall follow the classification of acts as they appear in the United States Neutrality Act of 1818, the provisions of which are to be found in the Revised Statutes of the United States, Secs. 5281-5291.

Sec. 5281 reads as follows:

> Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and imprisoned not more than three years.

Acceptance of Commission.

It will be observed that to constitute an offense it is necessary for a citizen to accept *and* exercise a commission. The mere acceptance alone is not sufficient to constitute an offense.[1] But it is a violation

[1] See Chap. III, p. 60, where it is pointed out that a citizen who accepts a commission, but does not do any act in exercise of it, might perhaps be prosecuted successfully under Sec. 5282 on the ground that the acceptance of a commission is equivalent to the enlistment of oneself in the service of a belligerent.

of the sovereignty of the neutral state for a belligerent to perform, within the jurisdiction of the neutral state, the sovereign act of conferring a commission, whether such commission be exercised or not. Hence, inasmuch as the conferring of a commission by one belligerent operates to the prejudice of the other, it becomes the duty of the neutral state to resist such a violation of its sovereignty and to forestall the possibility of it by forbidding the mere acceptance of a commission by its citizens.[1] The British Foreign Enlistment Act of 1870 makes it an offense against the Act "if any person . . . accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state. . . ."[2] There is no reference to the "exercise" of the commission so accepted, and no overt acts must be proven in order to prosecute an offender successfully. It is true that it would ordinarily be difficult to prove the acceptance of a commission in the service of a foreign belligerent except by the evidence of certain overt acts done in pursuance of it. But this is not necessarily the case, and it might at times happen that proof could be given of the acceptance of the commission when no steps had as yet been taken to carry it into effect.

Acceptance by aliens.

Sec. 5281 is limited in its application to citizens of the United States. But the same principles which make it the duty of a neutral state to forbid one of its citizens accepting a commission from a foreign prince apply with equal force to the acceptance, within the jurisdiction of the neutral state, of a similar commission by any person whatever. The sovereignty of a neutral state would be violated by the conferring by a belligerent, within the jurisdiction of the neutral state, of a commission even upon one of its own citizens, as well as upon any other aliens resident in the neutral state. But it would not, of course, be regarded as an infringement of neutral sovereignty for a belligerent state to issue a call upon its citizens resident in the neutral state to return home in order to enter the military or naval service of their own state.

Issuance and delivery of commission.

There is no provision in Sec. 5281 prohibiting the issuing or delivery, within the jurisdiction of the United States, of a commission to serve in the army or navy of a foreign belligerent state. In Sec. 5283 there is a prohibition against the issuance or delivery of a commission "to any vessel" to the intent that she may be employed as stated in the section. This prohibition was originally framed in view of

[1]See the principles enunciated by Jefferson in a letter to the French minister Genet, on June 5, 1793, Chap. II, p. 19.

[2]For the text of the act, see App., p. 191.

the practice of privateering and was intended to check the attempts of persons who, whether as real or pretended agents of a belligerent state, exercised the authority to confer commissions for privateers within the jurisdiction of the United States. Now that the practice of privateering has been formally abolished,[1] the prohibition against issuing commissions to vessels is out of place in Sec. 5283, and might properly be transferred to Sec. 5281 in the form of a general prohibition against the issuance or delivery of commissions in the military or naval service of a belligerent.

Exercise of commission granted abroad.

Sec. 5281 does not cover the case of a person exercising within the United States a commission obtained outside the United States. It is possible, within the terms of Sec. 5281, for a person holding the commission of a belligerent power whose boundary is contiguous to that of the United States to establish himself within the territory of the United States and to direct by telegraph, telephone or otherwise, hostile movements across the border.[2] Such an act, however clearly a use of neutral territory for hostile purposes, is not indictable under the existing neutrality laws of the United States.

Sec. 5282 reads as follows:

> Every person who, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars, and imprisoned not more than three years.

Solicitation of enlistments.

This section contains no prohibition against the act of inducing or soliciting persons to accept a commission or to enlist in the service of a foreign belligerent power. The act of persuading others to violate the neutrality of the United States is undoubtedly a criminal offense, and should be included within the scope of the United States neutrality laws in order that their effect may be as far reaching as possible.

[1] See below, pp. 152-154, where the possibility of a partial revival of privateering under the form of volunteer navies is considered.

[2] The warfare carried on along the Texas-Mexican border during the revolution led by Francisco Madero, in 1910-11, against the Mexican government, and during the present revolution (April, 1913), has shown how the territory of the United States may be used as a vantage ground for the direction of hostilities by leaders of revolutionary parties.

The British Foreign Enlistment Act of 1870 [Sec. 4] makes it a penal offense against the Act if any person "induces any other person to accept or agree to accept any commission or engagement" in the military service of a belligerent.

Enticement under false pretences.

There is no provision in Sec. 5282 prohibiting the act of enticing persons under false pretenses to leave the United States with intent on the part of the person enticing them that they shall enlist in the military or naval service of a belligerent when they have arrived abroad. The statute requires, on the part of one who is hired or retained to enlist abroad, a present intent, while he is within the jurisdiction of the United States, to enlist when he is beyond the limits of the United States.[1] In 1855 a recruiting service was carried on in the United States by agents of Great Britain with the object of increasing the ranks of the British army in the war against Russia.[2] In the case of *United States v. Kazinski*[3] the evidence showed that "some eighteen or twenty men were by various means inveigled on board a British brig, *The Buffalo,* at New York, under the representation that they were to be employed as laborers and mechanics at their various trades. . . . That by these representations they were induced to go on board *The Buffalo,* in order to take them to Halifax, to enlist for the Crimea; that the whole thing was no better than kidnapping." Owing to the limited scope of Sec. 5282 the offenders in this case could not be successfully prosecuted.

Provisions of British law.

The British Foreign Enlistment Act of 1819 contained limitations similar to those of the United States Neutrality Act of 1818, which was its model.[4] But in the British Act of 1870 a clause was introduced providing that "if any person induces any other person to quit Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent and in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state—he shall be guilty of an offense against this Act." In commenting upon this clause (in the original form in which it appeared in a draft bill submitted to the British Neutrality Laws Commission by the Secretary of State for Foreign

[1]See Chap. III, p. 62.

[2]The extent to which this recruiting was carried on is described in the annual message of President Pierce, December 31, 1855. Richardson's *Messages,* V, 332-333; See also the opinion of Attorney General Cushing, August 9, 1855. *Papers Relating to the Treaty of Washington,* I, 181; 7 Op. Atty. Gen., 367.

[3]26 Fed. Cases, No. 15,508.

[4]See App., p. 184.

Affairs), the framers of the bill pointed out that the clause provided for "cases (such as that of Messrs. Jones and Highat of Liverpool), in which seamen, etc., have been induced to go abroad with a design on the part of those engaging them, not communicated in this country to the seamen themselves, that they should elsewhere be prevailed upon to enlist in foreign service. Upon the terms of 59 Geo. III, cap. 69, it is a very serious question whether such a case is within the Act; the word 'intent' being so used as to furnish very strong grounds for the contention that the seamen themselves must, while in British territory, have formed the intent to enlist."[1] The United States neutrality laws should, like the British Act of 1870, be extended so as to cover such cases.

Sec. 5283 reads as follows:

> Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against 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, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Commercial transactions not forbidden by terms of act.

This section does not by its terms make the act of fitting out or arming a vessel to the order of a belligerent a criminal one, provided the undertaking is purely commercial in character. To secure conviction under Sec. 5283, it is necessary to prove that the persons engaged in the fitting out and arming of the vessel had an intent that the vessel should be used for a specific hostile purpose in violation of the neutrality of the United States. Mere knowledge on the part of the person fitting out and arming the vessel that she will probably be used by the purchasers to commit hostilities against a state with which the United States is at peace is not sufficient to constitute such

[1] *Report of the British Neutrality Laws Commission,* No. 2.

criminal intent, although the attempt has been made, and probably will again be made, to interpret the statute so as to cover such cases.[1] But it has been shown above that the present conception of the international obligations of a neutral state requires that the act of fitting out and arming vessels within the neutral state must be prevented irrespective of the fact that the intent of the person so doing is a purely commercial one.[2] Sec. 5283 meets the obligation to the extent of imposing the forfeiture of the vessel when it can be shown that the persons *by whom* the vessel is being fitted out and armed have the intent defined by the statute; but the statute is inadequate to permit the conviction of the persons engaged in fitting out and arming the vessel when the said persons are merely performing the commercial act of carrying out a contract entered into with the belligerent government. In this respect the British Foreign Enlistment Act of 1870 is more comprehensive in its terms than the United States Act of 1818. Sec. 8 of the British Act makes it an offense if a person builds or equips[3] a vessel "with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state."

Building vessel not included

Sec. 5283 does not include the act of *building* a vessel with unlawful intent; but, inasmuch as the act of building a vessel cannot be successfully completed without involving the act of fitting out the vessel, the omission has not thus far resulted in compromising the neutrality of

[1]See Chap. III, pp. 69-72.

[2]See Chap. IV, pp. 115-116. In the Case of the United States presented to the Tribunal of Arbitration at Geneva, an attempt was made to prove that the United States Neutrality Act of 1818 measured up to the standard of the three rules of the Treaty of Washington. But this was both unnecessary and unfounded in fact. Mr. Snow holds that "the doctrine set up by the United States Neutrality Act and by the Federal courts, that the 'intent' of the owner or ship-builder is the criterion by which his guilt or innocence is to be judged, is wholly inadequate; it would not for a moment stand the test of the rule of 'due diligence,' as applied by the Geneva Tribunal." *Cases and Opinions on Int. Law*, 437 note. Scott, *Cases*, 720. In view of the ratification by the United States of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War, Art. 8 becomes the rule of the neutral obligations of the United States on the point in question.

[3]On October 21, 1912, a bill was introduced into the House of Lords the main purpose of which, as explained by the Lord Chancellor, was to amend the terms of the Foreign Enlistment Act of 1870 so as to bring them into conformity with the Convention relating to the Rights and Duties of Neutral Powers in Maritime War. The changes in the law made by the bill were purely verbal with the exception of a clause alleviating the severity with which, it was said, the Act of 1870 pressed upon British ship-builders. But after being read a second time in the House of Lords, the bill was withdrawn in the House of Commons on February 12, 1913.

the United States.[1] The British Foreign Enlistment Act [Sec. 8] contains a provision covering the act of building, agreeing to build, or causing to be built, any vessel under the prohibited conditions.

Despatching vessel not included.

Sec. 5283 does not forbid the act of *despatching a vessel* with intent or knowledge on the part of the person doing so that the vessel shall or will be employed in the service of a belligerent state. It has been shown, however, that the neutrality of the United States can be violated with respect to a belligerent state by the mere departure from its shores of an armed vessel, even where there has been no knowledge or intent on the part of the persons building or fitting out the vessel that it is to be employed in the service of a belligerent.[2] This point figured among the recommendations of the British Neutrality Laws Commission in 1868, and a provision to meet it was inserted in the revised Foreign Enlistment Act of 1870.

An exception should be made to the application of the statute when a vessel is being built, fitted out, or armed under a contract entered into by the builders before the commencement of the hostilities in which the belligerent for whom the vessel is intended is engaged. In such cases the person building, fitting out, or arming the vessel should be required to give notice of the fact to the District Court of the district in which the vessel is being constructed, together with particulars of the contract, and to give proper security, and to submit to such measures as may be taken by the executive authorities for insuring that the vessel shall not be delivered to the belligerent until the termination of the war. The British Foreign Enlistment Act [Sec. 8] excepts its application under conditions similar to those above mentioned.

Evidence of intent.

Sec. 5283 makes no reference to the evidence required to prove the "intent" of the person fitting out or arming the vessel. It is needless to affirm how difficult it is to prove "intent," or even to prove "knowledge" of the destination of the vessel, if that clause is adopted as well,

[1] In the Case of the United States presented to the Tribunal of Arbitration at Geneva, the argument was made that the Neutrality Act of 1818 had been regularly interpreted by the United States as including the act of *building* the vessel. They therefore argued that the words "fitting out, arming, or equipping" of any vessel employed in the Treaty of Washington were intended to include the building of the vessel. "The framers of that treaty," it was said, "sought for language which would, beyond any question, indicate the duty of the neutral to prevent the departure from its ports of any vessel that had been specially adapted for the hostile use of a belligerent, *whether that adaptation began when the keel was laid to a vessel intended for such hostile use, or whether it was made in later stages of construction, or in fitting out, or in furnishing, or in equipping, or in arming, or in any other way.*" *Papers Relating to the Treaty of Washington*, I, 69.

[2] See above, p. 116.

Hall's proposed test.

in order to include the intent of the parties for whom the vessel is being fitted out and armed.[1] It has been suggested by Hall that, instead of the intent of the parties concerned, *the character of the ship itself* be adopted as the test,[2] so that the neutral would be placed under the duty of preventing the departure of "vessels built primarily for warlike use" if destined for the service of a belligerent, while it could permit the departure of "vessels primarily fitted for commerce" whatever be their destination. This rule has the great merit of simplicity, but it is less comprehensive than the first rule of the Treaty of Washington or its modern substitute, Art. 8 of the Convention relating to the Rights and Duties of Neutral Powers in

[1]See above, p. 63.

[2]After arguing that the indefiniteness of the existing rule will greatly increase the number of international controversies, Hall says: "Experts are perfectly able to distinguish vessels built primarily for warlike use; there would therefore be little practical difficulty in preventing their exit from neutral ports, and there is no reason for relieving a neutral government from a duty which it can easily perform. But it is otherwise with many vessels primarily fitted for commerce. Perhaps few fast ships are altogether incapable of being so used as to inflict damage upon trade; and there is at least one class of vessels which on the principles urged by the government of the United States in the case of the *Georgia* might fix a neutral state with international responsibility in spite of the exercise by it of the utmost vigilance. Mail steamers of large size are fitted by their strength and build to receive, without much special adaptation, one or two guns of sufficient calibre to render the ships carrying them dangerous cruisers against merchantmen. These vessels, though of distinct character in their more marked forms, melt insensibly into other types, and it would be impossible to lay down a rule under which they could be prevented from being sold to a belligerent and transformed into constituent parts of an expedition immediately outside neutral waters without paralysing the whole ship-building and ship-selling trade of the neutral country." *Op. Cit.*, 611. Hall's position is supported by T. J. Lawrence who thinks that "belligerents would do well to submit to the free sale and issue of such [commercial] ships in consideration of the total prohibition of the construction of war-vessels for their opponents," while "neutrals would find it advantageous to purchase freedom of commercial ship-building and entire immunity from belligerent reproaches by the sacrifice, during hostilities, of their trade with the contending powers in ships of war." *Principles of Int. Law*, 549. Lorimer argues convincingly that the test of the "intention" with which acts are done is not a satisfactory one in the matter of violations of neutrality by neutral citizens, and urges the rule of free trade in ships, as in other munitions of war, on the ground that it is "impossible to draw a workable distinction between a ship of war and a ship that may be used for war." *Institutes of the Law of Nations*, II, 169-172; Kleen argues strongly against the attempt to set aside the test of the "intention" by which the act of fitting out and arming vessels has hitherto been judged; considering that the separate parts of an armed ship have in them little that is distinctive of the whole, there is need, he says, of an "internal principle, which constitutes the guilt independently of the size or unity of the object. This internal principle can be none other than the intention, the motive, properly proved, that is to say, the element of all penal guilt." But, while admitting the difficulty of proving intentions, he seems to overlook the fact that the purpose of seeking some more objective test of responsibility is to avoid the international disputes which are likely to arise upon the very point of proving intentions.

Maritime War. It would prevent the construction and equipment in neutral states of vessels of war for the use of a belligerent, but it would not prevent the construction and equipment to the order of a belligerent of merchant vessels which may be put to use in maritime warfare either as fleet auxiliaries, or, by the subsequent addition of a small armament, as light-armed cruisers. But inasmuch as the first rule of the Treaty of Washington represents the law which the United States has agreed to enforce, the neutrality laws of the United States must not fall short of that standard. In order to meet the requirements of the first rule of the Treaty of Washington a provision should be introduced into United States statute to the effect that in the case of war-ships, which have by their nature but one use, the burden of proof shall lie on the builders that the vessels under construction are not being built to the order of a belligerent. The builder should be required to show a *bona fide* neutral destination, and the absence of a contract of the builder with a neutral government should be held to be *prima facie* evidence of a hostile destination, or at least sufficient ground for the neutral state to put a stop to further acts of the builders. A mere contract of the builder with citizens of another neutral state would not be sufficient guarantee of the innocent destination of the vessel, since it would leave it possible for consignees to transfer the vessel, when delivered, to a belligerent.

Burden of proof.

In the case of merchant vessels the old test of the intent of the person fitting out and arming them has given way in favor of the new, and hardly more practicable, test of the destination of the vessel. A belligerent will naturally resort to intermediary contracts, and the neutral state is faced with the problem of investigating the status of the consignees of the vessel on the slender chance that the latter will be found to be agents of the belligerent. The actual result will be that the provisions of Art. 8 will remain practically inoperative as regards merchant vessels fitted out for a belligerent, but bearing no special marks suggesting an ultimate use in hostile operations.

Evidence in case of merchant vessels.

A better rule on this subject is certainly to be desired, but at present the only other alternatives are either to allow merchant vessels to be freely fitted out or otherwise prepared, except in point of armament, within neutral jurisdiction for belligerent use, or else to prohibit absolutely the transfer of merchant vessels within neutral jurisdiction in time of war. The latter alternative would, as Mr. Hall says, have the effect of "paralysing the whole ship-building and ship-selling trade of the neutral country," while the former alternative runs counter to the principle of neutral duty formulated in the first of the three rules of

Alternatives.

the Treaty of Washington and embodied in Art. 8 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War. Moreover to permit a belligerent not only to buy, but to fit out in neutral ports, merchant vessels which are avowedly intended to form auxiliary cruisers of the belligerent fleet, would open the way to endless disputes as to what extent of equipment ought to be considered as constituting a merchant vessel an armed vessel. Some technical international rules would need to be adopted marking the line between the two classes of vessels, so that it would not be left to the arbitrary determination of any one state as to what thickness of armor plate and what extent of framework adapted to receiving gun-carriages would change the character of the vessel from a merchant to an armed ship.

Summary.

In conclusion it may be said that, while there is much difficulty attending the proof by a neutral state that a vessel of the commercial type has been fitted out with a belligerent destination in view, the present rule that the destination of the vessel determines the legality of the act of fitting it out, besides being clear in principle, has the advantage of requiring the neutral state to prevent the departure from its ports of merchant vessels which bear clear marks of having been adapted for use in war. In the same way, while a neutral state is not bound to prevent the *sale* within its jurisdiction of a merchant vessel to a belligerent, it is called upon under the present rule to determine when the vessel bears such marks of having been adapted for use in war as to indicate that it is destined to be used to commit hostilities even though the vessel was originally constructed with a commercial end in view. Finally, the present rule has the advantage of stating a general principle of neutral duty rather than of imposing hard and fast regulations. While definiteness in the law is always desirable, it would seem that on this subject conditions are not such that a definite law can be formulated at present. In the meantime, it is well to leave some liberty to the neutral state in the interpretation of accepted principles.[1]

Sec. 5284 reads as follows:

> Every citizen of the United States who, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming any private vessel of war, or privateer, with intent that such vessel shall be employed

[1] See above, pp. 120-123.

> to cruise, or commit hostilities, upon the citizens of the United States, or their property, or who takes the command of, or enters on board of any such vessel, for such intent, or who purchases any interest in any such vessel, with a view to share in the profits thereof, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years. And the trial for such offence, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Statute bears no relation to neutrality.

This section, as was pointed out in Chapter III,[1] bears no relation to the obligations of the United States as a neutral state, and it has, therefore, no proper place in the Neutrality Act. In so far as it provides for the protection of citizens of the United States against hostilities committed upon them or their property by their fellow citizens it is merely superfluous, since such protection is provided for by the laws of the United States for the punishment of piracy. Secs. 5370 and 5372 of the Revised Statutes define as piracy the act of committing murder or robbery upon the high seas, while Sec. 5373 makes it an act of piracy to commit an act of hostility against citizens of the United States on the high seas "under color of any commission from any foreign prince or state, or on pretence of an authority from any person."

Sec. 5285 reads as follows:

> Every person who, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince, or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars and be imprisoned not more than one year.

Statute relates to foreign vessels only.

This section relates exclusively to acts connected with foreign vessels of war sojourning in the ports of the United States, and it is for

[1] See above, p. 79.

this reason, as was pointed out in Chapter III,[1] that the intent which determines the offense under Sec. 5283 need not be proved, since it is presumed from the ownership of the vessel. In so far as Sec. 5284 relates to the public vessels of a foreign state or to vessels holding the commission of a foreign state, it will be seen that in passing the Acts of 1794 and 1818 the United States was not satisfied with attempting to prevent the augmentation of the force of such vessels by complaining diplomatically to the governments concerned that their officers were compromising the neutrality of the United States. The policy was adopted of holding the commanders and officers of such vessels, as well as their agents in the act of augmenting the force of their vessels, directly responsible and amenable to the criminal jurisdiction of the United States courts.[2] Sec. 5285 specifies three distinct ways in which the force of a foreign ship of war may be increased or augmented, and to them must be added, in view of the decision in the case of the *Santissima Trinidad,* a fourth not mentioned in the statute, namely, a substantial increase of the crew.[3] But during the last fifty years the privileges which were formerly accorded to belligerent vessels of war in neutral ports have been much restricted. On this, as on other points of neutral obligation, the American Civil War brought about the adoption of rules more in accord with the altered conditions of modern warfare.

Modern rules of asylum.

In 1861 the United States government complained to Great Britain that the Confederate vessel *Sumpter* had remained six days in the British port of Trinidad, and had been there furnished with all the necessary supplies for the continuance of her cruise. The British government denied that the said acts of the *Sumpter* constituted any violation of its neutrality proclamation; but with a view of preventing the recurrence of similar complaints and of preventing the abuse of the asylum granted in British ports to belligerent vessels, orders were issued on January 31, 1862, to the Lords Commissioners of the Admiralty to the effect that no vessels of either belligerent were to be allowed to remain in British ports more than twenty-four hours except in case of stress of weather or of the vessel requiring provisions or repairs; supplies were not to be taken in "beyond what may be necessary for her immediate use," and they were to consist only of "provisions and such other things as may be requisite for the sub-

[1]See above, p. 80.

[2]See an opinion of Attorney General Nelson rendered in 1844, 4 Op. Atty. Gen., 336. For the present rule of international law, see Moore, II, §256.

[3]See above, p. 81.

sistence of the crew," together with "so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination;" and no coal was to be again supplied to any such ship without special permission, until the expiration of three months from the time the last supply was granted. No definite limitation was placed upon the repairs which a belligerent vessel might make in British ports, though in one clause indirect reference is made to "necessary repairs."[1] The clause relating to the amount of coal which might be taken on board marks the recognition of the new conditions created by the use of steam as a motive power. On October 8, 1870, during the war between France and Germany, a proclamation was issued by General Grant imposing similar restrictions upon belligerent vessels in the ports of the United States.[2] In 1871 the second rule of the Treaty of Washington formulated a general principle with regard to the restrictions which should be placed upon belligerent vessels in neutral ports. A neutral government was held bound "not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men."[3]

By the time of the Second Hague Conference the rules promulgated

[1]For the text of the instructions, see *Papers Relating to the Treaty of Washington,* I, 226.

[2]Richardson's *Messages,* VII, 89.

[3]In the Case of the United States presented to the Tribunal of Arbitration at Geneva, the scope of this rule was explained as follows: "The ports or waters of the neutral are not to be made the base of naval operations by a belligerent. Vessels of war may come and go under such rules and regulations as the neutral may prescribe; food and the ordinary stores and supplies of a ship, not of a warlike character, may be furnished without question, in quantities necessary for immediate wants; the moderate hospitalities which do not infringe upon impartiality may be extended; but no act shall be done to make the neutral port a base of operations. Ammunition and military stores for cruisers cannot be obtained there; coal cannot be stored there for successive supplies to the same vessel, nor can it be furnished or obtained in such supplies; prizes cannot be brought there for condemnation. The repairs that humanity demand can be given, but no repairs should add to the strength or efficiency of a vessel, beyond what is absolutely necessary to gain the nearest of its own ports." *Papers Relating to the Treaty of Washington,* I, 71. This statement, however comprehensive it may seem from the details given, adds nothing to the British rules of 1862 except that a more definite limitation is placed upon the repairs which may be made upon vessels. As early as 1828, Henry Clay, Secretary of State, with reference to a Buenos Airean privateer in the port of Baltimore, placed a limitation upon the repairs which the vessel might make. "The reparation of damages," he said, "which she may have experienced from the sea is allowable, but the reparation of those which may have been inflicted in the action is inadmissible." Moore, *Int. Law Digest,* VII, 991.

Rules adopted by Hague Conference of 1907.

by Great Britain in 1862 had been generally adopted by other nations.[1] With respect to the general principles of belligerent asylum in neutral ports it was not difficult to secure an agreement at the conference embodying the substance of the second rule of the Treaty of Washington; the first clause of the rule appearing as Art. 5[2] of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War, and the second clause appearing as Art. 18 of the same convention.[3] With respect to the extent of the repairs which a belligerent vessel may make in a neutral port, it was agreed [Art. 17] that "in neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral power shall decide what repairs are necessary, and these must be carried out with the least possible delay." With respect to the supplies, other than those of a military character, which a belligerent vessel may obtain in neutral ports, the first paragraph of Art. 19 provides that "belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard." Much difficulty was experienced in formulating, on the subject of supplies of coal, a rule agreeable to the conflicting interests of the powers. The second paragraph of Art. 19 provides that "similarly these vessels may only take sufficient fuel to enable them to reach the nearest port in their own country. They may, however, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied."[4] Art. 20 provides that

[1] In 1898, during the Spanish-American war, the French government issued instructions requiring, among other things, the enforcement by French prefects of the rule that "a belligerent can only be furnished with such food, provision, and material for repairs as are necessary for the subsistence of the crew and the security of the voyage." Mandelstam and Nolde, *Guerre Maritime et Neutralité,* 230. During the war between Japan and Russia proclamations containing provisions similar to those of the British instructions of 1862 were issued by China, Denmark, and Sweden and Norway. *For. Rel.,* 1904, 19, 21, 31.

[2] "Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and, in particular, to erect wireless telegraph stations or any apparatus intended to serve as a means of communication with the belligerent forces on land or sea."

[3] "Belligerent war-ships may not make use of neutral ports, roadsteads, and territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews."

[4] The rule represents a compromise between the British proposal that vessels should be allowed to ship only so much fuel as is necessary to carry them to the nearest port of their own country, and the proposal supported by Germany and other powers that vessels should be given the supply of coal which they would normally carry in time of peace. *Deuxième Conférence de la Paix, Actes et Documents,* I, 315-317.

"belligerent war-ships which have shipped fuel in a port belonging to a neutral power may not, within the succeeding three months, replenish their supply in a port of the same power."

Amendments called for.

In consequence of the greater restrictions placed by modern international law upon the supplies which belligerent vessels may be allowed to obtain in neutral ports, the provisions of the United States neutrality laws on this point fall short of the standard of neutral duty. Sec. 5285 makes no mention of supplies other than those which may be included under "equipment solely applicable to war." The statute would not be violated by the fact that a war-ship, or other public vessel of a belligerent in the ports of the United States, should be furnished with large quantities of food, coal, and other non-military supplies, in excess of the amount permitted by Art. 19 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War. Moreover, Sec. 5285 contains no provision limiting the extent to which repairs may be made by a belligerent vessel in the ports of the United States. On the assumption that the United States, following its traditional policy, is unwilling to rest satisfied with attempting to prevent, by protest through diplomatic channels, violations of its neutrality on these points by the public vessels of a belligerent, it is clear that Sec. 5285 should be so enlarged as to prohibit the officers of the public vessels of a belligerent, as well as their agents in the United States, from doing any of the acts forbidden by Arts. 17, 18, 19 and 20 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War. Apart from the obligations incurred by the United States under this convention, it is proper that the neutrality laws of the country should be up to the standard of the rules previously promulgated by the United States.[1]

Sec. 5286 reads as follows:

> Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military 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 deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

[1]The latest expression of the present attitude of the United States upon the subject is to be found in the neutrality proclamation of February 11, 1904, issued during the war between Russia and Japan.

Whether "military expedition" covers "corps of combatants."

The precise scope of the terms of this section was set forth in Chapter III.[1] It was there shown that to *begin, set on foot, provide* or *prepare the means for* a military expedition included practically every form of coöperation in the enterprise. It was also shown that the interpretation of the words "military expedition" has been somewhat strict, as was proper to the terms of a criminal statute. It may be questioned whether a "military expedition" as interpreted by the courts, is comprehensive enough to include the somewhat indefinite expression "corps of combatants" which occurs in Art. 4 of the Convention relating to the Rights and Duties of Neutral Powers and Persons in War on Land.[2] A "corps of combatants" might be constituted by a body of men organized for the purpose of leaving the neutral country to aid a belligerent nation, but, nevertheless, remaining wholly unarmed until they reached the belligerent country.[3] But it has been held by the United States courts that to constitute a "military expedition," within the terms of Sec. 5286, the men comprising it must be provided with appropriate arms, such as will enable them to do the military work contemplated by them,[4] although the arms need not be carried upon their persons if preparations have been made to secure the arms before the party reaches the scene of hostilities.[5] It is conceded that a neutral state which endeavors, by the enactment of municipal legislation, to give effect to the obligation incurred by Art. 4 of the Convention relating to the Rights and Duties of Neutral Powers and Persons in War on Land, is confronted with the difficulty of determining just what number of men and what extent of organization among them is to constitute a "corps of combatants." But this difficulty is no greater than that met with in carrying out many other parts of the criminal law of a state, in which the principle *de minimis non curat lex* has to be applied. When the body of persons leaving a neutral country to enlist in foreign belligerent service becomes so considerable, by reason of numbers and organization, as to call forth the complaints of the belligerent who is injured thereby, it will not be hard to determine whether such a body constitutes a "corps of combatants."

Neither Sec. 5286, nor any of the preceding sections just discussed,

[1] See above, pp. 82-87.

[2] "Corps of combatants cannot be formed nor recruiting offices opened on the territory of a neutral power in the interest of the belligerents."

[3] See above, p. 130.

[4] *United States v. Hart*, 74 Fed. Rep., 724; see above, p. 85.

[5] *United States v. Hart*, 78 Fed. Rep., 868.

Special circumstance of common frontier.

makes provision for the special circumstance of one of the belligerents possessing territory bordering on the United States. In discussing Sec. 5281, it was pointed out[1] that there was no provision covering the case in which a person, holding the commission of a foreign state, establishes himself in the territory of the United States and there directs, by telegraph, telephone or otherwise, hostile movements across the border. A somewhat similar use might be made of neutral territory by the quartermaster's department of a belligerent army. A large quantity of military supplies, whether consisting of conditional contraband in the form of food, clothing, etc., or of absolute contraband in the form of guns, munitions, etc., might be collected in the United States and stored in some town near the border of the belligerent country. Agents of the belligerent could be established in this town and could ship the supplies across the border to the belligerent army as directed. By these arrangements the neutral town could, in a very real way, be made a base of operations for the belligerent army, just as a neutral port would become a base of operations if a belligerent war vessel should draw from it frequent renewals of supplies. The recognition of this fact by the United States has resulted in the adoption of the joint resolution of March 14, 1912, which will be considered below.[2]

Sec. 5287 reads as follows:

> [The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.] In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this Title; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or

[1]See above, p. 133.

[2]See pp. 158-159.

naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to the execution of the prohibitions and penalties of this Title, and to the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

Jurisdiction of District Courts.

Secs. 5281 to 5286 define the acts which shall be considered offenses against the neutrality laws of the United States, and provide the appropriate penalties. The succeeding sections, owing to their passage at different periods, are not arranged in logical order, and with the exception of the last section they are directed partly towards the enforcement of the provisions of Secs. 5281 to 5286, and partly towards the vindication of the sovereign rights of the United States as a neutral state. In this latter respect they relate to the obligations of the United States in its direct relations with belligerent states, and not to the repression of acts of individuals committed within its jurisdiction. The first sentence of Sec. 5287 formed a separate section in the Acts of 1794 and 1818. The justification for giving jurisdiction to the District Courts in such cases has been sufficiently set forth in Chapter III.[1] It was likewise shown that there were other cases in which jurisdiction was assumed by the District Courts independently of any special grant of jurisdiction from Congress. Prizes captured by vessels which had been fitted out and armed, or which had increased their force, within the territory of the United States were restored at the suit of their owners, on the ground that whether or not the capture was valid as between the captor and the owner, it was incumbent upon the United States as a neutral state to divest possession of property acquired as the result of a violation of its sovereignty. There has never been any question as to the propriety of the jurisdiction thus assumed by the District Courts under the power given them by the Judiciary Act of 1789 to act as courts of admiralty. It seems clear that by analogy the courts could equally well undertake to restore prizes captured by vessels which had merely been *sold* to belligerents within the territory of the United States, should a law be passed by Congress forbidding the sale of vessels to belligerents. For if the object of forbidding the sale within the jurisdiction of the United

[1] See above, pp. 88-90.

States of a war-ship to a belligerent is to prevent the departure from the ports of the United States of an instrument of war none the less formidable to the other belligerent because the sale has been upon a strictly commercial basis, it would appear that jurisdiction might be equally well taken over prizes captured by any such vessels which have come into the possession of the belligerent by a violation of the laws of the United States.

Executive action should follow judicial procedure.

The second and concluding sentence of Sec. 5287, which likewise formed a separate section in the Acts of 1794 and 1818, confers upon the President the power to employ the land and naval forces of the United States for the purpose of enforcing the provisions of the act in cases in which the officers of the courts would probably not be competent to do so. The case of *Gelston v. Hoyt*,[1] referred to in Chapter III[2] as setting forth the circumstances under which the seizure of a vessel by subordinate officers of the executive power would be justifiable, suggests certain defects in the original drafting of this sentence. In that case it was held that the authority given to the President by the act to employ the military and naval forces of the United States for the purposes mentioned did not justify him in calling upon the civil officers of the government for the same purpose, and that the power given him was intended to be exercised only when the ordinary process of the courts should prove ineffectual to prevent violations of the law. It was likewise pointed out in Chapter III that the inference from this decision would seem to be that executive action must follow judicial procedure, and that a warrant must first issue from the courts for the arrest of offenders against the act or for the seizure of the vessel alleged to be forfeited, and such warrant be disobeyed or resisted before it is lawful for the President to employ the military or naval forces of the United States. Accordingly, it is suggested that it would be advisable to amend Sec. 5287 to that effect.

Sec. 5288 reads as follows:

> It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

[1] 3 Wheat., 246.
[2] See above, p. 91.

Power of President discretionary.

The fact that this section deals with the neutral duties of the United States in cases requiring state action against the belligerent states themselves sufficiently explains the lack of definiteness in its provisions. Secs. 5281 to 5286, defining the acts of individuals which the United States as a neutral state is under obligation to prevent, were necessarily framed with the precision of criminal laws. The present section is not penal in character, and merely empowers the President to call the land and naval forces of the United States to his aid when necessary to vindicate the rights and to fulfill the duties of the United States in those matters in which executive action is called for, leaving it to him to decide when the obligations of the United States, as imposed by international law or by treaties, require such steps to be taken. It will be observed, therefore, that in certain cases involving the public vessels of a belligerent a two-fold action on the part of the government is required to maintain the neutrality of the United States. On the one hand the judicial department of the government is required to prosecute individuals who assist in augmenting the force of such vessels [Sec. 5285], and on the other hand the executive department of the government is called upon to take action against the vessels themselves to prevent them from violating the law.

Obligation under former treaties annulled.

It was pointed out in Chapter III that the word "treaties" in this section had special reference to the Treaty of 1778 between the United States and France. With the abrogation of this treaty, in 1798, the United States ceased to be under any treaty obligation to compel foreign vessels to leave the United States under stipulated circumstances. The obligation to compel their departure under the rules of international law, as then understood, still remained. This obligation has now been rendered precise by the adoption by the Second Hague Conference of definite rules regulating the asylum to be given in neutral ports to the public vessels of a belligerent power.

New rules of asylum.

These rules are contained in Arts. 9 to 24 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War. Arts. 17 to 20 were explained above[1] in connection with the augmentation of the force of belligerent vessels of war in neutral ports. Art. 9 imposes upon the neutral state the duty of forbidding the entrance into its ports of belligerent vessels which have failed to conform to the regulations imposed upon them or which have violated the neutrality of the neutral state. Art. 10 provides that the neutrality of a Power is not compromised by the mere passage through its territorial waters

[1]See above, pp. 144-145.

of war-ships or prizes belonging to belligerents. Art. 11 allows a neutral Power to permit its licensed pilots to be employed by belligerent war-ships. Arts. 12 and 14 repeat the rule contained in the British instructions of 1862, and in the proclamation of President Grant of 1870, that war vessels of belligerent powers may not remain in neutral ports more than twenty-four hours except in case of damage or stress of weather. Art. 13 requires the neutral state, on being informed of the outbreak of hostilities, to notify belligerent war-ships to depart within twenty-four hours or within the time prescribed by the law of the neutral state. Art. 15 provides that in the absence of special provisions in the law of the neutral state no more than three war-ships of a belligerent may be at the same time in the ports of a neutral state. Art. 16 prescribes regulations for the order of departure, and the interval between their departure, when war-ships of both belligerents are present simultaneously in a neutral port. Arts 21, 22 and 23[1] regulate the conditions under which prizes taken by a belligerent may be given asylum in neutral ports. Art. 24 authorizes the neutral state to take measures to incapacitate belligerent war-ships which do not leave a port in which they are not entitled to remain. Art. 25 of the same convention makes it the duty of the neutral state to "exercise such vigilance as the means at its disposal permit to prevent any violation of the above articles occurring in its ports or roadsteads, or in its waters."

Present obligation under "treaties."

In view of the fact that Arts. 9 to 24 as a body were not unanimously accepted by the powers, they cannot be said as yet to constitute international law, since the provisions of the convention are applicable only to the contracting powers, and only if both the belligerents are parties to the convention [Art. 28].[2] Accordingly, while retaining in Sec. 5288 the word "treaties" to enable the President to meet any obligations which the United States may incur under treaty with individual nations, it is advisable to insert after "treaties" the word "conventions" to enable the President to compel foreign vessels to depart from the United States in the cases provided for by the

[1] In adhering, in November, 1910, to the Convention relating to the Rights and Duties of Neutral Powers in Maritime War, the United States made reservation of Art. 23.

[2] It may be observed that the rules embodied in Arts. 9-24 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War were more or less generally observed previously to the adoption of that convention; and to the extent to which they were so observed they would continue to form part of international law, independently of the adoption of the said convention.

Convention relating to the Rights and Duties of Neutral Powers in Maritime War.

Power to *detain* vessels.

There is no provision in Sec. 5288 empowering the President to employ the military and naval forces of the United States for the purpose of *detaining* foreign public vessels which, by the rules of international law or the treaties and conventions of the United States, should not be allowed to depart from the United States in time of war. But it has just been seen that the Convention relating to the Rights and Duties of Neutral Powers in Maritime War imposes upon neutral states the duty of preventing the departure from their ports of a belligerent war-ship until a period of twenty-four hours has elapsed since the prior departure of a war-ship belonging to the enemy or of a merchant ship flying the enemy flag [Arts. 16, 25]. Likewise, neutral states must detain and dismantle a belligerent war-ship which, notwithstanding the notification of a neutral state, has not left a port in which it has no right to remain [Art. 24]. In this latter case the officers and crew of the belligerent ship must likewise be detained. Further, since Art. 3 of the same convention makes it the duty of the neutral power to effect the release of any prize, together with its officers and crew, which may have been captured within the jurisdiction of the United States and is still therein, it is necessary to include the fulfilment of that duty as one of the purposes for which the President may be allowed to employ the military and naval forces of the United States. It is true that the District Courts may assume jurisdiction over such prizes at the suit of the owners of the captured vessel, but Art. 3 evidently contemplates more prompt and direct action on the part of the neutral government.

Sec. 5289 reads as follows:

> The owners or consignees of every armed vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against 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.

Statute directed against privateering.

The provisions of this section were evidently directly aimed to prevent privateering. The bond required merely secures or attempts to secure that the armed vessel will not be used by the *owners them-*

selves to commit hostilities against a friendly state. No attempt was made to prevent the vessel from passing into the hands of a belligerent, by sale or otherwise, once it should have left port, and no check at all was placed upon the departure of armed vessels belonging to the citizens of another state, provided such vessels left port as they came in, without the addition of any equipment for war. But it has been shown at length in the earlier part of this chapter[1] that the rules of international law on this point have greatly changed since 1818. It is no longer sufficient for a neutral state to make sure that hostile expeditions are not being fitted out within its jurisdiction or departing from its ports. It has come to be recognized that armed vessels constitute such powerful instruments of war that, irrespective of any hostile intentions on the part of the owners themselves, such vessels cannot be permitted to leave port under conditions of prearranged sale and delivery to a belligerent, without thereby making the neutral port a base of operations for the belligerent and thus compromising the neutrality of the neutral state. Accordingly, it is incumbent upon the United States as a neutral state to require that the owners or consignees of armed vessels about to sail from its ports shall enter into bond to the United States and give satisfactory proof that the vessel is not leaving port under a contract or agreement entered into by the owners or consignees for the sale or delivery of the vessel to a belligerent power, whether within the territorial waters of the United States, or on the high seas, or in a foreign port. Nothing else than a *bona fide* contract for the delivery of the vessel to a neutral government should be considered as satisfactory proof of a neutral destination.[2]

Privateering under new forms.

If it be suggested that in consideration of the Declaration of Paris of 1856, by which the practice of privateering is declared to be abolished, the *present terms* of Sec. 5289 need no longer be retained, it is necessary to observe that the United States has never given its formal adhesion to the Declaration of Paris, although it announced its intention to abide by it during the war with Spain in 1898. The United States has likewise refused to sign the Convention relative to the Conversion of Merchant Ships into War-ships, adopted by the Second Hague Peace Conference of 1907, which was intended to prevent the recurrence of privateering. Moreover, even had the United States given its adherence to the Declaration of Paris and to the above convention, it would still remain necessary to prevent the owners of

[1] See above, pp. 115-120.

[2] See above, p. 139.

armed vessels from leaving American ports to join the volunteer fleet of a belligerent.[1] Practically all that the Convention relative to the Conversion of Merchant Ships into War-ships accomplished was to place a merchant ship which has been converted into a war-ship under the "direct authority, immediate control and responsibility of the Power whose flag it flies" [Art. 1], and to require that the fact of such conversion be announced by the belligerent on the list of the ships of its military fleet [Art. 6]. There is nothing in the convention to prevent the owner of a merchant vessel, within the jurisdiction of the United States, from arming his vessel and offering to place it. under the conditions imposed by the convention, at the disposal of a foreign belligerent in consideration for certain bounties offered by the latter. It is true that it is somewhat improbable in these modern times, when maritime warfare involves considerably more danger than in the period preceding 1856, that American citizens would be willing to place themselves and their ships at the disposal of a foreign belligerent power, but the case is at least possible and should be provided against.

Arming merchant vessels for self-defense.

On March 27, 1913, Mr. Churchill, during a speech in the British House of Commons upon the Navy estimates, announced that the Admiralty proposed to encourage British ship owners to provide for the defense of their vessels in time of war by lending them guns, furnishing them with ammunition, and training gun crews for them, provided the ship owners would pay for the necessary structural alterations of their ships. The idea of Mr. Churchill was apparently not to arm merchant ships for purposes of aggressive action in the event

[1]The first rule of the Declaration of Paris that "privateering is and remains abolished" still left unsettled many questions relating to the subject of volunteer navies. The Convention relating to the Conversion of Merchant Ships into War-ships laid down a number of rules defining the legal conditions which must be observed by a belligerent in making such conversions, but the powers were unable to come to an agreement upon the question whether the conversion of a merchant ship into a war-ship might take place upon the high seas. It was, however, recognized as unquestionable that such a conversion could not take place in a neutral port without a violation both of the duties of the neutral state towards the belligerents and of the duties of the belligerents towards the neutral.

In 1870, during the Franco-Prussian war, the Prussian government issued a decree ordering the creation of a volunteer navy to be composed of private vessels whose owners were offered large premiums for the destruction of French ships of war. Although the fact that the purpose of the volunteer navy was the destruction of enemy war-ships distinguishes such a project from privateering, which aims mainly at the capture of the *private* property of the enemy, and although the offer of the Prussian government was later withdrawn, the instance shows that it is not impossible that practices closely similar to privateering may be resorted to in spite of the Declaration of Paris. See Holtzendorff, *Handbuch des Völkerrechts,* IV, 560; Hall, *Int. Law.,* 520-521.

of war, but to enable the larger merchantmen to protect themselves. While the proposal has a different object in view from that contemplated in the creation of a volunteer fleet, and while it in no way resembles the practice of privateering, it is further evidence to show that the rôle that vessels originally built for commercial purposes have played in time of war has not yet become obsolete.

Sec. 5290 reads as follows:

> The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners 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, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

New conditions of detention.

Like the preceding section, this section is inadequate to meet the demands of international law of the present day. It provides for detention of a vessel only in cases where it is probable that the owners themselves of the vessel will employ it to commit hostilities against a friendly state. Its terms therefore should be extended to cover the same ground as that which Sec. 5289 must be made to cover. The conditions relating to the cargo and to the number of men shipped on board should be omitted, and the specification of a "vessel manifestly built for warlike purposes" should be changed to a "war-ship, or vessel built primarily for use in war, or other vessel which, being originally commercial, has, by the addition of armament, been adapted within or without the territory or jurisdiction of the United States for use in war," so that the section may receive the same interpretation as the preceding one. The proof of neutral destination, which it was shown should be required by Sec. 5289, should be made one of the conditions on which release of the vessel is made dependent. In short, Sec. 5290 should simply provide for the detention of vessels until they have fulfilled the obligations imposed by Sec. 5289.

Sec. 5291 reads as follows:

> The provisions of this Title shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, dis-

> trict, or people who is transiently within the United States, and [*enlist*] [enlists] or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

Exception not warranted by present law of neutral duty

The first and second sentences of this section have no intrinsic connection and must be considered independently of each other. It was pointed out in Chapter III[1] that the first sentence figured as a proviso to Sec. 2 of the original Act of 1794, and that the framers of that act considered that they were justified in appending to the law against enlistments in the service of a foreign state, an exception in favor of the subjects of such state who owed allegiance to it. That the exception was in keeping with the rules of international law of that day is hardly open to question, but at the present day it would seem to be no longer justifiable. Jefferson himself stated that the exception was a purely voluntary concession on the part of the neutral state. In a letter of August 16, 1793, to the United States minister to France, Jefferson maintained that "the right of raising troops being one of the rights of sovereignty, and consequently appertaining exclusively to the nation itself, no foreign power or person can levy men within its territory without its consent."[2] The fact that the troops thus raised should happen to be subjects of the foreign power, and only transiently within the neutral state, would not affect the principle that to enlist them without the consent of the neutral state would be to violate its sovereignty.[3] That a neutral state might not be justified in giving its consent to belligerent powers to enlist even their own subjects in the ports of the neutral state was a question of such little importance in comparison with the prevention of enlistments in general, that it did not apparently occur to the framers of the Act of 1794 that they were making a concession inconsistent with the principles expressed in

[1] See above, p. 99.

[2] *Am. State Papers, For. Rel.*, I, 168.

[3] The principle is, of course, entirely distinct from that involved in the right of subjects of a foreign power to leave the neutral state with the object of enlisting in the service of their country when they have arrived abroad.

Sec. 4 of that act [Revised Statutes, Sec. 5285]. A substantial increase of the crew of a belligerent vessel might, in many cases, be just as important an augmentation of her force as the addition of new guns or of "equipment solely applicable to war."[1] If this be so, then the injury to the other belligerent would not be lessened by the circumstance that the persons enlisted as members of the crew should happen to be subjects of the power in whose service they were enlisted while in the neutral port. Here again, the controversy between Great Britain and the United States, growing out of the Civil War, resulted in securing a more precise definition of neutral duty. The second rule of the Treaty of Washington makes it the duty of a neutral government "not to permit or suffer either belligerent to make use of its ports or waters . . . for the recruitment of men." No exception is mentioned in favor of subjects of the belligerent power, whether permanently or only transiently resident in the neutral state. Art. 18 of the Convention relating to the Rights and Duties of Neutral Powers in Maritime War represents a general acceptance on the part of nations of the principles embodied in the second rule of the Treaty of Washington. Accordingly, it would seem that the first sentence of Sec. 5291 is no longer consistent with international law of the present day, and should therefore be repealed.

Treason contemplated by Statute still possible.

The concluding sentence of Sec. 5291 should, however, be retained. It formed a separate section in the Acts of 1794 and 1818, and while it is less likely to be called into operation at the present day than formerly, it provides for cases which may still arise. It is possible that a citizen of the United States might enlist in the naval or land forces of a state at war with the United States, or build, fit out, arm, etc., a vessel to be used in the service of such state, and while violating the neutrality laws of the United States by reason of the fact that the act was done within the jurisdiction of the United States, at the same time be guilty of treason in levying war against the United States or giving aid and comfort to its enemies.

Piracy merged into treason.

With respect to the crime of "piracy" referred to in this sentence, it may be said that cases which might have arisen under Sec. 9 of the Act for the Punishment of Certain Crimes against the United States, passed in 1790,[2] would at the present day be merged into the crime of treason. Now that governments have abandoned the practice of issuing letters of marque and reprisal to private individuals, author-

[1]This fact was recognized in subsequent decisions of the courts. See above p. 81.

[2]See above, p. 100.

izing them to make captures of the private vessels of citizens of another state by way of reprisal for injuries received from that state, it is scarcely possible that a citizen of the United States could, by committing depredations upon the commerce of the United States, become guilty of piracy under Revised Statutes, Sec. 5373 [Sec. 9 of the Act of 1790] at a time when there was no actual war between the United States and the foreign state from which he held a commission. If war were in progress, the act would become one of treason, and could be punished accordingly.

In addition to the foregoing sections of the Revised Statutes, there has recently been enacted a joint resolution which may be regarded as an amendment to the Act of 1818. This joint resolution, of March 14, 1912, provides:

> 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.
>
> Sec. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both.

Special circumstance of contraband trade across frontier.

It will be observed that the terms of this resolution leave it to the discretion of the President to determine the circumstances under which all export commerce with any American country in arms and munitions of war is forbidden to the citizens of the United States. This conditional restriction of the most important contraband trade may appear at first sight contrary to the rule of international law that neutral states are under no international obligation to restrict ordinary commerce in contraband on the part of their citizens. But it has been pointed out above[1] that a belligerent, whose territory borders upon that of a neutral, might, by storing supplies in a neutral town on the frontier and drawing upon them at will, practically convert the neutral town into a base of operations for its armies. In other words, the fact that the neutral and belligerent countries are contiguous may create such changed conditions as to overrule the application of the principle of the freedom of contraband trade. Contraband commerce carried

[1]See above, p. 105.

on between the ports of a neutral state and those of a belligerent affords, as a rule, an opportunity for the other belligerent to capture the contraband goods on the high seas. Where contraband commerce by land is carried on across the boundary line of a belligerent and a neutral state, there is no opportunity for the other belligerent to intercept such commerce unless he is in actual military occupation of the enemy country. There is, of course, no international obligation upon the neutral state to prohibit *all* commerce in arms and munitions of war between its citizens and a neighboring belligerent, as the United States has done by the resolution of March 14, 1912. But while the resolution goes somewhat beyond the demands of the international obligations of the United States, at the same time its terms enable the United States to fulfill the duty of preventing towns along its border from becoming centers of military supplies for a belligerent across the boundary line. The objection against imposing this duty upon neutral states is not that it is not based upon sound principles of neutral obligation, but rather that it requires the neutral state to determine when the contrabrand commerce from a given center is being carried on upon so large a scale and in so organized a manner as to constitute the center a base of military supplies. That this is an obligation which a neutral state will not willingly assume may be conceded; but there can be no question that it is in accord with the true principles of neutrality. In the case of the United States, it will be observed that the terms of the resolution of 1912 contemplate conditions of domestic violence which may not yet have reached a state of organized warfare; but they are none the less applicable to a situation in which the insurgents, by reason of numbers and organization, may obtain recognition as belligerents, so that the international law of neutrality would come to have application.

DRAFT OF AN AMENDED NEUTRALITY ACT.

[Remark: This draft is made upon the principle that while the Neutrality Act of 1818 (the present law of the United States on the subject) is admittedly defective, it is advisable to introduce such additional provisions as are needed without departing further than is necessary from the form of that Act, except to repeal such of its provisions as have no longer any application or are inconsistent with the obligations of the United States under the present law of nations.]

Act of 1818.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any citizen of the United States shall, within the territory or judisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Draft.[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, if any *person, whether citizen of the United States or not,* shall, within the territory or jurisdiction of the United States, accept *or agree to accept* a commission to serve a foreign prince, state, colony, district, people, *or body of insurgents,* in war, by land or by sea, against any foreign prince or state with whom the United States are at peace, *or against any foreign colony, district, or people, whose belligerency has been recognized by the United States,* and with whom they are at peace, *or shall, within the territory or jurisdiction of the United States, induce any other person to accept any such commission to serve a foreign prince, state, colony, district, people, or body of insurgents, as aforesaid, or shall, within the territory or jurisdiction of the United States, issue or deliver to any other person any such commission, as aforesaid, or shall, within the territory or jurisdiction of the United States, exercise a commission conferred within or without the jurisdiction of the United States by any foreign*

[1]Amendments of the Act of 1818 are printed in italics, except when merely verbal.

prince, state, colony, district, people, or body of insurgents, at war, by land or sea, against any foreign prince or state with whom the United States are at peace, or against any foreign colony, district, or people, whose belligerency has been recognized by the United States and with whom they are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sec. 2. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: *Provided,* That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district or people, who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States, was fitted and equipped as such, enlist or enter himself, or hire or retain another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then

Sec. 2. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire, or retain *or induce* any other person to enlist or enter himself, or hire or retain any other person to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, people, *or body of insurgents, in war, by land or sea, against any foreign prince or state with whom the United States are at peace, or against any foreign colony, district, or people, whose belligerency has been recognized by the United States and with whom the United States are at peace, or shall, within the territory or jurisdiction of the United States, entice any other person to leave the United States under a false representation of the service in which such person is to be engaged, with the intent that such person may, when outside the jurisdiction of the United States, enlist or enter himself or be induced to enlist or enter himself in the service of any foreign prince, state, colony, district, people, or body of insurgents, as aforesaid, or shall within the territory or jurisdiction of the United States, as the owner or master of any vessel, knowingly take on board or have on board any person violating the provisions of*

be at peace with such foreign prince, state, colony, district, or people.

Sec. 3. *And be it further enacted,* That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against 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, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer, and the other half to the use of the United States.

this section, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years.

Sec. 3. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, *build,* fit out, arm *or despatch,* or attempt to *build,* fit out, arm, *or despatch, or agree to build, fit out, arm, or despatch,* or procure to be *built,* fitted out, armed, or *despatched,* or shall be knowingly concerned in the *building,* fitting out, arming, or *despatching* of any ship or vessel with intent *or knowledge or having reasonable cause to believe* that such ship or vessel shall *or will* be employed in the service of any foreign prince or state, or of any colony, district, people, *or body of insurgents,* to cruise or *engage in hostile operations* against any foreign prince or state with whom the United States are at peace, or against any foreign colony, district, or people *whose belligerency has been recognized by the United States* and with whom they are at peace, every person so offending shall be guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer, and the other half to the use of the United States: *Provided, That the penalties of this act shall not apply to any person who is building, fitting out, or arming, or procuring to be built, fitted out, or armed, any ship or vessel, as aforesaid, under a contract entered*

into before the commencement of the hostilities in which the said foreign prince, state, colony, district, people, or body of insurgents for whom the vessel is intended, is engaged, if such person gives notice to the District Court of the district in which the said acts are being done, of the fact that he is so building, fitting out, or arming, or procuring to be built, fitted out, or armed, such ship or vessel, and if he gives such security and takes and submits to such other measures as may be prescribed by the President for assuring that the vessel shall not be delivered to the belligerent party for whom it is intended until the termination of the war.

Note.—Sec. 4 of the Act of 1818 has no longer any application. See Chapter III, p. 78.

Sec. 4. *And be it further enacted, That if any person shall, within the territory or jurisdiction of the United States, sell, transfer, or deliver, any war-ship or other vessel built primarily for use in war, or any vessel, which, being originally commercial, has, by the addition of armament, been adapted within or without the territory or jurisdiction of the United States for use in war, to any foreign prince, state, colony, district, people, or body of insurgents, with intent or knowledge or having reasonable cause to believe that such ship or vessel shall or will be employed to cruise or engage in hostile operations against any foreign prince or state with whom the United States are at peace, or against any foreign colony, district, or people whose belligerency has been recognized by the United States and with whom the United States are at peace, every person so offending shall be guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, shall be*

forfeited; one half to the use of the informer, and the other half to the use of the United States.

Sec. 5. *And be it further enacted,* That if any persons shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the force of any ship of war cruiser or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war, every person, so offending, shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars and be imprisoned not more than one year.

Sec. 5. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, by adding to the number of guns, or by changing those on board for other guns, or by the addition of any equipment solely applicable to war, increase or augment, or procure to be increased or augmented, or knowingly be concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, people, *or body of insurgents,* the same being at war with any foreign prince or state with whom the United States are at peace, or with any foreign colony, district, or people, *whose belligerency has been recognized by the United States* and with whom they are at peace, *or if any person shall, within the territory or jurisdiction of the United States, and without the licence of the President of the United States, furnish to any ship of war, cruiser, or any other armed vessel, as aforesaid, supplies of food or coal, or make or procure to be made repairs upon such ship of war, cruiser, or other armed vessel,* every person so offending shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars and be imprisoned not more than one year.

Sec. 6. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, any military

Sec. 6. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, *or take part*

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, every person, so offending, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

in, any *naval* or military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace, or of any foreign colony, district, or people, *whose belligerency has been recognized by the United States* and with whom they are at peace, *or shall, within the territory or jurisdiction of the United States, organize or become a member of a corps of combatants formed in the interest of a foreign prince, state, colony, district, people, or body of insurgents, at war, by land or sea, with any foreign prince or state with whom the United States are at peace, or with any foreign colony, district, or people, whose belligerency has been recognized by the United States and with whom they are at peace,* every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

Sec. 7. *And be it further enacted,* That the district courts shall take cognisance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

Sec. 7. *And be it further enacted,* That the district courts shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof, *and in cases of captures by vessels which have been built, fitted out, armed, despatched, sold, transferred or delivered in violation of the provisions of this act.*

Sec. 8. *And be it further enacted,* That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot,

Sec. 8. *And be it further enacted,* That in every case in which a vessel shall be *built,* fitted out, *or* armed, or attempted to be *built,* fitted out, *or* armed, *or is about to be despatched, sold, or transferred,* or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, *or in which supplies are*

contrary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 9. *And be it further enacted,* That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval

furnished to any vessel of war, cruiser, or other armed vessel, or in which any *naval or* military expedition or enterprise shall be begun or set on foot, *or a corps of combatants formed,* contrary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States, as before defined, in every such case, *when a warrant shall have been issued by a district court for the arrest of persons accused of violating the provisions of this act, or for the seizure of a vessel alleged to be forfeited under the provisions of this act, and when such warrant shall have been disobeyed or resisted,* it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state *with whom the United States are at peace*, or of any foreign colony, district, or people, *whose belligerency has been recognized by the United States* and with whom the United States are at peace.

Sec. 9. *And be it further enacted,* That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval

forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States.

forces of the United States, or of the militia thereof, as shall be necessary to compel any ship or vessel *in the service of, or belonging to, a foreign state* to depart the United States, *or as shall be necessary to detain within the United States any ship or vessel in the service of, or belonging to, a foreign state,* in all cases in which, by the laws of nations or the treaties *and conventions* of the United States, such ship or vessel ought not to remain within, *or to depart from,* the United States, *or as shall be necessary to effect the release of any ship or vessel which having been captured by a belligerent power within the territorial waters of the United States is found within the jurisdiction of the United States.*

Sec. 10. *And be it further enacted,* That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against 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.

Sec. 10. *And be it further enacted,* That the owners or consignees of every *war-ship,* or vessel *built primarily for use in war, or other vessel which, being originally commercial, has, by the addition of armament, been adapted within or without the territory or jurisdiction of the United States for use in war,* shall, before such ship or vessel clears out the ports of the United States, enter into bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state with whom the United States are at peace, or of any foreign colony, district, or people, *whose belligerency has been recognized by the United States* and with whom they are at peace, *and that such owners or consignees shall enter into bond to the United States, as aforesaid, and shall give proof to the satisfaction of the district court of the district in*

which the said vessel lies, that the said vessel is not leaving port under a contract or agreement entered into by the said owners or consignees for the sale or delivery of the vessel, whether within the territorial waters of the United States, or on the high seas, or in a foreign port, to any foreign prince, state, colony, district, people, or body of insurgents, at war, by land or sea, with any foreign prince or state with whom the United States are at peace, or with any foreign colony, district, or people, whose belligerency has been recognized by the United States, and with whom they are at peace, or to the subjects or citizens of any foreign prince or state whatsoever.

Sec. 11. *And be it further enacted,* That the collectors of the customs be, and they are hereby, respectively, authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners 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, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act.

Sec. 11. *And be it further enacted,* That the several collectors of customs shall detain any *war-ship, or other vessel built primarily for use in war, or other vessel which, being originally commercial, has, by the addition of armament, been adapted within or without the territory or jurisdiction of the United States for use in war,* and is about to depart from the United States, until the owner gives such bond and security, *and furnishes such proof* as is required of the owners of armed vessels by the preceding section.

Sec. 12. *And be it further enacted,* That the act passed on the fifth day of June, one thousand seven hundred and ninety-four, entitled, "An act in addition to the act for the punishment of

Sec. 12. *And be it further enacted,* That the act passed on the twentieth day of April, one thousand eight hundred and eighteen, entitled, "An act in addition to the act for the punish-

certain crimes against the United States," continued in force, for a limited time, by the act of the second of March, one thousand seven hundred and ninety-seven, and perpetuated by the act passed on the twenty-fourth of April, one thousand eight hundred, and the act, passed on the fourteenth day of June, one thousand seven hundred and ninety-seven, entitled "An act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the act, passed the third day of March, one thousand eight hundred and seventeen, entitled, "An act more effectually to preserve the neutral relations of the United States," be, and the same are hereby, severally, repealed: *Provided, nevertheless,* That persons having heretofore offended against any of the acts aforesaid, may be prosecuted, convicted, and punished as if the same were not repealed, and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.

ment of certain crimes against the United States and to repeal the acts therein mentioned," be, and the same is hereby, repealed: *Provided,* That the repeal of the said act shall not have the effect of reviving any of the former acts thereby repealed, and that persons having, heretofore, offended against the said act may be prosecuted, convicted and punished as if the same were not repealed, and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.

Sec. 13. *And be it further enacted,* That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States.

Sec. 13 stands unchanged.

Note.—Supplemental section embodied in joint resolution of March 14, 1912. See appendix, p. 183.

Sec. 14. *And be it further enacted,* 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.

APPENDIX

Instructions to the Collectors of the Customs of the United States.[1]

PHILADELPHIA, *August 4, 1793.*

Sir:

It appearing that repeated contraventions of our neutrality have taken place in the ports of the United States, without having been discovered in time for prevention or remedy, I have it in command from the President to address to the collectors of the respective districts a particular instruction on the subject.

It is expected that the officers of the customs in each district will, in the course of their official functions, have a vigilant eye upon whatever may be passing within the ports, harbors, creeks, inlets, and waters, of such district, of a nature to contravene the laws of neutrality, and upon discovery of any thing of the kind, will give immediate notice to the Governor of the State, and to the attorney of the judicial district comprehending the district of the customs within which any such contravention may happen.

To assist the judgment of the officers on this head, I transmit herewith a schedule of rules concerning sundry particulars which have been adopted by the President, as deductions from the laws of neutrality, established and received among nations. Whatever shall be contrary to these rules will, of course, be to be notified as above mentioned.

There are some other points which, pursuant to our treaties, and the determination of the Executive, I ought to notice to you.

If any vessel of either of the Powers at war with France, should *bring or send* within your district a prize made of the subjects, people, or property of France, it is immediately to be notified to the Governor of the State, in order that measures may be taken, pursuant to the 17th article of our treaty with France, to oblige such vessel and her prize, or such prize, when sent in without the capturing vessel, to depart.

No privateer of any of the Powers at war with France, coming within a district of the United States, can, by the 22d article of our treaty with France, enjoy any other privilege than that of *purchasing such victuals as shall be necessary for her going to the next port of the Prince or State from which she has her commission.* If she should do any thing beside this, it is immediately to be reported to the Governor, and the attorney of the district. You will observe, by the rules transmitted, that the term privateer is understood not to extend to vessels armed for merchandise and war, commonly called with us *letters of marque,* nor, of course, to vessels of war in the immediate service of the government of either of the Powers at war.

No armed vessel which has been or shall be *originally fitted out* in any port

[1] *Am. State Papers, For. Rel.,* I, 140.

of the United States, by either of the parties at war, is henceforth to have asylum in any district of the United States. If any such armed vessel shall appear within your district, she is immediately to be notified to the Governor and attorney of the district, which is also to be done in respect to any prize that such armed vessel shall bring or send in. At foot is a list of such armed vessels of the above description as have hitherto come to the knowledge of the Executive.

The purchasing within, and exporting from the United States, *by way of merchandise,* articles commonly called contraband, being generally warlike instruments and military stores, is free to all parties at war, and is not to be interfered with. If our own citizens undertake to carry them to any of those parties, they will be abandoned to the penalties which the laws of war authorize.

You will be particularly careful to observe, and to notify as directed in other instances, the case of any citizen of the United States who shall be found in the service of either of the parties at war.

In case any vessel shall be found in the act of contravening any of the rules or principles which are the ground of this instruction, she is to be refused a clearance until she shall have complied with what the Governor shall have decided in reference to her. Care, however, is to be taken in this, not unnecessarily or unreasonably to embarrass trade, or to vex any of the parties concerned.

In order that *contraventions* may be the better ascertained, it is desired that the officer who shall first go on board any vessel arriving within your district, shall make an accurate survey of her then condition as to *military equipment,* to be forthwith reported to you; and that, prior to her clearance, a like survey be made, that any transgression of the rules laid down may be ascertained.

But, as the propriety of any such inspection of a *vessel of war in the immediate service of the government* of a foreign nation is not without question in reference to the usage of nations, no attempt is to be made to inspect any such vessel, till further order on the point.

The President desires me to signify to you his most particular expectation, that the instruction contained in this letter will be executed with the greatest vigilance, care, activity, and impartiality. Omissions will tend to expose the Government to injurious imputations and suspicions, and proportionably to commit the good faith and peace of the country—objects of too much importance not to engage every proper exertion of your zeal.

With consideration, I am, sir, &c.

ALEXANDER HAMILTON.

1. The original arming and equipping of vessels in the ports of the United States, by any of the belligerent parties, for military service, offensive or defensive, is deemed unlawful.

2. Equipments of merchant vessels, by either of the belligerent parties, in the ports of the United States, purely for the accommodation of them as such, is deemed lawful.

3. Equipments in the ports of the United States, of vessels of war in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful; except those which shall have made

prize of the subjects, people, or property of France, coming with their prizes into the ports of the United States, pursuant to the 17th article of our treaty of amity and commerce with France.

4. Equipments in the ports of the United States, by any of the parties at war with France, of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize, &c.

5. Equipments of any of the vessels of France, in the ports of the United States, which are doubtful in their nature as being applicable to commerce or war, are deemed lawful.

6. Equipments of every kind, in the ports of the United States, of privateers of the Powers at war with France, are deemed unlawful.

7. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful; except those stranded or wrecked, as mentioned in the 18th article of our treaty with France, the 16th of our treaty with the United Netherlands, the 9th of our treaty with Prussia; and except those mentioned in the 19th article of our treaty with France, the 17th of our treaty with the United Netherlands, the 18th of our treaty with Prussia.

8. Vessels of either of the parties, not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist therein their own subjects or citizens, not being inhabitants of the United States; except privateers of the Powers at war with France, and except those vessels which shall have made prize, &c.

Proclamation of Neutrality.[1]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS I have received information that certain persons, in violation of the laws, have presumed, under colour of a foreign authority, to enlist citizens of the United States, and others, within the State of Kentucky, and have there assembled an armed force for the purpose of invading and plundering the territories of a nation at peace with the said United States: And whereas such unwarrantable measures, being contrary to the laws of nations, and to the duties incumbent on every citizen of the United States, tend to disturb the tranquillity of the same, and to involve them in the calamities of war: and whereas it is the duty of the executive to take care that such criminal proceedings should be suppressed, the offenders brought to justice, and all good citizens cautioned against measures likely to prove so pernicious to their country and themselves, should they be seduced into similar infractions of the laws, I have therefore thought proper to issue this proclamation, hereby solemnly warning every person, not authorized by the laws, against enlisting any citizen or citizens of the United States, or levying troops, or assembling any persons within the United States

[1]Richardson's *Messages*, I, 157.

for the purposes aforesaid, or proceeding in any manner to the execution thereof, as they will answer the same at their peril; And I do also admonish and require all citizens to refrain from enlisting, enrolling, or assembling themselves for such unlawful purposes, and from being in anywise concerned, aiding, or abetting therein, as they tender their own welfare, inasmuch as all lawful means will be strictly put in execution for securing obedience to the laws, and for punishing such dangerous and daring violations thereof.

And I do moreover, charge and require all courts, magistrates, and other officers whom it may concern, according to their respective duties, to exert the powers in them severally vested, to prevent and suppress all such unlawful assemblages and proceedings, and to bring to condign punishment those who may have been guilty thereof, as they regard the due authority of government, and the peace and welfare of the United States.

In Testimony Whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the twenty-fourth day of March, one thousand seven hundred and ninety-four, and of the independence of the United States of America the eighteenth.

(L. S.) G. Washington,

By the President:

Edm. Randolph,

Secretary of State.

An Act in addition to the act for the punishment of certain crimes against the United States.[1]

Section 1. *Be it enacted and declared by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any citizen of the United States shall, within the territory or jurisdiction of the same, accept and exercise a commission to serve a foreign prince or state in war by land or sea, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sec. 2. *And be it further enacted and declared,* That if any person shall within the territory or jurisdiction of the United States enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince or state as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years. *Provided,* That this shall not be construed to extend to any subject or citizen of a foreign prince or state who shall transiently be within the United States and shall on board of any vessel of war, letter of marque or privateer, which at the time of its arrival within the United States was fitted and equipped as such, en-

[1] 1 Stat. L., 381.

list or enter himself or hire or retain another subject or citizen of the same foreign prince or state, who is transiently within the United States, to enlist or enter himself to serve such prince or state on board such vessel of war, letter of marque or privateer, if the United States shall then be at peace with such prince or state. *And provided further,* That if any person so enlisted shall within thirty days after such enlistment voluntarily discover upon oath to some justice of the peace or other civil magistrate, the person or persons by whom he was so enlisted, so as that he or they may be apprehended and convicted of the said offence; such person so discovering the offender or offenders shall be indemnified from the penalty prescribed by this act.

Sec. 3. *And be it further enacted and declared,* That if any person shall within any of the ports, harbors, bays, rivers or other waters of the United States, fit out and arm or attempt to fit out and arm or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state to cruise or commit hostilities upon the subjects, citizens or property of another foreign prince or state with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than five thousand dollars and the term of imprisonment shall not exceed three years, and every such ship or vessel with her tackle, apparel and furniture together with all materials, arms, ammunition and stores which may have been procured for the building and equipment thereof shall be forfeited, one-half to the use of any person who shall give information of the offence, and the other half to the use of the United States.

Sec. 4. *And be it further enacted and declared,* That if any person shall within the territory or jurisdiction of the United States increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the force of any ship of war, cruiser or other armed vessel which at the time of her arrival within the United States, was a ship of war, cruiser or armed vessel in the service of a foreign prince or state or belonging to the subjects or citizens of such prince or state the same being at war with another foreign prince or state with whom the United States are at peace, by adding to the number or size of the guns of such vessel prepared for use, or by the addition thereto of any equipment solely applicable to war, every such person so offending shall upon conviction be adjudged guilty of a misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed one thousand dollars, nor the term of imprisonment be more than one year.

Sec. 5. *And be it further enacted and declared,* That if any person shall within the territory or jurisdiction of the United States begin or set on foot or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace, every such person so offend-

ing shall upon conviction be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed three thousand dollars nor the term of imprisonment be more than three years.

Sec. 6. *And be it further enacted and declared,* That the district courts shall take cognizance of complaints by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

Sec. 7. *And be it further enacted and declared,* That in every case in which a vessel shall be fitted out and armed, or attempted so to be fitted out or armed, or in which the force of any vessel of war, cruiser or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot contrary to the prohibitions and provisions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as above defined, and in every case in which any process issuing out of any court of the United States, shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser or other armed vessel of any foreign prince or state, or of the subjects or citizens of such prince or state, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States or of the militia thereof as shall be judged necessary for the purpose of taking possession of, and detaining any such ship or vessel, with her prize or prizes if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring such prize or prizes, in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories of the United States against the territories or dominions of a foreign prince or state, with whom the United States are at peace.

Sec. 8. *And be it further enacted and declared,* That it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States, in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States.

Sec. 9. *And be it further enacted,* That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by a treaty or other law of the United States.

Sec. 10. *And be it further enacted,* That this act shall continue and be in force for and during the term of two years, and from thence to the end of the next session of Congress, and no longer.

Approved, June 5, 1794.

An Act to prevent citizens of the United States from Privateering against nations in amity with, or against citizens of the United States.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any citizen or citizens of the United States shall, without the limits of the same, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out or arming any private ship or vessel of war, with intent that such ship or vessel shall be employed to cruise or commit hostilities, upon the subjects, citizens or property of any prince or state with whom the United States are at peace, or upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel for the intent aforesaid, or shall purchase an interest in any vessel so fitted out and armed, with a view to share in the profits thereof, such person or persons so offending shall, on conviction thereof, be adjudged guilty of a high misdemeanor, and shall be punished by a fine not exceeding ten thousand dollars, and imprisonment not exceeding ten years. And the trial for such offence, if committed without the limits of the United States, shall be in the district where the offender shall be apprehended or first brought.

Sec. 2. *And be it further enacted,* That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by a treaty or other law of the United States.

Approved, June 14, 1797.

An Act in addition to the "Act for the punishment of certain crimes against the United States," and to repeal the acts therein mentioned.[1]

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sec. 2. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any forign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding

[1] 1 Stat. L., 520.
[2] 3 Stat. L., 447.

three years: *Provided,* That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district or people, who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States, was fitted and equipped as such, enlist or enter himself, or hire or retain another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

Sec. 3. *And be it further enacted,* That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against 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, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Sec. 4. *And be it further enacted,* That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such person, so offending, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offence, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Sec. 5. *And be it further enacted,* That if any persons shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the force of any ship of war cruiser or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those

on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war, every person, so offending, shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars and be imprisoned not more than one year.

Sec. 6. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, any military 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, every person, so offending, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

Sec. 7. *And be it further enacted,* That the district courts shall take cognisance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

Sec. 8. *And be it further enacted,* That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 9. *And be it further enacted,* That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States.

Sec. 10. *And be it further enacted,* That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the

said ship or vessel shall not be employed by such owners to cruise or commit hostilities against 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.

Sec.11. *And be it further enacted,* That the collectors of the customs be, and there are hereby, respectively, authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners 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, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act.

Sec. 12. *And be it further enacted,* That the act passed on the fifth day of June, one thousand seven hundred and ninety-four, entitled, "An act in addition to the act for the punishment of certain crimes against the United States," continued in force, for a limited time, by the act of the second of March, one thousand seven hundred and ninety-seven, and perpetuated by the act passed on the twenty-fourth of April, one thousand eight hundred, and the act, passed on the fourteenth day of June, one thousand seven hundred and ninety-seven, entitled "An act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the act, passed the third day of March, one thousand eight hundred and seventeen, entitled, "An act more effectually to preserve the neutral relations of the United States," be, and the same are hereby, severally, repealed: *Provided, nevertheless,* That persons having heretofore offended against any of the acts aforesaid, may be prosecuted, convicted, and punished as if the same were not repealed, and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.

Sec. 13. *And be it further enacted,* That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States.

Approved, April 20, 1818.

An Act supplementary to an act entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," approved twentieth of April, eighteen hundred and eighteen.[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several collectors, naval officers, surveyors, inspectors of customs, the marshals, and deputy marshals of the United States, and every other officer who may be specially empowered for the purpose

[1] 5 Stat. L., 212.

by the President of the United States, shall be, and they are hereby respectively authorized and required to seize and detain any vessel or any arms or munitions of war which may be provided or prepared for any military expedition or enterprise against the territory or dominions of any foreign Prince or State, or of any colony, district or people conterminous with the United States, and with whom they are at peace, contrary to the sixth section of the act passed on the twentieth of April, eighteen hundred and eighteen, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," and retain possession of the same until the decision of the President be had thereon, or until the same shall be released as hereiaafter directed.

Sec. 2. *And be it further enacted,* That the several officers mentioned in the foregoing section shall be, and they are hereby respectively authorized and required to seize any vessel or vehicle, and all arms or munitions of war, about to pass the frontier of the United States for any place within any foreign state, or colony, conterminous with the United States, where the character of the vessel or vehicle, and the quantity of arms and munitions, or other circumstances shall furnish probable cause to believe that the said vessel or vehicle, arms or munitions of war are intended to be employed by the owner or owners thereof, or any other person or persons, with his or their privity, in carrying on any military expedition or operations within the territory or dominions of any foreign prince or State, or any colony, district, or people conterminous with the United States, and with whom the United States are at peace, and detain the same until the decision of the President be had for the restoration of the same, or until such property shall be discharged by the judgment of a court of competent jurisdiction: *Provided,* That nothing in this act contained shall be construed to extend to, or interfere with any trade in arms or munitions of war, conducted in vessels by sea, with any foreign port or place whatsoever, or with any other trade which might have been lawfully carried on before the passage of this act, under the law of nations and the provisions of the act hereby amended.

Sec. 3. *And be it further enacted,* That it shall be the duty of the officer making any seizure under this act, to make application, with due diligence, to the district judge of the district court of the United States within which such seizure may be made, for a warrant to justify the detention of the property so seized; which warrant shall be granted only on oath or affirmation, showing that there is probable cause to believe that the property so seized is intended to be used in a manner contrary to the provisions of this act; and if said judge shall refuse to issue such warrant, or application therefor, shall not be made by the officer making such seizure within a reasonable time, not exceeding ten days thereafter, the said property shall forthwith be restored to the owner. But if the said judge shall be satisfied that the seizure was justified under the provisions of this act, and issue his warrant accordingly, then the same shall be detained by the officer so seizing said property until the President shall order it to be restored to the owner or claimant, or until it shall be discharged in due course of law, on the petition of the claimant, as hereinafter provided.

Sec. 4. *And be it further enacted,* That the owner or claimant of any property seized under this act, may file his petition in the circuit or district court of the United States, in the district where such seizure was made, setting forth the facts in the case; and thereupon such court shall proceed, with all convenient dispatch,

after causing due notice to be given to the district attorney and officer making such seizure, to decide upon the said case, and order restoration of the property, unless it shall appear that the seizure was authorized by this act: and the circuit and district courts shall have jurisdiction, and are hereby vested with full power and authority, to try and determine all cases which may arise under this act; and all issues in fact arising under it, shall be decided by a jury, in the manner now provided by law.

Sec. 5. *And be it further enacted,* That whenever the officer making any seizure under this act shall have applied for and obtained a warrant for the detention of the property, or the claimant shall have filed a petition for its restoration, and failed to obtain it, and the property so seized shall have been in the custody of the officer for the term of three calendar months from the date of such seizure, it shall and may be lawful for the claimant or owner to file with the officer a bond to the amount of double the value of the property so seized and detained, with at least two sureties, to be approved by the judge of the circuit or district court, with a condition that the property, when restored, shall not be used or employed by the owner or owners thereof, or by any other person or persons with his or their privity, in carrying on any military expedition or operations within the territory or dominions of any foreign prince or State, or any colony, district, or people, conterminous with the United States, with whom the United States are at peace; and thereupon the said officer shall restore such property to the owner or claimant thus giving bond: *Provided,* That such restoration shall not prevent seizure from being again made, in case there may exist fresh cause to apprehend a new violation of any of the provisions of this act.

Sec. 6. *And be it further enacted,* That every person apprehended and committed for trial for any offense against the act hereby amended, shall, when admitted to bail for his appearance, give such additional security as the judge admitting him to bail may require, not to violate nor aid in violating, any of the provisions of the act hereby amended.

Sec. 7. *And be it further enacted,* That whenever the President of the United States shall have reason to believe that the provisions of this act have been, or are likely to be violated, that offenses have been, or are likely to be, committed against the provisions of the act hereby amended, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney, of such district, to attend at such place within the district, and for such time, as he may designate, for the purpose of the more speedy and convenient arrest and examination of persons charged with the violation of the act hereby amended; and it shall be the duty of every such judge, or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.

Sec. 8. *And be it further enacted,* That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation, and to enforce the due execution, of this act, and the act hereby amended.

Sec. 9. *And be it further enacted,* That this act shall continue in force for the period of two years, and no longer.

Approved, March 10, 1838.

Joint Resolution To prohibit the export of coal or other material used in war from any seaport of the United States.[1]

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President is hereby authorized, in his discretion, and with such limitations and exceptions as shall seem to him expedient, to prohibit the export of coal or other material used in war from any seaport of the United States until otherwise ordered by the President or by Congress.

Approved, April 22, 1898.

Export of Arms, etc., to the Dominican Republic.[2]

By the President of the United States of America,

A PROCLAMATION.

Whereas, by a Joint Resolution, approved April 22, 1898, entitled "Joint Resolution to prohibit the export of coal or other material used in war from any sea-port of the United States," the President is "authorized, in his discretion, and with such limitations and exceptions as shall seem to him expedient, to prohibit the export of coal or other material used in war from any sea-port of the United States until otherwise ordered by the President or by Congress;"

Now, Therefore, I, Theodore Roosevelt, President of the United States of America, for good and sufficient reasons unto me appearing, and by virtue of the authority conferred upon me by the said Joint Resolution, do hereby declare and proclaim that the export of arms, ammunition and munitions of war of every kind, from any port in the United States or in Porto Rico to any port in the Dominican Republic, is prohibited, without limitation or exception, from and after the date of this my proclamation until otherwise ordered by the President or by Congress.

And I do hereby enjoin all good citizens of the United States and of Porto Rico and all persons residing or being within the territory or jurisdiction thereof to be governed accordingly.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 14th day of October, in the year of our Lord one thousand nine hundred and five and of the Independence of the United States of America the one hundred and thirtieth.

[seal.]

Theodore Roosevelt.

By the President:
Elihu Root,
Secretary of State.

[1] 30 Stat. L., 739.
[2] 34 Stat. L., 3183.

Joint Resolution To amend the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States.[1]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution to prohibit the export of coal or other material used in war from any sea-port of the United States, approved April twenty-second, eighteen hundred and ninety-eight, be, and hereby is, amended to 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.

Sec. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both.

Approved, March 14, 1912.

Export of Arms, etc., to Mexico.[2]

By the President of the United States of America,

A PROCLAMATION.

Whereas, a Joint Resolution of Congress, approved March 14, 1912, reads and provides 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;"

And, Whereas, it is provided by Section II of the said Joint Resolution, "That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both;"

Now, therefore, I, William Howard Taft, President of the United States of America, acting under and by virtue of the authority conferred in me by the said Joint Resolution of Congress, do hereby declare and proclaim that I have found that there exist in Mexico such conditions of domestic violence promoted by the use of arms or munitions of war procured from the United States as contemplated by the said Joint Resolution; and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of the Joint Resolution above set forth, hereby made applicable to

[1] 37 Stat. L., 630.
[2] 37 Stat. L., 1733.

Mexico, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted. And I do hereby enjoin upon all officers of the United States charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said Joint Resolution and this my Proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fourteenth day of March in the year of our Lord one thousand nine hundred and twelve and of the Inde-
[SEAL.] pendence of the United States of America the one hundred and thirty-sixth.

WM. H. TAFT.

By the President:
HUNTINGTON WILSON,
Acting Secretary of State.

Act of the British Parliament, "to prevent the Enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the fitting out or equipping, in His Majesty's Dominions, Vessels for warlike purposes, without His Majesty's License." [Cap. 69.][1]

[3D JULY, 1819.]

WHEREAS, the Enlistment or Engagement of His Majesty's Subjects to serve in War in Foreign Service, without His Majesty's Licence, and the fitting out and equipping and arming of Vessels by His Majesty's Subjects, without His Majesty's Licence, for warlike operations in or against the Dominions or Territories of any Foreign Prince, State, Potentate, or Persons exercising or assuming to exercise the powers of Government in or over any Foreign Country, Colony, Province, or part of any Province, or against the Ships, Goods, or Merchandize of any Foreign Prince, State, Potentate, or Persons as aforesaid, or their Subjects, may be prejudicial to and tend to endanger the peace and welfare of this Kingdom: And whereas the Laws in force are not sufficiently effectual for preventing the same;

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, an Act passed in the 9th Year of the Reign of His late Majesty King George the Second, intituled "An Act to prevent the listing His Majesty's Subjects to serve as Soldiers without His Majesty's Licence;" and

[1] *Brit. and For. State Papers,* VI, 130.

also an Act passed in the 29th Year of the Reign of His said late Majesty King George the Second, intituled "An Act to prevent His Majesty's Subjects from serving as Officers under the French King; and for better enforcing an Act passed in the 9th Year of His present Majesty's Reign, to prevent the enlisting His Majesty's Subjects to serve as Soldiers without His Majesty's Licence; and for obliging such of His Majesty's Subjects as shall accept Commissions in the Scotch Brigade in the Service of the States General of the United Provinces, to take the Oaths of Allegiance and Abjuration;" and also an Act passed in Ireland in the 11th Year of the Reign of His said late Majesty King George the Second, intituled "An Act for the more effectual preventing the enlisting of His Majesty's Subjects to serve as Soldiers in Foreign Service without His Majesty's Licence;" and also an Act passed in Ireland in the 19th Year of the Reign of His said late Majesty King George the Second, intituled "An Act for the more effectual preventing His Majesty's Subjects from entering into Foreign Service, and for publishing an Act of the 7th Year of King William the Third, intituled 'An Act to prevent Foreign Education;'" and all and every the clauses and provisions in the said several Acts contained, shall be and the same are hereby repealed.

II. *And be it further declared and enacted*, That if any natural-born Subject of His Majesty, His Heirs and Successors, without the leave or licence of His Majesty, His Heirs or Successors, for that purpose first had and obtained, under the Sign Manual of His Majesty, His Heirs or Successors, or signified by Order in Council, or by Proclamation of His Majesty, His Heirs or Successors, shall take or accept, or shall agree to take or accept, any Military Commission, or shall otherwise enter into the Military Service as a Commissioned or Non-commissioned Officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a Soldier, or to be employed or shall serve in any warlike or military operation, in the service of or for or under or in aid of any Foreign Prince, State, Potentate, Colony, Province, or part of any Province or People, or of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or part of any Province or People, either as an Officer or Soldier, or in any other military capacity; or if any natural-born Subject of His Majesty shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any Commission, Warrant or Appointment as an Officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a Sailor, or Marine, or to be employed, or engaged, or shall serve in and on board any Ship or Vessel of War, or in and on board any Ship or Vessel used or fitted out, or equipped or intended to be used for any warlike purpose, in the Service of or for or under or in aid of any Foreign Power, Prince, State, Potentate, Colony, Province, or part of any Province or People, or of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or part of any Province or People; or if any natural-born Subject of His Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go to any Foreign State, Country, Colony, Province, or part of any Province, or to any place beyond the Seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by Land or by Sea, in the service of or for or under or in aid of any Foreign Prince, State, Potentate, Colony, Province, or part of any Province or People, or in the service of or for

or under or in aid of any Person or Persons exercising or assuming to exercise the powers of Government in or over any Foreign Country, Colony, Province, or part of any Province or People, either as an Officer or a Soldier, or in any other military capacity, or as an Officer or Sailor, or Marine, in any such Ship or Vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any Person to or for his use or benefit; or if any Person whatever, within the United Kingdom of Great Britain and Ireland or in any part of His Majesty's Dominions elsewhere, or in any Country, Colony, Settlement, Island, or Place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage or procure, any Person or Persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an Officer, Soldier, Sailor, or Marine, either in land or sea service, for or under or in aid of any Foreign Prince, State, Potentate, Colony, Province, or part of any Province or People, or for or under or in aid of any Person or Persons exercising or assuming to exercise any powers of Government as aforesaid, or to go or to agree to go or embark from any part of His Majesty's Dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every Person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted.

III. *Provided always, and be it enacted,* That nothing in this Act contained shall extend or be construed to extend to render any Person or Persons liable to any punishment or penalty under this Act, who at any time before the 1st day of August, 1819, within any part of the United Kingdom, or of the Islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the 1st day of November, 1819, in any part or place out of the United Kingdom, or of the said Islands, shall have taken or accepted, or agreed to take or accept any Military Commission, or shall have otherwise enlisted into any Military Service as a Commissioned or Non-commissioned Officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a Soldier, or shall have served, or having so served shall, after the said 1st day of August, 1819, continue to serve in any warlike or military operation, either as an Officer or Soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept any Commission, Warrant, or Appointment as an Officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a Sailor or Marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the said 1st day of August, continue to serve in and on board any Ship or Vessel of War, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged or contracted or agreed to go, or shall have gone to, or having so gone to shall, after the said 1st day of August, continue in any Foreign State, Country, Colony, Province, or part of a Province, or to or in any place beyond the Seas, unless such Person or Persons shall embark at or proceed from some Port or Place within the United Kingdom, or the Islands of Jersey,

Guernsey, Alderney, or Sark, with intent to serve as an Officer, Soldier, Sailor, or Marine, contrary to the Provisions of this Act, after the said 1st day of August, or shall embark or proceed from some Port or Place out of the United Kingdom, or the Islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said 1st day of November, or who shall, before the passing of this Act, and within the said United Kingdom, or the said Islands, or before the 1st day of November, 1819, in any Port or Place out of the said United Kingdom, or the said Islands, have hired, retained, engaged, or procured, or attempted or endeavoured to hire, retain, engage, or procure, any Person or Persons whatever, to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid, as an Officer, Soldier, Sailor, or Marine, either in land or sea service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged, or employed, contrary to the prohibitions respectively in this Act contained, any thing in this Act contained to the contrary in any wise notwithstanding; but that all and every such Person and Persons shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such Person or Persons was or were liable and subject to before the passing of this Act, and as such Person or Persons would have been in, and been liable and subject to, in case this Act and the said recited Acts by this Act repealed had not been passed or made.

IV. *And be it further enacted,* That it shall and may be lawful for any Justice of the Peace residing at or near to any Port or Place within the United Kingdom of Great Britain and Ireland, where any offence made punishable by this Act as a misdemeanor shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such Justice, or any Justice of the Peace; and it shall be lawful for the Justice of the Peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such Person to gaol, there to remain until delivered by due course of Law, unless such offender shall give bail, to the satisfaction of the said Justice, to appear and answer to any information or indictment to be preferred against him, according to Law, for the said offence; and that all such offences which shall be committed within that part of the United Kingdom called England, shall and may be proceeded and tried in His Majesty's Court of King's Bench at Westminster, and the Venue in such case laid at Westminster, or at the Assizes or Session of Oyer and Terminer and Gaol delivery, or at any Quarter or General Sessions of the Peace in and for the County or Place where such offence was committed: and that all such offences which shall be committed within that part of the United Kingdom called Ireland, shall and may be prosecuted in His Majesty's Court of King's Bench at Dublin, and the Venue be laid at Dublin, or at any Assizes or Session of Oyer and Terminer and Gaol delivery, or at any Quarter or General Sessions of the Peace in and for the County or Place where such offence was committed; and all such offences as shall be committed in Scotland, shall and may be prosecuted in the Court of Justiciary in Scotland, or any other Court competent to try criminal offences committed within the County, Shire, or Stewartry within which such offence was committed; and where any offence made punishable by this Act as a misdemeanor shall be committed out of the said United Kingdom, it shall be lawful for any Justice of the Peace

residing near to the Port or Place where such offence shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such Justice, or any other Justice of the Peace for such Place; and it shall be lawful for the Justice of the Peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such Person to gaol, there to remain till delivered by due course of Law, or otherwise to hold such offender to bail to answer for such offence in the Superior Court, competent to try and having jurisdiction to try criminal offences committed in such Port or Place; and all such offences committed at any Place out of the said United Kingdom shall and may be prosecuted and tried in any Superior Court of His Majesty's Dominions, competent to try, and having jurisdiction to try criminal offences committed at the Place where such offence shall be committed.

V. *And be it further enacted*, That in case any Ship or Vessel in any Port or Place within His Majesty's Dominions, shall have on board any such Person or Persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from His Majesty's Dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any Foreign Prince, State, or Potentate, Colony, Province, or part of any Province or People, or of any Person or Persons exercising or assuming to exercise the powers of Government in or over any Foreign Colony, Province, or part of any Province or People, either as an Officer, Soldier, Sailor, or Marine, contrary to the Provisions of this Act, it shall be lawful for any of the principal Officers of His Majesty's Customs where any such Officers of the Customs shall be, and in any part of His Majesty's Dominions in which there are no Officers of His Majesty's Customs, for any Governor or Persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorized and empowered to administer, that such Person or Persons as aforesaid is or are on board such Ship or Vessel, to detain and prevent any such Ship or Vessel, or to cause such Ship or Vessel to be detained and prevented from proceeding to sea on her voyage with such Persons as aforesaid on board: Provided nevertheless, that no principal Officer, Governor, or Person, shall act as aforesaid, upon such information upon oath as aforesaid, unless the party so informing shall not only have deposed in such information that the Person or Persons on board such Ship or Vessel hath or have been enlisted or entered to serve, or hath or have engaged or agreed or been procured to enlist or enter or serve, or is or are departing as aforesaid, for the purpose and with the intent of enlisting or entering to serve or to be employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such information upon oath, the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such information upon oath; and that all and every Person and Persons convicted of wilfully false swearing in any such information upon oath, shall be deemed guilty of and suffer the penalties on Persons convicted of wilful and corrupt perjury.

VI. *And be it further enacted*, That if any Master or other Person having or taking the charge or command of any Ship or Vessel, in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's Domin-

ions beyond the seas, shall knowingly and willingly take on board, or if such Master or other Person having the command of any such Ship or Vessel, or any owner or owners of any such Ship or Vessel, shall knowingly engage to take on board any Person or Persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from His Majesty's Dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in any naval or military service, contrary to the Provisions of this Act, such Master or owner or other Person as aforesaid shall forfeit and pay the sum of £50 for each and every such Person so taken or engaged to be taken on board; and moreover every such Ship or Vessel, so having on board, conveying, carrying, or transporting any such Person or Persons, shall and may be seized and detained by the Collector, Comptroller, Surveyor, or other Officer of the Customs, until such Penalty or Penalties shall be satisfied and paid, or until such Master or Person, or the owner or owners of such Ship or Vessel shall give good and sufficient bail, by recognizance before one of his Majesty's Justices of the Peace, for the payment of such penalty or penalties.

VII. *And be it further enacted*, That if any Person, within any part of the United Kingdom, or in any part of His Majesty's Dominions beyond the seas, shall, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any Ship or Vessel, with intent or in order that such Ship or Vessel shall be employed in the service of any Foreign Prince, State, or Potentate, or of any Foreign Colony, Province, or part of any Province or People, or if any Person or Persons exercising or assuming to exercise any powers of Government in or over any Foreign State, Colony, Province, or part of any Province or People, as a Transport or Store Ship, or with intent to cruise or commit hostilities against any Prince, State, or Potentate, or against the Subjects or Citizens of any Prince, State, or Potentate, or against the Persons exercising or assuming to exercise the powers of Government in any Colony, Province, or part of any Province or Country, or against the inhabitants of any Foreign Colony, Province, or part of any Province or Country, with whom His Majesty shall not then be at War; or shall, within the United Kingdom, or any of His Majesty's Dominions, or in any Settlement, Colony, Territory, Island, or Place belonging or subject to His Majesty, issue or deliver any Commission for any Ship or Vessel, to the intent that such Ship or Vessel shall be employed as aforesaid, every such Person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender shall be convicted; and every such Ship or Vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such Ship or Vessel, shall be forfeited, and it shall be lawful for any Officer of His Majesty's Customs or Excise, or any Officer of His Majesty's Navy, who is by Law empowered to make seizures, for any forfeiture incurred under any of the Laws of Customs, or Excise, or the Laws of

Trade and Navigation, to seize such Ships and Vessels aforesaid, and in such places and in such manner in which the Officers of His Majesty's Customs or Excise and the Officers of His Majesty's Navy are empowered respectively to make seizures under the Laws of Customs and Excise, or under the Laws of Trade and Navigation; and that every such Ship and Vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such Ship or Vessel, may be prosecuted and condemned in the like manner, and in such Courts as Ships or Vessels may be prosecuted and condemned for any breach of the Laws made for the protection of the Revenues of Customs and Excise, or of the Laws of Trade and Navigation.

VIII. *And be it further enacted,* That if any Person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's Dominions beyond the seas, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such Vessel, or by changing those on board for other guns, or by the addition of any equipment for War, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike Force of any Ship or Vessel of War, or Cruizer, or other armed Vessel, which at the time of her arrival in any part of the United Kingdom, or any of His Majesty's Dominions, was a Ship of War, Cruizer, or armed Vessel in the service of any Foreign Prince, State, or Potentate, or of any Person or Persons exercising or assuming to exercise any powers of Government in or over any Colony, Province, or part of any Province or People belonging to the Subjects of any such Prince, State, or Potentate, or to the inhabitants of any Colony, Province, or part of any Province or Country under the controul of any Person or Persons so exercising or assuming to exercise the powers of Government, every such Person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted.

IX. *And be it further enacted,* That offences made punishable by the Provisions of this Act, committed out of the United Kingdom, may be prosecuted and tried in His Majesty's Court of King's Bench at Westminster, and the Venue in such case laid at Westminster, in the County of Middlesex.

X. *And be it further enacted,* That any penalty or forfeiture inflicted by this Act, may be prosecuted, sued for, and recovered, by Action of Debt, Bill, Plaint, or information, in any of His Majesty's Courts of Record, at Westminster, or Dublin, or in the Court of Exchequer, or in the Court of Session in Scotland, in the name of His Majesty's Attorney General for England or Ireland, or His Majesty's Advocate for Scotland respectively, or in the name of any Person or Persons whatsoever; wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and in every Action or Suit the Person against whom judgment shall be given for any penalty or forfeiture under this Act shall pay double costs of suit; and every such Action or Suit shall and may be brought at any time within 12 months after the offence committed, and not afterwards; and one moiety of every penalty to be recoverel by virtue of this Act shall go and be applied to His Majesty, His Heirs or Successors,

and the other moiety to the use of such Person or Persons as shall first sue for the same, after deducting the charges of prosecution from the whole.

XI. *And be it further enacted,* That if any Action or Suit shall be commenced, either in Great Britain or elsewhere, against any Person or Persons for any thing done in pursuance of this Act, all rules and regulations, privileges and protections, as to maintaining or defending any Suit or Action, and pleading therein, or any costs thereon, in relation to any acts, matters, or things, done, or that may be done by any Officer of Customs or Excise, or by any Officer of His Majesty's Navy, under any Act of Parliament in force on or immediately before the passing of this Act, for the protection of the Revenues of Customs and Excise, or prevention of smuggling, shall apply and be in full force in any such Action or Suit as shall be brought for any thing done in pursuance of this Act, in as full and ample a manner to all intents and purposes as if the same privileges and protections were repeated and re-enacted in this Act.

XII. *Provided always, and be it further enacted,* That nothing in this Act contained shall extend, or be construed to extend, to subject to any penalty any Person who shall enter into the military service of any Prince, State, or Potentate in Asia, with leave or licence signified in the usual manner, from the Governor-General in Council, or Vice-President in Council, of Fort William in Bengal, or in conformity with any orders or regulations issued or sanctioned by such Governor-General or Vice-President in Council.

Act of the British Parliament, to regulate the conduct of Her Majesty's Subjects during the existence of Hostilities between Foreign States with which Her Majesty is at Peace (Foreign Enlistment). [33 & 34 *Vict., c.* 90.][1]

[9TH AUGUST, 1870.]

WHEREAS it is expedient to make provision for the regulation of the conduct of Her Majesty's subjects during the existence of hostilities between foreign States with which Her Majesty is at Peace:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as "The Foreign Enlistment Act, 1870."

2. This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.

3. This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the Governor thereof as soon as may be after he receives notice of this Act, and

[1] *Brit. and For. State Papers,* LX, 278.

shall come into operation in that British possession on the day of such proclamation, and the time at which this Act comes into operation in any place is, as respects such place, in this Act referred to as the commencement of this Act.

Illegal Enlistment.

4. If any person, without the licence of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign State at war with any foreign State at peace with Her Majesty, and in this Act referred to as a friendly State, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign State as aforesaid—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

5. If any person, without the licence of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

7. If the master or owner of any ship, without the licence of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this Act referred to as illegally enlisted persons; that is to say:

(1.) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the licence of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State:

(2.) Any person, being a British subject, who, without the licence of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any

commission or engagement in the military or naval service of any foreign State at war with a friendly State:

(3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State; such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue; that is to say:

(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour: and

(2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace: and

(3.) All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship.

Illegal Shipbuilding and Illegal Expeditions.

8. If any person within Her Majesty's dominions, without the licence of Her Majesty, does any of the following acts; that is to say:

(1.) Builds or agrees to build, or causes to be built any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State: or

(2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State: or

(3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State: or

(4.) Despatches, or causes or allows to be despatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue:

(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

(2.) The ship in respect of which any such offence is committed, and her equipment, shall be forfeited to Her Majesty: provided that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of

such building or equipping if he satisfies the conditions following (that is to say):

(1.) If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State:

(2.) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such ship shall not be despatched, delivered, or removed without the licence of Her Majesty until the termination of such war as aforesaid.

9. Where any ship is built by order of or on behalf of any foreign State when at war with a friendly State, or is delivered to or to the order of such foreign State, or any person who to the knowledge of the person building is an agent of such foreign State, or is paid for by such foreign State or such agent, and is employed in the military or naval service of such foreign State, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign State.

10. If any person within the dominions of Her Majesty, and without the licence of Her Majesty:

By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship which, at the time of her being within the dominions of Her Majesty, was a ship in the military or naval service of any foreign State at war with any friendly State.

Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

11. If any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty,

Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, the following consequences shall ensue:

(1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

(2.) All ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

12. Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender.

13. The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years.

Illegal Prize.

14. If, during the continuance of any war in which Her Majesty may be neutral, any ship, goods, or merchandize captured as prize of war within the territorial jurisdiction of Her Majesty, in violation of the neutrality of this realm, or captured by any ship which may have been built, equipped, commissioned, or despatched, or the force of which may have been augmented, contrary to the provisions of this Act, are brought within the limits of Her Majesty's dominions by the captor, or any agent of the captor, or by any person having come into possession thereof with knowledge that the same was prize of war so captured as aforesaid, it shall be lawful for the original owner of such prize, or his agent, or for any person authorised in that behalf by the Government of the foreign State to which such owner belongs, to make application to the Court of Admiralty for seizure and detention of such prize, and the Court shall, on due proof of the facts, order such prize to be restored.

Every such order shall be executed and carried into effect in the same manner, and subject to the same right of appeal, as in case of any order made in the exercise of the ordinary jurisdiction of such court; and in the meantime, and until a final order has been made on such application, the court shall have power to make all such provisional and other orders as to the care or custody of such captured ship, goods, or merchandise, and (if the same be of a perishable nature, or incurring risk of deterioration) for the sale thereof, and with respect to the deposit or investment of the proceeds of any such sale, as may be made by such court in the exercise of its ordinary jurisdiction.

General Provision.

15. For the purposes of this Act, a licence by Her Majesty shall be under the sign manual of Her Majesty, or be signified by Order in Council or by Proclamation of Her Majesty.

Legal Procedure.

16. Any offence against this Act shall, for all purposes of and incidental to the trial and punishment of any person guilty of any such offence, be deemed to have been committed, either in the place in which the offence was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offence may be.

17. Any offence against this Act may be described in any indictment or other document relating to such offence, in cases where the mode of trial requires such a description, as having been committed at the place where it was wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the county, city, or place in which the trial is held.

18. The following authorities, that is to say, in the United Kingdom any judge of a superior court, in any other place within the jurisdiction of any British court of justice, such court, or, if there are more courts than one, the court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term "warrant," direct that any offender charged with an offence against this Act shall

be removed to some other place in Her Majesty's dominions for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interests of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if his offence had been committed at such place.

Any warrant for the purposes of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant, and to deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall, during the time of his removal under any such warrant as aforesaid, be deemed to be in the legal custody of the person or persons empowered to remove him.

19. All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of this Act shall require the sanction of the Secretary of State or such chief executive authority as is in this Act mentioned, and shall be had in the Court of Admiralty, and not in any other court; and the Court of Admiralty shall, in addition to any power given to the court by this Act, have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

20. Where any offence against this Act has been committed by any person by reason whereof a ship, or ship and equipment, or arms and munitions of war, has or have become liable to forfeiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender in any court having jurisdiction of the offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture because proceedings are taken against the offender.

21. The following officers, that is to say—

(1.) Any officer of customs in the United Kingdom, subject nevertheless to any special or general instructions from the Commissioners of Customs or any officer of the Board of Trade, subject nevertheless to any special or general instructions from the Board of Trade;

(2.) Any officer of customs or public officer in any British possession, subject nevertheless to any special or general instructions from the governor of such possession;

(3.) Any commissioned officer on full pay in the military service of the Crown, subject nevertheless to any special or general instructions from his commanding officer;

(4.) Any commissioned officer on full pay in the naval service of the Crown, subject nevertheless to any special or general instructions from the Admiralty or his superior officer;

May seize or detain any ship liable to be seized or detained in pursuance of this Act, and such officers are in this Act referred to as the "local authority;" but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom

such court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

22. Any officer authorised to seize or detain any ship in respect of any offence against this Act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police, or any officers of Her Majesty's army or navy or marines, or any excise officers or officers of Customs, or any harbour-master or dock-master, or any officers having authority by law to make seizures of ships, and may put on board any ship so seized or detained any one or more of such officers to take charge of the same, and to enforce the provisions of this Act, and any officer seizing or detaining any ship under this Act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person, shall be freely and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

23. If the Secretary of State or the chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, such Secretary of State or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has been either condemned or released by process of law, or in manner hereinafter mentioned.

The owner of the ship so detained, or his agent, may apply to the Court of Admiralty for its release, and the court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, then the ship shall be detained till released by order of the Secretary of State or chief executive authority.

The court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the court that the ship shall not be employed contrary to this Act, notwithstanding that the applicant may have failed to establish to the satisfaction of the court that the ship was not and is not being built, commissioned or intended to be despatched contrary to this Act. The Secretary of State or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State or chief executive authority that the ship shall not be employed contrary to this Act, or may release the ship without such security if the Secretary of State or chief executive authority think fit so to release the same.

If the court be of opinion that there was not reasonable and probable cause

for the detention, and if no such cause appear in the course of the proceedings, the court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the court, and any amount so assessed shall be payable by the Commissioners of the Treasury out of any moneys legally applicable for that purpose. The Court of Admiralty shall also have power to make a like order for the indemnity of the owner, on the application of such owner to the court, in a summary way, in cases where the ship is released by the order of the Secretary of State or the chief executive authority, before any application is made by the owner or his agent to the court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is restored in pursuance of this section all proceedings for such condemnation shall be stayed; and where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non-commissioned ship despatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character has taken place in this country.

24. Where it is represented to any local authority, as defined by this Act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of such detention to the Secretary of State or chief executive authority.

Upon the receipt of such communication the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that such ship was built, commissioned, or equipped, or intended to be despatched in contravention of this Act, he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention upon application to the Court of Admiralty in a summary way in like manner as he is entitled to be indemnified where the Secretary of State having issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the court for such release.

25. The Secretary of State or the chief executive authority may, by warrant, empower any person to enter any dockyard or other place within Her Majesty's dominions and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign State at war with a friendly State, and to search such ship.

26. Any powers or jurisdiction by this Act given to the Secretary of State may be exercised by him throughout the dominions of Her Majesty, and such powers and jurisdiction may also be exercised by any of the following officers, in this Act referred to as the chief executive authority, within their respective jurisdictions; that is to say,

(1.) In Ireland by the Lord Lieutenant or other the chief governor or governors of Ireland for the time being, or the chief secretary to the Lord Lieutenant:

(2.) In Jersey by the Lieutenant Governor:

(3.) In Guernsey, Alderney, and Sark, and the dependent islands by the Lieutenant Governor:

(4.) In the Isle of Man by the Lieutenant Governor:

(5.) In any British possession by the Governor.

A copy of any warrant issued by a Secretary of State or by any officer authorised in pursuance of this Act to issue such warrant in Ireland, the Channel Islands, or the Isle of Man shall be laid before Parliament.

27. An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the court as a Court of Admiralty.

28. Subject to the provisions of this Act providing for the award of damages in certain cases in respect of the seizure or detention of a ship by the Court of Admiralty no damages shall be payable, and no officer or local authority shall be responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this Act.

29. The Secretary of State shall not, nor shall the chief executive authority, be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act, or be examinable as a witness, except at his own request, in any court of justice in respect of the circumstances which led to the issue of the warrant.

Interpretation Clause.

30. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

"Foreign state" includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people:

"Military service" shall include military telegraphy and any other employment whatever, in or in connexion with any military operation:

"Naval service" shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval

operation, and any employment whatever on board a ship of war, transport, store ship, privateer, or ship under letters of marque; and as respects a ship, include any user of a ship as a transport, store ship, privateer or ship under letters of marque:

"United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands:

"British possession" means any territory, colony, or place being part of Her Majesty's dominions, and not part of the United Kingdom, as defined by this Act:

"The Secretary of State" shall mean any one of Her Majesty's Principal Secretaries of State:

"The Governor" shall as respects India mean the Governor-General or the Governor of any presidency, and where a British possession consists of several constituent colonies, mean the Governor-General of the whole possession or the Governor of any of the constituent colonies, and as respects any other British possession it shall mean the officer for the time being administering the government of such possession; also any person acting for or in the capacity of a Governor shall be included under the term "Governor;"

"Court of Admiralty" shall mean the High Court of Admiralty of England or Ireland, the Court of Session of Scotland, or any Vice-Admiralty Court within Her Majesty's dominions:

"Ship" shall include any description of boat, vessel, floating battery, or floating craft; also any description of boat, vessel, or other craft, or battery, made to move either on the surface of or under water, or sometimes on the surface of and sometimes under water:

"Building" in relation to a ship shall include the doing any act towards or incidental to the construction of a ship, and all words having relation to building shall be construed accordingly:

"Equipping" in relation to a ship shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service, and all words relating to equipping shall be construed accordingly:

"Ship and equipment" shall include a ship and everything in or belonging to a ship:

"Master" shall include any person having the charge or command of a ship.

Repeal of Acts, and Saving Clauses.

31. From and after the commencement of this Act, an Act passed in the 59th year of the reign of His late Majesty King George III, chapter 69, intituled "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's licence," shall be repealed: Provided that such repeal shall not affect any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into operation, nor the institution of any investigation or legal proceeding, or any other remedy for enforcing any such penalty, forfeiture, or punishment as aforesaid.

32. Nothing in this Act contained shall subject to forfeiture any commissioned ship of any foreign State, or to give to any British court over or in respect of any ship entitled to recognition as a commissioned ship of any foreign State any jurisdiction which it would not have had if this Act had not passed.

33. Nothing in this Act contained shall extend or be construed to extend to subject to any penalty any person who enters into the military service of any Prince, State, or Potentate in Asia, with such leave or license as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of Princes, States, or Potentates in Asia.