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by Raymond Leslie Buell
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AMERICAN NEUTRALITY AND COLLECTIVE SECURITY

By RAYMOND LESLIE BUELL

PRESIDENT OF THE FOREIGN POLICY ASSOCIATION

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AMERICAN NEUTRALITY AND COLLECTIVE SECURITY

By RAYMOND LESLIE BUELL

INTRODUCTION

THE Italian-Ethiopian dispute has reached the stage where the application of sanctions is being actively discussed. Under Article 16 of the Covenant each League member is under the obligation to subject the aggressor state "to the severance of all trade or financial relations." Should Great Britain and France establish a naval blockade of Italy under Article 16, or should Great Britain close the Suez Canal, will the American government protest against such action as it protested against the alleged violations of American neutrality during the first three years of the World War? If League members decide to prohibit the export of raw materials to Italy, may Italy continue to buy such materials from the United States? If so, will the United States assist Italy to escape from the consequences of a League embargo? The purpose of this study is to provide a factual analysis which may assist the reader in answering some of these questions.

Under the Covenant League members agree to submit their disputes to the Council and not to go to war in case the Council makes a unanimous recommendation which one party to the dispute accepts. Should a League member resort to war in disregard of this obligation all other League members agree immediately to apply sanctions against it.

Instead of the old policy of neutrality, i.e., of treating all belligerents alike, the League Covenant frankly discriminates against an aggressor, i.e., a state which resorts to war in violation of its obligations.

When the League Covenant was framed, it was assumed that the United States would adhere to its provisions and thus agree to impose an embargo upon trade with an aggressor state. With the failure of the United States to ratify the Treaty of Versailles the League members naturally feared that should they apply sanctions against such a state they would become involved in disputes with the United States over neutral rights similar to those which arose between 1914 and 1917.

It was hoped in some circles that the conclusion of the Pact of Paris of August 27, 1928, in which the United States and nearly all League members renounced war as an instrument of national policy, would build a bridge between America and the League. But as no steps were taken to implement that Pact the old uncertainty continued to exist. As late as November, 1934, Mr. Stanley Baldwin, who is now Prime Minister of Great Britain, declared, "Never so long as I have any responsibility in governing the country will I sanction the British Navy being used for an armed blockade of any country in the world until I

know what the United States of America is going to do."¹

A determined effort to solve this problem was made by the Roosevelt administration in 1933. On May 22 of that year Ambassador Norman Davis advanced an important proposal to the Geneva Disarmament Conference—an offer which was contingent on conclusion of an agreement providing for a substantial and general reduction of military and naval armaments.

"We are willing," Mr. Davis declared, "to consult the other states in case of a threat to peace, with a view to averting conflict. Further than that, in the event that the states, in conference, determine that a state has been guilty of a breach of the peace in violation of its international obligations and take measures against the violator, then, if we concur in the judgment rendered as to the responsible and guilty party, we will refrain from any action tending to defeat such collective effort which the States may thus make to restore peace."² Under such a program the United States would consult with other states, presumably at Geneva, with a view to preventing a dispute culminating in war. Should the League Council decide that a given state had resorted to war in violation of its obligations and should the United States, acting independently, agree

with this decision, then under the Davis declaration the United States would not attempt to enforce its neutral rights so as to defeat the application of League sanctions against a state illegally going to war.

Although Ambassador Davis did not commit the United States to the application of an arms embargo against such a state, the Roosevelt administration subsequently indicated its desire that Congress should grant such authority to the President.

Meanwhile the revelations of the Senate Munitions Committee during 1934-35 aroused widespread apprehension as to the consequences of the exports of munitions both in peace time and war. Fears were expressed that, should a general war in Europe break out, the American economic and industrial system would again become swollen as a result of belligerent demands; that disputes over neutral rights would arise, paralleling the heated controversies between the United States and the allies on the one hand and Germany on the other between 1914 and 1917 and that, as a result, the United States would again drift into a world war. The general international tension, accentuated by the Italian-Ethiopian dispute, strengthened the belief that legislation should be adopted placing an embargo on the export of munitions and warning Americans that if they traveled in war zones it would be at their own risk. The Neutrality Act, hastily adopted by the American Congress in August, 1935, denies the power of the President to discriminate between belligerents. In some quarters this provision has been interpreted as tying the hands of the President and handicapping the efforts of the League in the present Italian-Ethiopian crisis.

¹ H. W. Burgess and R. L. Bunker, "American Neutrality in a Future War", *Foreign Policy Reports*, April 10, 1935, p. 30. See this report for the Burton and Capper resolutions authorizing the imposition of an arms embargo against an aggressor state and also for the Chase Arms resolution.

² Minutes of the General Commission, Records of the Conference for the Reduction and Limitation of Armaments. Series B. Vol. II. December 14, 1933-June 29, 1933, p. 475.

THE BASIS AND TYPES OF LEAGUE SANCTIONS

THE extent to which the United States may obstruct collective action under the Covenant can be determined only after a brief examination of certain articles of the Covenant. Should the League Council bring in a unanimous report

under paragraph 6 of Article 15 which Ethiopia accepts, Italy is under obligation not to go to war against Ethiopia. It follows that the object of Italian diplomacy should be to secure a division among members of the Council.

Should the Council fail to be unanimous, except for Italy and Ethiopia, then both Italy and Ethiopia would recover their freedom of action under the Covenant and Italy could go to war after a period of three months.¹

It is conceivable that, while rejecting recommendations of the Council under Article 15, Italy will commit no act of aggression against Ethiopia, at least in the immediate future. Under such a policy a diplomatic war of attrition might take place in which Italy would attempt to postpone any action on the part of the League in the hope that popular support for such action may diminish with the progress of time. Confronted by such a policy the League Council could not recommend the application of League sanctions under Article 16 but it could suggest the adoption of preventive measures under Article 11 which declares that in the event of any "threat of war" the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. It is believed that under this article the Council could recommend the imposition of an arms embargo² on one or both parties. There is no agreement, however, whether Italy may veto action under Article 11.

Before going to the length of recommending the imposition of sanctions, the Council may wish to refer the dispute to the Assembly. Either Ethiopia or Italy may also refer the dispute to this larger body directly.

The resignation of Italy from the League, following the example of Germany or Japan, would not effect the question whether sanctions might be applied. Two years notice is necessary before resignation takes effect, and withdrawal may take place provided that all the international obligations of the state wishing to resign "shall have been fulfilled at the time of its withdrawal."³

Assuming that Italy actually resorts to force against Ethiopia, three main problems arise

under Article 16: 1) When must sanctions actually be applied? 2) Whose duty is it to decide when sanctions are to be applied? 3) What types of sanctions should be applied?⁴

When Must Sanctions be Applied?

Should the League Council present a unanimous report and should Ethiopia accept this report, Italy cannot legally "go to war" against Ethiopia. If Italy employs force against Ethiopia without admitting that a state of war has come into existence do the obligations of Article 16 apply? The De Brouckère report attempted to give an answer to this question by saying that in the absence of a declaration of war a government could be regarded as having resorted to war on two conditions.

1. One country must have committed an act of war against another.

2. The latter country must have admitted the existence of a state of war, and be legally justified in making such admission. The report added that the decision on both of these questions would be a difficult one and for this reason the question as to who may decide whether the necessity for sanctions has arisen is important.⁵

Whose Duty is it to Decide?

THE League Council as such has no power to decide whether Italy has violated its obligations and is liable to sanctions. As the Rutgers

¹ The most authoritative interpretation of Article 16 is the Assembly resolution of October 4, 1921, printed as an appendix to this report. This resolution constitutes "rules for guidance" for League members until certain amendments to Article 16 enter into force. Article 16 has also been the object of study by the De Brouckère report, by a memorandum of the Secretary-General of May 17, 1927, relative to the legal position arising from the enforcement in time of peace of measures of economic pressure and by the Rutgers memorandum of February 8, 1928. With the exception of the Rutgers memorandum, these documents are conveniently assembled in "Reports and Resolutions on the Subject of Article 16 of the Covenant" A.14. 1927.V. In some quarters doubt as to the validity of the 1921 Resolution has been expressed.

² A.14.1927, p. 69.

³ Cf. Article 12, Appendix I.

⁴ Great Britain imposed such an embargo equally upon Italy and Ethiopia in July.

⁵ There is also a question whether a state violating Article 15 could veto action under Article 16 by virtue of the unanimity rule. Any difficulties rising out of this doubt could be removed by expelling the state concerned under paragraph 4 of Article 16.

memorandum of 1928 declared, "it is not the Council which has the last word on the measures to be taken in execution of Article 16." Here there are really two questions involved. The first is the determination whether a state has "resorted to war" illegally. The second is the type of sanctions to be applied. In answer to both of these questions the Assembly in its resolution of October, 1921, declared, "It is the duty of each member of the League to decide for itself whether a breach of the Covenant has been committed. The fulfillment of their duties under Article 16 is required from members of the League by the express terms of the Covenant, and they cannot neglect them without breach of their treaty obligations."¹

Each League member must, therefore, decide whether a given act of force constitutes an act of war in violation of the Covenant.²

But, as the 1921 Assembly declared, the League Council should express an opinion whether a state has been guilty of a breach of the Covenant and recommend the date on which the enforcement of economic pressure is to be begun. This opinion should be sent immediately to all League members inviting them to take action.³

¹ The De Bruckere report stated, "It should not be inferred that each state can act on its own discretion and take any arbitrary decision whatsoever without having to fear any other sanction than that of public opinion. If, in an obvious case of aggression, a state refused to apply the prescribed sanctions to the guilty party, it would unquestionably be violating the Covenant and might have the provisions of the last paragraph of Article 16 applied to it. . . ." A.14.1927, p. 69.

² Professor Lauterpacht writes, "Members of the League are entitled to assume 'resort to war' in regard to hostilities, not accompanied by an *animus belligerendi*, which are taking place between other members of the League. They may do it when circumstances, of which they alone are judges, seem to them to warrant such a conclusion. They need not do it if they are not of the opinion that circumstances justify exercise of discretion in this direction." "Resort to war" and the interpretation of the Covenant During the Manchurian Dispute, *The American Journal of International Law*, 1934, p. 43. Cf. also Lt. L. Buell, "Weakness of Peace Machinery", *Foreign Policy Reports*, September 14, 1932.

³ The Report of the Secretary-General on the legal position of measures taken under Article 16 states, "It is assumed that any application of the article [16] would in fact be preceded and controlled by recommendations of the Council and that it would be a misapplication of the article, which would not be tolerated, if a member or group of members should

What Type of Sanctions Should be Applied?

ALTHOUGH Article 16 envisages the complete economic and financial isolation of the aggressor state and even military action against the aggressor, authoritative interpretations of this Article make it clear that in applying sanctions (a) the creation of a state of war with the aggressor should be avoided; (b) consideration should be given to the geographical position of each League member.

Should League members determine that Italy has "resorted to war" against Ethiopia, such a decision would not mean necessarily that Italy has resorted to war with all League members. The 1921 Assembly declared "The unilateral action of the defaulting state cannot create a state of war; it merely entitles the other members of the League to resort to acts of war or to declare themselves in a state of war with the Covenant-breaking state; but it is in accordance with the spirit of the Covenant that the League of Nations should attempt, at least at the outset, to avoid war and to restore peace by economic pressure."¹

The 1921 Assembly contemplated that the first sanction to be applied should be the interruption of diplomatic relations, limited in the first instance to the recall of chiefs of mission. "In case of prolonged application of economic pressure, measures of increasing stringency may be taken;" but the cutting off of the food supplies of the civilian population of the defaulting state should be applied only as a last resort. Under special circumstances "some members of the League might be entrusted with establishing an effective blockade of the seaboard of the Covenant-breaking state."

Another sanction was imposed in the Sino-Japanese dispute when the Assembly laid down the non-recognition doctrine. In its resolution of March 11, 1932, it declared that it was incumbent upon members of the League, "not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations."

claim to act under it on their own account in defiance of the general sentiment of the League.

¹ Cf., however, the De Bruckere report, A.14.1927 p. 71.

Finally, the question of sanctions was studied under the auspices of the Committee of Thirteen appointed by the League Council as a result of the resolution of April 17, 1935. This resolution, after condemning the German military law of March 16, requested a Committee to propose "measures to render the Covenant more effective in the organization of collective security and to define in particular the economic and financial measures which might be applied, should in the future a State, whether a member of the League of Nations or not, endanger peace by the unilateral repudiation of its "international engagements".¹ This committee invited a sub-committee to study "whether a selection of measures less comprehensive than those prescribed under Article 16 of the Covenant and not such as to disturb the whole economic life of the country concerned would be found which could effectively be applied in the circumstances postulated with a view to inducing that country to modify its course of action". As examples, the following might be studied:

1. The withholding from the country concerned of supplies of a limited number of key products required for the production of arms and warlike preparations;
2. The withholding of any other special classes of supplies (other than food supplies essential for the subsistence of the civilian population);
3. The interruption of the export trade of the country concerned or of any special part of it;
4. Measures of financial pressure, such as the withholding of credit facilities.²

At its second session held in July, 1935, the Committee of Thirteen asked its president to appoint, in consultation with the Secretary-General, competent experts to draw up a list of "key products" whose importation into a country could be prohibited without serious trouble resulting in the economic life of that country. The work of such experts must be finished by November 30.

The fact that the execution of sanctions may fall with greater severity upon certain League members than others was recognized by the

1921 Assembly when, in partial response to an appeal from the Scandinavian states, it declared that, "it may be necessary to recommend the execution of special measures by certain states, and if it is thought desirable to postpone, wholly or partially, in the case of certain states, the effective application of the economic sanctions laid down in Article 16. Such postponement shall not be permitted except in so far as it is desirable for the success of the common plan of action, or reduces to a minimum the losses and embarrassments which may be entailed in the case of certain members of the League by the application of the sanctions."

In reply to a request from the German government for an interpretation of Article 16 of the Covenant, made at Locarno, representatives of Belgium, France, Great Britain, Czechoslovakia, Poland and Italy handed a collective note to the German government on December 1, 1925, which stated:

"We are not in a position to speak in the name of the League, but in view of the discussions which have already taken place in the Assembly and in the commissions of the League of Nations, and after the explanations which have been exchanged between ourselves, we do not hesitate to inform you of the interpretation which, in so far as we are concerned, we place upon Article 16.

"In accordance with that interpretation the obligations resulting from the said article on the Members of the League must be understood to mean that each state member of the League is bound to cooperate loyally and effectively in support of the Covenant and in resistance to any act of aggression to an extent which is commensurate with its military situation and takes its geographical position into account."³

Summary of Article 16

The jurisprudence of Article 16 may therefore be summarized as follows:

1. Each League member decides whether the obligations of Article 16 have entered into effect, but it is hoped that the League Council will have first expressed an opinion whether a breach of the Covenant has taken place and recommended the type of sanctions to be applied.

¹ *Official Journal*, May, 1935, p. 551.

² Report of the sub-committee on Economic and Financial Measures, C.O.S.C./7, 1935. Presumably such sanctions would be applied under Article 11 as Article 16 is applicable only in case a state illegally resorts to war.

³ *World Peace Foundation Pamphlets*, Vol. IX, 1926, p. 73.

II. The application of sanctions does not necessarily create a state of war between League members and the aggressor state, and the Council will presumably recommend the application of that type of sanctions which will reduce the possibility of a general state of war coming into existence.

III. In advancing recommendations in regard to sanctions the Council may take into consideration the special geographic position and the interests of certain states.

IV. In the light of the development of Article 16 and of present discussions, the following sanctions might be progressively applied should Italy illegally go to war against Ethiopia:

1. The withdrawal of diplomatic representatives of League members from Rome.

2. The non-recognition of any situation, treaty or agreement, established in violation of the Covenant.

3. The prohibition on the part of League members of the export of munitions, raw materials, loans or credits to Italy.

4. Refusal of League members to accept imports from Italy.

5. A naval blockade on the part of certain League members of Italy proper, or of the Italian East African colonies.

6. The closing of the Suez Canal to troops and ammunition destined for the Italian forces in East Africa.¹

In considering what type of sanctions to apply the League Council will naturally consider the position of states which do not belong to the League such as the United States.

1. May collective measures interfere with the rights of non-members of the League and will such states actively protest against such interference?

2. May an aggressor state escape from the consequences of League sanctions by virtue of the policy of non-League members such as the United States?

An answer to this question can be given only after summarizing the history and analysing the meaning of the Neutrality Act of 1935.

¹ The question of military sanctions is excluded from this discussion.

THE AMERICAN NEUTRALITY ACT OF AUGUST, 1935

In an effort to avoid many of the difficulties which arose during the World War and also to remove the danger of a conflict with League members, the State Department, it was revealed in December, 1934, had been making a detailed study of the whole question of American neutrality during the past year.

In April, 1935, the Special Munitions Commission of the Senate announced that it was considering legislation to control or prohibit the export of munitions or contraband in time of war. Altogether during the 1935 session of Congress, twelve separate neutrality bills were referred to the House Committee on Foreign Affairs, while in the Senate a number of measures were introduced asking for the following:

1. The imposition of an embargo on arms, ammunition and other raw materials to all belligerents upon the outbreak of war.¹

2. The imposition of a similar embargo on public and private loans to belligerents for the purchase of contraband or credits.¹

3. The refusal of passports to American citizens travelling in war zones.²

4. The announcement of a policy to the effect that American exporters would ship at their own risk all articles or goods declared to be contraband by the belligerents in time of war.³

In the view of the State Department, these sweeping and mandatory prohibitions involving the surrender of neutral rights were unnecessarily drastic. In its opinion the President should be given discretionary power in regard

¹ S. J. Res. 120.

¹ S. J. Res. 100.

² S. J. Res. 99.

³ S. J. Res. 120.

to these questions. In an effort to reach a compromise between the desire for so-called mandatory legislation on the part of Senators and the executive wish for discretionary power, a sub-committee of the Committee on Foreign Relations of the Senate, together with Senators Clark and Nye of the Munitions Committee, conferred with State Department officials including Ambassador Norman Davis, during the month of July.

On August 17 Congressman S. D. McReynolds of the Foreign Affairs Committee of the House introduced a neutrality bill reflecting the point of view of the Committee and the State Department. He announced, however, that this bill would not be brought up for action at the present session of Congress but would be merely placed on the calendar as a basis for legislative discussion next term.¹ The bill provided that "upon the outbreak of war or during the progress of war between two or more foreign states, or whenever the President finds that conditions existing in any part of the world are such that the shipment of arms, ammunition, and implements of war from the United States may involve the United States in international complications or contribute to armed conflict, and when in either such case the President finds that the imposition of restrictions on the export of such war material from the United States will serve to maintain peace between the United States and foreign nations or protect the commercial interests of the United States and its citizens or to promote the security of the United States and shall so proclaim, it shall thereafter be unlawful to export arms, ammunition or implements of war..." The bill also contained certain prohibitions against the issuance of loans to belligerent governments, the carrying of munitions by American vessels, the use of American ports as belligerent bases of supplies, the use of the American flag on belligerent vessels, travel by American citizens on belligerent vessels except at their own risk and the entrance of submarines into American waters.

Mr. McReynolds also introduced a bill providing for the registration of munition

manufacture, the licensing of munition exports and the creation of a national munitions control board, composed of Cabinet officers. He asked immediate action on this bill.²

Disturbed at the apparent prospect of war in Europe arising out of the Italian-Ethiopian dispute, and the disposition of the House to postpone neutrality legislation until the next session, Senators Bennett C. Clark and Gerald P. Nye² publicly addressed a letter to Senator Key Pittman, Chairman of the Foreign Relations Committee, in which they asked the Committee to press for the immediate enactment of a comprehensive neutrality policy. Should Congress delay in defining such a policy until after the outbreak of war, they declared,

"It will be impossible for Congress to form a policy later without incurring representations that such a new policy involved the taking of sides against one particular belligerent... As your committee is aware every embargo after a war is declared affects belligerents unequally."

After quoting a hitherto unpublished letter written by former Secretary of State Lansing to President Wilson, the Senators said,

"With these official statements before us, it is an inescapable conclusion that the policy of the United States must be fixed before the declaration of a European war or not fixed at all. In that event, we face the danger of drifting into another European war as we did before."

On August 20 the *New York Times* published a dispatch from its Paris correspondent, Mr. H. L. Matthews, stating that, as a result of the collapse of the Tripartite negotiations in Paris, "there is good reason to believe that the United States will be subjected to one of the most intense campaigns of persuasion that has been experienced across the Atlantic since the days preceding the United States' entrance into the World War."

"This friendly but powerful pressure will come from Great Britain working through diplomatic, political and press channels in an effort to win the United States to her side in the coming conflict over Ethiopia."

¹ *New York Times*, August 17, 1935. H. J. 386.

² *New York Times*, August 18, 1935.

³ *New York Times*, August 19, 1935.

The correspondent added that the application of League sanctions against Italy would be valueless without the support of the United States. "Official French sources believe there is at least a tacit understanding, and in case hostilities are precipitated, London and Washington will consider the best course to take."¹

On August 20 Senator Bone of the Special Munitions Committee² and Senator Nye suddenly threatened to filibuster unless Congress should adopt neutrality legislation before the date of adjournment which had been fixed for August 24th. In his speech before the Senate Mr. Bone declared,

"I have had assurances—how reliable they are or how reliable is the source from which they come, I know not—that there have been intimations that this country of ours has 'Commitments'—'Commitments', forsooth!—which may, in the event of war, again bring the tread of marching feet in our streets, and once more compel us to listen to the martial voice of the bugles. I wonder who, in God's name, in this country, under the American flag and under our form of government, has a right to make 'commitments' which may take the life of my boy or the boys of the other millions of fathers in this country. Who, in the city of Washington, has the unholy power under our Constitution to put the boys of America in uniform, and, if need be, and against their will, send them across the seas to die in some foreign land? I wonder how we could ever answer to American mothers for such a crime. In 1917 we sent thousands of them to their deaths on foreign soil. What sort of an answer will there be in the hearts of American mothers to the echoes of the bugles when they again sound the horrible call to arms?"

Senator Bone also declared,

"Everyone has come to recognize that the Great War was utter social insanity, and was a crazy war, and we had no business in it at all. Oh, yes; we heard a great deal of talk then about the 'freedom of the seas'. Whose seas? The seas upon which were being shipped munitions of war which served

only to enrich a comparatively small group of men, and whose enrichment cost this country a staggering price. The enrichment of this group brought down upon our heads the terrible economic problems with which we wrestle right here today and we find it well nigh impossible to solve some of them. Freedom of the seas! Out with such nonsense! For the sake of this fantastic theory that could at best serve the few and not the many, thousands have died, and our hospitals are filled with insane boys who had a right, under God's providence, to live their lives in peace. What a distortion! . . . If gentlemen of the vicious disposition of certain European dictators today are able, like another blind and desperate Samson, to lay brawny arms around the pillars of the social temple, and pull it down around our ears, there is little hope of preserving this segment of our western civilization which we call the United States of America. If this is not a challenge to the United States Senate, then a challenge cannot be formulated that would make the slightest impression on the mentality of Senators. . . . National interests! In God's name, whose interests were they? They were the 'interests' of the business profiteers and bankers. They were not the 'interests' of those boys who are now in the insane asylums as a result of war hazards. They were not the 'interests' of the boys whose broken bodies lie in French soil. They were in the potential interest, if not the direct interest, of the 23,000 new millionaires whose fortunes were soon to be coined from widows' and orphans' tears."¹

Mr. Vandenberg, potential Republican presidential nominee in 1936, declared that it was the absence of a specific neutrality policy, after 1914, which "absolutely robbed us of any chance to direct our own subsequent destiny." He later added that the proposed embargo legislation would "draw 90% of the hazards out of the situation as far as the United States is concerned."

Senator Bennett Clark declared that during the war "in order for us to continue our trade in munitions and other supplies to belligerent nations, it became necessary for us to loan the nations the money with which to buy supplies, and the loans we made then were never paid back," and that "as a result of those loans and the policy then inaugurated it later became necessary for us to expend billions of dollars in the prosecution of a war of our own..."

¹ On the previous day the *New York Times* (August 19, 1935) had published a Paris dispatch declaring that Captain Anthony Eden, in Paris, had made an important declaration to Mr. Theodore Marriner, Jr., United States Chargé d'Affaires, stating that, should hostilities occur, the British Government would ask the United States to consult "immediately as to the best course to be taken." Both Mr. Marriner and Captain Eden denied subsequently that any such statement had been made. *New York Times*, August 20, 1935.

² *New York Times*, August 21, 1935.

¹ *Congressional Record*, August 20, 1935, vol. 79, No. 178, p. 14243 ff.

Senator Ashurst declared,

"The world is now sitting by watching not only the planting but the watering and the cultivating of the seeds of a world war. What is the world doing to sterilize that potential world war? Nothing... nothing... If we pass this resolution let us pledge ourselves and our consciences that we shall live up to it. But what will be the temptations? As soon as war begins wheat may go to \$2 a bushel. Let us agree that not a bushel of wheat shall be exported. As soon as war begins copper may go up to 30 cents a pound. As soon as war is declared cotton may go to 40 cents a pound, but let us agree not to export a pound."

The two Senators who ventured to disagree with Senator Bone's position were Senator Tydings and Senator Hamilton Lewis. The former expressed the belief that the philosophy of the neutrality bill really meant that the United States should have no shipping whatsoever in another world war. He also declared that while everyone would be for the resolution now, the situation would change when the price of cotton increased as a result of belligerent demands. The mandatory embargo was then "apt to degenerate into a set of New Year's resolutions, which will be broken about as soon as war is declared". Mr. Tydings declared that the way to prevent war was through cooperation and not through isolation. Senator Hamilton Lewis of Illinois introduced a resolution to the effect that the whole subject of neutrality should be left to the President.

On the day that Senators Bone and Nye threatened to filibuster—August 20—the Senate Foreign Relations Committee voted to report Senate Joint Resolution 173 as a substitute for the various neutrality measures which had been referred to the Committee. On the 21st Senator Pittman asked unanimous consent to lay aside the Guffey Coal Bill to consider the neutrality proposals.

Unlike the McReynolds Bill, the Pittman Bill provided for a mandatory arms embargo on both belligerents "upon the outbreak or during the progress of war".¹

Mr. Pittman explained that the resolution did not deal with the questions of war credits

because it was too intricate to be dealt with at this session. Moreover, were the embargo provisions applied, there would be little reason for a belligerent to borrow money from the United States. On the part of the great powers in default on the inter-allied debt, such borrowing was also prohibited by the Johnson Act.² The Pittman Resolution was adopted by acclamation after a few minutes' debate.

Upon being informed of the Senate's action, Chairman McReynolds of the House Committee declared "One thing is sure. The Committee will never report out the Senate Bill. I am opposed to the mandatory embargo features." He declared that the President was also opposed to such provisions.³

Nevertheless a delegation of Congressmen including six Democrats, six Republicans and one Progressive now waited upon the President informing him that a majority of the House favored the Pittman Resolution and would adopt it if the Rules Committee and Chairman McReynolds did not stand in the way. Threatened by a filibuster in the House, President Roosevelt called in conference Secretary Hull, Assistant Secretary Moore, and Mr. McReynolds on the evening of August 21. Following this conference, Mr. McReynolds declared that the President had made certain suggestions and that neutrality legislation would be passed this session.⁴

On August 22 the House Committee on Foreign Affairs, by a vote of 15 to 4⁴, voted out a compromise measure, which limited the provisions in regard to a mandatory embargo until February 29, 1936, or two months after the next session of Congress opens. The President finally agreed to accept this compromise apparently in the belief that it would be a grave political mistake not to adopt in the present session some form of neutrality legislation in view of the widespread desire to avoid "entanglement" in the European situation. While the mandatory embargo was unpalatable it would be accepted as a pro-

¹ *Ibid.*, p. 143.

² *New York Times*, August 22, 1935.

³ *New York Times*, August 22, 1935.

⁴ Four Republicans wished the embargo to be permanent.

¹ *Congressional Record*, No. 154, August 21, 1935, p. 14393.

visional measure on the understanding that the whole question would be reopened when Congress reconvened.

In the debate on the amended bill in the House on August 23, the fear was expressed that war in Europe was about to occur. Congressman Maverick of Texas declared,

"Looking at the newspapers today, we see a situation which is one of the most serious that the world has ever known. It is similar to the World War, probably worse."

After quoting Mussolini's statement that Italy is on the march and cannot be stopped by anybody, Mr. Maverick added,

"Caesar talk. And some one may think that I, as an old soldier, think this 'march' talk is all glory, flags, and bugles. Like hell! I say that literally. All I can think of is blood, guts, rotting, stinking bodies, mud . . . We should not delegate the power to the President of the United States. If the President is delegated optional power to declare embargoes, why he is, in effect, given the power to declare war."

Other speakers declared that to grant such power would make the President a dictator.¹

Congressman Ludlow declared,

"With the world in turmoil, due to the activities of a dictator who seems to be hellbent on war, and with war already brooding over Europe, Africa and the Orient, it is of the most extreme and pressing necessity that we shall do something to keep America from becoming involved . . . America can best fulfil its magnificent destiny by maintaining friendly relations with all nations, cultivating the spiritual values and walking upright in the sight of the Lord rather than by mixing in the brawls of other nations where wars have been a pastime for a thousand years."

The only voice in the House to question these arguments was that of Congressman Wadsworth who declared that the proposed legislation presented "an open invitation to the great and the powerful to attack the weak, knowing that the weak is forbidden by the law of the nations, including the law of the United States, to purchase a weapon with which to defend itself." After thirty minutes debate, the House adopted Senate Joint Resolution 173 as amended by the House Committee by acclamation.

¹ *Congressional Record*, August 23, 1935, No. 175, p. 14647.

In the Senate on August 24, the action of the House was confirmed after a debate in which Senator LaFollette attempted to censure certain remarks of Senator Pope in London.² During this debate, Senator Robinson, Democratic Floor Leader, declared,

"There is, in my humble opinion, no spot on this broad continent, no place under the Stars and Stripes, where there is any substantial measure of sympathy in this nation becoming involved in a European conflict . . . If any European nation is proceeding on the theory that this Government or its resources, either of man power or wealth, will contribute to the adjustment of European controversies, other than by peaceful suggestion or action, that nation is being misled."

Senator Hiram Johnson, while minimizing the prospect of being drawn into war or the usefulness of neutrality legislation declared,

"There was a time when propaganda would take us into war. There was a time when pacifist organizations, and others who were dealing with subjects of which they had little or no knowledge, might have led us blundering into a strife which was no part of our country's will. But that day, thank God, is past! . . . After seventeen years of suffering in this regard . . . it is delightful now finally to find justification of the men, very few, who stood firmly years ago and through all the long period since have stood firmly for maintaining America in America's security and in America's pristine glory and keeping out of every foreign entanglement and every European war. . . The joint resolution makes plain the policy of the United States of America to keep out of European controversies, European wars, and European difficulties. So today is the triumph of the so-called 'isolationists', and today marks the downfall, although we may not know it, of the internationalist . . . who would take us into European troubles and into European difficulties and foreign organizations dealing with foreign controversies."²

¹ In an interview with the International News Service in London Senator Pope expressed the belief that if a new war should develop along the lines of the World War the United States "will be pulled in again". He said that he, nevertheless, favored the neutrality bill but urged the United States to use its moral influence to avert the threatened war. The La Follette resolution, giving notice that no Senator had been authorized to act as its representative abroad, was referred to the Senate Committee on Foreign Relations by a vote of 47 to 26.

² *Congressional Record*, August 24, 1935, No. 177, p. 14905, 14908.

Senator Connally, while agreeing to vote for the measure as a temporary device, said,

"By this measure . . . we are judging in advance every international clash or conflict which may occur anywhere on earth. . . Is it an expression of neutrality to say to two warring nations, one of which has ambitions for territorial conquest, the other unprepared, the other weak, the other trying to pursue its own destiny—is it neutral to say to those nations 'we shall give arms to neither of you', thereby insuring the triumph of the prepared nation, the covetous nation, the ambitious nation, the nation which seeks by force of arms to impose its will on a weaker and defenseless nation. . . That is a form of declaration which announces that the United States will take the side of the strong and the powerful against the weak, unprepared, and the defenseless.

". . . The surest way to involve this country in war is to let the rest of the world believe that we will fight under no circumstances at all. . . It is the President's function to conduct our international affairs. The history of the world demonstrates that never, in all the long years of strife and struggle, has a parliamentary conduct of international affairs been successful. . . I cannot . . . subscribe to the doctrine that we should in advance, by statute, put ourselves in a plaster cast internationally, and give up whatever international influence America possesses toward peace and toward the pacification of disputes throughout all the world."

The Pittman resolution, as amended by the House, was then adopted by a vote of 77-2, Senators Bankhead and Gorry, both Democrats, voting in the negative.

The Neutrality Act of August, 1935, provides for:

1. A supposedly mandatory embargo upon the export of arms, munitions, and implements of warfare to all belligerents—a provision which expires February 29, 1936.
2. A system of registration of munitions manufacture and of licensing of munitions exports under supervision of a National Munitions Board, composed of the Secretary of State, Secretary of Treasury, Secretary of War, Secretary of the Navy, and Secretary of Commerce.¹

¹ The original Pittman Resolution provided also that the Chairman of the Foreign Relations Committee of the Senate, and the Chairman of the Committee on Foreign Affairs in the House should be members of this Board, but this proposal to share executive power with the legislative representatives was not adopted in the final law. Inasmuch as these munitions provisions relate only to the internal enforcement of the Neutrality Act, they will not be discussed here.

3. Delegation of power to the President:

- (a) to withhold protection from American citizens travelling on any vessel of any belligerent nation "whenever, during any war in which the United States is neutral, the President shall find that the maintenance of peace between the United States and foreign nations, or the protection of the lives of the citizens of the United States, or the protection of the commercial interests of the United States or its citizens, or the security of the United States, requires that the American citizen should refrain from traveling as passenger" on such vessels;
- (b) to prohibit the entrance of any foreign submarine during war into American ports or territorial waters except under conditions prescribed by the President;
- (c) to require bond of vessels suspected of leaving an American port for the purpose of delivering up to any belligerent warship or supply ship, men or fuel, munitions or other supplies.

On August 31 President Roosevelt signed the Neutrality bill providing for a supposedly mandatory embargo until February 29, 1936, at the same time making the following statement:

"I have given my approval to the Senate Joint Resolution 173—the neutrality legislation which passed the Congress last week. I have approved this joint resolution because it is intended as an expression of the fixed desire of the Government and the people of the United States to avoid any action which might involve us in war. The purpose is wholly excellent and this joint resolution will to a considerable degree serve that end."

He added that the provision for an arms embargo terminated at the end of February, 1936. "This section requires further and more complete consideration between now and that date. Here again the objective is wholly good. It is the policy of this government to avoid being drawn into wars between other nations, but it is a fact that no Congress and no Executive can foresee all possible future situations. History is filled with unforeseeable situations that call for some flexibility of action. It is conceivable that situations may arise in which the wholly inflexible provisions of Section 1 of

this Act might have exactly the opposite effect from that which was intended. In other words, the inflexible provisions might drag us into war instead of keeping us out. The policy of the Government is definitely committed to the maintenance of peace and the avoidance of any entanglements which would lead us into conflict. At the same time it is the policy of the Government by every peaceful means and without

entanglement to cooperate with other similarly minded governments to promote peace.

"In several aspects further careful consideration of neutrality needs is most desirable and there can well be an expansion to include provisions dealing with other important aspects of our neutrality policy not dealt with in this temporary measure."¹

¹ Dept. of State. Press Release, August 31, 1935.

THE NEUTRALITY ACT AND LEAGUE SANCTIONS

In considering the possible relationship of the United States to League of Nations sanctions one must bear in mind not only the provisions of the Neutrality Act of 1935 but the general powers of the President of the United States in the conduct of foreign policy. In this field the President may exercise a far greater degree of discretion, both in regard to means and ends, than in the field of domestic policy. As President Jefferson declared, "The transaction of business with foreign nations is executive altogether". The President controls the movement of the army and navy and has the power to prosecute the claims of American citizens in any part of the world. Whether or not he exercises his vast powers is a matter of executive discretion. He is subject to the veto of the Senate in regard to treaties, and of Congress in regard to the declaration of war; and he has no powers in regard to the control of exports and imports except as may be delegated to him by statute.¹

Taking into consideration the general powers of the President in regard to foreign policy, together with the express provisions of the Neutrality Act of 1935, we may now enquire as to the extent to which the United States may cooperate in the application of League sanctions.

The Withdrawal of Diplomatic Representatives of League Members from Rome

SHOULD League members decide to withdraw their chiefs of diplomatic mission from Rome,

¹ Cf. E. S. Corwin, *The President's Control of Foreign Relations*, (Princeton) 1915; Quincy Wright, *The Control of American Foreign Relations* (New York), 1922, p. 149.

the President of the United States could cooperate by similarly withdrawing the American ambassador. His constitutional powers in this respect are unquestioned. He would have ample justification for exercising these powers should he reach the conclusion that Italy had violated its obligations to the United States under the Pact of Paris, August 27 1928.

The Non-Recognition Doctrine

Should League members decide to apply the non-recognition doctrine to the Italian-Ethiopian dispute, it is logical to expect the United States to do likewise. On January 7, 1932, more than two months before the Assembly resolution above quoted, the State Department dispatched a note to China and Japan declaring that it "cannot admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement . . . which may impair the treaty rights of the United States . . . and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris."

An Embargo on Munitions, Raw Materials, Loans or Credits to Italy

Under the Neutrality Act of 1935, the President may cooperate with a League embargo to the extent of prohibiting the export of "arms, ammunition, and implements of war" to belligerents, provided such embargo is imposed upon all belligerents without discrimination.

Such embargo, however, can be imposed only upon the "outbreak of war". Should League members decide that Italy has resorted to war against Ethiopia in violation of its obligations, the President of the United States might equally declare that an outbreak of war had occurred and that an embargo should be applied; or he might act in independence of the League.

While the President has the undoubted right to prohibit the export of munitions it is not clear whether this right extends to raw materials such as cotton and scrap iron which are necessary to the manufacture of munitions. According to Senator Pittman, and to a statement attributed to Secretary Hull, the Neutrality Act does not cover such raw materials. The official interpretation of the meaning of the Act has not yet been given and there is reason to believe that the term "implements of war" may properly be construed to include raw materials necessary for the manufacture of arms and ammunition.¹

Neither does the Act authorize the President to prohibit the issuance of loans or short term credits to a belligerent government. Nevertheless, the Johnson Act of April 13, 1934, prohibits the sale of any security in the United States by a government in default in the payment of its obligations, to the Government of the United States.²

In as much as the Italian Government is in default on the inter-allied debt, this Act prohibits it from selling securities within the United States. The Act does not, however, apply to obtaining short term credits.³

¹ Cf. p. 18.

² For the full text Cf. APPENDIX IV.

³ According to the *New York Times* of August 25, 1935, Italy has been buying "far more extensively in the United States than was generally supposed. . . . Large quantities of gasoline and oil, steel bullets for use in the production of shell cases, copper, iron and steel scrap, cotton, trucks, machine tools and a variety of machine stuffs have been purchased." While the majority of orders are on a cash basis some orders are being negotiated on credit. Some exporters said that Italian representatives promised valuable concessions in the way of special marketing arrangements for gasoline and other products in the Italian home market in return for credits. The report declared that the majority of companies were reluctant to discuss their contracts with Italy and that many contracts for American goods were being handled through foreign branch offices which had arranged to route shipments through a third country.

Should the President prohibit the export of munitions and raw materials the demand for short term credits would be reduced and it is doubtful whether Italy could provide the necessary security to obtain such credits.

In short, under the Neutrality Act, the President may cooperate with the League to the extent of imposing an embargo on the shipment of arms, munitions and implements of war while the Johnson Act prohibits Italy from floating any loans within the United States. No official interpretation of the Act has yet been given as to whether the term "implements of war" includes raw materials necessary for the manufacture of munitions.

The adoption of a narrow interpretation of the Act would enable Italy to buy raw materials freely in the United States and thus enable it to escape the consequences of a League boycott.

In view of this possibility there are those who believe that it is useless for League members to impose sanctions against Italy. Another view is that the League members should discharge their responsibilities under Article 16 and, if the effort fails because of Italian purchases in America, then the United States would be responsible for the success of Italy in violating the Covenant and the Anti-War Pact. Should such a situation arise, Americans belonging to both the isolationist and internationalist schools would demand the enactment of more stringent neutrality legislation.

Americans might argue that if League members wish to prevent the shipment of American cotton to Italy, they should establish a blockade of Italy which the United States would respect. In reply, it is pointed out that, apart from difficulties arising with America over the nature of the blockade, the establishment of such an extreme measure might lead Italy to declare war, and the United States would not wish to be placed in the position of causing this result if it can be avoided through American cooperation in imposing a less drastic sanction.

Should the President decide to exercise his powers to impose an embargo, it must fall equally upon all belligerents. Does this mean that, if the League members become involved

in a general war with Italy as the result of the application of sanctions, the President must extend the embargo not only to Italy and Ethiopia but to all League members? Such extension would undoubtedly injure the principle of collective security. Upon this point the Neutrality Act says that the President "may from time to time extend such embargo . . . to other states as and when they become involved in such war". This wording is permissive, not mandatory. Consequently it would seem that the presidential embargo could be restricted to Italy and Ethiopia even should a general war result.

In theory, the application of an embargo against both Italy and Ethiopia would work to the advantage of Italy for it would prohibit an unprepared state which is the victim of aggression from buying arms in the United States. There are, however, certain practical considerations which may modify this theoretical objection. Thus, if the League embargo is applied only to Italy it will remain open for Ethiopia to buy arms from League members which are less distant from Ethiopia than is the United States.¹ Thus, whatever permanent policy the United States may adopt, it should not prove impossible to reconcile an American embargo upon both parties with League action against Italy in the present dispute.

If a League embargo against Italy is not to be evaded, it will be necessary to see to it that Italy does not purchase materials through the intermediary of third states. For example, a British embargo on the export of oil to Italy would be defeated if Germany could increase its purchases of oil from Great Britain and tranship them to Italy. The Committee of Experts who studied this question for the Committee of Thirteen declared that states participating in sanctions "must prohibit exports to the repudiating country . . . but they cannot permit unrestricted exportation to the outside countries. In fact the exportation of

any designated product can only be allowed to an outside state if exportation from that country to the repudiating country is prohibited and if adequate measures are taken to enforce the prohibition." As a possible solution the Committee suggested the conclusion of rationing agreements and the establishment in outside countries of special associations to prevent re-sale of embargoed products.²

Under the Neutrality Act of 1935 the President may render unlawful the export of arms, ammunition or implements of war "to any port of such belligerent states or to any neutral port for transshipment to, or for the use of, a belligerent country". Under one interpretation of this latter phrase, it should be possible for the President to ration exports to third states so as to make sure that transshipment of the embargoed articles to belligerents would not occur.

Refusal of League Members to Accept Italian Imports

Should League members prohibit the importation of all Italian goods into their territory they would seriously injure the international balance of payments of Italy and increase Italian difficulties in purchasing raw and other necessary materials. Under the Neutrality Act of 1935 the President of the United States has no power to prohibit the importation of Italian products and legally Italy could increase its sales to the United States. In practice, however, it is doubtful whether the sale of Italian goods on the American market would increase in quantities proportionate to the loss of such sales to League members, unless conceivably Italian prices should fall to extremely low figures. The United States now takes about three per cent of Italian exports.² Moreover,

¹ Paragraph 31, Report of the Sub-committee on Economic and Financial Measures, C.O.S.G. 7(1), July, 1935.

² For a table of Italian imports and exports, cf. Appendix III. Under the reciprocal tariff act of June 12, 1934, the President has the power to increase or decrease any existing duties by 50%. But the changes in such duties are limited to articles covered by foreign trade agreements and are to be made for the purpose of expanding foreign markets to the products of the United States. It is doubtful, therefore, whether this act could be utilized to increase duties on Italian goods in retaliation for the violation of the Pact of Paris.

¹ It is also contended that Ethiopia lacks financial resources with which to buy arms extensively, and should such arms be exported to Ethiopia in line of war the Italian navy would have no difficulty in confiscating such arms as contraband. This excludes the possibility that a League blockade might insure the free shipment of arms to Ethiopia.

American public opinion and private organizations, in imitation of the unofficial boycott of Nazi Germany on account of its treatment of Jews, could organize an unofficial boycott of Italian goods. Legally, however, the President seems to be without power to cooperate with this type of League sanction.

Naval Blockade

Should League powers establish a naval blockade of Italy or of the Italian colonies, they would have to respect the rights of non-League members.¹

The United States has always recognized the validity of an effective naval blockade in time of war. On the other hand, it engaged in a long controversy with Great Britain over the legality of the blockade against Germany during the World War and before the World War it did not admit the right of other powers to interfere with American commerce by means of a pacific blockade.² Under the Davis declaration of May, 1933, the United States expressed a willingness to change its policy for it declared that, should a Disarmament Convention be concluded, the American government would not protest against collective action toward an aggressor state. Although the Davis declaration is not yet in effect, the President, by virtue of his general control over foreign policy, has the power to acquiesce in a League blockade of Italy. Under the Neutrality Act of 1935 he may diminish the possibility of controversy arising out of such blockade by imposing an embargo on the export of arms, ammunition and implements of war and by withdrawing diplomatic protection from American citizens traveling on belligerent vessels.

Should the League members establish a blockade of Italy, the question would arise of whether they would take concerted action to ration shipments of munitions and raw materials to Germany in order to prevent transshipment to Italy. Should the President

feel unable to impose such rationing restrictions upon American exports to Germany, difficulties might arise if League members attempted to seize such exports, although here again the President has the power to acquiesce in this type of blockade.³

Closing the Suez Canal

Should Great Britain, acting under recommendation of the League Council, close the Suez Canal not only to Italian ships but also to non-Italian ships carrying munitions or contraband to the Italian forces in East Africa, would the United States protest should the British Government close the Canal to an American vessel thus engaged? There is nothing in the Neutrality Act of 1935 to govern this question. The American government, however, is not a party to the Convention of Constantinople of 1888 and it cannot, therefore, claim any rights under that Convention. It might be possible for the American government to assert that under customary international law or the principle of servitudes, American vessels had the right to pass through this Canal, but the assertion of such a claim would lie within the complete discretion of the President of the United States and any doubts as to the attitude of the American government could be removed by diplomatic negotiations.

Summary

In summary, the President has the power to cooperate actively or passively in the application of the following League sanctions:

- a) withdrawal of diplomatic representatives;
- b) non-recognition;
- c) embargo on munitions and implements of war;
- d) naval blockade;
- e) closing the Suez Canal.

Whether or not the President has power to embargo the export of raw materials such as cotton or scrap iron depends upon the interpretation given to the term "implements of

¹ Cf. the Report of the Secretary-General, cited.

² E. C. Hyde, *International Law Chiefly as Interpreted and Applied by the United States* (Boston), 1922, Vol. II, p. 180.

³ For the controversy over continuous voyage during the World War, cf. E. C. Hyde, cited, Vol. II, p. 619.

war". He may even enter into rationing agreements to see to it that an embargo is not evaded by shipment through third states, and he apparently is under no obligation to extend the embargo to League members should they become involved in war with Italy over the application of sanctions. In two respects the President is powerless to act. He cannot prohibit the entrance of Italian goods into the United States and he has no power to take preventive measures such as League members may take under Article 11 of the Covenant¹. Although he cannot prohibit American loans to Italy, such loans are forbidden by the Johnson Act. He does not have any control over the extension of short-term credits to Italy but it is not believed that these credits will be forthcoming if the American munition and raw material market is closed².

The American Attitude

Although the President retains a wide degree of discretion in so far as cooperation with League sanctions is concerned, the United States is under no international obligation to acquiesce in League sanctions or to impose an embargo upon the shipment of arms to belligerents. The extent to which the President decides to cooperate with League sanctions will depend upon the view which the American Government and American public opinion take toward the Italian-Ethiopian dispute. Upon several occasions since July, spokesmen of the American Government have publicly expressed the hope that in view of the provisions of the Pact of Paris neither Italy nor Ethiopia would resort to other than peaceful means for the settlement of their present controversy³.

¹ Cf. p. 3.

² The Johnson Act does not apply to Ethiopia, the government of which may consequently borrow in the United States. In 1930 the League drew up a convention on financial assistance which provided that a state which is the victim of aggression (such as Ethiopia) could receive international financial assistance. Such assistance should take the form of a guaranteed loan. A.15.1931.VII. Although this convention has not come into force, the League powers could apply the principle of a guaranteed loan for the purpose of strengthening Ethiopian resistance against Italy and the American market would presumably remain open for such a loan.

³ Cf. Appendix VI.

On August 7th the Export-Import Bank, a government institution, announced that it could not extend credits to cover the export of any commodities which looked "like munitions", and consequently had held up applications by American exporters to cover certain cotton exports to Italy.¹

On September 3, Secretary of State Cordell Hull announced that the oil concession granted by the Emperor of Ethiopia to the African Exploration and Development Corporation, a subsidiary of the Standard Vacuum Oil Company, had been cancelled as a result of the intervention of the State Department. In a statement Mr. Hull declared that the officials of the company,

"Were informed that the granting of this concession had been the cause of great embarrassment, not only to this Government but to other Governments who are making strenuous and sincere efforts for the preservation of peace.

"In the circumstances, the company officials were informed of the views of this Government that it was highly desirable that the necessary steps should be taken at the earliest possible moment to terminate the present concession."

In as far as public opinion is concerned, few expressions have been made in favor of Italy in America. Those who believe in international cooperation as well as those who believe in isolation would therefore presumably support an embargo, at least against Italy. On the other hand, it would be to the interests of the cotton and wheat farmers as well as of the manufacturers and munition makers to oppose the imposition of such an embargo.

Doubts as to the attitude of the United States in this matter could be removed by diplomatic negotiations or by formal "consultation" between the United States Government and League members at Geneva².

The Assembly resolution of October, 1921, declared, "Efforts should be made to arrive at arrangements which would insure the cooperation of states non-members of the League in the measures to be taken."

¹ *New York Times*, August 8, 1935.

² This discussion has assumed that, especially in view of the Pact of Paris, the United States would not violate any obligations owed to Italy should it acquiesce in League sanctions.

THE NEUTRALITY ACT AND AMERICAN INTERESTS

HAVING examined the Neutrality Act from the standpoint of the League, we shall approach it from the standpoint of the interests of the United States.

The purpose of the Neutrality Act of August, 1935, is ostensibly to prevent a recurrence of the conditions which supposedly led the United States into the World War in 1917.

As far as removing the possibility of dispute over neutral rights the Act contains two main provisions:

1. A supposedly mandatory embargo upon the export of arms, munitions and implements of warfare to all belligerents—a provision which expires February 29, 1936;

2. A delegation of power to the President authorizing him to withhold protection from American citizens traveling on any belligerent vessel during time of war.

During the World War the United States became involved in serious disputes with belligerents not only over the question of munitions but also over raw materials and manufactured goods which belligerents seized on the ground that they were contraband. To prevent the recurrence of such disputes a bill introduced into the Senate by Senators Clark and Nye in May, 1935 (S. J. Res. 120) provided that upon the outbreak of war the President should proclaim that any person or corporation which "shall export or sell for export from the United States or any place under its jurisdiction any article declared to be conditional or unconditional contraband by any belligerent government shall do so solely at its own risk or at the risk of a foreign government or national thereof; after export from the United States no American citizen, firm, partnership, or corporation shall retain any right, title, or interest in any such article of contraband." The Neutrality Act of August, 1935, does not contain any such provision nor does it prohibit the extension of credits or loans to foreign governments by American interests.¹ The Act is silent as to the policy

which the American Government should follow in the future towards such controversial questions as blockade, the definition of contraband, continuous voyage, search and seizure, armed merchantmen and the exemption of private property or at least foodstuffs from capture at sea.

Apart from the embargo provisions the only feature in the Act which will reduce the controversies of the type which arose during the World War is that which provides that the President may withdraw diplomatic protection from Americans traveling on belligerent vessels. This provision is regarded as important because it may prevent many so-called "incidents." The Neutrality Act is silent, however, in regard to policy toward Americans traveling in war zones on American vessels even though such vessels may be carrying munitions to belligerents; and it imposes no restrictions upon Americans who wish to travel on belligerent merchant vessels at their own risk. This defect in the Act was stressed by Senator Borah in the debate last August when he said,

"I do not think that an American citizen should be permitted to travel at all upon a belligerent ship when we are a neutral. To say that he shall travel at his own risk only solves a part of the question. It is the nation which is most vitally concerned, and no citizen should be permitted to place himself, in a place of peril, all the evil consequences of which cannot be confined to the citizen.

"If he ventures into the war zone, if he goes upon a belligerent ship, to a certain extent he involves, or may involve, his nation in case he is killed. The killing of a citizen is one of the things which contributes to a feeling of war psychology and a feeling of resentment. It ought not to be permitted to occur. In other words, Mr. President, it is not alone the citizen who is involved, but the entire nation. It is not only the citizen who is concerned, but the entire nation is concerned."²

Some of these difficulties might be resolved if the President had the power to impose an

¹ The Johnson act prevents Italy from making loans in the United States.

² *Congressional Record*, August, 21, 1935, cited, p. 14396.

¹ As far as the Italian-Ethiopian dispute is concerned,

embargo upon the export of any article declared to be contraband, or even of a limited number of important articles such as cotton, wheat, copper and scrap iron. The Neutrality Act of 1935, however, provides that the embargo should extend only to "the export of arms, ammunition or implements of war". The question is whether the term "implements" can be interpreted to cover raw materials which are necessary for the manufacture of munitions. According to the Neutrality Act the President, by proclamation, shall definitely enumerate the arms and munitions or implements of war included under the embargo. Although this proclamation has not yet been issued, several statements have already emanated from high officials to the effect that the term implements of war in their opinion does not cover raw materials. Secretary Hull is quoted to this effect at a press conference of August 31¹; while Senator Pittman, Chairman of the Senate Foreign Relations Committee made a similar statement in the Senate debate on the Neutrality Act. He declared that wheat, corn, cotton, meat and other food products could not be embargoed for the reason that "today the definition of arms, ammunition and implements of war is very generally recognized in international law. As a matter of fact, at this very session the Senate ratified a treaty or convention dealing with arms and implements of war, in which they were categorically described. . ."²

The convention to which Senator Pittman refers is that dealing with the Supervision in International Trade in Arms and Ammunitions and in Implements of War of June 17, 1925. This convention establishes a number of definite categories of arms, ammunition and implements, none of which includes raw materials.³ Nevertheless this convention applies

only to "arms, ammunition, and implements of war exclusively designed and intended for land, sea or aerial warfare, which are or shall be comprised in the armament of the armed forces of any State, or which, if they have been but are no longer comprised in such armament, are capable of military to the exclusion of any other use. . .". The 1929 draft convention and the proposal of the technical committee on categories of arms of the Disarmament Conference of 1933 both used the term "implements of war, exclusively designed and intended for land, sea, or aerial warfare. . ."⁴

The Neutrality Act of 1935 employs much broader language than that used in the 1925 convention, the 1929 draft convention, or the 1933 Committee proposals of the Disarmament Conference. For this Act authorizes an embargo upon all "implements of war" without restricting such implements to those exclusively designed and intended for warfare. According to Webster's *New International Dictionary*, "implement" is a broader term than "tool", "frequently implying that by which any operation is carried on". According to Bouvier's *Law Dictionary*, "implements" are "such things as are used or employed for a trade. . . whatever may supply wants". According to a common law definition, "implements" are "things of necessary use in any trade or mystery which are employed in the practice of the said trade, or without which the work cannot be accomplished. . ."⁵

It is obvious that munitions cannot be manufactured without the employment of certain raw materials. From this standpoint the President may interpret presumably subject to judicial review, the term "implements" to include any raw material entering into the manufacture of munitions. If such an interpretation were upheld the Neutrality Act of

¹ *New York Herald Tribune* (Paris ed.), September 1, 1935. At the hearings on the National Munitions bill, Mr. J. C. Green of the State Department expressed the view that the term "implements of war" did not include automobiles, but would include airplanes; and that "no raw materials of any description would be included". Hearings before the Committee on Foreign Affairs, 74th Congress, 1st session on H. R. 5788, July, 1935.

² *Congressional Record*, cited, August 21, 1935, p. 14395; *Ibid.*, August 24, p. 14607.

³ For the text, cf. Manley O. Hudson, *International Legislation*, Washington, 1931, Vol. III, p. 1637.

⁴ Committee for the Regulation of the Trade in and the Private and State Manufacture of Arms and Implements of War. Conf. D., 160, June 8, 1933.

⁵ P. SNOTO, *The Judicial Dictionary* (2nd ed., London, 1903), p. 915. S. J. Res. 120 did not use the term "implements" of war but authorized an embargo on the export of any articles which the United States declared to be "war material". The word "material" would seem to be wider in scope than the word "implement", cf. SNOTO, cited, p. 1172.

1935 could be employed to embargo a large number of commodities and thus reduce the possibility of conflict over so-called "neutral rights". Even under such a wide interpretation, the President might not be able to embargo raw materials, such as wheat, which do not enter into munition manufacture.

The leading proponents of neutrality legislation have insisted upon a mandatory embargo on the exports of arms, ammunition and implements of war, immediately upon the outbreak of war. This end was achieved by the Clark-Nye bill introduced in May, 1935, as follows: "upon the outbreak of war between two or more foreign states it shall be unlawful" for any person or corporation to sell for export from the United States any war materials to a belligerent. The bill also provided that "whenever the President finds that conditions exist in any part of the world" in which the shipment of arms or war material "may involve the United States in international complications, or contribute to armed conflict" the President could issue a proclamation making illegal the export of war materials "to a government or the national of any government, engaged in armed conflict or international controversy"; provided, however, that such embargo "shall be employed impartially to all governments engaged in such conflict or international dispute".

Thus the Clark-Nye Bill not only provided for an immediate embargo upon the outbreak of war but granted discretionary power to the President to prohibit the export of war materials to states which, while still technically in a state of peace, were engaged in controversies that might lead to war. Under such provisions, the President could at once impose an embargo upon the exports of war materials to Italy and Ethiopia or to Japan and China, although all of these states technically remain in a state of peace with each other.

As finally enacted, the Neutrality law of 1935 omits entirely the provision giving the President power to impose an embargo before a state of war actually comes into existence. Article 1 of the Act declares "upon the outbreak or during the progress of war between or among two or more foreign states, the President shall

proclaim such fact, and it shall thereafter be unlawful to export arms, ammunition, or implements of war" to such belligerent states or to any neutral port for transshipment to or for the use of a belligerent country. Consequently the President is unable to prevent arms shipments to a government such as Italy which is premeditating war in violation of its obligations.

Unlike the Clark-Nye Bill the Neutrality Act does not require the imposition of an embargo "upon the outbreak" of war but merely "upon the outbreak or during the progress of war". Under such a law President Wilson would have been under no obligation to impose an arms embargo upon the outbreak of war in 1914, but could have waited until any time "during the progress of war". Thus, despite the wishes and professions of the authors of the legislation the Neutrality Act of 1935 in fact gives to the President virtually complete discretion in the application of an arms embargo, subject only to the restriction that once applied it should fall equally upon all belligerents. Certainly the Act contains no legal guarantee that American exporters will not develop a large munitions trade during the course of the Italian-Ethiopian dispute or other similar controversies. The actual imposition of the embargo will probably depend upon the pressure of public opinion, which would also be true in case the President were given discretionary power.

Under the Neutrality Act of 1935 the President cannot impose an embargo without recognizing that a state of "war" exists in another part of the world. The issuance of a neutrality proclamation in periods when governments formally declared war and when such proclamations did not lead to the imposition of embargoes did not produce international complications. But as a result of recent developments tending to make war illegal it has now become the practice to resort to hostilities while denying that a state of war has come into existence. Japan, for example, denied that it was at war with China when several hundred thousand Japanese troops subjugated Manchuria, bombarded Shanghai and conquered Jehol. Mussolini denies any intention of

declaring war against Ethiopia, stating that he is merely engaged in a colonial expedition. Under the Neutrality Act of 1935, however, the President, before imposing an arms embargo, must decide whether or not a given state of hostilities constitutes war. It is not difficult to conceive of a situation under which Ethiopia invaded by Italian troops would declare that it was at war with Italy, but under which Italy would deny that war had come into existence. Should the President declare that war actually had come into existence under such conditions, Italy might regard such declaration as an unfriendly act.¹ Both the Clark-Nye Bill and the McReynolds Bill attempted to avoid such dangers by giving the President discretionary power to impose embargoes under circumstances falling short of war.² Under the Act of 1935 the President may escape from the dangers involved in a unilateral determination of whether given hostilities constitute "war" by applying an embargo only when the League members or some other international authority collectively decide that given acts of force have thus led to war.³

Summary

In summary, the Neutrality Act of 1935 authorizes but does not require the imposition of an arms embargo upon the outbreak of war, provided such embargo applies equally to all belligerents. The Act also authorizes the President to withdraw diplomatic protection from American citizens traveling on belligerent vessels in war zones. It does not prohibit the extension of short term credits or loans to belligerent governments by American

interests. It does not prohibit American merchant vessels from traveling in war zones even though they may be carrying munitions. It is silent in regard to American policy toward such questions as blockade, contraband, continuous voyage, search and seizure, armed merchantmen, and unrestricted submarine attack on belligerent or neutral commerce.

Although several official spokesmen have already interpreted the act narrowly it would seem possible to apply the term "implements of war" to raw materials necessary for the production of munitions. The application of an embargo upon such provisions would automatically reduce the possibility of conflict with belligerents over so-called neutral rights.

Under the Neutrality Act of 1935, however, the President cannot impose an embargo until after the "outbreak of war". He is thus prevented from stopping exports of arms to a country such as Italy which is merely preparing for aggressive action. He is also obliged to pass upon the question whether a legal state of war has come into existence, an obligation which may involve the United States in serious international complications if it is exercised in independence of collective action.

Thus, from the isolationist point of view, the Neutrality Act of 1935 merely touches the surface of the problem of preventing the recurrence of the type of disputes which arose when the United States was a neutral during the World War, or of preventing American interests from making abnormal profits out of war, or even of removing the possibility of inflaming public opinion over the seizure of American property or the loss of American lives at the hands of belligerents. From the standpoint of those who believe in developing the international interests of the United States as well as supporting the principle of international cooperation, the underlying principles of the Neutrality Act are equally unsatisfactory. Literally applied, such principles would lead to the sacrifice of the foreign commerce and shipping of the United States, involve the surrender of the political interests of the United States in the Orient and elsewhere, and generally reduce any effective influence by the United States on behalf of

¹ There have been cases, however, of third States regarding acts of force as constituting a state of war although one or both parties to the dispute did not do so, as in the case of Great Britain who applied rules of neutrality to France in its blockade of Formosa in 1884. H. Lauterpacht, "Resort to War" and the Interpretation of the Covenant During the Manchurian Dispute", *The American Journal of International Law* (1934), vol. 28, p. 43.

² The Clark-Nye Bill as above stated provided that such embargoes should apply equally to all governments concerned; the McReynolds Bill did not contain any such restrictions, thus making it possible for the President to cooperate with the League of Nations against an aggressor state.

³ Cf. p. 13.

world peace. The prohibition of arms exports to great and small powers alike, regardless of whether they have violated their obligations under the anti-war pact, will result, so it is argued, in international injustice and lead to the undermining of the League—results which will injure the real interests of the United States.

Admittedly a stop-gap, the Neutrality Act is thus subject to criticism on the part of those Americans who believe in complete isolation as well as those who believe in international co-operation. At the next session of Congress which begins in January, the neutrality question will be re-opened and an attempt made to define a more permanent policy.

APPENDIX I. — ARTICLES OF THE COVENANT

ARTICLE 12.

1. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.

2. In any case under this Article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE 13.

1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 12, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE 16.

1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

APPENDIX II — RESOLUTIONS CONCERNING THE ECONOMIC WEAPONS, ADOPTED BY THE ASSEMBLY ON OCTOBER 4, 1921.

The Assembly adopts the following resolutions:

1. The resolutions and the proposals for amendments to Article 16 which have been adopted by the Assembly shall, so long as the amendments have not been put in force in the form required by the Covenant, constitute rules for guidance which the Assembly recommends, as a provisional measure, to the Council and to the Members of the League in connection with the application of Article 16.

2. Subject to the special provisions of Article 17, the economic measures referred to in Article 16 shall be applicable only in the specific case referred to in this article.

3. The unilateral action of the defaulting State cannot create a state of war: it merely entitles the other Members of the League to resort to acts of war or to declare themselves in a state of war with the Covenant-breaking State; but it is in accordance with the spirit of the Covenant that the League of Nations should attempt, at least at the outset, to avoid war, and to restore peace by economic pressure.

4. It is the duty of each Member of the League to decide for itself whether a breach of the Covenant has been committed. The fulfilment of their duties under Article 16 is required from Members of the League by the express terms of the Covenant, and they cannot neglect them without breach of their Treaty obligations.

5. All cases of breach of Covenant under

Article 16 shall be referred to the Council as a matter of urgency at the request of any Member of the League. Further, if a breach of Covenant be committed, or if there arise a danger of such breach being committed, the Secretary-General shall at once give notice thereof to all the Members of the Council. Upon receipt of such a request by a Member of the League, or of such a notice by the Secretary-General, the Council will meet as soon as possible. The Council shall summon representatives of the parties to the conflict and of all States which are neighbours of the defaulting State, or which normally maintain close economic relations with it, or whose co-operation would be especially valuable for the application of Article 16.

6. If the Council is of opinion that a State has been guilty of a breach of the Covenant, the Minutes of the meeting at which that opinion is arrived at shall be immediately sent to all Members of the League, accompanied by a statement of reasons and by an invitation to take action accordingly. The fullest publicity shall be given to this decision.

7. For the purpose of assisting it to enforce Article 16, the Council may, if it thinks fit, be assisted by a Technical Committee. This Committee, which will remain in permanent session as soon as the action decided on is taken, may include, if desirable, representatives of the States specially affected.

8. The Council shall recommend the date on which the enforcement of economic pressure, under Article 16, is to be begun, and shall give notice of that date to all Members of the League.

9. All States must be treated alike as regards the application of the measures of economic pressure, with the following reservations:

- (a) It may be necessary to recommend the execution of special measures by certain States.
- (b) If it is thought desirable to postpone, wholly or partially, in the case of certain States, the effective application of the economic sanctions laid down in Article 16, such postponement shall not be permitted except in so far as it is desirable for the success of the common plan of action, or reduces to a minimum the losses and embarrassments which may be entailed in the case of certain Members of the League by the application of the sanctions.

10. It is not possible to decide beforehand, and in detail, the various measures of an economic, commercial and financial nature to be taken in each case where economic pressure is to be applied.

When the case arises, the Council shall recommend to the Members of the League a plan for joint action.

11. The interruption of diplomatic relations may, in the first place, be limited to the withdrawal of the heads of Missions.

12. Consular relations may possibly be maintained.

13. For the purposes of the severance of relations between persons belonging to the Covenant-breaking State and persons belonging to other States Members of the League, the test shall be residence and not nationality.

14. In cases of prolonged application of economic pressure, measures of increasing stringency may be taken. The cutting-off of the food supplies of the civil population of the defaulting State shall be regarded as an extremely drastic measure which shall only be applied if the other measures available are clearly inadequate.

15. Correspondence and all other methods of communication shall be subjected to special regulations.

16. Humanitarian relations shall be continued.

17. Efforts should be made to arrive at arrangements which would ensure the co-operation of States non-Members of the League in the measures to be taken.

18. In special circumstances and in support of economic measures to be taken, it may become advisable: (a) to establish an effective blockade of the seaboard of the Covenant-breaking State; (b) to entrust to some Member of the League the execution of the blockade operations.

19. The Council shall urge upon all the States Members of the League that their Governments should take the necessary preparatory measures, above all of legislative character, to enable them to enforce at short notice the necessary measures of economic pressure.

APPENDIX III — ITALIAN IMPORTS AND EXPORTS.

IMPORTS.					
Years	Animals	Foodstuffs	Raw Materials	Manufacturing Articles	Gold and Silver
1929	2.3	20.4	49.6	26.5	1.2
1930	2.8	22.7	45.8	28.0	0.7
1931	2.6	23.9	43.8	26.4	3.3
1932	1.9	23.4	47.0	26.4	1.3
EXPORTS.					
1929	0.1	24.7	21.1	54.1	—
1930	0.5	27.7	20.1	51.6	0.1
1931	2.0	27.4	17.5	52.9	0.2
1932	0.3	32.4	17.2	49.9	0.2

Percentage distribution by value.

L'Annuaire Statistique de la Société des Nations, 1934.

ITALIAN IMPORTS — BY COUNTRY.
(Million lire.)

Country	1931	1932	1933
France	824,9	481,9	409,7
Germany	1,533,7	1,110,4	1,086,9
Great Britain	1,098,7	743,3	724,9
Switzerland	400,5	310,0	270,4
Argentina	563,0	482,5	248,5
United States	1,327,0	1,108,2	1,113,2

ITALIAN IMPORTS — BY PRODUCTS.
(Thousand lire.)

Product	1931	1932	1933
Petroleum, Gas and Oil, etc.	7,016,7	6,738,2	6,419,7
Cotton	1,704,7	1,902,0	2,197,8
Scrap Iron	6,129,9	4,741,8	6,300,4
Wheat	1,485,0	1,056,2	456,6
Coal, Wood and Coke	11,093,9	8,778,1	9,561,8
Metal Ore	1,781,4	1,731,5	1,224,1

EXPORTS.

Wine	1,671,8	802,8	998,8
Olive Oil	587,3	452,5	349,0
Raw Hemp	450,6	304,0	400,2
Cotton Thread	283,6	296,7	286,4
Cotton cloth	394,2	351,4	300,9
Fruit	3,850,2	3,075,7	4,172,4

Annuario Statistico Italiano, anno 1934, XII, Quarto Serie, Vol. I, Roma.

APPENDIX IV — AN ACT
TO PROHIBIT FINANCIAL TRANSACTIONS WITH ANY FOREIGN GOVERNMENT IN DEFAULT ON
ITS OBLIGATIONS TO THE UNITED STATES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter it shall be unlawful within the United States or any place subject to the jurisdiction of the United States for any person to purchase or sell the bonds, securities, or other obligations of, any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after the passage of this Act, or to make any loan to such foreign government, political subdivision, organization or association, except a renewal or adjustment of existing indebtedness while such government, political subdivision, organization, or

association, is in default in the payment of its obligations, or any part thereof, to the Government of the United States. Any person violating the provisions of this Act shall upon conviction thereof be fined not more than \$10,000 or imprisoned for not more than five years, or both.

As used in this Act the term "person" includes individual, partnership, corporation, or association other than a public corporation created by or pursuant to special authorization of Congress, or a corporation in which the Government of the United States has or exercises a controlling interest through stock ownership or otherwise.

Approved, April 13, 1934.

APPENDIX V — THE NEUTRALITY ACT OF AUGUST 31, 1935

Resolved, etc., That upon the outbreak or during the progress of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export arms, ammunition, or implements of war from any place in the United States, or possessions of the United States, to any port of such belligerent states, or to any neutral port for transshipment to, or for the use of, a belligerent country.

The President, by proclamation, shall definitely enumerate the arms, ammunition, or implements of war the export of which is prohibited by this Act.

The President may, from time to time, by proclamation, extend such embargo upon the export of arms, ammunition, or implements of war to other states as and when they may become involved in such war.

Whoever, in violation of any of the provisions of this section, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States, or any of its possessions, shall be fined not more than \$10,000 or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of sections 1 to 8, inclusive, title 6, chapter 30, of the act approved June 15, 1917 (40 Stat. 223-225; U. S. C., title 22, secs. 238-245).

In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States.

When in the judgment of the President the conditions which have caused him to issue his proclamation have ceased to exist he shall revoke the same and the provisions hereof shall thereupon cease to apply.

Except with respect to prosecutions committed or forfeitures incurred prior to March 1, 1936, this section and all proclamations issued thereunder shall not be effective after February 29, 1936.

SEC. 2. That for the purposes of this Act:

(a) The term "Board" means the National Munitions Control Board, which is hereby established to carry out the provisions of this Act. The Board shall consist of the Secretary of State, who shall be chairman and executive officer of the Board; the Secretary of the Treasury; the Secretary of War; the Secretary of the Navy; the Secretary

of Commerce. Except as otherwise provided in this act, or by other law, the administration of this act is vested in the Department of State;

(b) The term "United States" when used in a geographical sense, includes the several States and Territories, the insular possessions of the United States (including the Philippine Islands), the Canal Zone, and the District of Columbia;

(c) The term "person" includes a partnership, company, association, or corporation, as well as a natural person.

Within ninety days after the effective date of this act, or upon first engaging in business, every person who engages in the business of manufacturing, exporting, or importing any of the arms, ammunition, and implements of war referred to in this Act, whether as an exporter, importer, manufacturer, or dealer, shall register with the Secretary of State his name, or business name, principal place of business, and places of business in the United States, and a list of the arms, ammunition, and implements of war which he manufactures, imports, or exports.

Every person required to register under this section shall notify the Secretary of State of any change in the arms, ammunition, and implements of war which he exports, imports, or manufactures; and upon such notification the Secretary of State shall issue to such person an amended certificate of registration, free of charge, which shall remain valid until the date of expiration of the original certificate. Every person required to register under the provisions of this section shall pay a registration fee of \$500, and upon receipt of such fee the Secretary of State shall issue a registration certificate valid for five years, which shall be renewable for further periods of five years upon the payment of each renewal of a fee of \$500.

It shall be unlawful for any person to export, or attempt to export, from the United States any of the arms, ammunition, or implements of war referred to in this act to any other country or to import, or attempt to import, to the United States from any other country any of the arms, ammunition, or implements of war referred to in this act without first having obtained a license therefor.

All persons required to register under this section shall maintain, subject to the inspection of the board, such permanent records of manufacture for export, importation and exportation of arms, ammunition and implements of war as the board shall prescribe.

Licenses shall be issued to persons who have registered as provided for, except in cases of export or import licenses where exportation of

arms, ammunition, or implements of war would be in violation of this Act or any other law of the United States, or of a treaty to which the United States is a party, in which cases such licenses shall not be issued.

The Board shall be called by the Chairman and shall hold at least one meeting a year.

No purchase of arms, ammunition, and implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of this Act.

The Board shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain such information and data collected by the Board as may be considered of value in the determination of questions connected with the control of trade in arms, ammunition, and implements of war. It shall include a list of all persons required to register under the provisions of this act, and full information concerning the licenses issued hereunder.

The Secretary of State shall promulgate such rules and regulations with regard to the enforcement of this section as he may deem necessary to carry out its provisions.

The President is hereby authorized to proclaim upon recommendation of the Board from time to time a list of articles which shall be considered arms, ammunition, and implements of war for the purposes of this section.

This section shall take effect on the ninetieth day after the date of its enactment.

Sec. 3. Whenever the President shall issue the proclamation provided for in section 1 of this Act, thereafter it shall be unlawful for any American vessel to carry any arms, ammunition, or implements of war to any port of the belligerent countries named in such proclamation as being at war, or to any neutral port for transshipment to, or for the use of, a belligerent country.

Whoever, in violation of the provisions of this section, shall take, attempt to take, or shall authorize, hire, or solicit another to take any such vessel carrying such cargo out of port or from the jurisdiction of the United States shall be fined not more than \$10,000 or imprisoned not more than five years, or both; and, in addition, such vessel, her tackle, apparel, furniture, equipment, and the arms, ammunition, and implements of war on board shall be forfeited to the United States.

When the President finds the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation, and the provisions of this section shall thereupon cease to apply.

Sec. 4. Whenever, during any war in which the United States is neutral, the President, or any

person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a part of the United States, or its possession, men or fuel, arms, ammunition, implements of war, or other supplies to any warship, tender, or supply ship of a foreign belligerent nation, but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. —; U.S.C., title 18, sec. 31), and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign nations, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, he shall have the power and it shall be his duty to require the owner, master, or person in command thereof, before departing from a part of the United States, or any of its possessions, for a foreign port, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or the cargo, or any part thereof, to any warship, tender, or supply ship of a belligerent nation; and, if the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, or one of its possessions, has previously cleared from such port during such war and delivered its cargo or any part thereof to a warship, tender, or supply ship of a belligerent nation, he may prohibit the departure of such vessel during the duration of the war.

Sec. 5. Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States, or of its possessions, by the submarines of a foreign nation will serve to maintain peace between the United States and foreign nations, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine to enter a port or the territorial waters of the United States or any of its possessions, or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. When, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply.

Sec. 6. Whenever, during any war in which the United States is neutral, the President shall find that the maintenance of peace between the United States and foreign nations, or the protection of the lives of citizens of the United States, or the protection of the commercial interests of

the United States and its citizens, or the security of the United States requires that the American citizens should refrain from traveling as passengers on the vessels of any belligerent nation, he shall so proclaim, and thereafter no citizen of the United States shall travel on any vessel of any belligerent nation except at his own risk, unless in accordance with such rules and regulations as the President shall prescribe: *Provided, however,* That the provisions of this section shall not apply to a citizen traveling on the vessel of a belligerent whose voyage was begun in advance of the date of the President's proclamation, and who had no opportunity to discontinue his voyage after that date: *And provided further,* That they shall not apply under ninety days after the date of the President's proclamation to a citizen returning from a foreign country to the United States or to any of its possessions. When, in the President's judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke

his proclamation and the provisions of this section shall thereupon cease to apply.

SEC. 7. In every case of the violation of any of the provisions of this Act where a specific penalty is not herein provided, such violator or violators, upon conviction, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

SEC. 8. If any of the provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 9. The sum of \$25,000 is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to be expended by the Secretary of State in administering this act.

Approved, August 31, 1935

APPENDIX VI — TEXT OF STATEMENT HANDED TO THE PRESS BY THE SECRETARY OF
STATE OF THE UNITED STATES, ON SEPTEMBER 13, 1935.

In view of the deep concern of this government and the widespread anxiety of the American people over recent developments which appear to constitute a grave threat to the peace of the world, I consider it desirable to recapitulate the steps thus far taken by this government in contributing in every practicable way toward a peaceful settlement of the present dispute between Italy and Ethiopia.

On the evening of July 3rd the Emperor of Ethiopia summoned the American Chargé d'Affaires *ad interim* at Addis Ababa to the palace and handed the Chargé a communication in which the Emperor stated that he felt it to be his duty to ask the American Government to examine means of securing observance of the Pact of Paris.

The Chargé was instructed to reply to the Emperor as follows:

"I have the honor to acknowledge the receipt of Your Imperial Majesty's note of July 3, 1935, and to inform Your Imperial Majesty that I immediately communicated its contents to my Government. I have been instructed by my Government to reply to your note as follows:

"My Government, interested as it is in the maintenance of peace in all parts of the world, is gratified that the League of Nations with a view to a peaceful settlement has given its attention to the controversy which has unhappily arisen between your Government and the Italian Government and that the controversy is now in process of arbitra-

tion. My Government hopes that whatever the facts or merits of the controversy may be, the arbitral agency dealing with this controversy may be able to arrive at a decision satisfactory to both of the Governments immediately concerned.

"Furthermore and of great importance in view of the provisions of the Pact of Paris to which both Italy and Abyssinia are parties in common with sixty-one other countries my Government would be loath to believe that either of them would resort to other than pacific means as a method of dealing with this controversy or would permit any situation to arise which would be inconsistent with the commitments of the Pact."

On July 10th, during a call of the Italian Ambassador made at the request of the Secretary of State, the Secretary made to the Ambassador a statement as follows:

"Although we are not familiar with the facts or the merits of the questions at issue between Italy and Ethiopia, we are deeply interested in the preservation of peace in all parts of the world and we are particularly interested in those international arrangements designed to effect the solution of controversies by peaceable means.

"Being convinced that world progress and economic recovery are urgently in need of peaceful conditions, particularly at this time, we feel impelled to impress upon the Italian Ambassador our increasing concern over the situation arising out of

Italy's dispute with Ethiopia and our earnest hope that means may be found to arrive at a peaceful and mutually satisfactory solution of the problem."

On July 11th the Secretary of State conferred with the British and French Ambassadors. He called attention to an article which had appeared in the press wherein there was placed upon the American Government's reply to the Emperor of Ethiopia an interpretation implying that the American Government had abandoned the Kellogg-Briand Pact and the Pact was therefore "dead".

The Secretary said he felt this interpretation was entirely contrary to the sense of his note to the Emperor which had emphasised the principles of the Pact of Paris and had given evidence of this Government's interest in the settlement of this dispute by peaceable means.

On the same day at his press conference the Secretary of State pointed out that naturally the American Government, as had frequently been stated previously, is deeply concerned about the preservation of peace in every part of the world and is closely observing conditions and developments.

On July 12th, in response to various inquiries of newspapers correspondents, the Secretary of State made a statement as follows:

"The Pact of Paris is no less binding now than when it was entered into by the sixty-three nations that are parties to it. By form and designation it constitutes a treaty by and among those nations. It is a declaration by the governments of the world that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another. Furthermore, it is an agreement and a solemn obligation that the settlement or solution of all disputes or conflicts among nations, of whatever nature or of whatever origin, shall never be sought except by pacific means.

"The United States and the other nations are interested in the maintenance of the Pact and the sanctity of the international commitments assumed thereby for the promotion and maintenance of peace among the nations of the world."

On August 1st the President issued a statement as follows:

"At this moment when the Council of the League of Nations is assembled to consider ways for composing by pacific means the differences that have arisen between Italy and Ethiopia, I wish to voice the hope of the people and the Government of the United States that an amicable solution will be found and that peace will be maintained."

Thereafter, during the month of August, expres-

sion of this hope of the people and Government of the United States was communicated in telegrams from the American Government to several other Governments.

On September 3rd, having discovered that an American corporation was a party to a newly granted commercial concession, the conclusion of which had added to the perplexities and difficulties confronting the governments and other agencies which are intent upon preservation of peace, the American Government took prompt steps toward removal of this obstacle to peaceful settlement. In connection with that matter the Secretary of State said at his press conference:

"The central point in the policy of this Government in regard to the Italian and Ethiopian controversy is the preservation of peace to which policy every country throughout the world is committed by one or more treaties—and we earnestly hope that no nations will in any circumstances be diverted from this supreme objective."

Now this Government feels called upon further to express the attitude of this country.

The Government and people of the United States desire peace. We believe that international controversies can and should be settled by peaceful means. We have signed, along with sixty-two other nations, including Italy and Ethiopia, a treaty in which the signatories have condemned war as an instrument of national policy and have undertaken each and all to settle their disputes by none but pacific means.

Under the conditions which prevail in the world today, a threat of hostilities anywhere cannot but be a threat to the interests—political, economic, legal and social—of all nations. Armed conflict in any part of the world cannot but have undesirable and adverse effects in every part of the world. All nations have the right to ask that any and all issues between whatsoever nations be resolved by pacific means. Every nation has the right to ask that no nations subject it and other nations to the hazards and uncertainties that must inevitably accrue to all from resort to arms by any two.

With goodwill toward all nations, the American Government asks of those countries which appear to be contemplating armed hostilities that they weigh most solicitously the declaration and pledge given in the Pact of Paris..., which pledge was entered into by all the signatories for the purpose of safeguarding peace and sparing the world the incalculable losses and human suffering that inevitably attend and follow in the wake of wars.

APPENDIX VII — PROCLAMATION RELATIVE TO ARMS, AMMUNITION AND IMPLEMENTS OF WAR

On September 26 the President issued the proclamation summarized below defining the term "arms, ammunition, and implements of war" with reference to the registration and licensing provisions of the Neutrality Act. The list applies only to those articles which require an export license under this act. The definition of the meaning of "implements of war" for purposes of the embargo under section I has not been made.

The White House today issued a proclamation by the President in which he declared and proclaimed that the following articles shall be considered arms, ammunition and implements of war for the purposes (regarding registration and licensing provisions) of the joint resolution of Congress regarding neutrality.

1. Rifles and carbines and ammunition in excess of calibre 26.5 and their barrels.
2. Machine guns, automatic rifles and machine pistols of all calibres and their barrels.
3. Howitzers and mortars of all calibres, their mountings and barrels.
4. Ammunition for the arms under one and three above and high powered steel jacketed ammunition in excess of calibre 26.5; filled and

unfilled projectiles with a thickness of .015 inch or greater for the projectiles of the arms enumerated under three above.

5. Bombs, torpedos and mines, filled or unfilled and appliances for their use or discharge.

6. Tanks, military armored and unarmored.

7. Vessels of war of all kinds including aircraft carriers and submarines, aircraft, assembled or dismantled heavier and lighter than air which are designed and intended for aerial combat by the use of machine guns or of artillery of war, the carrying and dropping of bombs, or which are equipped with or without design or construction prepared for any of the appliances referred to in the following paragraph.

Torpedo carriers and bomb or torpedo release mechanism. Revolvers and automatic pistols of a weight in excess of 630 grams using ammunition in excess of calibre 26.5 and ammunition therefor. Aircraft assembled or dismantled both heavier and lighter than air other than those included in category three. Propellers or air screws, hull, tail units and under carriage units, aircraft engines, projectiles and flame throwers, mustard gas and its release apparatus.

THE SUEZ CANAL AND LEAGUE SANCTIONS

BY RAYMOND LESLIE BUELL

THIS GENEVA RESEARCH STUDY, WHICH HAS QUICKLY
ATTRACTED INTERNATIONAL ATTENTION, DISCUSSES
THE QUESTION WHETHER IT WOULD BE LEGALLY
POSSIBLE TO CLOSE THE SUEZ CANAL AGAINST AN
AGGRESSOR STATE

THE FOLLOWING REPORTS
WILL APPEAR SOON

THE ITALIAN-ETHIOPIAN DISPUTE SERIES

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