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AMERICAN REGULATION
OF ARMS EXPORTS

BY
ELTON ATWATER

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Monograph Series of the
Carnegie Endowment for International Peace
Division of International Law
No. 4

AMERICAN REGULATION OF ARMS EXPORTS

BY

ELTON ATWATER

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Elmira College*

WASHINGTON
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1941

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FOREWORD

The regulation of the traffic in arms is a subject which has been considered from many points of view. In recent times the problem has been viewed from the standpoints of the preservation of neutrality and of the deterrents of aggression, or sanctions, as well as from those of international ethics and of diplomacy. It has played its part in American politics, in schemes for world organization, and in plans for the conservation of resources. In earlier periods, arms embargoes were an important instrument in the Latin American policy of the United States. In the dawn of United States history, ill-fated experiments with complete embargoes were an important incident in the history of our relationship to the French Revolutionary and Napoleonic Wars. All of these and other aspects of the regulation of the traffic in arms throughout the history of the United States have been analyzed by Professor Atwater in this book. His previous detailed study of the application of sanctions by the members of the League of Nations against Italy during the Ethiopian War has provided him with an unusual background for considering the more recent aspects of the American policy.

At this time, it may be that the various uses of the arms embargo as an instrument of policy fade into the background while more pressing problems of defense and perhaps of war itself occupy the center of the stage. Yet the history of the use of embargoes, both statutory and "moral," is still being written as part and parcel of the history of the neutrality of the United States. The repeal of the arms embargo when the Neutrality Act of 1939 was passed is clearly seen in retrospect as the first step in aid to Britain short of war. At this writing, one can not yet say whether the United States Government's refusal to yield to the clamor for an anti-Japanese embargo will prove to have been part of the prelude to peace or to war. But it is clear that the decision to raise or to impose an arms embargo is fraught with consequences of the utmost seriousness. It is also true that present prophesies of post-war world conditions are hazardous. Nevertheless, under all of the hypotheses which one may select as a basis for analyzing the future, it is safe to assume that the regulation of the traffic in arms will play its part, whether as a measure of conservation, of defense, of national pressure or of international cooperation. As Professor Atwater points out in his Introduction, however, it is always necessary to consider the purpose for which an arms embargo has been imposed before utilizing the

experience with it as a precedent for comparable action. This book with its record and appraisal of past experience has, therefore, a permanent value not only as a history but also as an aid in planning the future.

PHILIP C. JESSUP

Director of the Division of International Law

New York, N. Y.

April 1, 1941.

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The writer would like to take this opportunity to express his sincere appreciation to the many persons who have given him assistance and counsel in the preparation of this study. A particularly deep debt of gratitude is owed to Professor Philip C. Jessup of Columbia University, Director of the Division of International Law of the Carnegie Endowment for International Peace, who has written the Foreword and has made many helpful, critical suggestions regarding the scope and content of the study. Special thanks are due also to the following persons who have given much counsel in the preparation of the study and have read and criticized the manuscript, in part or in whole: Professors Ellery C. Stowell, Catheryn Seckler-Hudson and Henry B. Hazard of American University, Washington, D. C.; Mr. Leo Pasvolksy of Brookings Institution, now Special Assistant to the Secretary of State; Mr. Carlton Savage, Assistant to the Assistant Secretary of State; Professor Pitman B. Potter of the Graduate Institute of International Studies, Geneva, Switzerland; and Professor John B. Whitton of Princeton University, formerly of the Graduate Institute of International Studies.

In the preparation of the study, the writer was especially fortunate in being permitted to consult the unpublished papers of the Department of State to December 31, 1918. For this, he is indebted to the officers of that Department and in particular to Mr. Joseph C. Green, Chief of the Division of Controls, and Mr. Charles W. Yost, Assistant Chief of that Division. These gentlemen have given unselfishly of their time in facilitating the writer's research and in making countless valuable suggestions based on their intimate acquaintance with the problems of regulating the export of arms from the United States. Needless to say, all responsibility for the accuracy of the material contained herein rests with the writer.

Grateful acknowledgment should be made to the librarians of the Carnegie Endowment for International Peace and the Brookings Institution in Washington, D. C., without whose assistance the collection of material would have been vastly more difficult. The writer also wishes to express his deep appreciation to the Brookings Institution for a fellowship in the years 1938-9 which enabled him to do the necessary research.

Final acknowledgment is due the Division of International Law of the Carnegie Endowment for International Peace under whose auspices the book is being published.

The manuscript was completed in August, 1940, but wherever possible additions and modifications have been made to bring the material covered up to January 1, 1941.

ELTON ATWATER

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ABBREVIATIONS

- A.J.I.L.* *American Journal of International Law*
- Annals* *The Annals of the American Academy of Political and Social Science*
- Moore, Digest* John Bassett Moore, *A Digest of International Law*, 8 vols. (Washington, 1906)
- Stat.* *United States Statutes at Large*

INTRODUCTION

INTRODUCTION

No phase of American foreign policy in recent months has perhaps attracted more attention than the question of prohibiting or permitting the export of war materials to belligerent nations. No subject, furthermore, has perhaps revealed more clearly the confused and conflicting attitudes of the American people with respect to foreign wars. Anxious on the one hand to stay out of war and to have no part in the nefarious armaments traffic, yet desirous at the same time of permitting the shipment of war supplies to the victims of "aggression", American opinion has rapidly shifted from one policy to another in an effort to give expression to the various positions which it feels the United States should play in world affairs.

During the past few years, much has been written and spoken on the alleged evils of the armaments traffic and on the desirability or undesirability of prohibiting the export of arms in time of war. The discussion was fanned to a white heat for the first time by the sensational hearings before the Special Senate Munitions Investigation Committee in 1934, and large numbers of people became persuaded that the munitions manufacturers bore a heavy part of the responsibility for the entry of the United States into the World War. The immediate outcome of this was the adoption by Congress in 1935 of an arms export licensing system, together with a provision for an automatic embargo on arms shipments to all belligerent states as soon as the President found a state of war to exist. The subject of arms embargoes thereby became associated in American policy with the problems of neutrality, and it was in this particular connection that they received the most attention from the public thereafter. The provision for an automatic arms embargo, which constituted a considerable departure from the historic principle of freedom for private arms exports, was but one phase of the general right-about-face in American neutrality policy which Congress attempted to legislate beginning in 1935. It was symbolic of the passionate desire of the American people to keep out of war. Yet four years later, ironically, it failed to withstand the test of a major European conflict when it became apparent that the embargo was operating to forbid the export of arms to the belligerent group with which the American people were in sympathy.

Repeal of the arms embargo in 1939 precipitated another heated discussion on the subject of arms exports and neutrality, and again revealed how symbolic the embargo had become of the desire to stay out of war. Much attention was devoted to the relative advantages and disadvantages which an arms embargo would offer in the efforts to keep the United States out of foreign conflicts.

III. *Regulation of Arms Exports to Discourage Foreign Wars and to Keep the United States Out of War.*—Between 1934 and 1939, the United States, without expressly denying its rights under international law, voluntarily restricted these rights on a few occasions by prohibiting all arms exports to countries engaged in international war. This policy was first seen in the Chaco embargo of 1934-5, and it was later generalized in the neutrality acts of 1935 and 1937. Since November 29, 1935, all arms exports from the United States have been subject to license by the Department of State. On November 4, 1939, two months after the outbreak of the general war in Europe, Congress repealed the arms embargo provisions of the laws above mentioned, and permitted the export of arms and other commodities to the European belligerents on a "cash-and-carry" basis. This represented a return to a modified form of the traditional policy of freedom for private arms exports.

While it is of course impossible to say that the American policy with respect to the regulation of arms exports is divided into three neatly distinguishable periods—for the periods flow into one another and there is actually no sharp breaking point between them—it will nevertheless be easier to trace the development of this policy if one keeps in mind the general trends which have made themselves evident. The present problem of government control over arms exports can be viewed in better perspective, for example, if one keeps in mind that for over a century our general policy was opposed to such control, and that since the early part of the twentieth century limited control has been applied on occasion with respect to arms exports to Latin America and China.

It will become clear in the following pages that arms exports have been regulated by the United States for a number of different purposes: to strengthen the national defense by the conservation of essential supplies for domestic use in case of war; to prevent disorder and revolution in areas where American interests were felt to be vitally affected; to bring pressure to bear against certain governments to adopt policies more favorable to American interests; to shorten or terminate foreign wars; to keep the United States out of war; and to discourage certain objectionable actions of other states such as the bombing of civilian populations. In addition, there have been proposals to apply arms embargoes for the purpose of preventing or stopping "aggression" and enforcing such treaties as the Briand-Kellogg Pact. The United States has not as yet applied any formal arms embargoes for this purpose, although such action has been taken on two occasions by the members of the League of Nations (the embargo against Paraguay from January to July, 1935, and the embargo against Italy from October, 1935, to July, 1936). The United States applied embargoes during both the Chaco and Italo-Ethiopian conflicts, but did so impartially

without discriminating between the two belligerents as did the League members. Since 1938, however, there has been an increasing tendency on the part of the United States Government to use its power to discourage arms shipments to countries which were regarded as "aggressor" nations. Evidences of this have been seen in the informal "moral" embargoes against Japan and Russia, as well as in the general policy of the Roosevelt administration of all aid short of war to the European democracies.

It is extremely important in any study of arms export regulation to keep in mind the different purposes for which such regulation has been applied. This is particularly true when it comes to the consideration of precedents for the application of arms embargoes. There is all too often a tendency on the part of those attempting to justify a particular action to cite as a precedent the mere fact that some similar action took place in the past, without any consideration of whether or not the circumstances and motives underlying the previous action correspond to the circumstances and motives underlying the proposed action. This is unfortunate and confusing, for a precedent, in the opinion of the writer, consists not alone of the fact of similar action, but also of similar circumstances and similar reasons. An arms embargo for purposes of self-defense, for example, can hardly be considered as a precedent for an arms embargo to discriminate against an aggressor nation; nor can the embargoes to prevent revolution in special areas of Latin America be viewed accurately as precedents for an embargo to keep the United States out of war. This distinction between the various purposes of arms export restrictions will become apparent as the study proceeds.

One further distinction should also be made, viz., the distinction between permanent supervision of all arms exports by means of a government licensing system, and the application of embargoes or restrictions on arms exports at particular times and to particular countries. The United States has been relatively late in adopting permanent supervision, having had a licensing system only since 1935, whereas many of the European countries have had such a system in operation since the World War. The United States has, however, prohibited or restricted the export of arms to particular countries on several occasions since 1905.

Before taking up the specific cases in which the shipment of arms has been restricted or prohibited, attention will be devoted to the long period from 1793 onward during which the United States viewed with disfavor any interference with the right of its citizens to sell and export arms freely. This period will be treated in Part I which immediately follows. In the two subsequent parts, the various instances of regulation will be examined.

PART I
NON-REGULATION OF THE PRIVATE EXPORT OF ARMS

CHAPTER I

THE HISTORIC PRONOUNCEMENT OF JEFFERSON— FREEDOM FOR PRIVATE ARMS EXPORTS

Apart from special treaty obligations, international law as revealed in the practice of nations has never, either prior to 1793 or since, recognized any general obligation on the part of neutral governments to prohibit their nationals from selling and exporting arms or other contraband goods to belligerent powers.¹ While it has been generally recognized that belligerents had a right to seize and confiscate such contraband in order to prevent it from reaching the enemy, the responsibility of neutral states, in the opinion of most authorities, was not compromised by the fact that their citizens engaged in contraband trade. Belligerents could not hold a neutral power responsible for the ordinary commercial trade in contraband by its citizens so long as the latter were willing to sell on the same terms to all belligerents.²

¹ The states participating in the Armed Neutrality of 1780 had voluntarily undertaken to prohibit their subjects from engaging in contraband trade with any of the belligerents in the war of the American Revolution. Sweden and the Republic of Venice had already taken similar action in 1779. This, however, was not the generally recognized practice of the times. James Brown Scott, *The Armed Neutralities of 1780 and 1800* (New York, 1918), pp. 299, 311, 391, 403, 420, 433. G. F. de Martens, *Recueil de Traité*s, III, pp. 60-1, 76-7.

² It seems unnecessary to cite the many instances in the practice of nations as well as in the writings of authorities on international law in which this general principle has been laid down. It was crystallized in the Fifth and Thirteenth Hague Conventions of 1907 concerning the rights and duties of neutral powers in land and naval warfare. Article 7 of the Fifth Convention provided as follows, and Article 7 of the Thirteenth Convention was similar in substance: "A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet." 36 *United States Statutes at Large*, 2323, 2428 (hereinafter cited as *Stat.*). Hershey has observed that official protests against the right of neutral individuals to trade in contraband have been made by belligerent governments during nearly every war, but he adds that this view is without sanction either in theory or practice. Amos S. Hershey, *Essentials of International Public Law and Organisation* (rev. ed., New York, 1927), p. 672, note 7. A few writers, notably Phillimore, Hautefeuille, Pistoye, Duverdy, Kleen, Brusa, Field and Woolsey, have urged that neutral governments were obliged to prevent their nationals from supplying arms or munitions to belligerents, but these are a small minority in comparison with the great number of text writers and jurists who have held that neutral governments were bound by no such duty. Cf. James W. Garner, "The Sale and Exportation of Arms and Munitions of War to Belligerents," *American Journal of International Law* (hereinafter cited as *A.J.I.L.*), Vol. 10 (1916), pp. 749 ff. at pp. 751-3. Professor Garner has brought together in this article a collection of citations illustrating the general rule that neutral governments are not obliged to prohibit the private traffic in arms.

It should perhaps be noted that neutral governments are obliged to prevent their citizens from building or fitting out armed vessels for belligerent states or delivering arms directly to belligerent warships, such acts being viewed as making of neutral territory a base of military operations. While it may seem inconsistent to prevent such transactions and not to prevent the ordinary commercial production and sale of

When the United States, therefore, after the outbreak of the wars of the French Revolution, announced its intention of not prohibiting its citizens from engaging in the export of arms or contraband to the belligerent powers, it was not making any departure from the generally recognized practice of the time. Thomas Jefferson, then Secretary of State, set forth this position in his well-known note to the British Minister at Washington (Hammond) on May 15, 1793. The latter had previously called the attention of Jefferson to reports that a French agent had been purchasing arms in the United States with a view to exporting them to France. In this memorial, the Minister had suggested that the United States might deem it more expedient to prevent such activities than to expose American vessels to the dangers and difficulties which might result from their transporting such articles.¹

To this Jefferson replied with his historic pronouncement:

Our citizens have been always free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal disarrangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation,² that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent powers on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned, and, that even private contraventions may work no inequality between the parties at war, the benefit of them will be left equally free and open to all.³

The American Secretary of State thus gave expression to a principle which was to be followed by the United States with but few exceptions for a century and a quarter. The British Minister had not actually expected that Jefferson would take any other position or that the United States would prohibit the trade in contraband, but he merely wished to find out whether the Washington administration would recognize in so many words the right of the British to interfere forcibly with such commerce.⁴ Jefferson's reply of May 15 therefore provided what he wanted.

arms or munitions of war, it must be remembered that the law of neutrality has grown up as a practical set of compromises between the claims of belligerents and neutrals, and that it is therefore not necessarily consistent. It represents a practical working arrangement, rather than a consistently developed set of principles.

¹ Hammond to Jefferson, May 8, 1793. Cited in Charles M. Thomas, *American Neutrality in 1793, A Study in Cabinet Government* (New York, 1931), pp. 247-8.

² Neutrality proclamation of April 22, 1793. *American State Papers, Foreign Relations*, Vol. 1, p. 140.

³ J. B. Moore, *A Digest of International Law* (8 vols. Washington, 1906, hereinafter cited as Moore, *Digest*), Vol. 7, p. 955.

⁴ Charles S. Hyneman, *The First American Neutrality* (Urbana, Ill., 1934), pp. 145-6.

It is evident from the wording of Jefferson's note that one of the main reasons behind his position was that of economic advantage—the desire not to interfere with the commercial opportunity of any group of American producers or exporters. Indeed, the struggle for commercial independence which the United States was making at this time was the principal factor behind both its assertion of the general right of neutral citizens to trade with belligerents and its efforts to defend this right against the interference of Great Britain and France.

The Jefferson statement of May 15, 1793, was supplemented by instructions to the customs collectors on August 4, 1793, which declared that the purchase and export of contraband articles were not to be interfered with, but added that any American citizens attempting to transport them to the belligerents would be abandoned to the penalties authorized by the laws of war.¹

While the United States was not adopting any novel position in refusing to prohibit the export of arms, the fact that she did so at this particular time was significant. It will be recalled that the Washington administration, in pursuing its newly adopted policy of impartial neutrality, was insisting that the inviolability of its territory be respected by the belligerents and that no acts be committed within its jurisdiction which could be construed in any way as participation by the American Government in the European conflict.² The Government of the United States thereby declined to assume the rôle of partiality which was being urged upon it by France under the Franco-American Treaty of Alliance of 1778,³ and insisted instead on pursuing a policy of complete impartiality and non-participation. This, too, was not a novel policy for a neutral government, although it had not as yet become a well-established rule of international law. The principles of neutral impartiality and inviolability of neutral territory had been gaining increased recognition during the seventeenth and eighteenth centuries.⁴ Moreover, during the American Revolution, when England was also at war with France, and later with Spain and the Netherlands, several of the European neutrals had expressly forbidden

¹ *American State Papers, Foreign Relations*, Vol. 1, pp. 140-1.

² For a very helpful and comprehensive study of the American neutrality policy at this time, see Hyneman, *op. cit.*, *passim*.

³ Such partiality would not have been inconsistent with the standards of neutral conduct generally recognized up to that time. Numerous treaties, for example, had been concluded during the 16th, 17th and 18th centuries embracing: 1) promises to aid the other contracting party with men and money in case it should be involved in war; 2) promises to refrain from aiding the enemy of the other contracting party; and 3) promises to grant or deny transit privileges to troops of the other party. For further discussion, see *Neutrality, Its History, Economics and Law* (New York, 1935), by Philip C. Jessup and Francis Deák, Vol. 1, "The Origins", pp. 24 ff. See also W. E. Hall, *A Treatise on International Law* (7th ed. London, 1917), pp. 616-32.

⁴ Hyneman, *op. cit.*, pp. 13-16, 96-8, 112-17, 142-4. Jessup and Deák, *op. cit.*, pp. 249-60.

such acts as the arming or fitting out of public or private vessels for any of the belligerents, the enrolment of nationals in the service of the belligerents, and the recruiting of soldiers for such powers.¹ In addition to this, some of the neutral powers, especially those which participated in the Armed Neutrality of 1780, had gone so far as to forbid their nationals to engage in the supplying or carrying of arms and contraband to any of the belligerents.²

The United States, in 1793 and 1794, not only accepted the principles of impartiality and non-participation as applied by the European neutrals in the preceding years, but also enlarged upon them, clarified them and gave considerable impetus to their general recognition as obligations under the international law of neutrality. The American Government did not go so far, however, as had the European neutrals in prohibiting its nationals from supplying or carrying arms or contraband to the belligerents. This, it was felt, would impose too heavy a financial and economic sacrifice upon American industry. Therefore the United States made a careful distinction between government assistance or participation, which it promised not to engage in, and the acts of private citizens in aiding one or the other belligerent through the supplying or carrying of contraband, which it announced could take place freely subject to the risk of penalties at the hands of the belligerents. Thus, instead of following the complete standards of the Armed Neutrality, the United States, while accepting and enlarging upon the principles of governmental impartiality and non-participation, chose to retain for its private citizens the right to engage at their own risk in the profitable arms and contraband trade. Viewed in the light of this historical perspective, the pronouncement of Jefferson on the freedom of American citizens to export arms was singularly significant in 1793. It has even been suggested by Mr. Hyneman that had the United States at this time followed the precedents of the first Armed Neutrality and adopted the policy of prohibiting exports of contraband to belligerents, the whole development of international law on this matter might have been changed, and neutral governments might thereafter have come to consider such export prohibitions as the customary standard of international practice.³

¹ See, for example, the edict of the King of the Two Sicilies, September 19, 1778; edict of the Pope, March 4, 1779; ordinance of the King of Sweden, March, 1779; edict of the Republic of Genoa, July 1, 1779; and edict of the Republic of Venice, September 9, 1779. Martens, *Recueil de Traité*, III, pp. 46 ff., 52 ff., 60-1, 64 ff., 74 ff. For further discussion, see Hyneman, *op. cit.*, pp. 96-8, 112-17, 142-4.

² See *supra*, p. 7, note 1.

³ Hyneman, *op. cit.*, p. 149. As a matter of fact, neutral governments in a few instances during the 19th century (especially during the Franco-Prussian and Spanish-American Wars) and again during the World War prohibited arms exports to the belligerent powers. One of the principal motives, however, behind these embargoes, particularly on the part of the small European neutrals, was the conservation of

Having pronounced in favor of freedom for the private arms export trade, the United States nevertheless soon found itself in a situation where several exceptions had to be made to the general policy. Despite its good intentions of adhering to this policy, and despite the economic advantages deriving from a free arms export trade, the dangers of becoming involved in the European conflict during the critical years following 1793 obliged the American Government to take a number of precautionary steps in the direction of national defense and the protection of American neutral rights. Among these measures were two specific arms embargoes and several general embargoes on all foreign shipping and trade.

The first specific exception to the Jefferson policy of 1793 occurred one year later when Congress, by an act of May 22, 1794, prohibited for one year the export of cannons, muskets, pistols, bayonets, swords, cutlasses, musket-balls, lead, bombs, grenades, gunpowder, sulphur and saltpetre.¹ As will be seen, this was primarily a defense measure designed to conserve essential war materials in the United States for domestic needs, and it did not represent any fundamental change in the policy set forth by Jefferson a year earlier. Relations with Great Britain were dangerously near the breaking point in 1794,² and war was averted only by the decision of President Washington to send a special envoy, John Jay, to England to negotiate an agreement. The temporary arms embargo of 1794, which was allowed to expire a year later as the immediate danger of war faded,³ must be viewed therefore as a war measure, adopted under exceptional circumstances and abandoned when those circumstances no longer existed. Its exceptional nature is further seen in the fact that it prohibited arms exports to all destinations and not merely to the countries at war in Europe. By the middle of 1795, the United States was again following the policy upon which it had originally insisted—freedom of private citizens to sell and export arms at their own risk.

In 1797, however, an arms embargo was again applied, and again it

necessary war supplies for domestic use. During the World War, the pressure from both belligerents was another factor which obliged those powers to impose the embargoes. To the extent that these motives were responsible for the embargoes, the latter cannot be regarded as neutrality regulations, but only as measures of national defense. Cf. Garner, "The Sale and Exportation of Arms and Munitions of War to Belligerents," *A.J.I.L.*, Vol. 10 (1916), p. 777.

¹ 1 *Stat.* 369. There is no record of any Congressional debate on the proposal in the *Annals of Congress*. It should be noted that a general embargo on all ships leaving for foreign ports had been in effect since March 26, 1794, but was to expire on May 25. See *infra*, p. 14, note 2.

² Cf. Samuel F. Bemis, *Jay's Treaty* (New York, 1923), esp. Chaps. vii-ix.

³ The treaty concluded with England (Jay's Treaty) in November, 1794, was finally approved and consented to by the Senate in June, 1795. While there was considerable popular opposition to the treaty at the time of its ratification, the actual danger of war seems to have passed when the two governments signed the treaty.

was essentially a defense measure of an exceptional character. This time it was the possibility of war with France which loomed on the horizon, and which actually did culminate in a state of quasi-war from 1798 to 1800.¹ Confronted with widespread interferences with American shipping and commerce by French privateers and war vessels, President John Adams had summoned a special session of Congress to convene in May, 1797, and recommended that various precautionary measures of national defense be adopted.² Both houses of Congress responded sympathetically, and one of the first actions taken was the enactment of a law on June 14, 1797, establishing another temporary arms embargo.³ It applied to the same articles as had its predecessor of 1794, and was to be in effect until the end of the next session of Congress.

There was a brief debate on the bill in the House of Representatives on June 6, 1797, which indicated clearly that the embargo was essentially a defense measure. The purpose of the law was declared to be twofold: (a) to preserve the designated arms and ammunition in the United States for use in case of an emergency; and (b) to keep them at the same time from reaching foreign powers which might later use them against the United States.⁴ The exceptional character of the law was thereby made clear.

Certain objections, familiar to the ears of Congress in recent years as well as in 1797, were raised to the proposal on the ground that it would injure the American arms manufacturers and oblige them to turn to other activity with the result that after a few months there would be a greater scarcity of the needed articles than if no embargo were established.⁵ It was also suggested by a few members of the House that the intention of the bill seemed to be more one of cutting off the supplies of foreign powers than of conserving the articles for our own needs. The debate had already indicated that there was little probability of the United States' being inadequately supplied with cannon and cannon balls, from which it was concluded that the purpose was evidently one of preventing these goods from reaching foreign powers. This purpose, it was observed, might be attended with serious inconveniences since in

¹ Outraged by the Jay Treaty in which the United States had acquiesced in the British interpretation of maritime law, France had begun a series of retaliatory measures against American shipping in July, 1796, and had suspended formal diplomatic relations a few months later. Cf. W. A. Phillips and A. H. Reede, "The Napoleonic Period," *Neutrality, Its History, Economics and Law*, Vol. 2, pp. 72-90; also James B. Scott (ed.), *The Controversy over Neutral Rights between the United States and France, 1797-1800* (New York, 1917), pp. 1-24.

² Message to Congress, May 16, 1797, *Annals of Congress*, Vol. 7, col. 54.

³ 1 Stat. 520. Other acts adopted at this time authorized the fortification of certain ports and harbors, the organization of a standing militia in the several states, and the employment of three war vessels. *Ibid.*, 521-5.

⁴ *Annals of Congress*, Vol. 7, col. 249.

⁵ *Ibid.*, col. 248.

actual practice it would operate principally against one of the belligerent powers. For while both England and France had an equal right at that time to come and purchase arms, a complete prohibition would operate to the disadvantage of France which was more dependent on outside supplies. For this reason, it was feared that the law might offend France and provoke hostilities with her.¹

Despite these criticisms and observations, there was no very widespread objection to the embargo, and it was approved by a vote of 74-8 in the House on June 8, 1797.² There is no record of any debate on the subject in the Senate.

During the following session of Congress, the embargo was extended for another limited period, until May, 1800.³ Even more vigorous action was being taken now by the United States in order to protect its seafaring commerce from depredation at the hands of the French, and actual though undeclared hostilities were in fact taking place between the two countries.⁴ The arms embargo was only a small part of the general measures of defense being taken at that time. By the spring of 1800, however, the diplomatic situation had changed, and there was a prospect of peace, or at least of a return to more normal conditions.⁵ Under these circumstances, the embargo was allowed to expire when Congress adjourned in May, 1800.

With brief exceptions during the Civil and Spanish-American War periods, this was the last specific arms export prohibition in American history until the early twentieth century. At the recommendation of President Jefferson,⁶ an attempt was made to adopt a similar arms embargo act in 1805, and a bill to this effect was actually passed by the House of Representatives, but failed in the Senate.⁷ Another bill to

¹ *Annals of Congress*, Vol. 7, col. 249.

² *Ibid.*, col. 267.

³ An act of April 7, 1798 (1 *Stat.* 549) provided that the embargo should extend for one year after the close of that session of Congress, and thence until the end of the next session thereafter. The session then meeting adjourned in July, 1798, which meant that the embargo would continue until July, 1799, and thence until the end of the next session of Congress. The next session met in December, 1799, and sat until May 14, 1800. The embargo was therefore in effect until the latter date. *Annals of Congress*, Vol. 10.

⁴ See Gardner W. Allen, *Our Naval War with France* (Boston, 1909). For a concise summary of the measures taken by the United States at this time, see Samuel F. Bemis, *A Diplomatic History of the United States* (New York, 1936), pp. 117-21. See also Scott, *The Controversy over Neutral Rights between the United States and France*, pp. 54-92.

⁵ The French Government was now more interested in improving its relations with the United States lest the latter be drawn into an alliance with Great Britain. Napoleon had taken steps to relax the hostile French maritime policy, and a new American mission had arrived and been received respectfully in Paris in March, 1800. Bemis, *A Diplomatic History of the United States*, pp. 122-3.

⁶ In his message to Congress of December 3, 1805, Jefferson had recommended a further strengthening of the national defenses and also an immediate prohibition on the export of arms and ammunition. J. D. Richardson, *Messages and Papers of the Presidents, 1789-1897* (10 vols. Washington, 1896-1899), Vol. 1, pp. 382 ff. at p. 385.

⁷ *Annals of Congress*, Vol. 15, col. 182, 268-75. The reason for its failure in the Senate is not indicated.

prohibit the export of arms and other war supplies was introduced in February, 1809, but was not approved.¹

The use of arms embargoes by the United States is therefore not entirely new, although it must be recognized clearly that the purposes of the embargoes have changed. The early prohibitions on arms exports were exceptions to our general policy of freedom for the private arms trade, and were adopted for the purpose of conserving necessary supplies for domestic use. Today we have abandoned to a very considerable extent the policy of freedom for the private arms trade. We have subjected all exports of arms, ammunition and implements of war to government licensing. From 1935 to 1939, legislation was in effect envisaging the application of arms embargoes in cases of international wars for the purpose of "starving" such wars and reducing some of the risks of our becoming involved therein. Since November, 1939, arms exports in time of war have again been permitted, but only on a "cash-and-carry" basis.

The two specific arms export prohibitions of 1794-1795 and 1797-1800 were but a small part of the series of general embargoes on all foreign trade and shipping which the United States applied intermittently between 1794 and 1814 for the purposes of national defense and protection of American neutral rights.² Arms exports were of course included also in these general trade prohibitions, but their inclusion was obviously only incidental. To the extent that they were included, however, the general policy set forth by Jefferson in 1793 concerning the freedom of the private arms export trade was *temporarily*

¹ *Annals of Congress*, Vol. 19, col. 1535-6.

² *March 26 to May 25, 1794*. General embargo on all vessels bound for foreign ports. Defense measure.

December 22, 1807 to March 15, 1809. General embargo on all vessels bound for foreign ports. This was the famous "Jeffersonian embargo" adopted in an effort to force England and France, by means of economic pressure, to abandon their restrictions on neutral commerce.

March, 1809 to May 1, 1810. Non-intercourse with England and France, adopted to replace the unpopular Jeffersonian embargo.

February, 1811. Non-intercourse reestablished against Great Britain.

April to July, 1812. General embargo on all vessels bound for foreign ports (except those chartered by the United States Government) and on the export and transport of all goods from the United States to foreign countries. This was a defense measure adopted shortly before the outbreak of war with Great Britain (June 18, 1812).

December 17, 1813 to April 14, 1814. General embargo on the export and transport of all goods by land or sea to foreign countries and on all vessels bound for foreign ports with certain exceptions. This was a military measure designed to prevent supplies more effectively from reaching British ports and armies, especially by way of Canada.

For a detailed discussion of these general embargoes, see Henry Adams, *History of the United States of America* (9 vols. New York, 1889-91), Vol. 4, Chaps. vii, xi, xii, xiv, xv, xix (embargo of 1807-9); Vol. 5, pp. 14-21, 33-7, and *passim* (non-intercourse, 1809-10); Vol. 6, pp. 193-204 (embargo of 1812); Vol. 7, Chap. xv (embargo of 1812-13). For special studies of the Jeffersonian embargo, see Louis M. Sears, *Jefferson and the Embargo* (Durham, N. C., 1927); and Walter W. Jennings, *The American Embargo, 1807-1809* (Iowa City, 1921).

shifted still further into the background. The word "temporarily" is emphasized because it is clear that no fundamental change in the policy on this matter was contemplated. There was indeed no intention of relinquishing the rights of neutral citizens to export arms or contraband, and the embargoes and restrictions of 1807-1810, for example, were adopted only as a non-violent method of coercion designed to secure ultimately a greater recognition and respect on the part of England and France for neutral rights in general. While they did represent a temporary relinquishment of the right of American citizens to engage in contraband and other trade, they were not necessarily inconsistent with this general policy, but were instead a bold experiment in pacific coercion intended to secure greater respect for that policy. The other embargoes applied during this period were measures of national defense, and as such were clearly exceptional and temporary in character.¹

The writer does not propose to discuss further these general embargoes inasmuch as they bear only incidentally on the American policy with respect to arms export control. It should be noted in passing, however, that the Jeffersonian and other embargoes of this period which applied to all foreign trade and shipping should not be compared, as to their effects, with the effects of embargoes on arms exports alone. The economic readjustments and sacrifices imposed by a prohibition on arms exports would be insignificant in comparison with those required by a general embargo such as was in effect from 1807 to 1809.

¹ By way of contrast, the embargoes which the United States imposed on arms exports to belligerent powers between 1935 and 1939 constituted in effect a definite relinquishment of certain neutral rights, adopted in the interest of staying out of war.

CHAPTER II

THE POLICY REITERATED—1814-1914

During the century which followed 1814, the United States, with but few exceptions, followed the general policy laid down by Jefferson in 1793 regarding the freedom of private arms exports. Prior to 1898, no legislation was in effect, as in Great Britain,¹ authorizing the government to prohibit the export of war materials in time of emergency, and, prior to 1905, with the exception of a temporary embargo on arms and munitions of war during the Civil War and again during the Spanish-American War (to Spanish territory only, however), no restrictions on the export of these articles by private citizens seem to have been imposed.² During the Crimean, Franco-Prussian and Russo-Japanese Wars, the right of American citizens to sell and export arms to the belligerents was expressly affirmed.³

The archives of the Department of State during the nineteenth and early twentieth centuries are full of correspondence in which the United States championed this right and insisted that the private commercial trade in arms in no way violated the obligations of neutrality. Many of these statements have been collected and reproduced in John Bassett Moore's *Digest of International Law*,⁴ and a few of them are cited below by way of illustration.

The mere exportation of arms and munitions of war from the United States to a belligerent country has never, however, been considered as an offense against the act of Congress of the 20th of April, 1818 (the neutrality act of April 20, 1818).⁵ All belligerents enjoy this right equally, and a privilege which is open

¹ Cf. the writer's article, "British Control over the Export of War Materials," *A.J.I.L.*, Vol. 33 (April, 1939), pp. 292-7.

² The various records of the debates in Congress from 1814 to 1898 do not reveal any discussion or list any bills introduced on the subject of regulating or prohibiting the export of arms. In April, 1898, a joint resolution was adopted at the outbreak of the Spanish-American War authorizing the President to prohibit the export of coal or other material used in war. This authority was not used, however, to prohibit the shipment of arms or munitions of war until October, 1905, when such a restriction was applied on shipments to the Dominican Republic. These measures are discussed fully *infra*, pp. 18-19, 41.

³ See Annual Message of President Pierce, December 3, 1854, cited in Moore, *Digest*, Vol. 7, pp. 956-7; Neutrality Proclamation of President Grant, August 22, 1870, 16 *Stat.* 1132, 1134; Neutrality Proclamation of President Roosevelt, February 11, 1904, 33 *Stat.* 2332, 2334-5.

⁴ Vol. 7, Sec. 1308.

⁵ The neutrality act of 1818, which is still in force, prohibits within the territory of the United States the acceptance of commissions to serve against a friendly power, the arming or fitting out of vessels to be operated against friendly powers, the augmentation of the force of such vessels, and the organizing of hostile expeditions against a friendly power. The act codified the provisions previously existing in the neutrality acts of June 5, 1794, June 14, 1797, and March 3, 1817. 3 *Stat.* 447. See also U. S. Code, 1934 ed., Title 18, Sects. 21-30.

to all can not justly be complained of by any one party to a war. Guatemala, however, has a right under the law of nations and under her treaty with the United States to seize contraband of war on its way to her enemy, and this Government will not complain if she should exercise this right in the manner which the treaty prescribes.¹

It is certainly a novel doctrine of international law that traffic by citizens or subjects of a neutral power with belligerents, though it should be in arms, ammunition, and warlike stores compromises the neutrality of that power. That the enterprise of individuals, citizens of the United States, may have led them in some instances, and to a limited extent, to trade with Russia in some of the specified articles is not denied, nor is it necessary that it should be, for the purpose of vindicating this Government from the charge of having disregarded the duties of neutrality in the present war.²

The first exception to the general policy between 1814 and 1905 was apparently the temporary embargo on all exports of arms, ammunition and munitions of war, applied during the Civil War between November 21, 1862, and May 3, 1865.³ As Secretary of State Seward pointed out, however, this was purely a military measure, adopted because of the exigencies of the Civil War. It had no reference to wars elsewhere and was not intended to represent any change in the American attitude toward the freedom of private citizens to engage in the export of contraband goods. It was applied solely because the United States Government needed for its own use at that time all arms made and found in the country.⁴

With respect to the question of civil strife and the exportation of arms to revolutionary groups, Secretary of State Bayard said in 1885:

. . . the existence of a rebellion in Colombia does not authorize the public officials of the United States to obstruct ordinary commerce in arms between citizens of this country and the rebellious or other parts of the territory of the Republic of Colombia. It is a well-established rule of international law that the allowance of such commerce is no breach of duty towards the friendly government whose enemies may thus be supplied with arms.

As no charge is made that the vessels in question⁵ are armed vessels intended for the use of the rebels mentioned, or that military expeditions are being set on foot in this country against the Republic of Colombia, the duties of this Govern-

¹ Marcy, Secretary of State, to Molina, March 16, 1854. Cited in Moore, *Digest*, Vol. 7, p. 957.

² Marcy to Buchanan, American Minister to England, October 13, 1855. Cited in Moore, *op. cit.*, p. 957.

³ An executive order of November 21, 1862, issued under the general wartime powers of the President, prohibited until further notice the export or clearance of arms, ammunition or munitions of war, and authorized the revocation of any clearances previously issued for such articles. It was revoked on May 3, 1865. For texts of the orders, see Richardson, *Messages and Papers of the Presidents*, Vol. 6, pp. 125-6, 335.

⁴ Seward to Romero, Mexican Minister, December 15, 1862, and January 7, 1863. Moore, *op. cit.*, p. 958.

⁵ The Colombian Minister in Washington had called attention to the departure of certain vessels from New York with arms for the Colombian rebels. Becerra to Bayard, March 17, 1885, *Foreign Relations*, 1885, pp. 236-7.

ment are limited to the enforcement of the statutory provisions which apply to such cases.¹

Two days later, Mr. Bayard wrote in connection with the same subject:

. . . this Government, however much it may regret the encouragement in any manner from this country of the revolt against the constitutional authorities of its sister Republic, must maintain the right of its citizens to carry on without a violation of the neutrality laws the ordinary traffic in arms with the rebellious or other parts of that Republic, as more particularly set forth in my note to you of the 25th instant.²

In 1891, following a communication from the Minister of Chile to the effect that the Chilean Government had prohibited the importation of all arms and munitions of war and requesting the United States to instruct its customs officers to prevent the shipment of those articles to Chile,³ Secretary of State Blaine declared:

The laws of the United States on the subject of neutrality, which may be found under title LXVII of the Revised Statutes, while forbidding many acts to be done in this country which may affect the relations of hostile forces in foreign countries, do not forbid the manufacture and sale of arms or munitions of war. I am therefore at a loss to find any authority for attempting to forbid the sale and shipment of arms and munitions of war in this country, since such sale and shipment are permitted by our law. In this relation it is proper to say that our statutes on this subject are understood to be in conformity with the law of nations, by which the traffic in arms and munitions of war is permitted, subject to the belligerent right of capture and condemnation.⁴

In 1898, at the outbreak of the Spanish-American War, a joint resolution was passed by Congress authorizing the President in his discretion to prohibit the export of coal or *other material used in war* from any seaport of the United States.⁵ This was a war measure designed primarily to stop the exportation of large quantities of coal destined to Spain or to nations friendly to Spain.⁶ Its authority was utilized to prohibit the export of coal and contraband of war, including presumably arms, to Spanish ports, and this marked the second exception between 1815 and 1905 to the general policy of freedom for private arms exports. Like its Civil War predecessor, it too was a purely military measure designed to prevent arms and contraband from falling into the hands of the enemy.⁷

¹ Bayard to Becerra, March 25, 1885. *Foreign Relations*, 1885, p. 238. Cited in Moore, *op. cit.*, p. 962.

² Bayard to Becerra, March 27, 1885. *Ibid.*, 1885, p. 239. Moore, *op. cit.*, pp. 962-3.

³ Lazcano, Minister of Chile, to Blaine, March 10, 1891. *Foreign Relations*, 1891, p. 314. A revolution had broken out in Chile in January, 1891. *Ibid.*, pp. 91 ff.

⁴ Blaine to Lazcano, March 13, 1891. *Foreign Relations*, 1891, p. 314.

⁵ Joint resolution of April 22, 1898. 30 *Stat.*, 739. For text, see *infra*, p. 52.

⁶ See debates in Congress, *Congressional Record*, Vol. 31, pp. 3964, 4170.

⁷ A circular was issued by the Treasury Department on April 27, 1898, instructing the collectors of customs to refuse clearances to any vessels carrying coal or contra-

No regulations appear to have been issued at that time prohibiting the export of arms or war material other than with respect to Spain, but the law remained in effect until 1912 and was actually used in 1905 as a basis for restricting the export of arms and munitions of war to the Dominican Republic.¹ This embargo of 1905 is particularly significant because it marks the beginning of the policy, used extensively during the following three decades, of applying arms export restrictions for the purpose of promoting stability, preventing civil strife and protecting American interests in Latin America and China. Prior to 1905, it will be recalled, there had been only three specific arms embargoes ever applied by the United States, all of which had been adopted as defense measures to conserve essential war materials for domestic use in case of war or threat of war.² An arms embargo had never before been used by the United States as an instrument of policy for the prevention of civil strife and the promotion of stability in foreign lands. But from 1905 to 1922, it was used for this purpose with respect to the Dominican Republic. It was used intermittently from 1912 onwards with respect to Mexico; from 1919 with respect to China; and since the 1920's it has been used with respect to four Latin American countries. These embargoes will be discussed fully in Part II which follows, and attention is merely called at this point to the fact that in 1905 a new policy concerning the rôle of arms export regulation was inconspicuously brought into being. The general policy of freedom for the private citizen to engage in the export of war materials was still insisted upon, nevertheless, and the new policy considered only as an exception which did not mark any relinquishment of the general rule.

That the general policy on the subject remained unchanged was clearly revealed in the attitude of the Department of State regarding the export of arms to the revolutionary forces in Mexico at the outbreak of civil strife there in November, 1910. Immediately after the outbreak of the revolt, the Mexican President, Porfirio Díaz, had indicated to the American Ambassador that he would be very grateful if the United States would take steps "to prevent the unlawful acts of the revolutionists" who were buying arms and ammunition in the United States.³ Further correspondence ensued in which the Mexican Gov-

band of war to any Spanish port or to any neutral port if it was believed that the materials were destined for the use of the enemies of the United States. (*Treasury Circulars*, 1898, No. 72.) The regulations to be observed by exporters of coal were explained in detail in a note from Secretary of State Day to the Venezuelan Minister on June 6, 1898. Department of State Archives, MSS, Venezuela, *Notes to*, Vol. 2, p. 22. Cited in Moore, *Digest*, Vol. 7, pp. 194-5.

¹ Proclamation of October 14, 1905. 34 *Stat.* 3183. This is discussed further, *infra*, pp. 41 ff.

² 1794-5; 1797-1800; and 1862-5. There was also, of course, the embargo on contraband shipments to Spain in 1898.

³ Henry L. Wilson, U. S. Ambassador to Mexico, to the Secretary of State, November 14, 1910. *Foreign Relations*, 1911, pp. 358-9.

ernment sought to persuade the United States to take steps to prevent the sale of arms, ammunition and military supplies to agents of the revolutionaries along the border and the shipment of such supplies across the frontier into territory occupied by the rebels.¹ The position taken by the United States in reply to these representations was that the mere commercial sale and export of arms and ammunition, so long as they were unconnected with any military expedition originating in the United States, did not constitute a violation either of international law or the neutrality statutes of the United States.²

This position was reiterated even more strongly on March 8, 1912, when, following the renewal of active hostilities in Mexico and the request of the Mexican Government that the flow of arms through El Paso to the rebels be prevented, Acting Secretary of State Huntington Wilson wrote as follows to the Mexican Ambassador:

. . . I am constrained to call to your attention the obvious fact that since there is now no recognized state of belligerency in Mexico the rules and laws governing warfare and the conduct of neutrals are not involved. In other words, under the present situation, so far as the commerce of Mexico with other countries is concerned, the status is one of peace and no interdiction of any kind exists against commerce in any form outside the jurisdiction of Mexico. If any commerce now actually carried on is contrary to the laws of Mexico, as now existing and in force, it seems quite obvious that the Government of Mexico must itself enforce such laws within its own jurisdiction. But even if there were now a state of recognized belligerency, I beg to call to your excellency's attention the fact that commercial traffic in arms and ammunition would be in no wise prohibited. (Reference was then made to Article 7 of the Hague Convention of 1907 concerning the rights and duties of neutral powers in war on land.)³

But the general policy which the United States had been pursuing for over a century was due shortly to be modified, and the policy which had appeared inconspicuously in 1905 with regard to the Dominican Republic was now destined to be brought more into the open and to receive considerable impetus as a new policy limiting the complete freedom of American citizens to sell and export arms and munitions of war. At the instance of President Taft, who had summoned the Senate Foreign Relations Committee to his office, a new joint resolution was adopted on March 14, 1912, amending the resolution of 1898 so as to authorize the President to prohibit or restrict the export of arms or munitions of war to Latin American countries during conditions of civil strife there.⁴ President Taft at once issued a proclama-

¹ *Foreign Relations*, 1911, pp. 359-512, *passim*. A flourishing arms trade was going on between El Paso, Texas, and Juarez, the Mexican border town directly south of El Paso.

² See the various notes of the Secretary of State to the Mexican Embassy in Washington, January 24, 28, February 11, March 24, 29, April 19 and August 17, 1911. *Ibid.*, pp. 397, 400, 404, 433, 440, 461, 512.

³ *Foreign Relations*, 1912, pp. 740-2.

⁴ 37 *Stat.* 630. This is discussed further, *infra*, pp. 51 ff.

tion prohibiting all arms exports to Mexico,¹ and thus was initiated a policy which was destined to play an important rôle in our general policy towards that country during the years following and to reflect rather accurately the rise and fall of cordial relations between the two lands. This will be treated fully in the section on Mexico which follows in Part II.

This significant new trend in the American policy regarding arms export regulation was limited at that time to Mexico and the Dominican Republic,² and it did not mean as yet any general relinquishment of the policy of freedom for the private arms traffic. That the Department of State intended it to be considered as an exceptional measure and not as any modification in the general principles of international law was clearly revealed in the communication to the Mexican Ambassador on March 16, 1912, informing him of the embargo which had been applied:

. . . I have the honor to refer your excellency, in so far as the applicability of the governing rules of international law and the provisions of the statutes of the United States are concerned, to the Department's note to your excellency of the 8th instant,³ which sets forth the position taken by this Government not only under and in accordance with the principles of international law (which remain now, as heretofore, entirely unaffected by legislation of this Government), but also the position which, under our so-called neutrality statutes, it was necessary for this Government to take prior to the passage by Congress of the joint resolution dated March 14. . . . However, the Congress of the United States, voicing the desire of the President and of the American people that the Mexican nation shall be restored to conditions of domestic tranquillity, desiring to do everything this Government might properly do to contribute to such a state of tranquillity, and in the hope that the present unrest in Mexico shall soon pass away, has so modified existing statutes germane to the exportation of arms and munitions of war from this country as to inhibit, under conditions named, the exportation of any such materials from any place in the United States to any country specified until otherwise ordered by the President or by Congress. *This action was taken not because of any obligation so to do resting upon this Government by reason of the rules and principles of international law, which obligations were already far more than met by the existing so-called neutrality statutes of the United States, but solely from a sincere desire to promote the return of peace to Mexico and the welfare of a neighboring nation.*⁴

That no fundamental change had as yet taken place in the general American policy regarding the principle of freedom for private arms exports was even more clearly revealed by our insistence on this principle from 1914 to 1917 while we were neutral during the World War. This topic will be taken up immediately in the chapter which follows.

¹ Proclamation of March 14, 1912. 37 *Stat.* 1733.

² The embargo with respect to the Dominican Republic continued in effect under the proclamation of 1905, and the joint resolution of 1912 was never applied to any other country than Mexico. In 1922, the authority was broadened to cover countries in which the United States exercised extraterritorial jurisdiction (notably China). See *infra*, pp. 51 ff., 126 ff.

³ Quoted *supra*, p. 20.

⁴ *Foreign Relations*, 1912, pp. 747-8. Italics have been supplied by the writer.

CHAPTER III

THE WORLD WAR PERIOD

The question of whether or not American citizens should be allowed to export arms and munitions of war to belligerent powers provoked widespread discussion during the World War.¹ It is noteworthy that this was the first occasion when Congress was called upon to consider the subject of prohibiting the export of war material to belligerent powers for reasons not associated with national defense. The three previous arms embargoes of 1794-5, 1797-1800 and 1862-5 were clearly defense measures. The joint resolution of April 22, 1898, and the restrictions issued thereunder were likewise for military purposes, while the resolution of March 14, 1912, applied only to cases of domestic strife.

The writer has found no reference in the records of Congress prior to 1914 to any debates or bills introduced on the subject of prohibiting arms exports to belligerent countries with a view to shortening or terminating the hostilities or stopping what was considered to be a nefarious practice. This is not unnatural, however, in view of the fact that there were no general wars between 1815 and 1914, and that such wars as did occur were limited both as to duration and area of operation. In 1914 and the following years, on the other hand, with Europe engaged in a conflict unprecedented in scope and destructiveness, and with the United States supplying the belligerents (primarily the Allies) on a huge scale, proposals began to be heard that a limit be placed on these supplies, and more specifically that an embargo on the export of arms and munitions of war be adopted. The Wilson administration, nevertheless, was determined to insist upon the right of American citizens to manufacture, sell and export contraband goods subject to the risk of belligerent capture, and it maintained this position consistently against the protests from Germany and Austria-Hungary as well as from the critics at home.

In his neutrality proclamation of August 4, 1914, President Wilson had reiterated the principle that all persons in the United States could lawfully manufacture and sell arms and munitions of war and other contraband goods, but that they could not carry such articles on the high seas for any belligerent power without incurring the risk of hostile

¹ The subject has been treated in some detail in Charles C. Tansill, *America Goes To War* (Boston, 1938), Chap. ii. See also Carlton Savage, *Policy of the United States toward Maritime Commerce in War* (2 vols. Washington, 1936), Vol. 2, pp. 40-3. Further references are cited *infra*, p. 27, note 1.

capture under the law of nations.¹ Following many inquiries from American merchants and other persons as to whether they could sell contraband articles to the belligerent nations without violating the neutrality of the United States, the Secretary of State issued a public circular on October 15, 1914, pointing out that private citizens were entitled under international law to sell any articles they pleased to a belligerent government, and that the United States was in no way obligated by international law, treaty or statute to prevent such sales.²

On January 20, 1915, in reply to Senator William J. Stone, Chairman of the Senate Foreign Relations Committee, who had referred among other things to the lack of interference with the sale to Great Britain and her allies of arms, ammunition, horses, uniforms and other munitions of war, Secretary of State Bryan said:

There is no power in the Executive to prevent the sale of ammunition ³ to the belligerents.

The duty of a neutral to restrict trade in munitions of war has never been imposed by international law or by municipal statute. It has never been the policy of this Government to prevent the shipment of arms or ammunition into belligerent territory, except in the case of neighboring American Republics, and then only when civil strife prevailed. Even to this extent the belligerents in the present conflict, when they were neutrals, have never, so far as the records disclose, limited the sale of munitions of war. It is only necessary to point to the enormous quantities of arms and ammunition furnished by manufacturers in Germany to the belligerents in the Russo-Japanese war and in the recent Balkan wars to establish the general recognition of the propriety of the trade by a neutral nation.⁴

While American citizens were legally entitled, according to these statements, to sell war material to both sides, it soon became clear that because of the British blockade, only the Allies and not the Central Powers would be able to obtain war materials from the United States. Both the German and Austro-Hungarian Governments attempted to convince the United States that this one-sided arms trade between American exporters and the Allied Governments constituted a violation of the *spirit of neutrality*⁵ and therefore obligated the United States to prohibit the export of all arms and ammunition. Emphasis was laid on the exceptional circumstances then existing—the fact that the United States was the only important arms-producing country in a position to furnish war materials, that the American arms industry had undergone a manifold expansion in order to meet the war demand, that

¹ *Foreign Relations, 1914, Supp.*, pp. 547-51.

² *Ibid.*, pp. 573-4.

³ It is not clear why he mentioned only ammunition. There was equally no power to prevent the sale of arms or other materials of war.

⁴ *Foreign Relations, 1914, Supp.*, pp. vi-xiv, at p. x.

⁵ They were careful not to claim that the sale of arms by private citizens constituted a violation of the laws of neutrality. See Garner in *A.J.I.L.*, Vol. 10 (1916), p. 779, note 90.

the arms produced by this newly developed industry were all going to the enemies of Germany and Austria, and that they were doing so in such quantities as to compromise very definitely the neutrality of the United States. In order to be impartial in fact as well as in form, it was argued, the United States ought to apply an embargo on the exportation of all arms and ammunition.¹

The United States was unmoved, however, by these pleas, and declined to accept the "novel principle" that a neutral government was obliged to equalize the relative position of the belligerent powers. Further than this, to place an embargo on the trade in arms during the course of the conflict was considered by the American Government to be a "direct violation" of its own neutrality inasmuch as such a measure would constitute a change in its neutrality laws which would affect unequally the relations of the United States with the belligerent powers.²

In his well-known note of August 12, 1915, in reply to the Austrian protest of June 29, 1915,³ Secretary of State Lansing set forth the position of the United States clearly and unmistakably.⁴ He pointed out that the Austrian request for an American arms embargo was tantamount to a request that the United States equalize the advantages resulting from Allied superiority on the seas and restore a strict parity between the two belligerent sides. This contention on the part of Austria was characterized by Lansing as a "novel principle", "unknown to the international practice of the past", which "would impose upon every neutral nation a duty to sit in judgment on the progress of a war and to restrict its commercial intercourse with a belligerent whose naval successes prevented the neutral from trade with the enemy." Moreover, if the principle were recognized, it ought to operate equally with respect to a belligerent superior on land which had succeeded in cutting off the supplies of its enemy.

Lansing pointed out further that the adoption of the theory that neutral powers ought to prohibit the sale of arms to belligerents would compel every nation to have in readiness at all times sufficient munitions of war to meet any emergency and to erect and maintain armament factories sufficient to supply its needs throughout the war. This would result in every nation becoming an armed camp, ready to resist

¹ See e.g., Bernstorff, Ambassador of Germany, to Secretary of State, April 4, 1915; and Burian, Austro-Hungarian Foreign Minister, to Penfield, American Ambassador in Vienna, June 29, 1915. *Foreign Relations, 1915, Supp.*, pp. 157-8; 791-3. It is interesting to note, in contrast, that during the Second World War, Germany apparently made no official protests against the one-sided sale of arms and war materials to the Allied Powers under the "cash-and-carry" provisions of the Neutrality Act of November 4, 1939. The absence of any official German protest is the more striking in view of the fact that the Neutrality Act of 1939 repealed the arms embargo which had been in effect for two months with respect to all belligerents under the Neutrality Act of May 1, 1937.

² Bryan to Bernstorff, April 21, 1915, *ibid.*, p. 162.

³ See *supra*, note 1.

⁴ *Foreign Relations, 1915, Supp.*, pp. 794-8.

aggression, and tempted to employ force in asserting its rights instead of appealing to reason and justice.

Lansing's position was summarized finally in the following vigorous statement:

The principles of international law, the practice of nations, the national safety of the United States and other nations without great military and naval establishments, the prevention of increased armies and navies, the adoption of peaceful methods for the adjustment of international differences, and, finally, neutrality itself are opposed to the prohibition by a neutral nation of the exportation of arms, ammunition or other munitions of war to belligerent powers during the progress of the war.¹

This was the position maintained by the American Government throughout its period of neutrality,² and it will be readily observed that it was but an elaboration and expansion of the principles set forth in Jefferson's historic pronouncement of May 15, 1793. The general policy was still very much alive, despite the beginning of inroads made by the embargoes with respect to the Dominican Republic and Mexico in 1905 and 1912 respectively.

It might be noted that while the Lansing note of August 12, 1915, represents a strong argument against the imposition of an arms embargo *during a war*, it does not constitute such a convincing argument against the application of an embargo against all belligerents *at the outbreak of a war*.³ An arms export prohibition applied impartially at the beginning of a conflict may represent a relinquishment of certain neutral rights, but it certainly does not constitute a violation of neutrality as might an embargo applied during the course of a war.⁴ It was of course too late in 1915 to consider the possibilities of applying an arms export prohibition at the outbreak of the war, but this idea was destined to recur a decade or so later and to be discussed as a possible permanent

¹ The same viewpoint was reiterated in a memorandum of August 18, 1916, from the State Department to Representative J. J. Fitzgerald. *Foreign Relations, 1916, Supp.*, pp. 3-9, at p. 9.

² While insisting on the right of American citizens to sell and export arms freely to all belligerents, the United States Government did not consider that this right entitled its citizens to transport supplies to belligerent warships on the high seas, to sell and ship submarine parts to Canada for assembly there, or to sell and export weapons the use of which was forbidden by international law. See Garner in *A.J.I.L.*, Vol. 10 (1916), pp. 760-2. For a further discussion of how American submarine manufacturers and shipbuilders evaded the prohibition regarding submarine parts, see Tansill, *America Goes to War*, pp. 42-8.

³ Mr. Lansing's suggestion that an embargo would compel all nations to maintain military establishments and supplies sufficient to meet any emergency would, however, be even more applicable to an embargo applied at the outbreak of hostilities than to one applied after the hostilities had been in progress for some time.

⁴ An arms embargo applied during the course of a war, even though impartial in form, might operate in effect to the considerable disadvantage of one or the other of the belligerents, and as such might be considered as an unneutral act. The United States took the position during the World War that such an embargo would be definitely an unneutral act in direct violation of its neutrality.

policy for the United States to adopt. In 1935, it was finally adopted, only to be abandoned four years later in November, 1939, after the outbreak of the Second World War.

At the same time that Germany and Austria were endeavoring to persuade the Wilson administration to apply an arms embargo, a number of members of Congress were seeking to do the same thing, though for different reasons in many cases. No less than seventeen bills were introduced between December, 1914, and December, 1916, providing for various types of prohibition on the export of arms, munitions of war or contraband.¹ In all fairness, it should be mentioned that much of the support for these embargoes came from the German-American population and the German sympathizers in the United States.² Although hearings were held by the House Foreign Affairs Committee and the Senate Foreign Relations Committee on a few of these proposals,³ no bill was ever reported to the floor of either House and there voted upon. There was, however, some spontaneous discussion on the subject in both Houses during 1915 and 1916.

The chief arguments advanced in favor of such a general arms embargo were essentially as follows:⁴

1. The supplying of war materials on such a huge scale to the belligerents was "ethically and morally wrong" since it meant that the United States was thereby prolonging the war and con-

¹ See e.g., H. J. Res. 377 and 378 (63rd Cong.), introduced by Representatives Vollmer and Bartholdt on December 7, 1914, authorizing the President in his discretion to prohibit the export of arms, ammunition and munitions of war, in whole or in parts, from the United States. S. 6688, introduced by Senator Hitchcock on the same day, would have made it unlawful, during the existence of a war in which the United States was neutral, to export any arms, ammunition, artillery or explosives to be used against a country with which the United States was at peace. S. 6862, introduced by Senator Works on December 10, 1914, would have made it unlawful to sell or supply to any nation engaged in war any food, clothing, supplies, arms, ammunition, horses, or war supplies of any kind, whether contraband or not.

² Cf. e.g., testimony by representatives of various German-American organizations before the House Foreign Affairs and Senate Foreign Relations Committees in favor of the embargo resolutions. A few representatives of Irish-American groups also testified in favor of the proposals. Representative Richard Bartholdt, who had introduced one of the bills and who championed the idea very energetically in the Foreign Affairs Committee was of German birth.

³ House of Representatives, Committee on Foreign Affairs, "Exportation of Munitions of War," *Hearings* on H. J. Res. 377 and 378, December, 1914-January, 1915. Senate, Committee on Foreign Relations, "Prohibition of Exportation of Munitions of War," *Hearing* on S. 6688 and 6862, February, 1915.

⁴ See *Hearings* on H. J. Res. 377 and 378; *Hearing* on S. 6688 and 6862; also statements by Representatives Cary, Porter and Vollmer, *Congressional Record*, Vol. 52, pp. 2159-61, and Appendix, pp. 583-6, 735-7; statements of Senators Works, Hitchcock and others, cited by Garner in *A.J.L.*, Vol. 10 (1916), pp. 784-5. A number of petitions and resolutions favoring an embargo were referred to, *Congressional Record*, Vol. 52, pp. 2299-2300, 2838, 2937, 2939; Vol. 53, pp. 572, 1612, 1780, 6624. The press of the country, according to a *Literary Digest* Poll in January, 1915, was sharply divided on the subject, with a majority opposed, however, to the idea of an embargo on war material. Of 440 papers which voted, 244 were opposed to the embargo, 167 favored it, and 20 were non-committal. Cited in Tansill, *America Goes to War*, p. 37.

tributing to the heavy loss of life. While it was admitted that to sell and export arms might be permissible under international law, this did not mean that it was "right" to do so.

2. The one-sided arms trade between the American merchants and the Allied Governments was unneutral in fact since it meant that we were helping but one side. While both the Allies and Central Powers were theoretically entitled to come to the United States and obtain supplies, in actual fact only the Allies could do so. This amounted to a breach of our impartial status which could be remedied only by a prohibition on arms exports.
3. Not only would the embargo shorten the war, but the principle behind it would serve as a most efficient deterrent of wars in the future. As such, it would be desirable as a permanent policy.

In reply to these arguments, the opponents of the embargo answered:¹

1. If it were ethically wrong to sell arms to the belligerents, then it was equally wrong to sell them food, clothing, raw materials and other supplies to enable them to carry on the war. Furthermore, it would be wrong also to sell arms to countries preparing for war. There would be no end to the prohibitions which would have to be established if this principle were followed, and a neutral attempting to follow it would be faced with considerable economic losses as well as grave administrative responsibilities. An arms embargo alone, moreover, would have little effect unless accompanied by an embargo on all other supplies, and this would mean economic disaster.² The idea that it was morally wrong to sell arms to the belligerents was based on the belief that war itself was necessarily wrong, and this contention was rejected by some.³ An arms embargo, it was suggested, would only be helping Germany to succeed in her "deliberate conspiracy against the peace of the world."⁴
2. The argument that the neutrality of the United States was compromised by the one-sided arms trade between American merchants and the Allies, and that the United States was obliged to equalize the position of the belligerents was most clearly answered by Secretary Lansing's note of August 12, 1915, already cited. The legality of the private arms trade under international law was likewise unquestionable. Further-

¹ For able presentations of this point of view, see Garner, "The Sale and Exportation of Arms and Munitions of War to Belligerents," *A.J.I.L.*, Vol. 10 (1916), pp. 749-97; William C. Dennis, "The Right of Citizens of Neutral Countries to Sell and Export Arms and Munitions of War to Belligerents," *Annals*, 1915, pp. 168-82; Charles N. Gregory, "The Sale of Munitions of War by Neutrals to Belligerents," *Annals*, 1915, pp. 183-91. All of these writers laid considerable emphasis on the fact that neither international law nor the general practice of nations imposed any requirement upon neutral states to prohibit the export of arms or contraband by private citizens.

² Cf. also statement of Representative Stephens, *Congressional Record*, Vol. 52, pp. 2890-1.

³ *The Outlook*, Vol. 108 (December 23, 1914), pp. 903-4.

⁴ *The New Republic*, Vol. 3 (July 10, 1915), pp. 241-2.

more, the application of an arms embargo while the war was in progress would constitute a change in our rules of neutrality which would operate in effect to the disadvantage of the Allies and would therefore expose us to the charge of having committed an unneutral act.¹

3. The desirability of the embargo as a matter of expediency was rejected on the ground that it would be setting a dangerous precedent which might become embarrassing in the event that the United States at some future time should become a belligerent and find herself unable to obtain arms abroad. Moreover, if the principle of the arms embargo were adopted as a general policy, it would jeopardize the safety of countries with no armaments industry, and would actually encourage greater military preparedness on the part of all nations by obliging them to maintain military establishments and supplies adequate at all times to take care of an emergency.²

Two further arguments in favor of an embargo were advanced by a few witnesses before the House Foreign Affairs Committee:

1. That for reasons of national defense, it would be wise to authorize the President to prohibit the export of arms and munitions of war in order that he should be able if necessary to conserve needed supplies of such materials for our own use.³ (This was the motive which had lain behind our previous export embargoes on arms in 1794, 1797 and 1862.)
2. That an arms embargo would be an effective means of forcing Great Britain to observe a greater respect for neutral rights on the high seas.⁴

The argument, so current in recent years, that an arms embargo would help to keep the United States from becoming involved in the war does not seem to have been advanced in so many words at that time, although it was hinted at by Representative Vollmer on one occasion.⁵ This is an idea which has gained great vogue since the World War as a result of the belief that the unrestricted export of arms and other war supplies on such a large scale to the Allies from 1914 to 1917 was one of the chief factors which led ultimately to our entrance into that conflict.

Whether or not a general arms embargo would have had much effect on one or the other of the belligerent groups in Europe is a

¹ Cf. the attitude of various members of the House Foreign Affairs Committee, *Hearings* on H. J. Res. 377 and 378, *passim*.

² Cf. also *The Outlook*, Vol. 108 (December 23, 1914), p. 904; and Vol. 110 (Aug. 11, 1915), p. 843.

³ *Hearings* on H. J. Res. 377 and 378, pp. 38-9, 76.

⁴ *Ibid.*, pp. 116, 122-3, 126-7, 137-52.

⁵ *Ibid.*, p. 12. Vollmer suggested that by permitting arms exports to continue unrestricted, we should be building up in this country "a very dangerous special interest" (the munitions industry) which would "do all in its power to divert us from the paths of peace to the gory road of militarism."

question beyond the scope of this study, but it may be noted that the support manifested in the United States for the embargo proposals gave considerable concern to the British Government and led the latter to protest in turn to the American Government that any such action taken during the war would be a "radical departure from a long-established custom" and would therefore be an unneutral act.¹ It was furthermore pointed out that an arms embargo would not only be absolutely contrary to American precedent, but also that it would unquestionably work to the advantage of the power (like Germany) which had prepared for war, and to the disadvantage of those powers which (like Great Britain) had not prepared for it.² The fears of the British Government, however, were never realized. The letter of Secretary Bryan to Senator Stone of January 20, 1915, had definitely established the administration's position as to the freedom of the private arms trade, and on January 23, Bryan went so far as to indicate to Ambassador Page that the embargo proposals before Congress had no chance of being adopted.³

The proponents of the embargo attempted to cite certain precedents in favor of their position, notably that Germany had stopped the export of arms and ammunition to Spain during the Spanish-American War at the request of the American Ambassador in Berlin, Andrew D. White;⁴ and that President Taft in 1912 had prohibited the export of arms and munitions of war to Mexico. As Professor Garner has pointed out, the embargo enthusiasts in 1914 and 1915 magnified the German action during the Spanish-American War out of all proportion to its significance.⁵ What actually had happened was that a German ship, suspected of carrying contraband, had been stopped at Hamburg and searched at the request of Ambassador White. No contraband was found, however, and so the vessel was allowed to proceed. Moreover, no German restrictions on the export of arms or contraband were applied during the war, and vessels freely carried these supplies from German ports to both belligerents.

As for the embargo with respect to Mexico, it has already been noted that this concerned a case of civil strife, not international war, and grew out of exceptional circumstances—the contiguity of the two countries, the heavy flow of arms across the frontier into the hands of

¹ Page, American Ambassador, to Secretary of State, December 11, 1914. *Foreign Relations, 1914, Supp.*, pp. 578-9.

² Spring Rice, British Ambassador, to Secretary of State, January 21, 1915. *Foreign Relations, 1915, Supp.*, p. 778.

³ Bryan to Page, January 23, 1915. *Ibid.*, p. 685. The message said specifically that there needed to be no fear that the proposals of Congressman Bartholdt (H. J. Res. 378) would be adopted.

⁴ This was based on an account in the *Autobiography of Andrew Dickson White* (New York, 1905), Vol. 2, pp. 168-9.

⁵ *A.J.I.L.*, Vol. 10 (1916), pp. 771-3.

the Mexican revolutionists, and the danger to American citizens and interests in Mexico caused by the revolutionary disturbances. Indeed, there do not seem to have been any precedents in American diplomatic history for a general arms embargo against the European belligerents in 1914-15 for the reasons advanced in its behalf, all previous prohibitions on arms exports by the United States having been applied for entirely different purposes.¹

There remained of course the embargoes applied by certain of the small European neutrals during the Franco-Prussian and Spanish-American Wars, as well as the general prohibitions on the export of arms and other materials applied by various neutral powers during the World War, all of which were cited as precedents for the proposed American embargo in 1914-15. But none of these seem to have been applied for the purposes which lay behind the American embargo proposal (the moral reasons; preventing a one-sided arms trade; and shortening or terminating the war). Rather were they measures adopted to conserve essential war supplies for any emergency which might arise—and comparable as such to the American arms embargoes of 1794-5 and 1797-1800—as well as to avoid the hostility of both belligerent groups. During the World War, the pressure from both belligerent sides had much to do with the adoption of the embargoes, the small neutrals being obliged by Great Britain, for example, to prohibit the export of essential commodities to Germany as a necessary condition for receiving goods through the British blockade.²

Furthermore, none of the small European neutrals were in a position to supply large quantities of arms to the belligerents as was the United States, so that an embargo on their part could scarcely be regarded as a means of shortening or terminating the war. What is even more important, the European neutrals had applied their embargoes at the outbreak of the war, whereas the United States was being asked to do so several months after the war had begun, an action which, as has been noted, would have amounted to a change in the neutrality regulations of the United States during the course of the war to the disadvantage of one of the belligerents, and which might therefore have been considered as an unneutral act and a violation of international law. For these reasons, the embargoes applied by the European neutrals do not seem to constitute precedents for the proposed American embargo in 1914-15.

The only neutral arms embargo which might conceivably have served

¹ A valid precedent, it will be recalled, consists not alone of the fact of similar action, but also of similar circumstances and similar reasons.

² Edgar Turlington, "The World War Period," *Neutrality, Its History, Economics and Law*, Vol. 3, Chap. v, *passim*. Cf. also Lansing to Tumulty, September 16, 1915. *Foreign Relations*, 1915, *Supp.*, p. 804.

as a precedent for the American proposal was that of Brazil, the one non-European neutral aside from China which had taken such action, and which had incorporated into its general neutrality rules the unusual provision for an embargo on all arms shipments to belligerent nations.¹ The Brazilian action was taken as part of her neutrality policy, and was presumably not adopted primarily to conserve national supplies or because of pressure from the belligerents. One might also consider as remote precedents the embargoes on contraband trade imposed in 1780 by the members of the Armed Neutrality since those prohibitions were also applied as neutrality measures.² But even these measures were not adopted with a view to terminating or shortening a foreign war, or because of any belief that the arms export trade was "morally wrong," but simply because a prohibition on contraband trade seemed to be a practical method for securing freedom for the non-contraband trade.³

It is submitted, therefore, that an American arms embargo in 1914-15 for the purposes advanced in its support would have been unique in international practice and virtually without precedent, as well as representing a complete reversal of the policy announced by Jefferson in 1793. While it was not adopted at that time, and while the policy of 1793 again vindicated itself successfully, the various embargo proposals (the first of their kind in American diplomatic history) nevertheless provoked considerable thought and were symptomatic of a changing attitude in the minds of many people towards the question of the armaments traffic and the subject of government regulation of arms exports.

Shortly after the United States entered the World War, it adopted as part of its military program a comprehensive system of control over the export of all important commodities; and arms, ammunition and explosives were among the first articles subjected to this control.⁴ Exportation of the latter, and of several other essential materials (fuels, fuel oils, meats and fats, food grains and fodder, iron, steel, fertilizers), was prohibited as from July 15, 1917, except under government license.⁵

¹ Brazilian General Rules of Neutrality, August 4, 1914, quoted in the *Annals*, 1915, pp. 151-4. Brazil had likewise applied such an embargo during the Spanish-American War. China also appears to have prohibited the private commerce in contraband articles, but she was not a producer or exporter of arms. *Foreign Relations*, 1915, *Supp.*, p. 804. ² See *supra*, p. 7, note 1.

³ This may also have been one of the reasons for the arms embargoes by the European neutrals during the Spanish-American War.

⁴ Title VII of the Espionage Act of June 15, 1917, authorized the President to prohibit by proclamation during the course of the war the export of any goods designated by him if the public safety so required. 40 *Stat.* 217, 225.

⁵ Proclamation of July 9, 1917. 40 *Stat.* 1683. Power to grant export licenses was vested in the Secretary of Commerce from July 15 to August 27, 1917; in the Exports Administrative Board, an interdepartmental body, from August 27 to October 12, 1917; and thereafter in the War Trade Board, an interdepartmental body charged

Other commodities were subsequently added to the prohibited list until it embraced finally all goods.¹

The general export restrictions were for the most part revoked by July, 1919, but the wartime power to regulate exports continued in effect until March 3, 1921, and was actually used as a basis for:²

1. Prohibiting the shipment of arms, munitions of war and military equipment to China in pursuance of an international embargo agreement of May 5, 1919.³
2. Restricting the shipment of all goods to Russia until July 8, 1920, and thereafter the shipment of arms, munitions of war, military equipment, locomotives, railroad material, rolling stock and motor cars. This was to carry out the policy of not permitting the export of any material to Bolshevist Russia which might be used for military purposes.⁴
3. Restricting the shipment of all goods to Austria, Hungary, Bulgaria and Turkey until September 30, 1919, and thereafter the shipment of arms, munitions of war and military equipment.

These restrictions all came to an end on March 3, 1921, when the wartime authority to regulate exports was terminated by the repeal of Title VII of the act of June 15, 1917.⁵

The World War period may be said to mark an appropriate dividing point in the development of the American policy with respect to arms export control. Until that time, it has been seen, the view had been consistently maintained that private citizens were entitled to engage freely in the sale and export of arms and that the government was not obligated to restrict such activity. Such restrictions as had been imposed had been primarily in the nature of defense or military measures, although from 1905 onwards a new policy had begun to appear regarding the regulation of arms exports to Latin American countries in time of civil strife.

During the post-war period, however, the policy of freedom for the private arms export trade came to be more and more challenged, and it soon became clear that the days of this policy were ultimately

with the regulation of all exports, imports and enemy trade. On July 1, 1919, the War Trade Board was dissolved, and its remaining functions turned over to a special section in the Department of State. Cf. *Report of the War Trade Board*, Washington, 1920, pp. 2-5, 375.

¹ Proclamation of February 14, 1918. 40 *Stat.* 1746.

² Department of State, War Trade Board Section, Special Export Licenses of July 14, 1919, July 20, 1919, September 30, 1919, and July 8, 1920 (W.T.B.R. 803, 815, 833, and 841). The last is published in *Foreign Relations*, 1920, Vol. 1, pp. 743-5.

³ See *infra*, pp. 123 ff.

⁴ Even after the formal control over these shipments expired in March, 1921, the Department of State and the War Department as well, viewed with disfavor the export of arms and military supplies from the United States to Soviet Russia and used their influence, with apparent success, to discourage such exports. Cf. e.g., *U. S. Daily*, September 2, 1927, p. 1.

⁵ 41 *Stat.* 1359.

numbered. The American Government during this time showed an increasing interest in the regulation of the international arms traffic; and, despite the fact that it declined to ratify the Convention of Saint Germain of 1919 dealing with this subject, it took an active part in negotiating the Geneva Convention of 1925 for the supervision of the trade in arms.¹ In 1923, President Harding announced a policy of prohibiting the sale of surplus government arms to foreign powers, either directly by the government itself, or indirectly by transferring them to private citizens for sale abroad.² From 1928 onwards, the movement to prohibit arms shipments to belligerent countries came to life again, stimulated this time by the anti-war sentiment in the United States and the signing of the Briand-Kellogg Pact. The campaign for arms embargo legislation received further impetus after 1931 as a result of the Sino-Japanese and Chaco conflicts, and finally in 1934 and 1935, steps were actually taken to prohibit the exportation of arms to countries engaged in international war.

These developments will be discussed in further detail in Part III below. For the moment, attention will again be invited in the following pages to the policy which first appeared in 1905—the policy of regulating arms shipments to certain Latin American countries in order to prevent revolutionary disturbances. This policy, which was formulated into general law in 1912 and applied with respect to Mexico, marked the first permanent inroad upon the Jefferson policy of 1793 and represented the first symptoms of the general breakdown of that policy and the substitution therefor of a régime of government supervision.

¹ See *infra*, Pt. III, Chap. i.

² See *infra*, p. 174.

PART II
REGULATION OF ARMS EXPORTS TO PROMOTE
STABILITY AND DISCOURAGE REVOLUTION
IN LATIN AMERICA AND CHINA

CHAPTER I

THE DOMINICAN REPUBLIC

The embargo which was applied on the export of arms and munitions of war to the Dominican Republic in 1905 was particularly significant since it marked the beginning of a new policy with respect to the use of arms embargoes. Prior to that time, as has been noted, arms embargoes had been used on only a few occasions by the United States, and then only for reasons of military defense with a view to keeping essential war materials at home in time of emergency. The general policy of the American Government had been to place no restrictions in the way of the private sale and export of arms either to belligerent countries in cases of international war, or to countries engaged in civil strife.

From 1905 onward, however, beginning inconspicuously with the case of the Dominican Republic, the United States applied restrictions on the shipment of war material to certain Latin American countries and China (after 1919) with a view to curtailing civil strife and promoting general stability in those areas. Arms export restrictions thereby came to be used as part of our broader policy of promoting and protecting American interests in Latin America and the Far East. Since revolutionary activity in the Caribbean and Central American area could easily complicate the problem of protecting the newly acquired Panama Canal as well as disturb American property and investments in that region, the government at Washington frequently took steps either to prevent such disturbances or to discourage them as much as possible. Various methods were used to achieve this end, the most extreme being the temporary occupation of the troubled areas by American marines from time to time, and, on a few occasions, the actual establishment of provisional military governments under the direct supervision of the United States. The marines were used on many occasions during the first three decades of the twentieth century to protect American interests in the Caribbean and Central American areas, and to see to it that some semblance of law and order was maintained there which would permit life and business activity to go on normally.¹

Another method used by the government during this period to discourage the outbreak of revolutionary activity which might endanger American interests was the restriction of arms exports to the faction or

¹ See Chester Lloyd Jones *et al.*, *The United States and the Caribbean* (Chicago, 1929), especially the section by Parker T. Moon, "'Self Defense' and 'Unselfish Service' in the Caribbean," pp. 143 ff.

government causing the disturbance. There have been numerous instances of such arms export restrictions by the United States Government since 1905, and it is the purpose of this section (Part II) to analyze them in some detail. These restrictions marked the first important break in the policy laid down by Jefferson in 1793, and they are often cited as precedents for the arms embargo policy adopted as part of the new neutrality legislation in 1935. It should be borne in mind, however, that the restrictions applied on arms shipments to the various Latin American countries after 1905 were inspired by motives of a considerably different character from those which lay behind the arms embargo policy of 1935. The latter was adopted primarily with a view to reducing the risks of involvement in a foreign war, preventing the United States from becoming the chief source of supply for arms and ammunition needed by the belligerents, and thereby contributing perhaps to a shortening of any war which might take place. The restrictions with respect to Latin America, on the other hand, seem to have been inspired largely by the desire to assure stability in the general neighborhood of the Panama Canal, thereby protecting American interests in that area more effectively and removing any occasion for European intervention. The development of the Panama Canal necessarily extended the defense responsibilities of the United States to the entire Caribbean and Central American area, and made it highly desirable that political stability be maintained in that region and that no civil disorders be tolerated which might invite intervention by non-American powers. This was also the period in which United States citizens were investing heavily in the countries of the Caribbean-Central American area, and this further intensified the interest in political stability.¹

¹ This policy of restricting arms exports to disturbed areas in Latin America where the United States had vital interests was similar in many respects to the policy of the European powers of regulating the import of firearms and ammunition into their respective colonial areas and protectorates in Africa. The European powers, however, did not prohibit the export of arms from the mother country, but relied instead upon import restrictions applied by the colonial authorities in the respective areas. Numerous regulations of this sort are cited in the indices to *British and Foreign State Papers, 1873-1900, and 1900-1921*.

An international agreement signed at Brussels in 1890 (the so-called Brussels Act) provided for restrictions on the import of firearms and ammunition into certain native areas in Africa. The United States signed and ratified this, but never adopted any legislation to give it effect. (27 Stat. 886.) The Convention of St. Germain of 1919 and the Geneva Arms Traffic Convention of 1925 (see *infra*, Pt. III, Chap. i) contained provisions replacing the Brussels Act which restricted the export of arms and ammunition to various native areas, and these restrictions have been observed by a number of European powers since 1919 despite the fact that neither of the two general conventions has come into effect. While the United States has never shown any particular disposition to restrict the export of arms to Africa where it had no direct interests, it has taken an entirely different view with respect to those areas of Latin America in which we were vitally concerned, and has applied arms export restrictions on a number of occasions.

It was this general condition of affairs which prompted President Theodore Roosevelt, shortly after the turn of the century, to initiate the policy which has since become known as the Roosevelt Corollary of the Monroe Doctrine. According to this policy, the United States, in order to forestall any possible European intervention in this hemisphere, was justified in itself intervening in Latin America to maintain order and protect foreign interests which might be endangered. In subsequent years, the United States took various steps, including the restriction of arms exports, to prevent revolutionary groups from upsetting the *status quo* in different sections of the Caribbean-Central American area or establishing governments there which would be unfriendly to the United States. The relationship between the arms export restrictions and this broader policy of preserving stability in areas where we had vital interests, will, it is hoped, become apparent in the chapters which follow. It was clearly manifest in the case of the Dominican Republic in 1905, the first instance in which the new policy made its appearance.

It will be recalled that the Dominican Government in 1905 was bankrupt and in a serious plight due to the large number of unpaid debts to foreign countries and to the possibility of intervention by some of the European powers which had received no satisfaction on their loans.¹ In order to prevent any such intervention from Europe in the island republic, President Roosevelt decided in favor of a plan for limited intervention by the United States, thereby giving birth to the Roosevelt Corollary of the Monroe Doctrine.² A protocol between the United States and the Dominican Republic was accordingly drawn up and signed in February, 1905, according to the terms of which the United States was to collect the customs duties of the republic and distribute the proceeds between the Dominican Government and the various foreign creditors.³

The American Senate, however, refused to consent to the ratification of the customs protocol, and President Roosevelt, not to be outdone, undertook by means of an executive agreement to arrange a *modus vivendi* or temporary understanding according to which an American citizen would act as collector of the Dominican customs pending ratification of the protocol. This arrangement took effect on April 1, 1905, and Mr. George R. Colton was appointed receiver of customs.

Having gone thus far in attempting to restore financial stability to the republic, President Roosevelt determined to keep the island quiet

¹ For a discussion of the conditions in the Dominican Republic, see Howard C. Hill, *Roosevelt and the Caribbean* (Chicago, 1927), Chap. vi; and Sumner Welles, *Naboth's Vineyard, the Dominican Republic, 1844-1924* (2 vols. New York, 1928), esp. Chap. x (Vol. 2).

² Dexter Perkins, *The Monroe Doctrine, 1867-1907* (Baltimore, 1937), Chap. vi.

³ For further discussion, see Hill, Welles and Perkins, *op. cit.*

pending the ratification of the protocol, and to allow no revolutionary activity to interfere with the *modus vivendi*.¹ American warships were therefore kept in Dominican waters, and on August 29, 1905, following reports that an attempt would be made to land a quantity of arms and ammunition on the north coast of the island, apparently for revolutionary purposes, instructions were issued to the American naval commander there to "stop the introduction of arms and ammunition."² This was the beginning of the new arms export policy. There was no actual prohibition on arms exports from the United States to the Dominican Republic until six weeks later on October 14, 1905, but during this interval American naval officers boarded and searched all American merchant vessels arriving in Dominican ports with a view to preventing the entry of arms and ammunition.

The Navy Department instructions of August 29, 1905, were very general ("stop the introduction of arms and ammunition"), and Admiral Bradford, the American commanding officer, was left to interpret and apply them as he saw fit. He proceeded to instruct the various officers under him to board all American ships arriving in Dominican waters, and to seize any arms or ammunition found on board. He also instructed them to request the commanders of foreign vessels within Dominican waters not to land any arms or ammunition which they might have on board. Inasmuch as it was not desired to prevent the Dominican Government from obtaining arms, it was provided that these instructions should not apply to the harbor of the capital city, Santo Domingo, or to any other shipment for which the Dominican Government had obtained permission from the United States.³

The strictness with which Admiral Bradford enforced these orders was so great that complications soon arose out of differences of opinion between himself, the Dominican authorities and Colonel Colton, the General Receiver of Customs, as to just what materials should and

¹ Roosevelt to Taft, April 8, 1905. Cited in Hill, *Roosevelt and the Caribbean*, p. 164, note 1. See also Joseph B. Bishop, *Theodore Roosevelt and His Time* (New York, 1920), Vol. I, p. 434.

² Secretary of Navy Bonaparte to Admiral Bradford, August 29, 1905. Navy Department, Office of Naval Records and Library, MSS. *Santo Domingo Correspondence, January 10, 1905 to March 24, 1906*. Bradford was the commanding officer in charge of the Third Squadron of the North Atlantic Fleet, then assigned to Dominican waters. On September 5, 1905, President Roosevelt instructed the Secretary of the Navy as follows: "As to the Santo Domingo matter, tell Admiral Bradford to stop any revolution. I intend to keep the island in *statu quo* until the Senate has had time to act on the treaty, and I shall treat any revolutionary movement as an effort to upset the *modus vivendi*." Cited in Bishop, *op. cit.*, Vol. I, p. 434. These instructions were relayed to Admiral Bradford on September 7, 1905. Navy Department, MSS. *Santo Domingo Correspondence, op. cit.*

³ "Confidential Information and Instructions for the Commanding Officers of Third Squadron, North Atlantic Fleet" (no date given, but it was apparently soon after September 11, 1905). Navy Department, MSS. *Santo Domingo Correspondence, op. cit.*

should not be allowed to enter the country. It developed in some cases that the American naval officers were seizing and holding munitions shipments which the Dominican authorities and Colonel Colton wished to enter the country, and it soon became obvious that a coordination of procedure and a harmonization of regulations governing the American and Dominican officials was highly desirable.

It finally occurred to the government in Washington that perhaps a form of licensing system for arms exports to the Dominican Republic would be the best way of making sure that the American naval officers in Dominican waters would not seize those arms and ammunition which both the American and Dominican Governments had agreed could enter the republic. Apparently, the idea of a prohibition on the export of arms to the republic had not at first been considered by the American authorities, it being believed that the action of the naval officers would be sufficient to prevent the entry of arms and ammunition. But the difficulties which soon arose drew attention to the curious fact that the naval officers were attempting to prevent the entry of arms and ammunition into the Dominican Republic at the same time that the export of these articles was taking place freely from the United States. The implications of this strange combination of circumstances were apparently realized by the middle of October, 1905, and accordingly Secretary of State Root instructed the American Minister in Santo Domingo City (Dawson) as follows on October 13, 1905:

There is now some difficulty in lawfully preventing the exportation of arms and ammunition to Santo Domingo, which would be obviated by a proclamation by the President prohibiting such exportation under a resolution of Congress approved April 22, 1898. All such exportation would then become unlawful unless especially authorized by this government. We could give such authority in any cases desired by the Dominican Government. Ascertain whether it would be agreeable to that government to have the President issue such a proclamation.¹

The joint resolution of 1898, it will be recalled, had been adopted at the outbreak of the Spanish-American War, and gave the President broad discretionary authority to prohibit the export of coal or other material used in war.² While it was a war measure designed primarily to prevent the shipment of coal and contraband to Spain or Spanish territory, it had not been repealed at the close of the war, and its existence on the statute books in 1905 provided a convenient and perhaps fortunate³ source of authority for any restriction on arms exports which

¹ *Foreign Relations*, 1905, p. 398.

² 30 Stat. 739. For the text of the resolution, see *infra*, p. 52.

³ The opposition in Congress, particularly in the Senate, to Roosevelt's intervention in the Dominican Republic might well have prevented the adoption of any special arms embargo legislation, had such legislation been necessary. For a discussion of the Senate's opposition to the President's Dominican policy, see Hill, *Roosevelt and the Caribbean*, pp. 160-4.

the President saw fit to apply. The law had contained no time limit, and it gave the President full authority to prohibit the export of "material used in war", with or without restrictions. It was ideally suited to carry out the wishes of President Roosevelt in 1905, and it was hence resurrected and applied, even though the circumstances of its application were entirely different from those which had occasioned its original adoption.

This broad discretionary authority over war material exports, which had been conferred by the law of April 22, 1898, and which continued in effect until March 14, 1912, was similar in many ways to the authority vested in the executive branch of most of the European governments with respect to such exports. It stands in sharp contrast to the restricted and mandatory legislation in effect in the United States from 1935-9 which directed the President to prohibit arms exports to all belligerents whenever he found a state of war to exist.¹ The existence of this broad authority in the earlier period of our history seems to be due, however, to the fact that it was adopted as a war measure, with only war objectives in mind, and that as such it was expedient to give the President considerable leeway and discretion. The law of 1898 had not been adopted with any peacetime purpose in mind such as lay behind the recent arms embargo legislation of the United States, and its application in 1905 to the case of the Dominican Republic could be justified only by the letter of the law.

Be that as it may, the Roosevelt administration had concluded that a prohibition on arms exports to Santo Domingo was a desirable means of more effectively carrying out its policy of preventing any revolutionary disturbances in the republic. Accordingly the Dominican Government was sounded out on the idea. It will be observed that the instructions to Minister Dawson of October 13, 1905, envisaged a form of licensing system under which all exports of arms and ammunition to the republic would be prohibited except those specially authorized or licensed by the United States for delivery to the Dominican Government at the latter's request. A complete embargo was not proposed, therefore, but only an embargo on such shipments as the Dominican Government had not requested. In this way, it was hoped to strengthen the position of the government and render armed revolution less possible. Such an arrangement would at the same time prevent further seizures by American naval officers of materials the entry of which the Dominican Government had authorized and desired.

It was only natural that the Dominican Government should welcome a restriction on American arms exports under those conditions, and its reply to the suggestion was therefore a prompt affirmative which

¹ Cf. the neutrality laws of August 31, 1935, and May 1, 1937.

Minister Dawson was able to relay to the State Department on October 14, 1905.¹ The necessary presidential proclamation was issued on the same day, prohibiting after that date the export of "arms, ammunition and munitions of war of every kind" from any port in the United States or Puerto Rico to any port in the Dominican Republic, without limitation or exception, until otherwise ordered by the President or by Congress.² While the proclamation itself did not mention that exceptions would be granted for shipments requested by the Dominican Government, Secretary Root instructed Minister Dawson to inform that government that any exceptions desired by it would be made by special order.³ This was the first specific arms embargo used as an instrument of peacetime policy in American diplomatic history, and it should be clear from the foregoing discussion that its application was part of the broader policy of Theodore Roosevelt of maintaining law and stability in the Dominican Republic for the purpose of preventing any European intervention and safeguarding American interests. The embargo was destined to continue in effect thereafter for nearly seventeen years, until the spring of 1922.

Following the adoption of the joint resolution of March 14, 1912, amending the resolution of April 22, 1898, and authorizing the President to prohibit or restrict the export of arms and munitions of war to any American country during cases of domestic violence,⁴ the question arose at the Department of State as to whether or not this affected the proclamation of October 14, 1905. The latter had been issued in pursuance of the resolution of 1898 which had now been amended in such a way as to change its original meaning entirely. The resolution of 1898, it will be recalled, had given the President discretionary authority to prohibit the export of coal or other material used in war. The new joint resolution of 1912, which had been introduced as an amendment to the 1898 law, amounted actually to a new law in its place which limited the President's authority considerably in contrast to the broad powers conferred in 1898. Only the export of arms and munitions of war (instead of material used in war) could be prohibited, and this only to American countries in cases of civil strife or domestic violence. The 1912 resolution was a much more restricted law than its predecessor, and it reflected more accurately than did the latter the limited extent to which Congress was prepared to go in time of peace in prohibiting the export of war materials from the United States.

While the joint resolution of March 14, 1912, was therefore consider-

¹ *Foreign Relations*, 1905, p. 398.

² 34 Stat. 3183.

³ Root to Dawson, October 17, 1905. *Foreign Relations*, 1905, p. 399. These orders were subsequently issued by the Secretary of State in the name of the President whenever the Dominican Legation in Washington requested that an arms shipment be permitted to go to the Dominican Republic.

⁴ See *infra*, pp. 51 ff.

ably narrower in scope than the resolution of April 22, 1898, its subject-matter still covered the proclamation of 1905 regarding the Dominican Republic. The Solicitor of the State Department, nevertheless, held the opinion that the 1912 resolution had changed the law on which the 1905 proclamation had been based, and that therefore all exports of arms and munitions of war to Santo Domingo would be legal unless and until the President should issue a new proclamation under the 1912 law restricting such exports.¹ At the suggestion of the Solicitor, the question was then referred to the Attorney General (Wickersham) who held that since the subject-matter of the 1905 proclamation fell squarely within the provisions of the 1912 resolution, the latter in no way invalidated the former. The resolution of 1898, under which the proclamation had been issued, was still in effect, though amended, and since the proclamation was not inconsistent with the amended resolution, it would continue in operation until otherwise ordered by the President or Congress.²

The fact that this question was raised and that the State Department was anxious to know whether it was authorized as in the past to regulate arms exports to the Dominican Republic indicates that it still considered such regulation desirable. Revolutionary activity had again broken out on the island in 1912, following the assassination of President Cáceres in November, 1911, and efforts were being made by the United States to reestablish peace.³ Under such circumstances, it was deemed more essential than ever that a strict control be maintained over arms exports to the republic.

With but few exceptions, the Department of State, from 1905 to 1916, issued no permits for the export of arms, ammunition or munitions of war to the Dominican Republic unless specific requests therefor had been submitted by the Dominican Government through its legation in Washington. This was consistent with the general policy followed by the United States during this period of supporting the recognized government in Santo Domingo and preventing arms from reaching the hands of any revolutionists. Until 1916, moreover, the records do not indicate any instances in which the requests of the Dominican Government were denied by the State Department.⁴

¹ Opinion of the Solicitor, April 3, 1912. Department of State, MSS. Decimal File, 839.113/157.

² Opinion of April 11, 1912. 29 *Opinions of the Attorney General* 387.

³ The country had enjoyed five years of peaceful and orderly government under General Cáceres. For further discussion, see Welles, *Naboth's Vineyard*, Vol. 2, Chap. xi, esp. pp. 681 ff. For a convenient summary, see Dana G. Munro, *The United States and the Caribbean Area* (Boston, 1934), pp. 112 ff.

⁴ On one occasion in July, 1915, when the Dominican Government requested permission to import 500 rifles and ammunition from the United States, the State Department indicated some reluctance to grant the permit for fear that the arms might

In the spring of 1916, however, open revolution again flared up. President Jiménez was forced to leave the capital, and the revolutionary leader, Arias, succeeded in occupying it.¹ With active military intervention by the United States in support of President Jiménez impending, Secretary of the Navy Daniels on May 5, 1916, suggested to the Secretary of State that, in view of the existing conditions in the Dominican Republic, the arms embargo be strictly adhered to and no exceptions made.² This proposal was intended to prevent any war material from reaching the revolutionists who were then in control of Santo Domingo City. On May 12, 1916, the State Department indicated to the Secretary of the Navy that any requests from the Dominican Minister for permission to ship arms to the republic would be held up for the time being and subjected to careful scrutiny in the light of existing conditions.³ From then until late October, 1916, no permits for the export of arms or explosive materials of any sort to Santo Domingo were granted except in a few cases where it was clearly impossible for the materials to be diverted to a warlike use. After October 28, 1916, the absolute prohibition was relaxed slightly so as to permit a few shipments of explosives and blasting equipment at the request of the Dominican Legation.⁴ But requests to export arms and ammunition were still held up.

In the meantime, American military intervention in Santo Domingo had become a reality. Marines had been landed on May 14, 1916, and had continued in occupation of various portions of the island with a view to stamping out all revolutionary movements and eliminating Arias, the rebel leader, from the picture.⁵ Finally, in November, 1916, when it appeared that an Arias-dominated Congress might be elected unless further steps were taken, the United States, "with deepest reluctance,"⁶ proceeded to set up a military government in Santo Domingo in order more effectively to restore and maintain order and ensure the execution of the customs and financial convention of 1907. From November, 1916, to July, 1924, the Dominican Republic was

come within the reach of certain local Dominican officials who were not sympathetic to the central government. While the United States was desirous of helping to maintain the constituted government in the republic and was disposed to permit this shipment of munitions, it felt that it would be wise to consider how to supply the arms needed by the central government without placing them in reach of any who might wish to seize them and oppose the government by force. The permit was not issued at once, but was delayed until August, 1915. Other permits seem to have been issued regularly thereafter, however. Department of State, MSS. Memorandum of July 31, 1915. Decimal File, 839.113/336; also 839.113/310.

¹ *Foreign Relations*, 1916, pp. 220 ff. ² Department of State, MSS. 839.113/347.

³ *Ibid.*

⁴ *Ibid.*, 839.113/368 and 369.

⁵ *Foreign Relations*, 1916, p. 227; Munro, *The United States and the Caribbean Area*, pp. 125-6.

⁶ President Wilson to Lansing, Secretary of State, November 26, 1916. *Foreign Relations*, 1916, p. 242.

under the rule of a military government administered and controlled by the United States, the American military governor administering all branches of the government and exercising even the legislative power.¹ Because the military governor was in effect the government of the Dominican Republic, the State Department in June, 1917, modified its procedure for granting arms export permits under the 1905 proclamation so that the applications for such permits would in the future come from the American military governor, through the United States Navy Department, instead of coming as previously from the Dominican Legation in Washington.²

In April, 1917, the United States entered the World War, and from July, 1917, to March, 1921, the export of arms and munitions of war to Santo Domingo became subject to the sweeping wartime regulations affecting these materials.³ Requests for export permits were accordingly referred to the various agencies charged with administering the wartime export prohibitions, and were no longer directly passed upon by the Department of State.

Following the repeal of the wartime export prohibitions on March 3, 1921, the Department of State returned to the practice which it had followed prior to July, 1917—i.e., of issuing special orders in the name of the President exempting from the embargo proclamation of 1905 any arms or ammunition requested by the Dominican authorities. On January 31, 1922, another joint resolution was passed by Congress restating and extending the provisions of the resolution of March 14, 1912, so as to apply to countries in which the United States exercised extraterritorial jurisdiction, as well as to American countries, during periods of civil strife.⁴ The resolution of 1922 also repealed its two predecessors of 1898 and 1912, and in so doing repealed the proclamation of October 14, 1905, thereby automatically terminating the embargo on arms shipments to the Dominican Republic. The embargo could have been continued, of course, by the simple procedure of issuing a new proclamation under the 1922 law, but there seemed to be a feeling that the prohibition was no longer necessary, especially in view of the existing circumstances in which the Dominican Government, under the régime of martial law, had full control over imports. The embargo was therefore allowed to lapse in March, 1922.

In looking back over the sixteen years during which this embargo was in effect, several points stand out:

¹ Steps looking to the withdrawal of American military control and the transfer of government functions back to the Dominican authorities were begun in December, 1920, but the military government was not actually terminated until July, 1924. Munro, *op. cit.*, pp. 128-36. For a fuller account, see Welles, *Naboth's Vineyard*, Vol. 2, Chaps. xiii-xv.

² Department of State, MSS. 839.113/410, 411, 412.

³ See *supra*, p. 31, notes 4, 5.

⁴ 42 Stat. 361.

First: During the entire period, the prohibition was administered so as to allow war material to be sent to those who were regarded as the lawfully constituted authorities, and to prevent such materials from being sent to irresponsible or revolutionary groups. In this way, it was hoped to discourage armed revolution and to promote greater stability and order in the Dominican Republic.

Second: No specific definition of "arms, ammunition and munitions of war" was issued or even drawn up by the State Department, with the result that much uncertainty existed among exporters, customs officials and State Department authorities alike as to what articles actually required an export permit for shipment to the Dominican Republic.¹ Whenever a specific inquiry was raised, the State Department usually referred the matter to the customs officers, or, in some cases, to the Attorney General, maintaining that the interpretation and enforcement of a Congressional statute were not properly its business but the business of the judicial officers of the government. Such shifting of responsibility to the shoulders of other departments, while unquestionably done in good faith, was hardly conducive to efficient administration.

Third: The procedure for administering the embargo was unusually cumbersome. No formal export licenses or application blanks were used, and each exception to the general arms prohibition involved the issuance by the State Department of a special typewritten order, followed by a considerable amount of interdepartmental correspondence. Copies of each order had to be sent to the Dominican Legation, the Department of Commerce and Labor (Customs Division), and the Secretary of the Navy. The customs officers were evidently given no general instructions as to the passing of arms covered by these orders, for special instructions were issued to them in each case. Special instructions were also sent to the American naval officers in Dominican waters until July, 1907.² In addition to this, there were inquiries from American exporters as to what articles required special export permits and which could be sent without such permits, most of which correspondence could have been avoided if a specific list of prohibited

¹ The only specific list of prohibited articles seems to have been that prepared by Admiral Bradford for the use of the American naval officers in Dominican waters in enforcing the proclamation of 1905. This included arms and ammunition of every description, together with the materials and machinery for their manufacture; articles entering into the construction, equipment and armament of naval vessels; torpedoes and mines, together with materials for their manufacture and use; military camp and field equipment; ordnance material of whatsoever kind; uniforms and military accessories; horses and mules for cavalry, artillery and transportation purposes, together with harnesses; and swords, sabers, lances, daggers, grenades, bombs, and other weapons of warfare. Bradford to Secretary of Navy, November 14, 1905, Navy Department, *Santo Domingo Correspondence, op. cit., supra*, p. 40, note 2.

² After the middle of 1907, there were apparently no naval vessels regularly stationed in Dominican waters.

articles had been publicly announced. Cumbersome though it was, this procedure remained in effect without substantial change throughout the existence of the Dominican embargo.

Fourth: The proclamation of October 14, 1905, contained no penal provisions and neither did the joint resolution of April 22, 1898, under which it had been issued. There was hence no basis on which prosecution could be predicated, and no legal means for punishing violators of the embargo. Another limitation presented itself in that no authority had been granted the customs officials to seize or retain munitions of war about to be exported in violation of the embargo. As a matter of fact, they did seize such shipments, but they were in the peculiar position of having no defense for their action in case any legal proceedings were begun to compel the restoration of the articles. They suffered a further difficulty in that they were not authorized either to destroy or dispose of any arms seized, and could only hold the articles until title was acquired by the running of the statute of limitations, which was a cumbersome and lengthy procedure.

The joint resolution of March 14, 1912, did contain penal provisions which made possible a more effective enforcement of the embargo,¹ and the Department of Justice on January 15, 1917, pointed out the advisability of issuing a new proclamation thereunder in order to overcome the difficulties indicated above.² The State Department again, however, declined to express any opinion as to how the administration of the embargo could be rendered more efficient. It admitted that conditions of domestic violence existed in Santo Domingo which would justify the issuance of a new proclamation under the law of 1912, but indicated that the Department of Justice, the Treasury Department and the Navy Department which was then responsible for the existing military government in the republic, were best able to determine what amendments were necessary.³ The reluctance of the State Department to express any definite opinion as to how the prohibition should be administered or enforced was one of the striking characteristics of the administration of the embargo.

The restriction of arms exports to the Dominican Republic repre-

¹ Section 2 of the 1912 resolution provided: "That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both." 37 *Stat.* 630. There had been no such provision in the resolution of 1898.

² Department of State, MSS. 839.113/394.

³ Department of State, MSS. 839.113/394. It should be noted that the recommendations of the Department of Justice were given effect by Congress in Title VI, Sec. 1 of the Espionage Act of June 15, 1917. (40 *Stat.* 223.) This authorized the seizure of any arms or munitions of war whenever an attempt was made to export them in violation of law or whenever there was reason to believe that they were intended to be exported in violation of law. These provisions are still in effect (U. S. Code, 1934 ed., Title 22, sec. 238).

sented the first step in the development of a new American policy towards the regulation of the shipment of arms. The embargo was remarkably inconspicuous during its sixteen years of existence, and little if any mention has ever been made of it aside from occasional references to the original proclamation of October, 1905. Yet, as has been seen, it was brought into being and played a definite part in connection with the general policy toward Santo Domingo begun by Theodore Roosevelt in 1905 and followed for nearly two decades by his successors. Its significance can be appreciated only as it is viewed against the background of this general policy of promoting stable government and discouraging revolution in the Caribbean and Central American area where American interests were considered to be vital.

While the new policy of discouraging revolution by restricting arms exports was never made conspicuous by the Dominican embargo case, yet before the latter was terminated in 1922, the new policy had been applied with respect to two other countries, Mexico and China, both of which cases brought it clearly before the eyes of the American public. It is to the consideration of these cases that our attention will next be turned.

CHAPTER II

MEXICO—1912—1922

The restriction of arms exports to Mexico between 1912 and 1922 illustrates more clearly the new policy of protecting American interests in the neighboring portions of Latin America by attempting to maintain order and support those governments which were friendly to the United States. It also revealed some of the difficulties and dangers attendant upon the regulation of arms shipments for the purpose of influencing the course of internal affairs in foreign states.

Open revolution had broken out in Mexico in November, 1910, and President Porfirio Díaz had finally been obliged to resign from office on May 25, 1911, after having ruled the country for over thirty-four years.¹ Before yielding his office, however, he had made several vain attempts to persuade the United States Government to prevent the sale of arms to Mexican revolutionary agents along the frontier and the shipment of such material across the frontier into rebel territory. The United States, nevertheless, had repeatedly insisted that it was not obliged under international or domestic law to prevent the mere commercial sale and export of arms so long as there was no evidence that such commerce was part of any hostile military expeditions organized and launched from American soil.²

Francisco Madero, the revolutionary leader, was elected President of Mexico in October, 1911, and inaugurated on November 6, but within three months after his inauguration, new revolutionary activity broke out against him.³ Like his unfortunate predecessor, Madero also tried to convince the United States that it ought to take some steps to prevent the steady flow of arms and ammunition across the Texan frontier into the hands of his opponents. At first, he met with the same response which had been accorded President Díaz a year earlier—that the United States was under no obligation to prohibit the mere commercial export of arms. But in March, 1912, owing largely to the initiative of President Taft, the American position was reversed, and a new policy applied—the policy which had been adopted in 1905 with respect to Santo Domingo.

¹ *Foreign Relations*, 1911, pp. 348 ff., 494. For a convenient summary of the period, see J. Fred Rippey, *The United States and Mexico* (New York, 1931), Chap. xx; Henry B. Parkes, *A History of Mexico* (Boston, 1938), pp. 311 ff.

² See *supra*, pp. 19 ff.

³ *Foreign Relations*, 1911, pp. 519, 520. *Ibid.*, 1912, pp. 713 ff.

The Joint Resolution of March 14, 1912

Ever since revolutionary activity had begun in Mexico, American citizens and their property in the rebel areas had been constantly in danger, and by 1912 many of them had been obliged to flee from their homes and abandon their business in order to save their lives.¹ Anti-American feeling in Mexico was strong. On February 4, 1912, President Taft had concentrated 100,000 troops on the Mexican border, ready to cross if need be "as a police measure" to protect American lives and property.² One month later, on March 2, the President by proclamation had warned all Americans to refrain from any participation in the disturbances in Mexico, while at the same time, the American Ambassador, under instructions from Washington, had advised American citizens to withdraw from various danger zones throughout the country.³

The paradoxical part about the whole matter was that the revolutionists who were threatening and menacing American lives and property in Mexico were receiving their arms and ammunition across the border from the United States, especially through the frontier towns of Texas. El Paso, for example, which was directly opposite the rebel-controlled town of Juarez, had practically become a base of supplies for the revolutionists. As Senator Root pointed out, Americans were being obliged to flee from their homes and business in Mexico in order to protect themselves from being destroyed by arms and ammunition sold and transported across the border from the United States.⁴ It was to bring this state of affairs to an end, and shut off American arms and ammunition from the Mexican rebels that President Taft, on the morning of March 13, 1912, held a conference in his office with various members of the Senate Committee on Foreign Relations, the House Committee on Foreign Affairs, and Senators and Representatives from Texas, "for the purpose of securing an extension of his power to prevent the wholesale passing of arms and munitions of war across the Texas frontier into Mexico."⁵

At this conference, the opinion was expressed that the "very antiquated neutrality laws" of the United States ought to be amended, but it was recognized that this would require a good deal of considera-

¹ *Foreign Relations*, 1911, pp. 349, 353 ff. *Ibid.*, 1912, pp. 713 ff.

² Rippey, *op. cit.*, p. 335; *Foreign Relations*, 1912, pp. 716, 724-5.

³ *Foreign Relations*, 1912, pp. 732-5.

⁴ *Congressional Record*, Vol. 48, p. 3257.

⁵ Statement of Senator Root, March 13, 1912. *Congressional Record*, Vol. 48, p. 3257. The authorities of Texas had previously made representations to the President that the territory of their state was being used as a base from which revolutionary expeditions were being sent to Mexico to overthrow the Madero Government, and that this was disturbing conditions along the frontier and jeopardizing the lives of Americans in Mexico. Taft is supposed to have taken action as a result of these representations from Texas. *Congressional Record*, Vol. 50, p. 2228.

tion and time. The immediate situation in Mexico, it was felt, could be dealt with by a slight modification of the power vested in the President by the joint resolution of April 22, 1898.¹ The latter had given the President discretionary power to prohibit the export of coal and other material used in war *from any seaport* in the United States. The Mexican situation, however, called for a restriction on arms shipments across the land frontier between the two countries, and a revision in the 1898 law was necessary in order to authorize the stopping of such shipments. Instead of amending the 1898 law so as to authorize the President to prohibit the export of material used in war by land or sea, the Senate Foreign Relations Committee drafted what amounted to a new law and introduced this as an amendment to the joint resolution of 1898. The broad discretionary powers over the export of coal and war materials were deleted, and in their place were substituted much narrower and more limited powers authorizing the prohibition of arms and munitions of war shipments to American countries during periods of domestic strife. The unusual character of the broad powers over exports granted by the 1898 law has already been discussed, and their existence attributed solely to the fact that the 1898 law was a wartime measure which had been allowed to remain on the statute books afterwards.² That there was no intention of giving the Executive any broad peacetime powers over war material exports was clearly seen in the extensive overhauling which the 1898 law underwent in 1912 when the necessity of some degree of peacetime control forcefully presented itself.

The joint resolution of April 22, 1898, had provided as follows:

. . . the President is hereby authorized, in his discretion, and with such limitations and exceptions as shall seem to him expedient, to prohibit the export of coal or other material used in war from any seaport of the United States until otherwise ordered by the President or by Congress.³

The "amendment" to this joint resolution which Senator Root introduced on March 13, 1912, with the unanimous approval of the Senate Foreign Relations Committee, provided in Section 1 as follows:

. . . whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, the President is hereby authorized, in his discretion, and with such limitations and exceptions as shall seem to him expedient, to prohibit the export of arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.⁴

The President's power to regulate arms exports in time of peace was thereby to be restricted to cases of domestic strife in American coun-

¹ *Congressional Record*, Vol. 48, pp. 3257-8.

² See *supra*, pp. 18, 41-2.

³ 30 *Stat.* 739.

⁴ *Congressional Record*, Vol. 48, p. 3257.

tries which were being promoted by arms or munitions of war procured from the United States. All reference to coal or other material used in war was stricken out, and the terms of the resolution confined specifically to arms and munitions of war (which were not defined, however). While Mexico was not specifically mentioned in the proposed bill, it was the Mexican case which lay behind the proposal and to which it was intended that the embargo powers would be applied. The motivating factor seems to have been the desire to prohibit the shipment of arms and ammunition to those in Mexico who were threatening American lives and property—a question of immediate self-interest. It was pointed out, for example, that the proposed law was important because it would enable the United States to take steps to protect its interests in situations such as that in Mexico where there was not such a war as would justify a proclamation of neutrality.¹ Against the background of these circumstances, the bill was passed by the Senate on the same day it was introduced (March 13), with scarcely any debate, and without a record vote.²

The measure was called up for consideration in the House on the following day, the administration being anxious now to take action as quickly as possible. It was approved there at once with a slight change in wording which the Senate promptly accepted, and sent on to the President for signature the same day (March 14).³ In its final form, the joint resolution of March 14, 1912, amended the resolution of 1898 to read as follows:

That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.

Sec. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both.⁴

The change in the wording of Section 1 was made by the House Judiciary Committee with the approval of Senator Root, and was designed to remove any possible criticism of the law on the ground that it delegated legislative or congressional power to the President.⁵ The objectionable clause in the original Senate bill was the provision authorizing the President to prohibit the export of arms at his discretion, a clause which might have been interpreted as an unconstitutional delegation of the congressional powers over foreign commerce. In

¹ *Congressional Record*, Vol. 48, p. 3258.

² *Ibid.*

³ *Ibid.*, p. 3307.

⁴ *37 Stat.* 630.

⁵ *Congressional Record*, Vol. 48, pp. 3306-7.

order to avoid any such basis of criticism, the House changed the bill so as to limit the President's action to a purely administrative matter, namely, the determination and proclamation that conditions of domestic violence existed in an American country which were being promoted by arms or munitions of war from the United States. Upon the issuance of such proclamation, it would become unlawful, under the law of Congress, to export arms or munitions of war to such country. The powers conferred upon the President were thereby limited to the determination of the existence of a state of facts, a function which was clearly administrative in character. The original Senate bill had made a violation of the President's proclamation a crime, whereas the bill as amended made a violation of an act of Congress a crime after the President had proclaimed a certain state of facts to exist.

The new policy which had made its appearance inconspicuously in 1905 with respect to the Dominican Republic was now brought more clearly before the public eye and crystallized into law. Another inroad was thereby made into the historic principle of non-regulation of private arms exports. But it can scarcely be said that the new policy was as yet a general policy, even though it had been incorporated in general terms in the joint resolution of March 14, 1912. It must not be overlooked that the latter resolution was adopted solely because of the Mexican situation and solely with a view to enabling the President to prevent the exportation of arms and munitions of war across the land frontier to Mexico. Indeed, during the ten years of its existence, it was never used with respect to any country other than Mexico.¹ Had not the Mexican case given rise to a specific need for authority to prohibit the export of arms by land from the United States, the joint resolution of 1912 would never have been passed and the law of April 22, 1898, might have continued in existence for some time to come.²

The joint resolution of March 14, 1912, had no sooner been approved than President Taft issued a proclamation applying its provisions to Mexico and thereby prohibiting the export of arms and munitions of war to that country. The proclamation read as follows:

Whereas a Joint Resolution of Congress approved March 14th, 1912, reads and provides as follows: . . . [The text of the joint resolution is then given. See *supra*, p. 53].

¹ The embargo with respect to the Dominican Republic continued in force under the original proclamation of October 14, 1905.

² Had the law of 1898 been in effect in its original form from 1914-17, the Wilson administration might have had more difficulty in refusing to apply an embargo on the export of war materials to the European belligerents. The original provisions of the 1898 law would have furnished full authority for such an embargo—authority which actually was lacking in 1914—and while it is doubtful that the Wilson administration could have been forced to take any such action against its wishes (any more than the Roosevelt administration could be induced to apply an embargo on arms shipments to China and Japan in 1937-9 under the 1937 neutrality law), the existence of the authority to do so might have been a source of embarrassment.

Now, therefore, I, William Howard Taft, President of the United States of America, acting under and by virtue of the authority conferred in me by the said Joint Resolution of Congress, do hereby declare and proclaim that I have found that there exist in Mexico such conditions of domestic violence promoted by the use of arms or munitions of war procured from the United States as contemplated by said Joint Resolution; and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of the Joint Resolution above set forth, hereby made applicable to Mexico, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted. And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said Joint Resolution and this my Proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.¹

The action for which two successive Mexican Governments had been appealing to the United States was thus finally taken, although the reason behind the action seems to have been the protection of American lives and property in Mexico fully as much as the promotion of the welfare of our southern neighbor.² Regardless of the motives, the embargo proclamation had "a most excellent effect" in official and diplomatic circles at Mexico City, where the alleged contribution of the United States to the strength of the rebellion had been a matter of frequent and severe criticism.³ At the same time, an editorial in the *American Journal of International Law* hailed the joint resolution of March 14, 1912, as a measure of great importance since it introduced a "profound change in the neutrality laws of the United States" and enabled the President to prohibit the export of arms which might be used to promote domestic violence and revolutionary activity against established governments in Latin America.⁴

While the joint resolution of 1912 modified the historic American policy concerning freedom of arms exports and thereby introduced an important change in the neutrality laws of the country, it is the writer's opinion that neutrality was only an incidental consideration at that time, and that the primary motive was to give the President authority to restrict arms shipments to disturbed areas in Latin America where the interests and lives of American citizens were immediately endangered. It was one of the methods to be used by the United States thereafter in carrying out its broader policy of protecting American interests in Latin America by promoting stable government and

¹ 37 Stat. 1733.

² In informing the Mexican Ambassador of the joint resolution and the proclamation of March 14, 1912, the State Department declared: "This action was taken not because of any obligation so to do resting upon this Government by reason of the rules and principles of international law . . . but solely from a sincere desire to promote the return of peace to Mexico and the welfare of a neighboring nation." *Foreign Relations*, 1912, p. 748. See *supra*, p. 21.

³ Henry L. Wilson, American Ambassador in Mexico City, to the Secretary of State, March 20, 1912. *Foreign Relations*, 1912, p. 754.

⁴ *A.J.I.L.* Vol. 6 (1912), pp. 477-8.

discouraging revolutionary disturbances. The arms embargoes applied during the following two decades with respect to the neighboring Latin American countries clearly illustrate this, and reveal that neutrality was only an incidental and not a primary consideration.

It is well known that the international law of neutrality imposes no obligation to prohibit private arms shipments to revolutionary groups or to maintain recognized governments in power. Indeed, for an outside power to take steps designed to prevent revolution in a neighboring state may justly be considered as interference in the internal affairs of that state, and as such a gross breach of neutrality.¹ The policy of the United States toward Mexico in the years following 1912, and toward other countries in Central America in the 1920's, can scarcely be considered as a policy of neutrality. It may more accurately be described as a policy of interference, designed to maintain friendly or "constitutional" governments in power, and thereby protect American interests and forestall any European interference in the area which the United States considered to be under its supervision or regional control. The use of arms export restrictions was resorted to as part of this policy, and was more closely associated with American interference and supervision in Central America than with any policy of neutrality.²

The Short-lived Virtues of Impartiality

March 14-25, 1912

The history of American restrictions on arms exports to Mexico presents a strange combination of partial and impartial treatment with respect to the government and revolutionary factions in that country. At times, the restrictions were applied impartially to both sides; at other times, they were applied against the rebels and not against the Mexican Government; and on one occasion the restrictions were lifted with the result that the rebels benefited most.

The embargo took effect immediately on March 14, 1912, and from then until March 25, 1912, it was applied impartially with respect to both sides in Mexico, no shipments of arms or munitions of war³

¹ Cf. Edwin M. Borchard, "The Arms Embargo and Neutrality," *A.J.I.L.* Vol. 27 (1933), p. 295.

² Cf. on this point, Ellery C. Stowell, *Intervention in International Law* (Washington, 1921), pp. 297-306, 342-3.

³ The Department of State did not issue any list of "arms or munitions of war" until 1920, but on March 25, 1912, the Attorney General handed down an opinion, at the request of the Secretary of State, defining the term for the guidance of those entrusted with the administration of the embargo. This definition embraced all articles "primarily and ordinarily used for military purposes in time of war," including, in addition to arms, ammunition and explosives, materials and machinery used in the repair or manufacture of arms or ammunition, together with articles of camp equipment, uniforms, ordnance and military field equipment. Foodstuffs, ordinary clothing and ordinary articles of peaceful commerce were not included in the prohibition. 29 *Opinions of the Attorney General* 375. Slight modifications and elaborations in this list were made by subsequent opinions of the Attorney General as specific questions arose.

being allowed to depart for that country. This was the first occasion in American diplomatic history when an arms embargo was applied by the United States in time of peace against a particular foreign recognized government.¹ It was, however, only short-lived, despite the feeling in the Department of State that if any embargo were to be applied, it ought to be applied impartially with respect to both sides. The position of the Department at this time was set forth in a memorandum of March 16, 1912, to President Taft and was briefly as follows:²

1. The embargo should be applied impartially on arms shipments to both the Madero Government and the revolutionists. Any exceptions in favor of the Madero Government would be "most unwise" since such exceptions would tend to imply that the United States specifically desired to favor the Madero Government, and might thereby cause reprisals on the part of the revolutionists.³
2. It would also be unwise for the time being to permit special shipments of large amounts of explosives to private enterprises in Mexico inasmuch as they might be seized either by the government forces or the rebels.
3. It was felt desirable, however, to permit the shipment of arms to the American Ambassador at Mexico City for distribution among the members of the American colony there in order to enable the latter to protect themselves and their property in cases of mob violence. The American Ambassador would be required to satisfy himself that any arms distributed in this way would not be used to promote domestic disorder. In case Americans elsewhere in Mexico needed arms for self-defense, it might be arranged to consign them to the nearest American Consul who would in turn have the same responsibility for their distribution.

Arms shipments for the personal use of Americans in Mexico were accordingly permitted by the Department of State under the foregoing conditions—i.e., that they were consigned to the American Ambassador or to an American Consul who was responsible for their proper distribution and for seeing that there was no possibility of their being used in any way to promote domestic disorder. When it later developed that the Mexican Government objected to the somewhat official procedure of consigning arms to the American Ambassador or to the American Consuls for distribution by them to American citizens, and placed various obstructions in the way of this procedure, the United States

¹ The embargo with respect to the Dominican Republic from 1905 onwards had not applied to shipments of arms desired by the recognized Dominican Government. Cf. *supra*, pp. 42-7.

² *Foreign Relations*, 1912, pp. 748-50.

³ The Department of State still felt one year later that the application of the embargo in a partial or discriminatory way would be embarrassing inasmuch as it arbitrarily interfered with the natural course of events in Mexico and fixed upon the United States Government a certain measure of responsibility for the outcome. Adee, Acting Secretary of State, to President Wilson, March 24, 1913. *Foreign Relations*, 1913, p. 874.

gave up this practice and contented itself with sending shipments directly to the consignees. The Mexican Government interposed no hindrances to this procedure. It became necessary, however, for the State Department to scrutinize each proposed shipment carefully in order to make certain that it would reach its destination safely and that the consignee was a *bona fide* American citizen who needed the arms for self-defense. In cases of doubt, the information required could be ascertained through the nearest consular office or through the embassy at Mexico City.¹

Discrimination against the Mexican Rebels
March 25, 1912—July 21, 1913

On March 21, 1912, only one week after the embargo had been proclaimed, the Mexican Ambassador requested that an exception be made to the President's proclamation so as to allow the passage into Mexico of certain shipments of arms and ammunition which had been detained by the United States authorities along the Texas frontier.² The question was thus squarely posed as to whether exceptions should be made in favor of the Madero Government, and, at the insistence of President Taft, it was answered in the affirmative.³ On March 26, 1912, the Mexican Ambassador was informed that the President had decided to except the shipments from the proclamation of March 14, and had ordered them released for exportation to Mexico. It was stated that with respect to any future consignments of arms and ammunition to the Mexican Government, the American exporter would be instructed to take the matter up with the Mexican Embassy, and that upon submission by the embassy of the necessary details concerning the shipment, the matter would be given prompt attention and placed before the President as soon as possible for his final decision as to whether or not the materials might be exported.⁴ The desire of the State Department to apply the embargo impartially was thus overridden by the desire of President Taft to permit shipments for the use of the Mexican Government, and thereafter until the midsummer of 1913, exceptions to the embargo were granted at the request of the Mexican Embassy in Washington.⁵

¹ Adee, Acting Secretary of State, to President Wilson, March 24, 1913. *Foreign Relations*, 1913, p. 874. Also, *Foreign Relations*, 1912, pp. 782, 791, 801-2.

² *Foreign Relations*, 1912, pp. 755-6.

³ The joint resolution of 1912, it will be recalled, authorized the President to prescribe limitations and exceptions to any arms export prohibition which might be established.

⁴ *Foreign Relations*, 1912, pp. 765-6.

⁵ The State Department was still of the same opinion one year later, March 24, 1913, with regard to the desirability of applying the embargo impartially and granting exceptions only for shipments of arms and munitions of war to commercial houses for commercial use, to Americans for self-defense, and to industrial establishments for their operation. Adee to President Wilson, March 24, 1913. *Foreign Relations*, 1913, p. 874.

President Taft had originally intended to write into his proclamation of March 14, 1912, a blanket exception for all shipments requested by the central administration in Mexico, but he was dissuaded at the last moment from doing so by the Department of State which had felt that the inclusion of any such blanket exception in the proclamation would make it appear so partisan and so favorable to the Madero administration as to induce the insurrectionists to make reprisals against Americans in Mexico. The proclamation, accordingly, did not contain any statement with reference to arms shipments for the Mexican Government, but exceptions in favor of such shipments were nevertheless recommended thereafter "in order to conform to the verbally expressed desire of President Taft." This practice was declared to be "directly dependent upon the policy of this Government with regard to Mexico."¹

In addition to the shipment of arms and ammunition for the use of the Mexican Government and for the self-defense of American citizens in Mexico, the Department of State soon came to the conclusion that it would be expedient to permit the export of blasting explosives and equipment to various mining and industrial companies in Mexico where it was not likely that such explosives would fall into the hands of or be seized by the revolutionists. It was realized that if large mining enterprises there were obliged to close down because of lack of explosives, a considerable number of Mexicans would be thrown out of work and would perhaps become insurrectionists or bandits whereas they might not have done so if employed. On the other hand, of course, there was the danger that such explosives might be seized by the insurgents and used for military purposes. Between these considerations, it was felt that a fairly safe rule would be to allow the export of industrial explosives in case their destination was accessible by a safe route and was in a region in actual control of the Mexican Government forces. As for explosives destined to localities in the peaceful control of the insurrectionists, it was felt that permission might be granted for relatively small shipments upon the presentation of convincing assurances by the American exporter that the explosives would be used only for industrial purposes, and that they would reach their destination in safety. In this way, it was hoped to keep as many industrial enterprises in operation and as many people employed as possible, thereby reducing the occasion for domestic disorder.²

Two other types of exception were made to the embargo:³

1. Exports of arms and ammunition to commercial houses in Mexico for ordinary purposes of commerce such as hunting, and self-defense. All such shipments were carefully scrutinized by the

¹ Adee to Wilson, March 24, 1913. *Foreign Relations*, 1913, p. 874.

² *Ibid.*, 1912, pp. 757, 781, 782-3. *Ibid.*, 1913, p. 873.

³ *Ibid.*, 1913, pp. 873, 874.

State Department and permitted only when it seemed reasonably certain that there would be no violation of the law or proclamation of March 14, 1912.

2. Special cases such as the export of arms for protection or for sporting purposes to private persons not Americans (e.g., to certain British subjects in Mexico, at the request of the British Ambassador); and the shipment of arms for the United States naval vessels in Mexican waters.

There were a great number of applications for exceptions to the embargo, most of them concerning blasting and mining explosives, sporting and commercial arms, and arms for the self-defense of Americans in Mexico.¹ The applications were scrutinized carefully, and an investigation made through the nearest American consular office in Mexico of the conditions in the vicinity of the destination of the shipment and along the route to that destination from the port of entry into Mexico. Inquiry was also made as to the good faith of the consignee and the use to which the arms or munitions in question would be put after delivery. The determining factor in finally granting or withholding permission to export in many instances was whether or not it appeared possible that the arms might fall into the hands of the rebel forces or be seized by them.

When, for example, Vera Cruz fell into the hands of the insurrectionary forces in October, 1912, the Department of State requested the Treasury Department to hold up (i.e., through action of the customs officers) all shipments of arms or munitions of war destined to enter Mexico by that port until it could be ascertained that materials could be forwarded safely by that route.² Likewise when certain areas in Mexico along the United States frontier were occupied by the rebels, no exports were allowed to cross at those points, and the customs officers there were instructed to permit no shipments to leave the United States.³ Again, when it developed after a permit had been granted that conditions in Mexico along the proposed route had changed and become disturbed, an effort was made, if there was still time, to have the customs officers hold up the shipment at the frontier or forward it by another route not passing through the disturbed territory.⁴ In this way, the American authorities did everything possible to keep arms, ammunition, explosives and other military supplies from falling into the hands of the Mexican rebels.

¹ Applications to ship arms or munitions of war to the Mexican Government had to be submitted through the Mexican Embassy in Washington. Requests for other exceptions (industrial explosives, sporting arms, arms for self-defense, etc.) could be made directly to the Department of State.

² *Foreign Relations*, 1912, p. 855. ³ *Ibid.*, 1913, p. 719. ⁴ *Ibid.*, 1913, p. 875.

Partiality Leads to Reprisals

The American policy of permitting arms exports to the Mexican central government while prohibiting them to the rebels in northern Mexico provoked much bitterness on the part of the latter toward the United States and resulted in a series of active reprisals against American citizens in Mexico and an increase in the danger to American lives and property.¹ Testimony before a Senate subcommittee by a number of American citizens who owned property or were employed in northern Mexico indicated that after the application of the embargo of March 14, 1912, there was much more interference with American lives and property by the Mexican revolutionists than before.²

The revolutionists took the view that the United States Government had aligned itself with the Madero administration in its fight against them, and that consequently, so far as the revolutionary party was concerned, there would be no more respect or protection for American or foreign interests in Mexico. General Orozco, one of the rebel leaders, claimed that if he had not been deprived of arms and ammunition by the American embargo, he would have long since overthrown Madero and occupied Mexico City. His followers believed him, and this belief tended to encourage their attacks on American property.³ General Salazar, another rebel leader, openly admitted that he intended to force the United States to come out and fight in the open, optimistically boasting that the rebels would still be in no worse a position and that the United States would thereby be forced to accept some of the risks of war.⁴ American citizens were held up, robbed and disarmed, their horses, cattle and ranch equipment stolen, their properties damaged, and in several cases they themselves were kidnapped and held for ransom or their lives otherwise endangered. In justification of their action, the rebels simply said: "You Americans have put Madero in power; you are keeping him there; you will not allow us arms or ammunition or food or anything, and the only way we can get it is to take it from you, by holding your foremen for ransom, and taking your mules and horses."⁵ Thus were American citizens in

¹ Cf. the opinion of the State Department in March, 1912, that the embargo law, if enforced, would prove embarrassing, but that if enforced, it ought to be applied impartially lest it lead the rebels to retaliate. See *supra*, p. 57, note 3.

² U. S. Senate, Committee on Foreign Relations (subcommittee), "Revolutions in Mexico," *Hearing* pursuant to S. Res. 335, September 7, 1912, to January 9, 1913, pp. 9-11, 32-3, 43-4, 64-8, 371-2, 496, 694, 720, 800-1. Most of the testimony before this committee dealt with the activities of American interests in financing one side or the other in Mexico or in any way inciting rebellion there.

³ *Hearing* pursuant to S. Res. 335, p. 44. See also, *Foreign Relations*, 1912, pp. 813, 821-2, 824.

⁴ *Hearing*, *op. cit.*, p. 65.

⁵ *Ibid.*, pp. 800-1. The resentment of the rebels was not due entirely to the arms embargo, but also to the other acts of the Taft administration in supporting the

Mexico obliged to suffer the consequences of the discriminatory policy of President Taft.

A bitter attack on the Taft policy was made by Senator Albert Fall of New Mexico who maintained that the embargo should apply equally to both sides. By allowing the Madero Government and not the rebels to obtain arms, the United States, he declared, had created the opinion in Mexico that it was behind the Madero revolution of 1911 and that it was now protecting Madero from the righteous wrath of the Mexican people.¹ One year later (June 18, 1913), the Senator introduced a joint resolution to repeal the law of March 14, 1912, on the ground that its application had led to reprisals and attacks against American citizens and property in Mexico.² Instead of reducing the danger to American lives and property, as it had been intended, the law had actually increased that danger.³

A Return to Impartiality and Non-Assistance
July 21, 1913–February 3, 1914

The policy of permitting arms exports to the Mexican Government came to an end in midsummer of 1913 when the rapidly-widening rupture between the new de la Huerta Government and President Wilson led the latter to apply the embargo against that government as well as against the rebels. The Madero administration had been overthrown by a violent revolution in February, 1913, and a Provisional Government under General de la Huerta was established.⁴ A few days later, ex-President Madero and the ex-Vice President were shot while being transferred under escort from the national palace to the penitentiary. American public opinion was shocked at these developments, and neither the Taft nor the Wilson administration was willing to recognize the new government, President Wilson taking the position that he would not extend recognition to any régime which had come into power through violent revolution against a lawfully constituted government.⁵ His desire to promote constitutional government and his determination to give no support to de la Huerta were revealed in such statements as the following:

We hold . . . that just government rests always upon the consent of the governed, and that there can be no freedom without order based upon law and upon

Madero Government, particularly the granting of permission to Mexican federal troops to pass through United States territory in order better to attack the insurgents (October, 1912). *Foreign Relations, 1912*, pp. 895-900. Rippey, *The United States and Mexico*, pp. 335-6.

¹ Speech of July 22, 1912. *Congressional Record*, Vol. 48, p. 9423.

² *Ibid.*, Vol. 50, p. 2074.

³ *Ibid.*, pp. 2222-7.

⁴ For a convenient summary, see Rippey, *The United States and Mexico*, pp. 346 ff.

⁵ Harley Notter, *The Origins of the Foreign Policy of Woodrow Wilson* (Baltimore, 1937), pp. 223-30.

the public conscience and approval. . . . We can have no sympathy with those who seek to seize the power of government to advance their own personal interests or ambitions.¹

I would like to believe that all this hemisphere is devoted to the same sacred purpose (the preservation of free, self-government) and that nowhere can any government endure which is stained by blood or supported by anything but the consent of the governed.²

There can be no certain prospect of peace in America until General Huerta has surrendered his usurped authority in Mexico; until it is understood on all hands, indeed, that such pretended governments will not be countenanced or dealt with by the Government of the United States.³

The policy pursued by the United States concerning the regulation of arms exports to Mexico during 1913 and 1914 can be understood only when the attitude of President Wilson toward the de la Huerta régime is constantly kept in mind.⁴

Although *de facto* relations were maintained with the Mexican authorities through the American Embassy at Mexico City, the refusal to recognize General de la Huerta formally as the lawful President of Mexico led to many further acts of discrimination against American interests and trade, and resulted in a general resentment on the part of Mexicans against the United States and an unwillingness on the part of de la Huerta to pay any attention to the protests and representations of the American Embassy.⁵ This state of affairs only widened the breach between de la Huerta and President Wilson. Finally, when the mission of John Lind failed in August, 1913,⁶ the breach was complete,

¹ Statement of March 11, 1913, concerning American policy toward Latin America. *Foreign Relations*, 1913, p. 7.

² Address delivered at Swarthmore College, October 25, 1913. *Congressional Record*, Vol. 50, p. 5862.

³ Annual Message to Congress, December 2, 1913. *Foreign Relations*, 1913, p. x.

⁴ It seems clear that Wilson's attitude toward de la Huerta was not directly motivated by any desire to promote American material interests in Mexico, but rather by the sincere desire to promote peace, order and constitutional government. With stability and constitutional government restored, there would be peace and prosperity for all, and American and Mexican interests would benefit together instead of at the expense of each other. By attempting to promote a policy of understanding and cooperation with respect to Latin America as a whole, Wilson hoped to overcome the suspicions of the Latin Americans which had been engendered by the "dollar diplomacy" of his immediate predecessors. It was because de la Huerta typified in Wilson's mind all the things for which constitutional government did not stand that Wilson came to the conclusion that de la Huerta would have to go. Cf. Wilson's statement of March 11, 1913, *Foreign Relations*, 1913, p. 7; also Notter, *op. cit.*, pp. 223-6.

⁵ Lind had been sent to Mexico City as President Wilson's personal representative. He was to offer his good offices and press for the establishment of a government in Mexico which the country would "obey and respect", and which would be based on:

a) an immediate cessation of fighting throughout Mexico;
b) security given for an early and free election in which all would agree to take part;

c) pledge of de la Huerta not to be a candidate for President at this election;

d) agreement of all to abide by the results of the election and to cooperate in organizing and supporting the new administration.

The authorities at Mexico City rejected Lind's proposals in their entirety. *Foreign Relations*, 1913, pp. 821-2.

and Wilson concluded that nothing further could be accomplished through the channels of mediation or good offices towards bringing about a reconciliation between the conflicting groups in Mexico. He therefore resolved to pursue a policy of "waiting" and self-restraint in the hope that the Mexicans would come to a true realization of the facts by themselves and be able to set their house in order again.¹ At the same time, he decided to observe a really "true neutrality", which would not favor either side, and which would prohibit the shipment of arms or munitions of war to both.² No exceptions to the embargo would be granted thereafter at the request of the *de facto* Mexican representative in Washington, and the Treasury Department would be requested to revoke all permits previously authorized by the President for shipments to the central administration in Mexico.³

Despite the fact that the de la Huerta Government had not been recognized by the United States, the policy which had been followed during the Madero régime of permitting arms exports for the use of the Mexican Government had hitherto been continued, and arms shipments for the de la Huerta administration were permitted until the middle of July, 1913. It seemed strange to many critics of Wilson's policy that the United States should continue to allow arms exports to a government in Mexico which it refused to recognize while at the same time forbidding such exports to the other factions which were trying to overthrow that government. It seemed even stranger that permission should be refused to export war materials to the followers of the late President Madero to whose government the shipment of arms had been permitted prior to its overthrow at the hands of de la Huerta in February, 1913.⁴

The reason for permitting arms shipments requested by the *de facto* Mexican authorities to continue as before is not clear, but it may very well have been because negotiations and discussions were in progress looking toward a reconciliation of the various factions in Mexico and the holding of a presidential election in the fall of 1913 in which de la Huerta would not be a candidate.⁵ It may have been felt at Washington that peaceful reconciliation could be brought about in Mexico more quickly and easily if no further steps were taken which might be interpreted by de la Huerta as hostile acts (such as the imposition of an arms embargo). Any hopes in this direction, however, were shattered

¹ See Wilson's message to Congress, August 27, 1913, *Foreign Relations*, 1913, pp. 820-3.

² *Ibid.*, p. 823.

³ Bryan, Secretary of State to the Mexican Chargé, September 3, 1913. Department of State, Decimal File, MSS. 812.113/2709; Wilson to Secretary of Treasury, September 11, 1913. MSS. 812.113/2920a.

⁴ Statements of Senator Fall, June 27, 1913, and Senator Bristow, September 4, 1913. *Congressional Record*, Vol. 50, pp. 2225-6; 4228.

⁵ Notter, *The Origins of the Foreign Policy of Woodrow Wilson*, pp. 249-52.

by the complete failure of the Lind mission, which led directly to President Wilson's announcement on August 27, 1913, that the embargo would thenceforth be applied impartially with respect to all sides in Mexico. Arms exports had actually been held up since July 21, for no instructions had been issued to the customs officers since that time to permit any shipments of such materials to the Mexican Government.¹ Applications from the Mexican Chargé for special export permits were held up, pending the outcome of the Lind mission,² and when the latter ended in failure, the restoration of the embargo was formally announced. In his message to Congress of August 27, 1913, Wilson explained his position as follows:

For the rest, I deem it my duty to exercise the authority conferred upon me by the law of March 14, 1912, to see to it that neither side to the struggle now going on in Mexico receive any assistance from this side of the border. I shall follow the best practice of nations in the matter of neutrality by forbidding the exportation of arms or munitions of war of any kind from the United States to any part of the Republic of Mexico—a policy suggested by several interesting precedents and certainly dictated by many manifest considerations of practical expediency.³ We can not in the circumstances be the partisans of either party to the contest that now distracts Mexico, or constitute ourselves the virtual umpire between them.⁴

Convinced of the wisdom of his decision, President Wilson, through the State Department, sought to persuade a number of other countries to follow his example in prohibiting the export of arms to Mexico. Suggestions to this effect were sent on September 29, 1913, to the principal powers and to several of the Latin American governments.⁵ Only Guatemala and British Honduras seem to have accepted the suggestion and applied embargoes, although a few other Latin American countries indicated sympathy with the proposal. None of the major powers, however, took any such action, and this obliged President Wilson a few months later to reconsider the advisability of a unilateral American embargo.

While the United States was now returning to the policy of an impartial embargo in the summer of 1913, similar to that which had been

¹ Department of State, Memorandum of August 26, 1913. MSS. 812.113/2698.

² Lind left for Mexico on August 4. Notter, *op. cit.*, p. 256, note 1.

³ While a return to a policy of impartiality certainly represented "the best practice of nations in the matter of neutrality", the same can scarcely be said with respect to forbidding the exportation of arms or munitions of war to a state engaged in civil strife. The latter type of embargo had not yet become a well-established policy of the United States, and it certainly did not represent the practice of the principal European powers. There had been a few instances of arms embargoes by the smaller neutrals during the Franco-Prussian and Spanish-American Wars. The latter were international and not civil wars, however. See *supra*, p. 30. From 1819 to 1823, Great Britain had prohibited the export of arms to Spain and the Spanish colonies in America during the period of the latter's revolution against the mother country. Even this, however, was not a civil war. Cf. the writer's article in *A.J.I.L.* Vol. 33 (April, 1939), pp. 294-5.

⁴ *Foreign Relations*, 1913, p. 823.

⁵ Department of State, MSS. 812.113/2821a.

followed between March 14 and 25, 1912, one significant difference should be noted between the two cases. The earlier prohibition had been applied with respect to a recognized government—the Government of President Madero—whereas the impartial embargo of 1913 applied to an unrecognized government, the administration of General de la Huerta. Our action in 1913, therefore, while impartial in its application, cannot be cited accurately as a precedent for an arms embargo against a recognized government with which we were in friendly relations as can the short-lived prohibition of March, 1912.

The embargo as it was applied from August, 1913, to February, 1914, cut off the shipment of arms and munitions of war to both the de la Huerta régime and the various contending factions, but it was not administered so as to prevent the export of dynamite and blasting explosives to mining companies in Mexico. The purpose in excepting these was the same as that which had originally led to the granting of exceptions for such shipments in 1912, namely, to keep as many industrial enterprises going in Mexico as possible and prevent the discharge of employees who might through discontent join the revolutionary groups.¹ A few other exceptions to the embargo were granted in favor of arms and ammunition for self-defense purposes for individuals and companies, but aside from this, the embargo was absolute.²

Wilson's policy of "waiting" and self-restraint, announced in his message of August 27, 1913, was destined to receive a rough jolt later in the fall, and by the end of the year more forceful methods were under consideration. The rough jolt came on October 10-11, when de la Huerta dissolved the Mexican Congress, arrested 110 of the deputies despite their constitutional immunities, and assumed certain of the powers conferred upon the Congress by the constitution.³ Wilson at once charged de la Huerta with an "act of bad faith toward the United States", and by the end of October began considering more drastic measures of eliminating the Mexican dictator.⁴ On November 7, 1913, he notified the major powers that the United States would require de la Huerta to retire, and that it would not regard anything done by de la Huerta since October 10 or by the "fraudulent legislature" which he was about to convoke as binding upon the Mexican people.⁵ The President's message to Congress in December, 1913, reiterated his insistence that de la Huerta surrender "his usurped authority in Mexico."⁶

¹ See, e.g., Wilson to Secretary of Treasury, September 5 and 8, 1913, Department of State, MSS. 812.113/2760 and 2761.

² Department of State, MSS. 812.113/2919.

³ *Foreign Relations*, 1913, pp. 836, 838-9.

⁴ Notter, *The Origins of the Foreign Policy of Woodrow Wilson*, pp. 264 ff., 272.

⁵ Notter, *op. cit.*, p. 273.

⁶ See *supra*, p. 63, note 3.

As Wilson moved toward more forceful action in his efforts to unseat de la Huerta, one of the measures suggested was that of assisting the rebels in northern Mexico by raising the embargo on arms. Nelson O'Shaughnessy, the American Chargé d'Affaires at Mexico City, and John Lind, the President's special agent, who was still in Mexico, both agreed on the advisability of such a step. O'Shaughnessy wrote Secretary Bryan on December 13 that if the United States enforced the embargo effectively, de la Huerta would use this as an argument in Paris to raise money for the purchase of arms. If the rebels meanwhile could not get war supplies except in small quantities by smuggling, while de la Huerta could obtain them in Europe, he would succeed in establishing a permanent dictatorship in Mexico.¹

By the end of January, 1914, Wilson had become persuaded to lift the embargo and embark on a policy of indirect assistance to the revolutionary forces (the Constitutionalist party) in northern Mexico, led by General Carranza. The absolute embargo which had been in force since midsummer of 1913, had not prevented de la Huerta, who controlled the seaports, from obtaining arms from Europe, but it had prevented the revolutionists who had access to no ports, from getting such materials. The raising of the embargo, therefore, even though done impartially, would operate to the definite advantage of the Carranza forces and would help towards the downfall of de la Huerta.² Wilson was now convinced that no power or person outside Mexico could arrange any satisfactory settlement of the Mexican question and that the best thing to do was to allow the two factions to fight it out between themselves. He had concluded, moreover, that there were no influences which could be counted on at Mexico City to establish a government in the interests of the entire country, and he had accordingly decided that he was no longer justified in maintaining "an irregular position" regarding the contending parties in the matter of neutrality.³ He had therefore determined to remove the prohibition on arms exports, and allow the civil war to be carried "to its bitter conclusion", terrible though this might be.⁴

Wilson was by now persuaded that assistance to the Carranza forces was the least objectionable method of unseating de la Huerta. He had furthermore become convinced of the merits of the Constitutionalist cause, and had been impressed by favorable reports which had

¹ Ray Stannard Baker, *Woodrow Wilson, Life and Letters* (New York, 1931), Vol. 4, p. 299.

² Baker, *op. cit.*, p. 304; Notter, *op. cit.*, pp. 282-3; Rippey, *The United States and Mexico*, pp. 351-2.

³ Yet in his message of August 27, 1913, Wilson had declared that he would follow "the best practice of nations in the matter of neutrality by forbidding the exportation of arms . . . to any part of the Republic of Mexico." See *supra*, p. 65.

⁴ Bryan, Secretary of State, to Page, American Ambassador to Great Britain, January 29, 1914. *Foreign Relations*, 1914, p. 445.

come to him concerning Carranza.¹ On January 26, 1914, he called a conference of the Senate Foreign Relations Committee to discuss the matter. There was general assent to his plan, except for certain doubts expressed by Senator McCumber, to whom Wilson wrote on January 29 as follows:

I feel very much as you do about the lifting of the embargo but have again and again been driven in my mind to the conclusion that it is an inevitable course of action in the circumstances. . . . I have done everything possible to convince myself that the Constitutionals are coming to a true realization of their public international responsibility as their cause moves forward and that they will henceforth attempt to act, as far as the circumstances of civil war permit, in the spirit of modern regulations.²

In an instruction on January 31, 1914, to all the American diplomatic missions abroad, Secretary Bryan explained that by removing the prohibition on arms exports to Mexico, the United States intended to put itself in the same position as other nations whose citizens had all along been at liberty to sell what they pleased to Mexico. The United States Government deemed it essential to the settlement of the difficulties in Mexico that that country be treated as any other country would be if involved in civil war. She would be the sooner able to meet her international obligations and responsibilities if left "to determine her own affairs by domestic force and then by domestic counsel."³

The exceptional character of the American policy of restricting arms exports to Mexico was thereby clearly recognized and admitted. After nearly two years of applying such restrictions, partially and impartially, the United States was to return to its traditional practice under international law of imposing no restrictions on the export of war materials by its private citizens. But her action in so doing, even though impartial in legal form, operated to the distinct advantage of the revolutionary group and was in fact intended to do so. As such, it marked the beginning of a positive program of intervention against the de la Huerta administration,⁴ and constituted a clear-cut example of how the power to regulate arms exports could be very effectively used to supplement an active foreign policy.

The presidential proclamation formally raising the embargo was issued on February 3, 1914.⁵ At the same time, President Wilson issued a statement declaring that the proclamation originally prohibiting the export of arms to Mexico (March 14, 1912) had been a "deliberate departure from the accepted practices of neutrality . . . under a well-considered joint resolution of Congress, determined upon in circumstances which have now ceased to exist." It had been intended

¹ Baker, *op. cit.*, p. 303. Notter, *op. cit.*, p. 282.

² Baker, *op. cit.*, p. 304.

³ *Foreign Relations*, 1914, p. 447.

⁴ Cf. Notter, *op. cit.*, p. 282. Rippey, *op. cit.*, p. 352.

⁵ 38 *Stat.* 1992.

to discourage incipient revolts against the regularly constituted authorities of Mexico. But circumstances had radically changed since 1912, the President declared, and there was no longer any constitutional government in Mexico. Under these conditions, the existence of the arms prohibition hindered and delayed the very thing the United States was insisting upon, namely, "that Mexico . . . be left free to settle her own affairs and as soon as possible put them on a constitutional footing by her own force and counsel."¹

Vera Cruz and an Extra-Legal Arms Prohibition
April 23—September 8, 1914

With the embargo formally revoked, the situation again became as it had been prior to March 14, 1912. American citizens were free to export arms or munitions of war anywhere in Mexico, and this meant that the revolutionists in the north were again able to obtain supplies across the border from the United States. But this state of affairs did not last long. Two months later (April, 1914) a series of incidents occurred which led to a complete severance of diplomatic relations with the Mexican authorities² and the actual occupation of Vera Cruz by American naval forces.³

Confronted with a situation which might easily have led to further armed intervention, the government at Washington took an extraordinary step and clamped down another embargo on arms and ammunition without issuing any proclamation whatsoever under the joint resolution of March 14, 1912, or other authority. On April 22, 1914, one day after the occupation of Vera Cruz, the Treasury Department instructed the customs officers at Laredo, Texas, to hold up all exports of ammunition until further notice, it having been reported that an attempt would be made to obtain ammunition for the Mexican federal garrison stationed at Nuevo Laredo across the frontier.⁴ On April 23, instructions to detain all exports of arms and munitions were sent to all customs collectors along the Mexican frontier.⁵ The following day, the War Department instructed its commanding officers along the

¹ *New York Times*, February 4, 1914. Cited in E. E. Robinson and V. J. West, *The Foreign Policy of Woodrow Wilson* (New York, 1917), p. 207.

² Relations had previously been on a *de facto* basis.

³ On April 9, 1914, a minor American naval officer and two sailors had been arrested at Tampico by members of de la Huerta's army. De la Huerta ordered them released and expressed regret, but refused to salute the American flag as was demanded. A few days later, another minor American officer was arrested at Vera Cruz. A pacific blockade of the Mexican coast by American ships followed, and finally on April 21, in order to prevent a German steamer from landing a cargo of arms at Vera Cruz, the American forces shelled the city, seized the customs house, and finally occupied the city completely. A convenient summary of events is given in Stuart, *Latin America and the United States* (1938 ed.), pp. 146-7.

⁴ Secretary of Treasury to Secretary of State, April 22, 1914. Department of State, MSS. 812.113/3128.

⁵ Department of State, MSS. 812.113/3224.

border to prevent all arms and munitions of war from going into Mexico, while the Treasury Department instructed its customs collectors on the frontier to do their utmost to prevent the smuggling of arms and ammunition and to ask the cooperation of the army officers in the vicinity if need be.¹

As no embargo proclamation or formal notice was issued at this time,² reliance was apparently placed entirely on the powers of the President to take whatever measures were necessary in the face of a national emergency and the possibility of war. The embargo seems to have been primarily a precautionary defense measure designed to prevent the shipment into Mexico of arms and ammunition which might subsequently be turned against American soldiers if further military intervention took place. In this respect, it differed from preceding embargoes which had been primarily intended to help or hinder one or the other of the contending factions in Mexico. The prohibition applied at first only to arms and ammunition shipments by land across the Mexican frontier, but on May 28, 1914, it was broadened to cover shipments by sea as well.³ Permits were granted, however, as in previous embargoes, for small consignments of dynamite and explosives for industrial purposes shipped by reputable firms.⁴

The embargo came to an end in September, 1914, following an opinion by the Attorney General that, in the absence of any proclamation under the joint resolution of March 14, 1912, there was no legal means whereby the shipment of arms and ammunition to Mexico could be prevented. The occasion for this opinion was an inquiry from the customs collector at El Paso as to how far he might go under existing instructions in attempting to prevent the exportation of ammunition to Mexico. Considerable difficulties had been encountered with smuggling, and on August 8, 1914, the collector had reported to the Secretary of State that a good deal of ammunition was being smuggled into Mexico despite the diligence of the customs officers and the military authorities to prevent it. He said that an attempt had re-

¹ Secretary of War to Secretary of State, April 24, 1914. MSS. 812.113/3131 and 3132. Secretary of Treasury to Secretary of State, April 24, 1914. MSS. 812.113/3133.

² But see the next footnote regarding the executive order of June 9, 1914.

³ Secretary of State to Secretary of Treasury, May 19, 1914. Department of State, MSS. 812.113/3251. Secretary of State to Walker Bros. Hancock, May 28, 1914; Secretary of State to Secretary of Treasury, May 29, 1914. MSS. 812.113/3283.

On June 9, 1914, an executive order (No. 1960) was issued providing that instructions to customs officers concerning the exportation of arms and munitions of war to Mexico by sea should be issued by the Commerce Department (Bureau of Navigation), and that similar instructions for exportation by land should be issued by the Treasury Department. In pursuance of this, the Commerce Department on June 12, 1914, instructed the customs collectors at the seaports of the United States to refuse to clear for Mexican ports any vessels carrying arms or ammunition. Department of State, MSS. 812.113/3378.

⁴ Department of State, Memorandum of July 21, 1914. MSS. 812.113/3641.

cently been made to bribe a customs inspector to allow two cars loaded with ammunition to pass into Mexico. In view of these difficulties, he urged that the wisdom of establishing a full embargo by presidential proclamation be considered.¹

The State Department referred the question to the Attorney General, indicating that it desired to see every means employed, within the limits of the law, to prevent the exportation of arms or munitions of war across the Mexican border.² On August 27, 1914, the Attorney General replied that since no embargo proclamation had been issued under the joint resolution of March 14, 1912, he knew of no legal means by which the customs collector could prevent the passage of ammunition across the Mexican border, unless the action was such as to violate the neutrality laws of the United States (e.g., in connection with a hostile expedition).³ When the State Department inquired as to whether or not the executive order of June 9, 1914,⁴ constituted an embargo, the Department of Justice indicated that the order was worded in such a way that it could scarcely be considered as an embargo on the shipment of arms and munitions of war to Mexico.⁵

Confronted with the opinion that no embargo legally existed, the State Department decided not to detain any further arms or ammunition shipments to Mexico, and informed the Treasury to this effect on September 10.⁶ The Secretary of the Treasury, however, who had already been informed directly of the Attorney General's opinion, had apparently instructed the customs collectors on September 8, 1914, that in view of the restoration of peace in Mexico, arms and ammunition might thenceforth be treated as ordinary commercial shipments and allowed to go forward accordingly.⁷ Interested exporters were also informed thereafter that no embargo existed and that permits would no longer be necessary to export explosives as had been previously required.⁸

Had the Department of State deemed it necessary, a formal proclamation could of course have been issued under the joint resolution of March 14, 1912, and the export of arms to Mexico legally subjected thereby to control. But the immediate crisis of April had passed; de la Huerta had finally given up and left Mexico in July, 1914; Wilson was again trying to bring about a reconciliation among the various remaining leaders in Mexico; and by mid-September, plans for the

¹ Department of State, MSS. 812.113/3504.

² Lansing to Secretary of Treasury, August 25, 1914. MSS. 812.113/3522.

³ Attorney General to Secretary of State, August 27, 1914. MSS. 812.113/3552.

⁴ See *supra*, p. 70, note 3.

⁵ Department of State, Memorandum of August 31, 1914, MSS. 812.113/3560.

⁶ Department of State, MSS. 812.113/3560.

⁷ Secretary of Treasury to Secretary of State, September 8, 1914, MSS. 812.113/3660.

⁸ See e.g. Department of State, MSS. 812.113/3585.

withdrawal of American forces from Vera Cruz were under way.¹ With the situation relieved, and the danger of armed intervention past, the administration at Washington evidently believed that it would not be necessary to reestablish a formal arms embargo, and so decided to allow the prohibition of April, 1914, to be set aside.

As a matter of fact any substantial agreement or reconciliation between the contending factions in Mexico was still far from realization, and hence the decision to return to the policy of no restrictions on arms exports was consistent with the conclusion which had first led President Wilson to raise the embargo on February 3, 1914,—namely, that the only practicable course was to allow the civil war to be fought through to its bitter conclusion.

Partiality Once Again
October 9, 1915—April 15, 1916

The policy of not restricting the export of arms to Mexico continued in effect for over a year, there being no general prohibitions on these shipments from September 8, 1914, to October 9, 1915.² The possibility of reestablishing the general embargo was considered in August, 1915, when it became known that large quantities of arms and ammunition were being sent to Mexico,³ but no definite action was taken until two months later, when it was decided to accord recognition to the Carranza party as the *de facto* government of Mexico. Once again the shipment of arms and war material was to be regulated in such a way as to supplement our general policy toward that country.

The various contending leaders in Mexico had been very slow to reach any understanding among themselves, even after the removal of de la Huerta, and President Wilson finally decided in July, 1915, to invite the diplomatic representatives of several Latin American states to

¹ Notter, *The Origins of the Foreign Policy of Woodrow Wilson*, pp. 308, 362-3. The withdrawal from Vera Cruz took place in November, 1914. *Ibid.*, p. 364.

² On September 9, 1915, the State Department requested the Treasury Department to instruct the customs collector at Laredo, Texas, to prevent the export to Mexico of a large ammunition shipment due to arrive there the next day enroute to the Carranza forces across the border. (Department of State, MSS. 812.113/3693a.) On September 25, at the request of the State Department, the customs collector there was instructed to hold all shipments of arms and ammunition destined to Mexico until further notice. This instruction was revoked on October 1, 1915. (MSS. 812.113/3699, 3701.) Aside from these special instructions concerning shipments via Laredo, no restrictions were imposed prior to October 9, 1915.

³ Department of State, Memorandum of August 13, 1915, indicating the large shipments of arms and ammunition to Mexico which were taking place. (MSS. 812.113/3691 ½.) On August 14, Secretary Lansing suggested to President Wilson the advisability of reestablishing the embargo on the theory that an armistice between the warring factions might thereby be enforced and also that arms ought to be kept from the factions in control of the border towns where there was a danger of clashes with American troops along the frontier. MSS. 812.113/3691 ½.

confer with him regarding the recognition of some government in Mexico.¹ These conferees eventually concluded on October 9, 1915, that the Carranza party was the only one possessing the essentials for recognition as the *de facto* government of Mexico.² Ten days later, the United States recognized it as such.³

Having now decided to recognize Carranza, Wilson determined to make it easier for him to suppress the remaining revolutionary activity in Mexico by cutting off the arms supplies shipped to his opponents. On October 9, 1915, the same day that the conferees had decided in favor of Carranza, the American customs collectors at El Paso, Nogales and Los Angeles were instructed to detain all shipments of arms and ammunition for use in Mexico.⁴ Inasmuch as these ports of departure served principally the three states of northwestern Mexico—Chihuahua, Sonora and Lower California—which were then in opposition to Carranza, the effect of this instruction was to restrict arms shipments to the opponents of Carranza. This policy was made much more specific and complete ten days later when, on the same day that the *de facto* Carranza Government was recognized, President Wilson issued an embargo proclamation under the joint resolution of March 14, 1912.⁵ The proclamation was identical in wording with the proclamation of March 14, 1912, and as such prohibited all exports of arms and munitions of war to Mexico. Taking advantage, however, of the authority conferred by the joint resolution of 1912 to prescribe exceptions to the embargo, President Wilson, in a separate letter to the Secretary of the Treasury on October 19, instructed that arms exports be permitted for the use of the recognized *de facto* government of Mexico, or for industrial or commercial uses within the territory under its effective control. No exceptions, it was emphasized, were to be granted at that time for shipments into Chihuahua, Sonora or Lower California, where the control of the *de facto* government was not effective.⁶ The embargo was therefore applied in such a way as to strengthen the position of the recognized Carranza Government and to hamper the activities of those who were opposed to that government. Inasmuch as the Carranza forces were in control of all ports in Mexico except those in Sonora, Chihuahua and Lower California, the Department of State indicated on November 9, 1915, that arms shipments could be allowed to enter Mexico freely by all routes except those destined for the three above-mentioned states.⁷ The embargo hence was

¹ *Foreign Relations*, 1915, pp. 722-3. Notter, *op. cit.*, pp. 418-20.

² *Foreign Relations*, 1915, p. 767. Carranza shortly before had reaffirmed his pledge to respect the lives and property of foreigners in Mexico. *Ibid.*, p. 764.

³ *Ibid.*, p. 771.

⁴ *Ibid.*, p. 780.

⁵ Proclamation of October 19, 1915. 39 *Stat.* 1756.

⁶ *Foreign Relations*, 1915, pp. 781-2.

⁷ Department of State, MSS. 812.113/3778.

applicable only to this portion of Mexico where the Carranza Government was not in effective control.

Once again, the United States discovered that an embargo which was applied only to one side in the Mexican struggle would lead to reprisals against American citizens and property on the part of those who were discriminated against. General Villa, a former associate of Carranza who had broken away and set up a government of his own in early 1915 and was now leading forces in northwestern Mexico, was infuriated at the American recognition of Carranza and the prohibition of arms shipments into territory not controlled by the Carranza forces. On October 31, he was reported to have stated that he was through with any dealings with the United States and that he would attack Americans if necessary.¹ He carried out his threat, and during the following months several Americans were killed or wounded as a result of attacks by Villa's followers. These reprisals were of course not due solely to the arms embargo against the Mexican rebels, but to the general Wilson policy of supporting Carranza, of which the arms embargo was part.

The climax was reached on March 9, 1916, when a body of some four hundred Villa supporters actually crossed the border at Columbus, New Mexico, where they killed and wounded several Americans and set fire to the principal buildings.² Wilson now moved in the direction of more forceful measures to prevent Villa's border raids, the Carranza Government having failed to take any effective measures to stop them, despite protests from the United States. On March 10 he ordered that an armed force be sent into Mexico with the sole object of capturing Villa and preventing further raids by his band, and with the proviso that "scrupulous regard" be paid to the sovereignty of Mexico.³ The expedition failed to capture Villa, but it remained in Mexico for nearly a year thereafter to prevent border raids and to keep the Villa bandits inactive until the Carranza forces should carry out their duties of protecting American lives and property there.

Relations between the Carranza Government and the United States during the following months were dangerously near the breaking point, with war threatening on several occasions. Accordingly, the shipment of arms and munitions of war to Mexico was strictly supervised and regulated so as to conform to the needs of the situation. On March 11, 1916, two days after the Villa raid on Columbus, the State Department requested the Treasury Department to instruct the customs collectors along the Mexican border to withhold permission temporarily

¹ *Foreign Relations*, 1915, p. 775.

² Baker, *Woodrow Wilson, Life and Letters*, Vol. 6, pp. 66-8. *Foreign Relations*, 1916, pp. 480 ff.

³ *Foreign Relations*, 1916, p. 483.

for munitions of war being shipped to individuals or companies in Mexico under the previous authorization of the President.¹ All shipments were therefore held up, but on March 24, when the situation along the border had cleared up considerably, the restrictions were relaxed. A few small consignments of explosives were allowed to pass into northwestern Mexico, and several shipments of ammunition were permitted to be sent to the *de facto* government authorities.² A new crisis, however, soon flared up in the relations between the two countries, and a complete arms export prohibition was restored.

*Armed Interference Necessitates an Embargo on
all War Materials, April 15, 1916—July 20, 1917*

On April 12, 1916, the American expeditionary force in Mexico was attacked by the Mexican populace at the town of Parral, and the already strained relations between the United States and Mexico were strained still further.³ Carranza at once indicated that this was one of the results to be expected from a continued occupation of Mexican territory by American troops, and took occasion to demand that the latter be withdrawn.⁴ Secretary Lansing refused the demand, commenting that withdrawal could be hastened if Carranza cooperated in the capture of Villa.⁵ In view of the acuteness of the situation, the State Department on April 15, 1916, reimposed its restrictions on arms shipments to the Mexican Government. One export permit which had been granted on April 12 was withdrawn, and no others were issued thereafter for over a year, all requests from the *de facto* Mexican representative in Washington being denied.⁶ Two weeks later when an ultimatum to withdraw American forces from Mexico was being expected, the War Department ordered General Funston at El Paso to stop all arms and munitions of war from entering Mexico,⁷ and on May 9, Secretary Lansing requested the Treasury Department to instruct the customs officials on the Mexican border and at seacoast points to release munitions shipments to Mexico only on receipt of official notice from the President or the Department of State.⁸

The embargo was enforced rigorously thereafter, and the only shipments permitted to pass were small quantities of explosives urgently needed by mining companies in Mexico in order to continue their operations. Even before these were permitted, the Department of

¹ Department of State, MSS. 812.113/3941a.

² *Ibid.*, MSS. 812.113/3981, 3989, 3995b, 3946, 4029.

³ *Foreign Relations*, 1916, pp. 513-15, 518-21.

⁴ *Ibid.*, pp. 514-17.

⁵ *Ibid.*, p. 518.

⁶ Department of State, MSS. 812.113/4044, 4061, 4068, 4091 and 4092.

⁷ May 1, 1916. *Foreign Relations*, 1916, p. 789. Cf. also Generals Scott and Funston to Secretary of War, May 1, 1916. *Ibid.*, pp. 535-6.

⁸ *Foreign Relations*, 1916, pp. 790-1.

State frequently consulted its consular representatives in northern Mexico to determine whether or not the shipment was desirable. The approval of the War Department was also obtained inasmuch as the army was now playing an important rôle in the Mexican question and it was not desired to permit any shipments which might fall into the hands of those with whom the army might become engaged in conflict.¹

The situation in June, 1916, became even more acute following another demand from Carranza on May 22 that the American troops be withdrawn from Mexico immediately, and following another attack on the American forces on June 22, this time at Carrizal.² A general Mexican attack was believed to be imminent, and with the danger of war mounting, a temporary embargo was imposed late in June on the export of a great many goods in addition to arms and munitions of war. All industrial and mining explosives for which permits had been granted were held up between June 19 and July 12;³ food and clothing shipments were prohibited from June 26 to July 11;⁴ and exports of coal, horses and mules were also temporarily stopped.⁵ In order to make sure that arms or munitions of war were not being transhipped to Mexico by way of Central America or the West Indies, the customs collectors were instructed on July 6, 1916, to require evidence from munitions exporters showing that their shipments were not ultimately destined for Mexico.⁶

Fortunately, the danger of war subsided quickly as Carranza on July 12 suggested a conference between the representatives of the two countries, and the United States prepared to accept.⁷ By July 21, the situation had calmed down enough to warrant removing the embargo on all exports except munitions of war and materials or machinery which might be used for the manufacture of such munitions. Special permits were still required as before for these exports.⁸ The issuance of these permits during the following twelve months (until July, 1917) was limited, however, to materials which were not destined for military purposes. No articles which appeared likely to be used as munitions of war (i.e., for military purposes) or in making such munitions were allowed to be exported, and no permits for the export of arms or ammunition to the Mexican Government were granted until

¹ Cf. *Foreign Relations*, 1916, pp. 793-4.

² *Ibid.*, pp. 552-63, 593. Baker, *Woodrow Wilson, Life and Letters*, Vol. 6, pp. 75-6.

³ *Foreign Relations*, 1916, p. 792, and Department of State, MSS. 812.113/4327. Industrial explosives were the only "munitions of war" which had been allowed to enter Mexico since April 15, 1916. Despite the fact that the arms embargo was now complete, two bills were introduced in Congress on June 24 and 26, 1916, to prohibit the further export of arms to Mexico. (H. Res. 276, and H. J. Res. 245, 64th Congress) *Congressional Record*, Vol. 53, pp. 9962, 10038. No action was taken on the bills, however.

⁴ Department of State, MSS. 812.113/4324a and 4334.

⁵ *Ibid.*, MSS. 812.113/4305 and 4316. ⁶ *Ibid.*, MSS. 812.113/4487 and 7941.

⁷ *Foreign Relations*, 1916, pp. 601, 604.

⁸ *Ibid.*, p. 792.

July, 1917, despite the requests of that government that the embargo be raised. Efforts were even made informally in October, 1916, to persuade the Central American powers to prevent the shipment of munitions of war to Mexico pending the restoration of more nearly normal conditions in that country. There had been reports that attempts might be made to acquire arms in Central America for use in Mexico, and the Department of State feared that if such shipments took place, they would eventually fall into the hands of lawless elements and tend to prolong the strife already existing there.¹

On December 1, 1916, in reply to a request from the Mexican Government regarding the lifting of the embargo,² Secretary Lansing indicated that he had discussed the question with the Secretary of War who had stated that it would be most inexpedient from a military standpoint to permit arms shipments then inasmuch as the line of communication between Juarez and Chihuahua had been cut by the bandits operating in that region, and that to ship arms south from Juarez would be to let them fall into the hands of the common enemy of both Mexico and the United States. Despite his sympathy for the Mexican Government in its domestic difficulties, the Secretary of War could not for the reason above stated authorize a raising of the embargo. In view of this opinion, Secretary Lansing explained that nothing could be done at the moment to grant the Mexican request.³ On February 10, 1917, Lansing again declined to grant permission for the export of a large quantity of ammunition to the Mexican Government for use in the campaign against bandits in Chihuahua.⁴

Formal diplomatic relations between the United States and Mexico were resumed in the spring of 1917,⁵ but it was not until July of that year

¹ *Foreign Relations*, 1916, pp. 794-5.

² The Mexican agent in Washington, Arredondo, had apparently requested that the embargo be raised in order to make possible the sending of needed ammunition to the Carranza forces which were then campaigning against the remaining bandits and rebels in Chihuahua.

³ *Foreign Relations*, 1917, pp. 1078-9.
⁴ *Ibid.*, p. 1079. The War Department also opposed granting permission on the ground that the *de facto* Mexican Government had never seemed disposed to cooperate with the United States in its efforts to promote stability in Mexico, protect the property and lives of foreigners there, and prevent bandit raids across the Mexican border. Secretary of War to Secretary of State, February 8, 1917. Department of State, MSS. 812.113/5806.

⁵ After weeks of fruitless negotiation within the American-Mexican Joint Commission which had been set up in the late summer of 1916, the American Commissioners, though distrustful of the Mexican *de facto* Government and its intentions, concluded that the only solution lay in a reestablishment of diplomatic relations and a withdrawal of the American troops from Mexico. They accordingly recommended this course of action to President Wilson on January 3, 1917, and the recommendation was accepted. The withdrawal of American troops was completed on February 5; Ambassador Henry P. Fletcher presented his credentials at Mexico City on March 3; and the Mexican Ambassador, Señor Bonillas, was formally received at Washington on April 17, 1917. The nomination of Ambassador Fletcher had been made in December, 1915, and had been confirmed by the Senate in February, 1916, but he did not depart for his post until a year later, presumably because of the unsettled conditions in Mex-

that any exception to the arms embargo was authorized by President Wilson in favor of the Mexican Government. The action was then taken at the recommendation of Ambassador Fletcher who, on June 5, 1917, had pointed out that it was in the interests of the United States to give all proper support to the Mexican Government to enable it to restore order and normal economic conditions. He declared that so long as the embargo was maintained, internal conditions in Mexico would improve only slowly, if at all, and our relations with Mexico would be clouded by suspicion and unfriendliness. Many Mexican leaders had spoken to him about raising the embargo, and had intimated that its continuance was hard to understand in view of the resumption of friendly diplomatic relations. Although one of President Wilson's principal reasons for maintaining the embargo had been the fear that ammunition would fall into the hands of the enemies of the Mexican Government, the Mexican General, Pablo Gonzales, had informed the Ambassador that there should be no uneasiness on this score and that he could guarantee that all proper and adequate precautions would be taken. Ambassador Fletcher therefore decided to recommend that five million rounds of ammunition, previously bought by the Mexican Government but detained at the frontier by the American authorities, be released. This action, he indicated, would give him an opportunity to see whether the effect of raising the embargo entirely would be as favorable as the Mexican leaders had predicted. If the effect should be beneficial, the way would then be open for solving our Mexican difficulties along lines of friendly assistance, mutual confidence and self-respect.¹

One month later, on July 7, 1917, the Mexican Ambassador in Washington requested the United States to release some 2,733,000 cartridges purchased by the Mexican Government prior to the establishment of the arms embargo and still detained along the Texan frontier.² This time, as a result of Ambassador Fletcher's recommendation of June 5, the State Department acceded to the Mexican request, and, for the first time since April 15, 1916, granted an exception to the arms embargo in favor of the Mexican Government.³ It was announced that Ambassador Fletcher, who had left Mexico for a short time, would

ico and the rupture of friendly relations in the spring and early summer of 1916. While the United States had recognized the *de facto* Carranza Government in October, 1915, it was represented in Mexico City by only a special agent until March, 1917. Similarly, Carranza was represented by a "confidential agent" in Washington until April, 1917. Baker, *Woodrow Wilson, Life and Letters*, Vol. 6, pp. 81-2; *Foreign Relations*, 1917, pp. 910, 915; Notter, *The Origins of the Foreign Policy of Woodrow Wilson*, p. 483.

¹ Fletcher to Secretary of State, June 5, 1917. *Foreign Relations*, 1917, pp. 1080-2.

² *Ibid.*, pp. 1082-3.

³ Polk, Acting Secretary of State, to Mexican Ambassador, July 20, 1917. *Ibid.*, p. 1085.

return immediately in order to arrange with the Mexican Government the details of the delivery which would insure the ammunition reaching the proper hands.¹

This action did not mark the beginning of any regular shipments of arms or munitions of war to the Mexican Government, however, for the American war trade regulations took effect at the same time and precluded the export of all important commodities needed by the United States for the prosecution of its war against Germany. As the general shipment of these various commodities, including arms and munitions of war, became subject to government license beginning on July 15, 1917, the administration of the arms embargo with respect to Mexico was transferred from the State Department to the various agencies in charge of the general wartime export prohibitions.² Applications for permission to send arms or munitions of war to Mexico were thenceforth referred by the State Department to these agencies for final decision, although the Department was consulted before any licenses were issued.

While licenses were granted during the remainder of 1917 and during 1918 for shipments of dynamite and blasting equipment required for mining purposes in Mexico, no exports of arms or ammunition seem to have been allowed. In its negotiations concerning the import of needed commodities from the United States, the Mexican Government endeavored to obtain for its army 20,000 arms and ten million rounds of ammunition of a type not used by the United States,³ but the latter indicated that it was unwilling to divert supplies of arms and war materials from its own troops and those of its allies for shipment into Mexico.⁴

Oil and Arms, 1919-1921

With two exceptions, the embargo on the shipment of arms and munitions to the Mexican Government or to anyone else in Mexico who might use them for warlike purposes was complete from April 15, 1916, to July, 1919.⁵ The first exception had been in July, 1917,

¹ *Ibid.*, pp. 1085-6. The arrangements for the release of the cartridges were not actually completed until September, 1917. *Ibid.*, p. 1087.

² See *supra*, p. 31, note 5. The embargo with respect to the Dominican Republic was also administered after July, 1917, as part of the general wartime export regulations.

³ *Foreign Relations*, 1918, pp. 615, 616, 625.

⁴ Lansing to Fletcher, March 15, 1918. *Foreign Relations*, 1918, pp. 617-19, at p. 618; also Lansing to Fletcher, July 6, 1918, *Ibid.*, pp. 627-9.

⁵ On July 12, 1919, a new presidential proclamation was issued prohibiting the export of arms and munitions of war to Mexico, and authorizing the Secretary of State to grant exceptions to this prohibition. (41 *Stat.* 1762.) It is not entirely clear why the proclamation was issued at this time because it does not seem to have been necessary from a standpoint of actual practice. The embargo proclamation of October 19, 1915, was still in effect, and the general wartime export regulations were likewise still in effect, having just been transferred from the War Trade Board to the Department of State on July 1, 1919. (See *supra*, p. 31, note 5.) There seems to have

when a consignment of ammunition for the Mexican Government had been released upon the recommendation of Ambassador Fletcher, largely as an experiment to see whether it would be properly used.¹ No further shipments were permitted, however, owing to the World War export regulations which had just taken effect, and which prohibited the export of war materials needed for the American or Allied forces. In the early part of 1919, the second exception occurred, and involved another shipment of ammunition to the Mexican Government, together with a small quantity of arms and ammunition for the Governor of Chihuahua.² No further exceptions seem to have been made for some time thereafter, however, owing to the critical relations which supervened between the United States and Mexico once again.

The difficulties between the Carranza Government and the United States had smoothed out somewhat in the spring of 1917, following the withdrawal of the American expedition from Mexico and the resumption of formal diplomatic relations. At about the same time, the United States entered the World War, and for the two years following, the unsettled problems of American-Mexican relations were thrust more or less into the background. With the World War out of the way, however, these problems and new ones began to receive more attention, and those who favored a vigorous policy to protect American interests in Mexico began to clamor loudly for action.

The chief points of friction during the latter part of 1919 which resulted in strained relations and led the United States to refuse to permit arms shipments to the Mexican Government may be summarized as follows:

1. The opposition of American property owners and investors in Mexico to certain provisions of the new Mexican Constitution of 1917 (Article 27) which placed considerable restrictions on American industrial enterprises in Mexico (chiefly oil) and virtually prohibited further exploitation of Mexican natural resources by foreigners unless the latter waived their nationality and organized as Mexican corporations. Certain decrees of the Carranza Government in 1918, which operated so as to stop the activity of American oil companies, were interpreted as virtually confiscatory in character.³
2. An active campaign in the United States to arouse public interest in favor of intervention or at least strong measures to protect

been some confusion after the war, however, as to the status of the Mexican arms embargo, and the impression may have existed that a new proclamation was necessary in order to continue the regulation. At any rate, both the State and War Departments seem to have been anxious to have the proclamation issued, and so the action was taken. *Foreign Relations*, 1919, Vol. 2, p. 551.

¹ See *supra*, pp. 78-9.

² *Foreign Relations*, 1919, Vol. 2, pp. 548-50.

³ For a convenient summary, see Stuart, *Latin America and the United States* (1938 ed.), pp. 152-9.

American interests in Mexico. This was encouraged in no small measure by the activity of a Senate subcommittee under the chairmanship of Senator Albert Fall which held extensive hearings on conditions in Mexico between August, 1919, and May, 1920, and finally published a scathing report on the Carranza régime.¹ Certain of Wilson's advisers (Lansing, Fletcher, Lane) also showed more sympathy for a forceful and vigorous policy with respect to Mexico.

3. The kidnapping and arrest of the American consular agent at Puebla (W. O. Jenkins) in October, 1919.² This climaxed the increasing feeling against Mexico, and the stage seemed to be set once again for intervention. Senator Fall introduced a resolution in Congress requesting the President to withdraw recognition from Carranza and to sever diplomatic relations with his government.³
4. The sympathies of the Mexican Government during the World War had apparently been with Germany, and this naturally had occasioned displeasure in the United States which was still evident in 1919.

Just as the American policy regarding the restriction of arms exports to Mexico had been very closely associated in the past with our general policy toward that country and had coincided with the ebb and flow of friendly relations, so it was in the latter part of 1919. As early as April 11, 1919, Ambassador Fletcher, who had returned to the State Department, indicated that he had been trying since his return to secure more liberal treatment for Mexico with respect to shipments of arms and munitions. He had been succeeding in this, he said, but declared that the refusal of the Mexican Government to allow American oil companies to drill wells would seriously interfere with his efforts. He therefore suggested to the American Chargé in Mexico City that the Mexican Foreign Office be acquainted with this situation and that efforts be made to secure at least provisional permits to drill. He added that if the Mexican Government should prove obdurate, it would encounter difficulty in securing further shipments of arms and munitions.⁴

The Mexican Government declined to do anything immediately about such permits, but finally on July 21, 1919, agreed to grant them

¹ See *Investigation of Mexican Affairs*, Sen. Doc. No. 285, 66th Congress, 2nd session (2 vols. Washington, 1920). ² *Foreign Relations*, 1919, Vol. 2, pp. 578 ff.

³ December 3, 1919. S. Con. Res. 21, 66th Congress. *Congressional Record*, Vol. 59, p. 73. When President Wilson, who was seriously ill at the time and had not therefore been consulted about Mexican affairs, learned what was going on, he expressed opposition to the Fall resolution and requested that it not be adopted. (December 8, 1919.) James M. Callahan, *American Policy in Mexican Relations* (New York, 1932), p. 579.

⁴ Polk, Acting Secretary of State, to American Chargé in Mexico City, April 11, 1919, enclosing communication from Fletcher. *Foreign Relations*, 1919, Vol. 2, p. 594.

on the condition that the oil producers promise to be bound by any future legislative regulations on the subject adopted by the Mexican Government.¹ This was not acceptable to the United States, however, which pointed out that the oil companies could not reasonably be expected to bind themselves in advance to any law to be enacted in the future when they had no assurances that their rights would be respected by such law.²

The unsatisfactory status of the oil question, combined with the other factors mentioned above which were disturbing American-Mexican relations, was reflected in the refusal of the United States from July, 1919, onwards to grant any permits for arms shipments to the Mexican Government. On eleven occasions between July 7 and November 22, 1919, the Mexican Ambassador applied to the State Department for licenses to export war material without receiving any reply to his requests.³ And when on January 7, 1920, he inquired of the Secretary of State whether any decision had been reached thereon, he was informed that "after mature deliberation" it appeared inexpedient at that time to permit the shipment of arms or munitions of war to Mexico.⁴ The predictions of Ambassador Fletcher of the preceding April had come true, and once again arms export restrictions were being used to supplement our general policy of promoting and protecting American interests in Mexico.

Political conditions in Mexico underwent a rapid change in the spring of 1920 when the Carranza Government was overthrown by a revolution led by General Alvaro Obregón.⁵ The latter hastened to avow a friendly policy toward the United States and soon revealed leadership of a high quality. He was elected President in September, 1920, and inaugurated on December 1. The American press responded favorably and agitation for armed intervention soon gave way in favor of milder measures of diplomatic and economic pressure, with military action to be kept in the background, to be employed only as a last resort. Recognition of the new government was withheld, however, pending the conclusion of an agreement safeguarding American property rights from confiscation.⁶

The course of the arms embargo in 1920 is not entirely clear, but it

¹ *Foreign Relations*, 1919, Vol. 2, p. 606.

² Phillips, Acting Secretary of State, to American Chargé in Mexico City, October 1, 1919. *Ibid.*, pp. 610-11. ³ *Foreign Relations*, 1919, Vol. 2, p. 554.

⁴ Lansing to the Mexican Ambassador, January 23, 1920. *Ibid.*, p. 555.

⁵ May, 1920. *Foreign Relations*, 1920, Vol. 3, pp. 129 ff. 148, 150. Stuart, *Latin America and the United States*, pp. 160-1. Rippy, *The United States and Mexico*, p. 361.

⁶ The agreement was not reached until August, 1923. Announcement of the resumption of diplomatic relations was made on August 31, 1923, and diplomatic representatives were formally accredited on September 3, 1923. *Foreign Relations*, 1923, Vol. 2, pp. 554-5.

appears that the prohibition continued in effect with respect to both sides for a considerable portion of the year, at least,¹ although it was relaxed somewhat in September to permit the export of moderate quantities of small arms and ammunition.² This action followed reports that several shipments of arms and ammunition had been recently received by Mexican firms from European countries and that American companies interested in this business had complained against the embargo. This relaxation of the embargo applied only to small arms and sporting guns, and did not affect the prohibition on heavy arms such as automatic rifles, machine guns or artillery.

Termination of the Embargo

January 31, 1922

The embargo continued in effect until January 31, 1922, when it was automatically revoked by the adoption of the joint resolution of that date which repealed and replaced the joint resolution of March 14, 1912, on which the embargo had been based.³ It is not at present clear whether any exceptions were granted for arms shipments to the Mexican Government after September, 1920, but it is possible that such exceptions were made in view of the fact that the relations between Mexico and the United States had again become more friendly.⁴ That they may have been granted seems to be all the more possible judging from the nature of a communication which the Department of State dispatched on March 3, 1922, to the American Chargé at Mexico City.⁵ In it the Department called attention to the fact that the joint resolution of January 31, 1922, had automatically terminated the embargo proclamation of July 12, 1919, and that in order to continue the control over shipments of arms or munitions of war to Mexico, a new proc-

¹ On May 14, 1920, just after the Obregón *coup d'état* had taken place, the Department of State declined to permit the export of 10,000 arms and two million cartridges to the Government of the State of Sonora, even though recommended by the American Consul there. (*Foreign Relations*, 1920, Vol. 3, pp. 243-4.) On July 31, 1920, the Department indicated that it was still not permitting arms or munitions to be shipped to either faction in Mexico. (*Foreign Relations*, 1920, Vol. 3, p. 158.) It has not been possible to consult the unpublished papers of the Department of State after 1918, and the published papers in *Foreign Relations* do not reveal a great deal as to the course of the embargo in 1920 and 1921.

² Secretary of State to American Consul in charge at Mexico City, September 24, 1920. *Foreign Relations*, 1920, Vol. 3, pp. 247-8.

³ The joint resolution of January 31, 1922, simply restated the provisions of the 1912 resolution and extended them to apply to countries in which the United States exercised extraterritorial jurisdiction as well as to American countries. It was adopted in order to enable the United States to continue its embargo on arms shipments to China. It repealed the 1912 and 1898 resolutions outright, however, and because of this the embargo proclamations of October 19, 1915, and July 12, 1919, automatically ceased to exist. For the text of the first two sections of the 1922 resolution, see *infra*, p. 127-8.

⁴ The question of American property rights in Mexico had not yet been settled, however, and recognition of the Obregón Government was still being withheld.

⁵ *Foreign Relations*, 1922, Vol. 2, pp. 717-18.

lamation would have to be issued under the 1922 resolution. The Department therefore requested the Chargé to inquire of General Obregón whether the Mexican authorities wished to have the embargo continued. It was indicated that the United States Government would follow the wishes of the Mexican authorities on this matter, terminating the prohibition or re-imposing it as they might desire.

The friendly tone of this communication, and the willingness on the part of the United States to do as the Mexican Government wished regarding the embargo, seem to indicate that the United States, by the beginning of 1922, at least, was allowing exceptions to the embargo in favor of the Mexican Government and applying the restrictions in a way calculated to strengthen the position of that government in Mexico. This is the more probable in view of the fact that the United States would scarcely have asked the opinion of the Mexican Government on such a question if, at the same time, it had been applying its arms export restrictions against that government.

The Mexican reply, transmitted to Washington on March 6, 1922, expressed appreciation for the American offer to proceed in accordance with the desires of the Mexican Government regarding arms shipments, and indicated that the conditions of peace and tranquillity then prevailing among the Mexican people would not necessitate a renewal of the embargo.¹ In the light of this expression of opinion by the Mexican Government, the Department of State announced publicly on March 7, 1922, that the embargo would not be renewed at that time.²

Administrative Difficulties

With regard to the administration and enforcement of the embargo, four chief difficulties seem to have been present:

1. The cumbersomeness of procedure prior to 1919-20.
2. The severe handicaps imposed upon the enforcement officers by the narrow, legalistic interpretation which the federal district courts gave to the powers conferred by the embargo resolution of 1912.
3. The lack of any specific definition of arms or munitions of war prior to 1920.
4. The difficulty of enforcing an embargo and preventing smuggling by relying almost exclusively on the action of the customs officers at the frontier, with no supervision over the general manufacture and shipment of arms prior to their arrival at the frontier.

As in the case of the Dominican embargo,³ the procedure of administering the Mexican embargo prior to 1919 was extremely cumbersome,

¹ *Foreign Relations, 1922, Vol. 2, pp. 718-19.* ² *Ibid.*, p. 719. ³ See *supra*, p. 47.

and involved a great deal of detailed correspondence, particularly in the matter of granting exceptions. After deciding, for example, that an exception to the embargo might be made, the State Department had to present the case to the President, who, if he approved, would then request the Secretary of the Treasury to instruct the appropriate customs officers to allow the consignment to pass. The President or the Secretary of the Treasury, in turn, would notify the State Department that the exception had been granted. This procedure was followed for each exception to the embargo, and since there were sometimes as many as three or four hundred applications for exceptions per month, it can be readily appreciated how much correspondence was involved.¹

Fortunately, in 1919-20, a licensing system was established which was much simpler. Under this system, the customs officers were given standing instructions to permit no exports of arms or munitions of war to Mexico without a license from the State Department. The latter in turn was authorized to make exceptions to the embargo and could then issue licenses on its own responsibility without being obliged to take the matter up with the President and Secretary of the Treasury for each particular shipment. Furthermore, formal application blanks were used which served both as the exporter's application and later as the State Department license. The application was made on one of these blanks, and after being approved and initialed at the Department of State, the same blank constituted the license proper, which could then be presented by the exporter to the customs officers at the port of departure. This simplified matters considerably and eliminated the need for much correspondence.

One of the most troublesome questions in the administration of the embargo was the shipment of large quantities of arms and ammunition to firms doing business along the Mexican border, and the subsequent smuggling of these supplies across the frontier. The United States Government at first tried to stop this by indicting and convicting these firms under ordinary court procedure, but this proved to be quite ineffective. Not only was it entirely a matter of indifference to the Mexicans whether anybody was convicted or punished, so long as they got the supplies, but it was only a slight concern to the shippers whether they were indicted or not, as the profits were so large that they could afford to risk indictment on the chance of (a) its being found invalid; (b) a partisan jury disagreeing; (c) a lenient judge imposing a small

¹ Department of State, MSS. 812.113/ *passim*. After April, 1916, the procedure was simplified to the extent of having the State Department write directly to the Treasury recommending that exceptions be made to the embargo. Thereafter, the President was not consulted in the case of each shipment nor obliged to sign each special export permit as previously.

sentence; or (d) the indictment being held insufficient as a matter of law and construction of the joint resolution of 1912.¹

Evasion of the law was actually made easier because the federal district courts in Texas and Arizona interpreted the joint resolution so literally as to destroy much of its original intent. Part of the difficulty, it is true, was due to the fact that the wording of the resolution was not sufficiently comprehensive—it made unlawful only the “export” of arms or munitions of war, and provided a penalty only for the “shipment” of prohibited material, nothing being said regarding penalties for “attempts to export” or for shipments made with the “intent to export” arms or munitions of war to a prohibited country. A strictly literal interpretation of these provisions, such as the district courts along the frontier seemed prone to give, created the almost impossible situation in which only an exportation which was completed and delivered in Mexico, or which was at least en route to some specific destination in Mexico at the time of seizure, could be considered a violation of the 1912 resolution and proclamation. Shipments which represented only attempts or intents to export were not considered punishable offenses, no matter how probable it seemed that the arms would be subsequently sent to Mexico, clandestinely or otherwise. This narrow interpretation, which rendered enforcement of the embargo almost impossible, was clearly seen in three leading cases decided by the district courts in Texas and Arizona in 1912 and 1913.

The first of these, *United States v. Chavez*,² involved the charge that the defendant had carried a quantity of cartridges on his person from one point in the city of El Paso to another point in the same city with the intent to export them to Mexico. The district court noted that the resolution of 1912 prohibited only the “export” of arms or munitions of war and said nothing about an attempt or intent to export. It concluded therefore that the word “export” was limited to the actual transportation of arms from the United States to Mexico, and that it did not include shipments from one point to another in El Paso with only intent to export. The indictment was dismissed on the ground that the exportation had not been completed and that the charge did not allege actual delivery in the prohibited country (Mexico).

Fortunately for the enforcement of the embargo, the case was appealed to the United States Supreme Court which took a broader view of the 1912 resolution and observed that the complete intent of the resolution would be destroyed if the judgment of the district court

¹ Memorandum of the Assistant Attorney General, Charles Warren, to Secretary of State Lansing, August 3, 1915. Department of State, MSS. 812.113/3690½.

² 199 Fed. 518 (October 5, 1912).

prevailed. Carried to its logical implications, that judgment would have recognized no offense as having been committed until the defendant had entered Mexico with the prohibited goods, at which time, however, he would have been beyond the reach of the United States authorities and free from punishment unless perchance he should later return to the United States and be captured. The Supreme Court therefore reversed the decision of the district court, holding that it was the clear intent of Congress in the 1912 resolution to prohibit the sending of arms or munitions of war to the prohibited country (Mexico) without reference to the completion of the act by the delivery of the goods at their destination.¹ The court thereby rescued the federal enforcement officers from an otherwise impossible situation by giving them the implied authority to punish attempts to export in violation of the embargo.

The authority of the enforcement officers was, however, soon circumscribed again by the decisions of the District Court of Arizona in two important cases, *United States v. Steinfeld and Company*, and *United States v. Phelps-Dodge Mercantile Company*.² In the Steinfeld case, a shipment of some 20,000 cartridges had been sent from New Haven, Connecticut, to the defendants in Tucson, Arizona, a city located some fifty miles north of the Mexican frontier. The indictment charged them with arranging the shipment with an intent to export the ammunition into Mexico, with the State of Sonora as the ultimate destination, thereby violating the joint resolution of March 14, 1912. The court held the indictment defective on three grounds:

1. It appeared that the offense charged had been committed not in Arizona but in Connecticut where the shipment had been made. It was the shipment of the goods which was unlawful under the statute, not the mere ordering of the shipment. The action therefore should have been brought in the District Court of Connecticut, not Arizona.
2. The indictment charged merely an intent to export the munitions of war from Tucson to Sonora, and this was not an offense against the resolution. The shipment of munitions from one point in the United States to another point in the United States could not within itself be deemed an offense since it was only the

¹ 228 U. S. 525 (May 5, 1913). In *United States v. Lucas* (1925, 6 Fed. 2nd 327), the District Court for the western district of the State of Washington held that the penalty under the joint resolution of January 31, 1922 (which extended the provisions of the 1912 resolution so as to be applicable to China) applied only to the consummated offense and not to a mere attempt to export. This would seem to be contrary to the decision in the Chavez case, as well as to the provisions of Title VI, Section 1 of the act of June 15, 1917 (these provisions not repealed after the World War) which authorized the seizure of any arms or munitions of war whenever an attempt was made to export them in violation of law or whenever there was reason to believe that they were intended to be exported in violation of law. 40 *Stat.* 223; *U. S. Code* (1934 ed.) Title 22, Sec. 238.

² 209 Fed. 904 and 910 (December 1, 1913).

shipment from some point in the United States to some point in the prohibited territory which was forbidden according to United States *v. Chavez*. Nowhere did the 1912 resolution prohibit the shipping of goods from one point to another in the United States no matter how near the latter point might be to the prohibited territory. Furthermore, so long as the defendants confined themselves to a mere intent to ship, and did not couple this with an actual shipment from some point in the United States to some point in Mexico, they were guilty of no offense under the resolution.

3. The indictment did not name any specific point of destination within the prohibited territory to which it charged that the shipment of munitions was to be made. The State of Sonora in Mexico was a large territory and not a "place" within the meaning of the resolution. It contained numerous cities, towns and other places, to any one of which the indictment could have applied. In failing to name any specific destination or any persons to whom the shipment was alleged to have been consigned, the indictment was lacking in that degree of certainty required in criminal proceedings.

The Phelps-Dodge case was much like the Steinfeld case except that the shipment had taken place between two points in Arizona and was therefore clearly within the jurisdiction of the Arizona District Court. The decision was handed down at the same time as the Steinfeld decision and was similar to it in other respects.

While the Arizona court, in these two decisions, did not refute the decision in the Chavez case, it interpreted it so strictly as to limit its applicability considerably, and to circumscribe very seriously the efforts of the federal enforcement officers *to prevent* arms and munitions of war from reaching Mexico. It permitted the shipment of large quantities of arms and ammunition to frontier towns, when the real destination was obviously Mexico, and then in effect forbade the federal officers to interfere with such goods until the final shipment into Mexico had actually begun. In so doing, it completely overlooked the fact that smuggling and clandestine shipment were the methods most frequently resorted to by those who sought to take or send arms and ammunition across the frontier. Any attempt to export arms through the channels of regular commerce at that time would have been prevented by the American customs officers who had been instructed to allow no such shipments to enter Mexico (unless specially authorized by the President). The only practicable way, therefore, whereby any large quantities of arms and ammunition in the small frontier towns could be disposed of was to sell them to various persons who would later try to smuggle them across the border for the Mexican rebels.

Yet in the face of the realities of the situation, and despite the fact

that no export of arms in the regular way could get past the customs officers, the court observed that "the ordinary course of business" was to make out a bill of lading for the goods to be shipped, and to name therein the persons to whom they were consigned and the place of destination. Continuing its observation, the court demonstrated its complete failure or unwillingness to comprehend the situation by adding:

. . . it is hardly conceivable that any sane person would ship munitions of war or anything else of value from a point in the United States to "the state of Sonora", in the United States of Mexico, or to any other country, without causing a bill of lading for the goods to be made out, and the goods labeled with the name of the consignee and the point of destination. . . .¹

If this was the way the courts proposed to deal with smuggling, it is little wonder that officials in the Department of Justice threw up their hands in despair and concluded that the embargo could not be enforced by relying on the ordinary procedure of indictments and conviction, but that more positive steps in the direction of preventing violations would have to be taken. One of the high officials in the Department of Justice suggested that it would be necessary to rely almost entirely on the preventive power of the President, rather than on criminal processes and the courts.² The mere arrest, trial and punishment of violators after the deed had been committed had proved to be ineffective, and it was therefore felt that preventive action should be applied before violations took place. To this end, it was suggested that the federal officers be authorized to seize and hold any arms or ammunition found in stores along the border in such quantities as to render it probable that they were intended for shipment into Mexico. The government might not be able to support the legality of the seizure in all cases, but it would at least have prevented the shipment of the materials for the time being, which was the object desired.³

¹ 209 Fed. 909. It is only fair to add that the court in conclusion indicated that it did not intend to intimate that allegations charging the giving of a bill of lading and the naming of a consignee were necessary ingredients in an indictment, and that it had only spoken of these matters to show the necessity of having a definite destination for the shipment. *Ibid.*, 910.

² Assistant Attorney General Warren to Lansing, August 3, 1915. Department of State, MSS. 812.113/3690½.

³ In 1916, the Attorney General specifically recommended to Congress that an act be passed authorizing the seizure and detention of arms or munitions of war which were being exported or which the government had reason to believe were about to be exported in violation of any embargo under the joint resolution of 1912 or similar future legislation, or in connection with a military expedition. He pointed out that there was no provision in the 1912 resolution authorizing seizure of arms or munitions, and explained that there ought to be some such authority as had been contained in the temporary law of March 10, 1838 (5 *Stat.* 212), which had been passed at the time of the Canadian insurrection and which had contained complete provisions regarding the seizure of arms destined for use in connection with military expeditions to Canada. Department of Justice, *Recommendations by the Attorney General for*

The third principal difficulty in administering the Mexican embargo resulted from the fact that, as in the case of the Dominican embargo, the Department of State issued no definite list of prohibited materials for the benefit of the customs officials or exporters. The prohibition was confined to "arms and munitions of war", and it was reasonably clear at first, from the various opinions of the Attorney General of 1912 and 1913, what general types of articles were included.¹ But in June, 1916, as war between the United States and Mexico became dangerously imminent, an embargo on a number of other important commodities had been applied,² and after it was raised one month later, nobody seemed to be certain just what materials were still prohibited to Mexico.

The instructions to the customs collectors of July 21, 1916, had indicated that the embargo was removed except as to "munitions of war and materials and machinery which may be used for the manufacture of munitions of war." While this did not appear on the surface to extend to any materials other than those embraced in the Attorney General's opinion of March 25, 1912, it nevertheless seems to have been applied in a much broader fashion. Zinc sheets, cotton-covered magnet wire, spring steel, steel sheets, mattress wire and wireless apparatus, for example, were prohibited on various occasions in late 1916 and during 1917. A State Department memorandum of April 24, 1917, prepared for the benefit of shippers, indicated that the materials requiring export permits were munitions of war, including explosives ordinarily used in mining operations, as well as metals, chemicals, and machinery that could be used in connection with the manufacture of munitions or implements of war.³ The list was never more specifically enumerated than this, even at the request of the Mexican Embassy,⁴ and American exporters consequently could never be exactly certain what items required export permits.

The fact that the list was indefinite meant that it was also very flexible. Not knowing exactly what goods were covered, exporters

Legislation Amending the Criminal and other Laws of the United States with Reference to Neutrality and Foreign Relations (Washington, 1916), Sec. 9, pp. 19-20. Reproduced in *A.J.I.L.*, Vol. 10 (1916), pp. 606-9, at p. 608. This recommendation concerning the authority to seize arms intended for exportation in violation of an embargo was not given effect by Congress until a year later when it was incorporated into Title VI of the act of June 15, 1917. See *infra*, p. 95.

¹ See *supra*, p. 56, note 3.

² See *supra*, pp. 75-6.

³ Department of State, MSS. 812.113/6614.

⁴ In reply to an inquiry from the Mexican Embassy as to what articles were prohibited, the Secretary of State explained on May 29, 1917, that no list existed, but that generally speaking, supplies that might be classed as munitions of war, including such articles as metals, chemicals and machinery that could be used for the manufacture of munitions of war or in connection with such manufacture required the special authorization of the United States Government for shipment to Mexico. Secretary of State to Mexican Ambassador, May 29, 1917. Department of State, MSS. 812.113/7189.

often applied for permission just to make sure that everything would be all right. Permission might then be granted or withheld according to the circumstances, and export control thereby exercised over many articles which could scarcely be considered as "munitions of war", but were more in the nature of conditional contraband.

By the latter part of May, 1917, the Department of State finally decided that it would be helpful to the customs authorities and to shippers if a list of prohibited articles were compiled. Accordingly on May 23, 1917, it submitted to the Bureau of Standards for criticism and revision a list of chemicals and materials which could be used in the manufacture of explosives or munitions of war or in connection with such manufacture. The broad interpretation which the Department of State now intended to follow was revealed in its proposed list of prohibited materials which embraced various metals that could be used for war purposes such as brass, copper, lead, nickel, iron, steel, zinc, tin plate and aluminum, together with products made of these metals; chemicals or raw materials that could be used in the manufacture of explosives; all explosives; cotton products in large quantities that could be used in the manufacture of explosives; rubber products in large quantities; wood and paper pulp; and materials and appliances for wireless stations.¹ The Bureau of Standards in turn amplified the above list until it contained about three hundred articles, all of which, it was submitted, should be considered as being affected by the regulations with respect to Mexico.²

The State Department never apparently issued any detailed list of materials similar to the one mentioned above for purposes of the Mexican situation, but on July 15, 1917, the general wartime export prohibitions began to take effect, and thereafter licenses were required for the shipment of nearly all commodities. The articles proposed in the State Department and Bureau of Standards list of May, 1917, were soon subject to general export control, and the promulgation of any special Mexican list hence became unnecessary.

After the general wartime regulations came to an end in 1919, the need for a specific Mexican list again became evident, and on May 1, 1920, such a list was finally announced—the first specific definition of "arms and munitions of war" issued by the State Department in the history of its arms export restriction policy.³

¹ Secretary of State to Secretary of Commerce, May 23, 1917. Department of State, MSS. 812.113/7187a. The United States had entered the World War by this time, and it is quite possible that the State Department was now thinking in terms of a broad conservation of important supplies for domestic needs. This was indicated by a statement in the letter of May 23 to the effect that the above-mentioned products would be included in a more general list of prohibited articles.

² Secretary of Commerce to Secretary of State, May 31, 1917. Department of State, MSS. 812.113/7324.

³ *Foreign Relations*, 1920, Vol. 3, p. 242.

Twenty categories of materials were included in this list, representing a comprehensive definition of arms and munitions of war for which export licenses from the Department of State would be required when destined for Mexico.¹ The list was much more satisfactory for purposes of the embargo than had been the opinion of the Attorney General of March 25, 1912, defining arms and munitions of war.² The latter, while indicating certain types of materials which might be considered as arms and munitions of war, had nevertheless been sufficiently general and flexible to permit varying interpretations as to the specific articles which might be included. It had not specifically listed all the prohibited materials, and hence left much room for uncertainty on the part of shippers and customs officers. Moreover, it was never issued as the official list of materials which were prohibited to Mexico, but only as a guide to be followed by the appropriate enforcement officers in deciding what materials should be prohibited. Little wonder, therefore, that varying interpretations should have resulted. The list of May 1, 1920, in addition to being the official list of prohibited materials, was fortunately much more specific, and while it contained some rather generally defined categories of materials,³ was nevertheless a distinct advance over the list of March 25, 1912, and marked a definite improvement in administrative procedure.

The fourth difficulty in administering the embargo lay in the fact that the responsibility for enforcement was left almost entirely to the customs officers at the frontier, with little or no supervision over the movement or shipment of arms prior to their arrival at the frontier, and virtually no power to seize suspicious stores of munitions unless they were actually en route to Mexico. Prior to 1917, not even the army authorities along the frontier could legally assist the customs officers in enforcing the prohibition. On November 24, 1915, the customs collector at El Paso, for example, reported to the Treasury Department that his force of officers was quite inadequate to enforce the embargo effectively, particularly since the Rio Grande River was then dry and smuggling was all the easier. He expressed the hope that a military embargo might be established in order that the army authorities could assist in enforcing the prohibition or perhaps take over the enforcement responsibilities entirely.⁴

¹ The list embraced arms and ammunition of all kinds, including: aircraft and warships, explosives and certain explosive ingredients, poison gases and apparatus for their use, camp equipment for military purposes, special machinery for making arms and ammunition, gun mountings, military motor cars and trucks, range finders and signalling apparatus, submarine mines, army uniforms, and wireless apparatus and supplies.

² See *supra*, p. 56, note 3.

³ Such as "camp equipment for military purposes exclusively," "gases for war purposes," or "machinery—such as cartridge-making machines, specially manufactured for use in making arms and ammunition."

⁴ Department of State, MSS. 812.113/3801.

The Treasury Department referred this suggestion to the Secretary of War with a request for a statement as to what additional assistance the army could render the customs service in this matter. The reply of the War Department on December 29, 1915, clearly revealed one of the many legal handicaps which stood in the way of an effective enforcement of the embargo. It was pointed out that United States troops could not be used to execute the laws without special authorization of Congress. This was expressly forbidden by the act of June 18, 1878. (20 *Stat.* 152.) While the army could be used to prevent the carrying on of military expeditions in violation of the neutrality laws (Act of March 4, 1909, 35 *Stat.* 1090), the mere transport of munitions did not constitute a military expedition. The army might also be used to execute the laws during time of rebellion or insurrection (*Revised Statutes*, 1878, Secs. 5298-5299), but this provision did not apply in the Mexican situation. Inasmuch as the joint resolution of March 14, 1912, contained no provision for the use of the military forces in its execution, the War Department concluded that American troops could not, without special act of Congress, be authorized to search individuals, conveyances or packages for arms or munitions of war being transported across the Mexican border.¹

Although troops had actually been used in April, 1914, and again in May, 1916, to help enforce the embargo, these were both occasions when there was an immediate danger of war with Mexico, and when the action might have been taken as a military measure. The opinion of the War Department of December 29, 1915, applied presumably to the question of taking such action as a peacetime measure, and this was answered in the negative. Following this decision, some attention was given in the Department of Justice to the drafting of new legislation which would supplement the existing neutrality laws by authorizing the issuance of search warrants in enforcing these laws and also the seizure and detention of arms and munitions of war about to be exported in violation of the embargo against Mexico or the law regarding military expeditions.² Nothing of this nature was crystallized into law until the adoption of the act of June 15, 1917.³

Meanwhile, Mr. Z. L. Cobb, the customs collector at El Paso, again recommended that steps be taken to authorize the military authorities along the border to cooperate with the customs officers in enforcing the embargo, and that the government agencies along the frontier be authorized not only to search for contraband, but to seize it and thus

¹ Secretary of Treasury to Secretary of State, January 12, 1916. Department of State, MSS. 812.113/3873 enclosure.

² Cf. recommendations of the Attorney General in 1916. See *supra*, p. 89, note 3.

³ See *infra*, p. 95.

remove the commercial features of violating the embargo.¹ He realized full well that the embargo could not be effectively enforced so long as the customs officers were empowered to seize munitions only when an attempt was made to export them. It was necessary to go farther back towards the source of the munitions and have powers to prevent shipments which might possibly be exported later. To this end, he recommended on several occasions that the customs collectors be empowered to seize large stores of ammunition along the frontier, since it was clear to all intents and purposes that these materials would later be smuggled over the border. He echoed the opinion previously expressed at the Department of Justice that more preventive action was needed.

In order that the customs authorities might have full knowledge regarding arms shipments to frontier points, Collector Cobb suggested to the State Department that the various railroad companies serving the border towns be requested to notify the customs officials of all arms or munitions of war which they carried there. With the possession of such information, the customs officials would be in a much better position to take steps to prevent smuggling.² As Cobb had stated, and as he repeatedly emphasized, it was necessary to go back toward, and indeed to reach, the sources of the arms and ammunition in order to cut down the chances of smuggling. This was exactly what the courts in 1912 and 1913 had said could not be done, and what the Treasury Department, acting presumably in accordance with these decisions, had advised the customs collectors in 1916 not to do. Cobb referred to a company which had offered to pack military arms and ammunition in containers other than those usually used in such a way as to disguise them entirely. In order to prevent such criminal action, he pointed out that there was no remedy except to seize the stocks of arms or

¹ Cobb to Secretary of Treasury, February 13, 1917. Department of State, MSS. 812.113/5946. On May 16 and July 18, 1916, the Treasury Department had advised the customs officers at El Paso and Eagle Pass that under the embargo they were justified only in denying the export of munitions to Mexico and seizing them in case of their attempted export. They could not go beyond this and, for example, seize munitions in stores along the border on the mere presumption that they might be exported to Mexico.

² On April 26, 1917, General Pershing (then stationed on the Mexican border) reported to the War Department that the railroads at his request had agreed to decline shipments of arms and munitions of war to border points without approval of the military authorities; also that the Chambers of Commerce at all towns near the border were fully cooperating in the endeavor to prevent arms and munitions of war from falling into the hands of irresponsible persons. Department of State, MSS. 812.113/6677.

The arrangement with the railroads was continued in 1920 by a circular instruction of June 19 from the American Railway Association providing that all railroads should prohibit shipments of arms and ammunition to points on the Mexican border unless covered by bills of lading of the United States Government, or authorized by the proper military authorities in the border area, or accompanied by an export license issued by the Secretary of State. *Foreign Relations*, 1920, Vol. 3, pp. 244-5.

ammunition in advance and thereby wipe out both profit and investment.¹

Full legislative authority to make such seizures and to use the land and naval forces in doing so was finally granted by the act of June 15, 1917 (Title VI, Sec. 1) which provided:

Whenever an attempt is made to export or ship from or take out of the United States, any arms or munitions of war, or other articles, in violation of law, or whenever there shall be known or probable cause to believe that any such arms or munitions of war, or other articles, are being or are intended to be exported, or shipped from, or taken out of the United States, in violation of law, the several collectors, naval officers, surveyors, inspectors of customs, and marshals, and deputy marshals of the United States, and every other person duly authorized for the purpose by the President, may seize and detain any articles or munitions of war about to be exported or shipped from, or taken out of the United States, in violation of law, and the vessels or vehicles containing the same, and retain possession thereof until released or disposed of as hereinafter directed. If upon due inquiry as hereinafter provided, the property seized shall appear to have been about to be so unlawfully exported, shipped from, or taken out of the United States, the same shall be forfeited to the United States.²

The sections which followed provided for the issuance of warrants to justify the detention of the articles after seizure, the right of the owners to petition for restoration of the goods, and the procedure for hearings on the question of restoration or condemnation. Section 6 provided that the normal and lawful export trade should not be interfered with except in cases where the export of arms or munitions of war or other articles had been prohibited by proclamation or law. Section 8 authorized the use of the land or naval forces to carry out the purposes of the preceding sections.

Had legislation such as this been in effect from the beginning, the suggestions of Collector Cobb could have been applied, the courts could not have taken such a restrictive attitude, and the embargo could have been enforced and smuggling prevented far more effectively than it actually was prior to 1917.

The experience up to this time indicated quite clearly that the embargo could not be administered effectively so long as the enforcement activity was confined very largely to the frontier itself and was thrown almost entirely upon the customs authorities. To reiterate what Collector Cobb had pointed out, it was necessary to go farther back towards the sources of the arms and ammunition and to exercise a degree of control before the materials had actually been shipped to a point where they could be readily smuggled across the border. To have subjected all arms exports to government license and all arms manufacturers and dealers to some degree of government supervision would

¹ Cobb to Polk, February 17, 1917. Department of State, MSS. 812.113/6068.

² 40 Stat. 217 ff. at 223-4.

have gone far towards lightening the task of the enforcement officers at the frontier. Furthermore, since this was a case in which a long land frontier was involved, it became evident that the ordinary force of customs officers was inadequate to patrol that frontier effectively. The assistance of the army or of some other group to supplement the customs force in the responsibility of frontier patrol was therefore highly desirable.¹

Summary and Conclusions

The repeal of the embargo in 1922 brought to an end a ten-year period during which the United States set aside, with respect to Mexico, its historic policy of not interfering in time of peace with the private export of arms, and in its place adopted a policy of restricting and regulating those exports in such a way as to supplement and strengthen our general policy of promoting stable government and protecting American interests in Mexico. It is remarkable to note how closely the arms export restrictions paralleled our general Mexican policy, and how they were inevitably applied or relaxed according to the degree of friendship and confidence which the Mexican Government inspired at Washington. This was particularly true during the eight years of the Wilson administration when the attitude of President Wilson towards the de la Huerta and Carranza governments played an unusually important rôle in the application of the embargo.

As was noted at the outset, the history of the American restrictions on arms exports to Mexico from 1912 to 1922 presents a strange combination of partiality and impartiality of treatment as between the government and the various revolutionary factions in Mexico. The preceding pages have revealed the flexible way in which the embargo was applied—sometimes impartially with respect to all sides in Mexico, including the government; sometimes against only the revolutionary groups; and on a few occasions (1914-15) against neither side. In order to see more clearly, and in its entirety, the complicated course which the embargo followed, it may be helpful to recall in summary form the various changes which took place:

March 14 to March 25, 1912

Embargo applied impartially with respect to all of Mexico.

March 25, 1912 to July 21, 1913

Exceptions allowed in favor of the Mexican Government, and, after February, 1913, the unrecognized *de facto* de la Huerta authorities at Mexico City.

¹ The embargo proclamation of July 12, 1919 (see *supra*, p. 79, note 5) contained a provision authorizing the military authorities of the United States to assist in preventing violations of the prohibition.

- July 21, 1913 to February 3, 1914
Embargo applied impartially with respect to all of Mexico.
- February 3 to April 23, 1914
No embargo at all.
- April 23 to September 8, 1914
Impartial embargo on arms and ammunition exports to Mexico, as a precautionary defense measure.
- September 8, 1914 to October 9, 1915
No embargo at all.
- October 9, 1915 to April 15, 1916
Embargo on arms and munitions shipments to Chihuahua, Sonora and Lower California which were not yet under the control of the newly recognized Carranza Government. No embargo on shipments to territory under the latter's control.
- April 15, 1916 to July, 1917
Embargo on all arms and munitions shipments to Mexico, as a precautionary defense measure. One exception granted in favor of the Mexican Government on July 20, 1917.
- July, 1917 to July, 1919
Embargo continued with respect to all arms shipments to Mexico, as part of the general American wartime prohibitions. Exception granted in the early part of 1919 for one shipment of ammunition to the Mexican Government and a small shipment of arms and ammunition for the Mexican authorities in Chihuahua.
- July, 1919 to 1921 (?)
Embargo continued with respect to all arms shipments to Mexico as a result of further friction over the oil question and other matters.
- 1921 (?) to January 31, 1922
Exceptions allowed in favor of the Obregón administration.
- January 31, 1922
Embargo terminated.

Throughout the ten-year period, permission was generally granted for the shipment of explosives and blasting equipment to reputable mining and industrial enterprises in Mexico whenever it appeared certain that these materials would not be captured or diverted to military uses. Similarly, permission was usually granted for the export of arms and ammunition to American citizens in Mexico for purposes of self-defense, upon the receipt of satisfactory assurances that the materials would reach their destination in safety. On some occasions, the export of sporting arms was permitted under the same conditions.

While the policy with respect to permitting the shipment of arms and munitions of war to the Mexican Government was both intricate and varied, it seems fairly clear, nevertheless, that the restrictions were applied during this ten-year period with the following objectives in view:

1. To strengthen the position of what was considered to be the constitutional government of Mexico and to facilitate the efforts of that government to suppress revolution and maintain order throughout the country. This, it was believed, would guarantee the security of American lives and property in Mexico, and would contribute to the general welfare and prosperity of all. Such was clearly the motive behind the policy of permitting arms exports to the government and prohibiting them to the revolutionary factions (March 25, 1912, to July 21, 1913; October 9, 1915, to April 15, 1916; July, 1917—one shipment; and early 1919—two shipments).
2. To weaken the position of any government which was not considered to be lawfully constituted on the basis of the free will of the Mexican people. There could be no peace or security for anybody in Mexico, it was believed, so long as such a government was in power. This was the converse of the first objective and was the primary motive behind President Wilson's policy of prohibiting all arms exports to Mexico from July 21, 1913, to February 3, 1914, and for raising the embargo on the latter date so as to aid the rebels.
3. To prohibit the shipment of arms and munitions of war to those who might later use them against American citizens and soldiers in Mexico. This was one of the original motives behind the embargo resolution of 1912. It was also the motive for the prohibitions in April, 1914, and April, 1916, when the danger of war with Mexico was very great.
4. To bring pressure to bear against the Mexican Government when that government was considered to be pursuing an unfriendly course towards the United States or to be interfering unduly with American property rights and interests in Mexico. This was the most conspicuous motive behind our refusal to permit the shipment of arms to the Mexican Government from July, 1919, onwards, when the controversy was raging over the property rights of American oil interests in Mexico. It was also present in the policy of prohibiting arms exports to de la Huerta from July, 1913, to February, 1914, and then raising the embargo so as to enable de la Huerta's opponents to obtain arms from the United States.
5. To conserve domestic supplies of arms and ammunition during the World War to meet our own needs and those of the Allies. This accounted primarily for our unwillingness to allow arms exports to Mexico from July, 1917 to 1919.

The first two of these objectives were destined to become later in the 1920's a well-established part of the United States policy towards other neighboring Latin American countries which were considered to be within the immediate sphere of influence of the United States by reason of their proximity to the Panama Canal (Honduras, Nicaragua and Cuba). The policy of supporting recognized governments in their

efforts to suppress revolution, by permitting them to obtain arms supplies from the United States while denying the same privilege to revolutionary groups, had made its first appearance in 1905 in the case of the Dominican Republic, and had been followed consistently with regard to that country until 1916.¹ In the case of Mexico, this policy was conspicuous at first, especially during 1912 and 1913, and again from October, 1915 to April, 1916, but it could never be followed very long at a time because of the frequency of strained relations and the existence of periods in which the United States declined to recognize any government in Mexico. This is more clearly seen from the fact that during the entire period in which an embargo of some sort was in effect, excluding the period of American wartime regulations, exceptions to the embargo were allowed in favor of the Mexican Government less than half of the time. Despite the fact that it could not be put into effect very often between 1912 and 1922, the principle of applying arms export restrictions so as to strengthen recognized constitutional governments and prevent revolution in the neighboring Latin American countries was given considerable impetus during this period, with the result that it was applied on several occasions later in the 1920's.

The Mexican case is noteworthy in one further respect, namely, that it offers a convenient opportunity to study the possible consequences of a discriminatory application of arms embargoes. While it must be remembered that the circumstances were those of civil war and not international war, nevertheless, it seems possible that similar consequences could result in both cases from the pursuance of a policy which officially favors one side as against another. There is much talk today of the desirability or undesirability of employing discriminatory embargoes as an instrument of peacetime policy, but there has unfortunately been all too little consideration of the practical results which such a policy might entail. Many people, indeed, seem to be under the impression that a discriminatory arms embargo could be applied unilaterally by the United States against any particular country of which they happen to disapprove, and that the effects of such action upon the United States would be negligible. The writer does not propose to enter into a discussion as to whether such embargoes are politically desirable or not, but he does suggest that it is highly important for those who advocate such a policy to be fully aware of the results which may follow.

Attention is therefore recalled to the fact that the policy of permitting arms exports to the Mexican Government and prohibiting them to the

¹ See *supra*, pp. 44-6. After the establishment by the United States of a military government in Santo Domingo in November, 1916, the arms export restrictions were applied in accordance with the wishes of the American military authorities in that country.

revolutionists in 1912-13, and again during the period beginning in October, 1915, led to bitter resentment on the part of the latter and to active reprisals against American citizens and property in Mexico. The interference with American lives and interests in Mexico in 1912-13 was declared to have been much greater than before the imposition of the embargo and to have been in retaliation for the action by the United States. In the latter part of 1915 and early 1916, Americans in northern Mexico and along the border were exposed to the raids and attacks of Villa, who had sworn vengeance against the United States for having recognized Carranza in October, 1915, and having cut off arms supplies from the territories opposed to Carranza. These border raids finally led President Wilson to send an expeditionary force across the frontier to capture Villa, and this in turn produced another crisis in American-Mexican relations which almost resulted in war.

The arms embargo was of course only one part of the American policy of trying to support the constitutional government against the revolutionists, and the reprisals which followed were directed against the policy as a whole and not the embargo alone. Nevertheless, the significant fact to be noted is that the reprisals resulted because we dropped our previously impartial policy and changed to a policy of partiality and support for the Carranza party. As has been indicated, the writer is not arguing that such a change in our policy from impartiality to partiality¹ was politically undesirable or unjustified.² He is only calling attention to the fact that one of its effects was a series of reprisals against American citizens and properties in Mexico which in turn led to further intervention by the United States and almost to war.

In February, 1914, President Wilson, exercising his discretionary

¹ The writer is referring here to such *official or formal partiality and impartiality* as would be expressed in an executive proclamation or instruction or in a law of Congress. Obviously, there can be no policy which is entirely impartial *in effect*. But so long as the official policy, as set forth in the laws and regulations of the government, is impartial, there can be no justified resort to reprisals provided the policy is not changed during the progress of hostilities with the view to aiding one or other of the belligerents. If such a change is made, even though impartial in form, and if it amounts to a relaxation of the neutrality regulations in favor of one belligerent, the other belligerent may consider it an unneutral act and retaliate.

² While interference to assist a foreign government in suppressing a revolution is a violation of international law, such interference may be deemed necessary under limited conditions such as the existence of continual anarchy, accompanied by the apparent improbability of order ever being restored, or the presence of conditions of gross inhumanity. In the case of Mexico and Central America, which have long been subject to a degree of supervision or regional control by the United States, the latter has not always considered itself bound to observe the rules of international law in the same way it does with respect to foreign states not subject to any such supervision or control. The Monroe Doctrine also, according to the Roosevelt Corollary, may to some extent have justified the policy of the United States toward the discouragement of revolution in the neighboring countries of Latin America. Cf. Stowell, *Intervention in International Law*, pp. 299-300, 329-44, 354-5.

powers under the joint resolution of 1912, raised the embargo which had been in effect with respect to all of Mexico since the preceding summer, and thereby enabled the Mexican revolutionists to obtain war materials with which to intensify their campaign against de la Huerta. As has been seen, this change in our policy operated to the distinct disadvantage of de la Huerta, and, since it was taken during the course of hostilities in Mexico, represented a definite act of interference on our part in the internal affairs of that country. It contributed toward further anti-American feeling on the part of de la Huerta's followers which culminated in the incidents at Tampico and Vera Cruz in April, 1914, and the ultimate occupation of the latter port by the American forces.

It was events such as these which led Senator Henry Cabot Lodge on January 6, 1915, to declare that while he had not opposed the joint resolution of 1912, he had since become convinced of the unwisdom of giving such authority to the President. His words might have been uttered during the neutrality debates of 1935, 1936, 1937 or 1939, so similar are they to some of the current arguments which have been heard:

The Constitution reserves to Congress the sole right to declare war. To put in the hands of the Executive the opportunity to alter at will neutrality laws which have been in existence more than a hundred years is going far toward impairing the authority of Congress in the great function of declaring war or maintaining peace. We can see how it operated in this case. President Taft imposed an embargo on the export of munitions of war and arms, and it was a direct aid to the Madero government, which was then facing an insurrection. Then President Wilson, at a later period, lifted the embargo, and that was a direct aid to the insurgents who were opposing the government of Gen. Huerta.

I think this is a power which should not be in the hands of any one man, and I think, moreover, that it is a mistake to subject the Chief Executive to the pressure which the existence of that power in his hands necessarily causes—pressure from one side or the other and from all sorts of influences, which may be sinister or the reverse. The alteration of the neutrality laws is a grave duty which ought to remain in the hands of Congress, which has the sole authority to declare war.¹

One cannot draw any general conclusions from the fact that reprisals did take place in 1912-13 and 1915-16, because a decade later when the United States again applied a discriminatory policy and even extended its support more openly to the recognized government, no similar acts of retaliation occurred.² Nor in the case of the Dominican Republic or other Central American countries in which a discriminatory policy was applied did any comparable reprisals take place. While it can not therefore be said that a discriminatory embargo will inevitably or necessarily lead to retaliation the possibility that it may do so ought

¹ *Congressional Record*, Vol. 52, pp. 1016-17. ² See *infra*, pp. 109-11; 118-19.

to be kept in mind by those who are urging such a policy or who are responsible for its adoption. A discriminatory policy is a dangerous weapon, and while this does not necessarily preclude its use if our national interests are definitely in danger, it should certainly be adopted only after full weight and consideration have been given to the possibility that it may lead to reprisals and perhaps to war.

During the recent civil war in Spain, there was much agitation in the United States to raise the arms embargo which had been applied against both sides in January, 1937, in order to enable the Loyalist Government to obtain arms in this country. Like our action in 1914, this change in policy during the course of the conflict would have operated to the disadvantage of one side, the Franco faction, and might have been interpreted by the latter as an act of interference on our part. Such action may or may not have been politically desirable in view of the previous interference of other powers in Spain, but is it not possible that reprisals against American citizens and property in Spain would have followed as a result? And what would the United States have done if such reprisals had taken place? Would we have contented ourselves with diplomatic protests, or would we have taken further steps in our policy of interference? Such practical considerations as these were seldom heard in the emotional discussions of whether or not the embargo should have been raised. Nor have they been often heard in connection with the proposals frequently made that the United States embargo the shipment of war materials to Japan, despite the fact that such an embargo, formally applied by the American Government, would be a hostile act against Japan, justifying retaliation or reprisals on the latter's part.¹

The repeal of the United States arms embargo in November, 1939, after it had been impartially applied in September of that year against all the belligerents in the European conflict, was interpreted by many as a discriminatory act against Germany which might have justified the latter in taking reprisals against the United States.² No such reprisals followed, however, which indicates again that a discriminatory policy may not necessarily lead to retaliation even though such retaliation may be justified.

¹ It is significant to note that in July, 1940, when the United States subjected the export of oil and scrap metal to governmental license and thereby made it possible to prohibit shipments of these products to Japan or any other country, there was immediately talk in Japan of retaliation against the United States for committing what was considered to be an unfriendly act. (*New York Times*, July 26, 1940, p. 1; *ibid.*, July 27, p. 4.) It should be noted, however, that the licensing system applies to all exports of oil and scrap metal, and that it was taken ostensibly as a defense measure to conserve domestic supplies. As such, it could give no legitimate cause for reprisal on the part of Japan provided the latter were not discriminated against in the issuance of export licenses.

² See *infra*, pp. 249 ff.

The embargoes with respect to Mexico from 1912 to 1922 were by far the most complicated and politically involved that have ever been applied by the United States. This was due, as has been seen, to the almost continuous state of revolution going on in Mexico during this period, and to the "paternal" efforts of the United States to superimpose its pattern of constitutional government upon the Mexican people. The situation was complicated by the fact that the northwestern states of Mexico, where revolutions were frequently launched, were contiguous to the United States and could readily obtain arms legally or illegally from across the frontier.

The embargoes were closely associated with the general political developments between the two countries, which makes it all the more difficult to follow their course, and necessitates the examination of each prohibition against its particular background of diplomatic history. An effort has been made to do this in the preceding pages, and it is hoped that the general trends of the American policy regarding the regulation of arms exports have become somewhat clearer as a result.

CHAPTER III

MEXICO—1924—1929

Coolidge Goes to the Aid of Obregón

Within less than two years after the termination of the embargo in 1922, revolution against the Obregón Government broke out (December, 1923), this time led by Adolfo de la Huerta, former Minister of Finance under Obregón, who was dissatisfied with General Calles, Obregón's choice for the next president of Mexico. Once again the United States lent its support to the preservation of "law and order," this time more openly than before. Having reached an agreement with the Mexican Government in August, 1923, on the question of American claims and property rights, and having thereafter formally resumed diplomatic relations,¹ the United States was now disposed to show its approval of the Obregón administration when the latter was threatened by revolt. This it did by not only permitting the Obregón Government to obtain arms in this country and prohibiting the rebels from doing likewise, but also by selling it some of its own surplus war equipment—an additional and more open means of carrying out its policy of promoting constitutional government in Mexico.

An embargo was proclaimed on the export of arms and munitions of war to the Mexican rebels on January 7, 1924, but already ten days earlier, on December 29, 1923, the Department of State had announced that the United States Government, upon application from the Obregón Government, had agreed to sell to the latter a limited quantity of war materials. Secretary Hughes explained that this action had been taken in view of the relations between the two governments which had been formally resumed the preceding September, and because of the importance of maintaining stability and orderly constitutional procedure in the neighboring republic.²

This action was at once interpreted as an expression of support on the part of the American Government for President Obregón and of opposition to the de la Huerta revolution and the right of the Mexican people to decide for themselves what government they wanted. It was criticized widely as a dangerous precedent and as an act which consti-

¹ September 3, 1923. *Foreign Relations*, 1923, Vol. 2, pp. 554-5.

² *Foreign Relations*, 1923, Vol. 2, pp. 569-70. The Department of State declined, however, to permit the sale of two discarded naval cruisers to the Mexican Government on the ground that Article 18 of the Washington Treaty on the Limitation of Naval Armament had prohibited the delivery to another government of war vessels or vessels which could be used for war purposes. *Ibid.*, pp. 567-9.

tuted a taking of sides in the internal affairs of a friendly state.¹ Moreover, it appeared to be in direct contradiction to the policy announced by President Harding earlier in the year of prohibiting the sale of government arms to foreign powers.²

On December 31, the agent of the de la Huerta faction in Washington protested to Secretary Hughes against any delivery of munitions of war to the Obregón Government, and declared that such action would only serve to prolong the period of bloodshed essential to the overthrow of that government which, although constitutionally installed in power, had "utterly refused and failed to comply with its solemn duty to the people."³

In view of the criticisms which were forthcoming, the administration issued a statement on December 31, 1923, justifying its action as being in the interest of stability and orderly procedure—familiar words. It was pointed out that the Mexican Government had made positive steps toward adjusting the differences between the two countries and had also made a substantial deposit toward refunding the Mexican debt. Now that it was being attacked and assailed by violence, the United States could not remain indifferent to its appeal for aid in restoring order. The administration insisted that the furnishing of war material to Mexico was in no way a reversal of the Harding policy regarding the sale of surplus arms. It was pointed out that President Harding, in his letter of April 23, 1923,⁴ had stated that our surplus war equipment should not be employed in encouraging warfare any place in the world. The sale of war material to Mexico, it was insisted, was for the purpose of supporting law and order, and thereby discouraging warfare in Mexico. It was hence not contrary to the Harding policy, in the administration's view.⁵

It will be observed that the argument was based on the second part of the Harding letter of April 23, 1923, which had instructed that none of our surplus military equipment be employed in encouraging warfare

¹ *New York Times*, December 30, 1923, p. 1; December 31, p. 1; January 1, 1924, pp. 1, 2; January 2, p. 16; January 7, p. 7. *Current History*, April, 1924, pp. 65-6. Resolutions were introduced in Congress on January 3 and 8, 1924 (H. J. Res. 121 and S. 1819) prohibiting the sale of war material to foreign governments. *Congressional Record*, Vol. 65, pp. 571, 686. Both bills were pigeonholed in committee.

² This policy had been set forth in a letter from President Harding to the Secretaries of War and Navy on April 23, 1923, in which he said:

"I hope it will be the policy of the War (and Navy) Department not only to make no sales of war equipment to any foreign power, but that you will go further and make certain that public sales to our own citizens will be attended by proper guarantees that such supplies are not to be transferred to any foreign power. I would gladly waive aside any financial advantage that might attend such sales to make sure that none of our surplus equipment is employed in encouraging warfare any place in the world." (*New York Times*, April 25, 1923, p. 1. Cited also in *Foreign Relations*, 1923, Vol. 1, pp. 42-3.) For further discussion, see *infra*, pp. 174-5.

³ *Foreign Relations*, 1923, Vol. 2, p. 570.

⁴ See *supra*, note 2.

⁵ *New York Times*, January 1, 1924, p. 1.

any place in the world. No reference was made to the first part of the letter which had specifically requested the War and Navy Departments "to make no sales of war equipment to any foreign power." Taken out of its context, the wording of the second part might be interpreted plausibly to justify the administration's position, and this was exactly what the administration sought to do. If, however, the second part be read in connection with the first part of the letter, it is extremely difficult to see how any sale of war material by the United States Government to Mexico could be justified. If President Harding meant what he said when he wrote the War and Navy Departments on April 23, 1923, then it is very difficult to escape the conclusion that the action of his successor in selling arms and ammunition to Mexico was directly in contradiction to the Harding position.

It is perhaps more reasonable to believe that the Harding policy was originally decided upon primarily in connection with the question of general disarmament and the prevention of international war, and that the possibility of its application to a case of civil insurrection in Latin America never occurred to its originators.¹ Whatever its motives, however, it is clear that the Coolidge administration did not intend to allow it to interfere with the new American policy of promoting stability and strengthening constitutional government in the neighboring countries of Latin America. Subsequent developments in Cuba, Honduras and Nicaragua within the next two years were destined to bear this out.²

On January 23, 1924, again in defense of the government's policy, Secretary Hughes declared that the reason it had decided to sell arms to Mexico was in order not to encourage or throw our moral influence on the side of those who were challenging peace and order in Mexico and attempting to overthrow the recognized government by force.³ He again referred to the second part of the Harding letter of April 23, 1923, and declared that this in no way precluded us from furnishing

¹ It might be noted in this connection that one of the reasons why the United States in 1922-3 declined to ratify the Arms Traffic Convention of St. Germain of 1919 was the fact that the provision in the convention prohibiting arms exports to non-contracting states might operate so as to prevent the shipment of arms from the United States to any Latin American countries, not parties to the convention, which might need arms. While this concerned all exports of arms, both public and private, in contrast to the Harding policy which related only to the disposal of surplus government arms, it is nevertheless symptomatic of the special concern felt by the United States Government with respect to arms shipments to Latin America. See *infra*, p. 172-3.

² The United States War Department sold arms and ammunition to the Government of Cuba in May, 1924; to the Government of Honduras on several occasions in 1925, 1926, and 1927; and to the Government of Nicaragua in February, 1927. Similar sales had also been made to the Cuban Government in February, 1917. See *infra*, Chaps. v and vi dealing with Cuba, Honduras and Nicaragua.

³ Address before the Council on Foreign Relations, *A.J.I.L.*, Vol. 18 (1924), pp. 235-6.

arms to aid in suppressing insurrectionary attacks upon public order in a neighboring state whose peaceful development was especially important to us—another clear indication that the Harding policy would not be allowed to interfere with the general policy of the United States towards Mexico. Hughes rejected the idea that the United States, by supporting the Mexican Government, was interfering with the inherent right of an oppressed people to revolt, and said:

It is plain that the purpose of those engaged in this enterprise of arms is simply to determine by forcible measures the succession to President Obregón. It is not a revolution instinct with the aspirations of an oppressed people; it is a matter of personal politics. It is an effort to seize the presidency; it means a subversion of all constitutional and orderly procedure.¹

The Coolidge administration was now fully committed to the policy first adopted a decade earlier—a crusade of maintaining constitutional government in Mexico and protecting the Mexicans, as well as the American interests in Mexico, from the evils of “personal politics.”²

The second step taken at Washington to aid President Obregón to suppress the revolution was the embargo previously mentioned on all shipments of arms or munitions of war to the revolutionists. On January 3, 1924, the State Department had indicated that while there was no official prohibition on private shipments of arms to either side in Mexico, it would look with disfavor upon such shipments to the revolutionary sections.³ It was thereupon announced that de la Huerta had instructed his agent in the United States to purchase a quantity of arms and ammunition in order to test the statement of the United States Government that no embargo existed.⁴ The administration at Washington countered at once with an intimation that President Coolidge would impose an embargo on arms shipments to the revolutionists if the warning already issued against such shipments were ignored, and Secretary Hughes again declared that such exports were contrary to the policy of the government.⁵ All temporizing came to an end, however, on January 7, when a proclamation was issued under the joint resolution of January 31, 1922, and an embargo formally applied.⁶

The proclamation differed from its predecessors in that it made a specific exception in favor of shipments to the Mexican Government. This was but one more indication of the open way in which the Coolidge administration was willing to support Obregón. President Taft, it will be recalled, had wanted to write into his proclamation of March 14,

¹ Address before the Council on Foreign Relations, *A. J. I. L.*, Vol. 18 (1924), p. 235.

² Between January 7 and March 12, 1924, over \$1,286,000 worth of arms and ammunition was sold by the War Department to the Mexican Government. Secretary of War to the U. S. Senate, March 31, 1924. Senate Doc. No. 104, 68th Congress, 1st session.

³ *New York Times*, January 4, 1924, p. 3.

⁴ *Ibid.*, January 6, 1924, p. 1. ⁵ *Ibid.*, January 7, 1924, p. 1. ⁶ 43 *Stat.* 1934.

1912, a blanket exception for all shipments requested by the Mexican Government, but had been dissuaded from doing so at the last moment by the Department of State which felt that such a step would make the embargo appear so partisan as to provoke reprisals by the revolutionists against Americans in Mexico.¹ The final text of the 1912 proclamation was therefore worded impartially so as to apply to all of Mexico, although in actual practice, as is well known, exceptions were granted for arms shipments to the Mexican Government. Similarly, the proclamations of October 19, 1915,² and July 12, 1919, were also worded impartially, and it was not until January 7, 1924, that a provision of discrimination was actually written into an embargo proclamation itself. This prescribed "as an exception and limitation" to the embargo

. . . such exportations of arms or munitions of war as are approved by the Government of the United States for shipment to the Government of Mexico which has been recognized by the Government of the United States, and such arms and munitions for industrial or commercial uses as may from time to time be exported with the consent of the Secretary of State.³

What had thus been previously administrative practice and policy was now openly and clearly announced by President Coolidge in his proclamation of January 7, 1924.

The embargo was applied by the use of a system of export licenses similar to that which had been used after the World War with respect to the previous embargo. The practice was now followed, however, of having the license applications submitted by the prospective exporters or shippers through the Mexican Embassy in Washington instead of directly to the Department of State. This had the advantage of placing on the Mexican Government the responsibility for deciding what arms, other than those for purely industrial or commercial use,⁴ should enter Mexico, and also of relieving the American officials of the difficult and sometimes embarrassing duty of making such decisions. The practice now was to accept the recommendations of the Mexican Government and grant export permits which had been approved by the Mexican Embassy.

The cooperation of the railroads was again enlisted, and on January 8, 1924, the American Railway Association issued circular instructions prohibiting the shipment by rail into Mexico of all arms and munitions of war except: (a) those on bills of lading of the United States Govern-

¹ See *supra*, p. 59.

² The proclamation of October 19, 1915, was worded impartially, but discrimination in favor of the recognized *de facto* government was authorized on the same day by a letter from President Wilson to the Secretary of the Treasury. See *supra*, p. 73.

³ 43 Stat. 1934.

⁴ Applications to export arms or explosives for industrial and commercial use could be submitted directly to the State Department.

ment (consigned presumably to points along the border), (b) those authorized by the United States military authorities, or (c) those authorized by the Secretary of State.¹

With the help of the war material from the United States, the Obregón Government succeeded in suppressing within a few months what might otherwise have been a very serious threat to its existence.² On July 24, 1924, it was reported that the Mexican Government, in view of its improved position, had decided that there was no longer any need for the arms embargo, and that the American Ambassador, Mr. Charles B. Warren, would take up with the State Department the question of raising the embargo upon his return to Washington.³ Ambassador Warren apparently did recommend the removal of the embargo about this time, but the administration decided to continue it in effect.⁴

In contrast to what happened in 1912-13 and 1915-16, the discriminatory embargo applied by the United States in 1924 led to no deliberate reprisals against American interests in Mexico, despite the fact that the United States went much farther in its open support of the Mexican Government than it had done previously.⁵ Even after

¹ *New York Times*, January 9, 1924, pp. 1, 3.

² A graphic description of how the Obregón forces were suffering from a serious shortage in ammunition at the outbreak of the revolution, and how they would probably have been unable to hold out if American war materials had not been sent them, is given in an article by G. W. Hinman, Jr., "The United States' Ban on Latin-American Rebels," *Current History*, April, 1924, pp. 63-70. Mr. Hinman discusses some of the implications of the American policy of supporting the recognized governments of Latin America against revolutionary disturbances. His suggestion, however, that this was the first time when the United States had used active efforts to support a recognized government against revolutionary groups is hardly correct, as will be recalled from the policies of the Taft and Wilson administrations toward Mexico, and the policy toward the Dominican Republic from 1905 onward. This was not even the first time that the United States Government had sold war material to a Latin American Government for purposes of facilitating the suppression of revolution. In February, 1917, the United States Government agreed to sell 10,000 rifles and five million rounds of ammunition to the Cuban Government to aid the latter in suppressing a revolution. (*New York Times*, February 14, 1917, p. 1.) This action was taken under an act of Congress of August 29, 1916, which specifically permitted the sale of ordnance and military stores by the United States Government to Cuba. (39 *Stat.* 619, 643.)

For a justification of the Coolidge policy, see Eleanor W. Allen, "The Case for American Aid to Obregón," *Current History*, April, 1924, pp. 71-8.

³ *New York Times*, July 25, 1924, p. 6.

⁴ *Ibid.*, July 30, 1926, p. 1.

⁵ In addition to selling a considerable quantity of government arms and ammunition to the Obregón Government and applying an embargo on arms exports to the rebels, the United States permitted 2,000 Obregón troops to cross through its territory, and at the same time, by means of a naval demonstration, forced the de la Huerta faction to abandon its blockade of Tampico and its plans for mining the harbors of Vera Cruz, Frontera and Puerto Mexico. A division of six American destroyers and one cruiser was ordered to Vera Cruz, the headquarters of the de la Huerta faction, while another cruiser was stationed at Tampico. (*New York Times*, January 18, 1924, p. 1; January 20, p. 1; January 21, p. 1; January 22, p. 1; and January 24, p. 2.) It was also revealed that the American Government had for some time been prohibiting the movement of mails from American ports to ports and territory controlled by the Mexican rebels. *New York Times*, January 23, 1924, p. 3.

the announcement that seven American naval vessels had been ordered to Vera Cruz, the de la Huerta representatives in Washington declared that there would be no attempts at reprisals.¹

On the contrary, the de la Huerta faction actually went out of its way to court American favor and sympathy. When the United States cruiser *Tacoma* became stranded on a reef near Vera Cruz, the de la Huerta authorities despatched a tug to assist in the rescue work, and when it was found necessary to send 247 of the *Tacoma's* crew ashore at Vera Cruz, the de la Huerta agents in Washington declared that the seamen would be made comfortable and would receive every consideration, despite the fact that the United States was supporting the Obregón Government in its efforts to crush the revolution.² A few days later, when the *Tacoma* finally sank during a severe hurricane, de la Huerta ordered his "small naval transports" to go to the aid of the American cruiser despite the dangers and risks from the heavy seas, and they succeeded in rescuing all but four of those remaining on board.³

On January 20, 1924, the de la Huerta agent in Washington expressed surprise at the statement that the Mexican troops being moved through the United States were intended for service in regions of eastern Mexico where American interests were represented as being in "grave danger." He declared that American lives and property were not endangered in territory under the control of the de la Huerta authorities who were observing the laws of war and intended to protect the lives and interests of foreigners. He stated:

So far as I am aware, there has not been a single complaint to my government at Vera Cruz, either by an American or by an American consul, to the effect that any American interest has been endangered in territory under control of the *de facto* government's forces. If any such interest has been threatened or injured we would be glad to have it brought to our attention. We have no desire to injure or jeopardize any American interest.⁴

This attitude is in striking contrast to that taken by the Mexican rebels a decade earlier when many deliberate attacks were made on American citizens and property in retaliation for the support which the Taft and Wilson administrations were lending to the government at Mexico City. The reason for de la Huerta's attitude was apparently the fact that he and his advisers hoped in some way or other to gain support and assistance from the United States, and realized that this could never be done if general hostility were provoked throughout the

¹ *New York Times*, January 20, 1924, p. 1.

² *Ibid.*, January 19, p. 1. The *Tacoma* had been ordered to Vera Cruz for the purpose of establishing wireless communication between that port and the United States.

³ *Ibid.*, January 23, 1924, p. 1; January 24, p. 3.

⁴ *Ibid.*, January 21, 1924, pp. 1, 2. In a telegram to President Coolidge on March 2, 1924, the de la Huerta agent again maintained that the revolution had shown "a decided feeling of respect toward foreign properties." *Ibid.*, March 3, p. 3.

United States by any program of retaliation like that engaged in during the preceding decade. De la Huerta, moreover, was generally recognized as having the backing of the Mexican conservatives who desired that indemnification be paid to the landowners for their confiscated estates and that labor radicalism be checked.¹ In the light of this background, it is all the more probable that he would have been interested in protecting the property rights of foreigners and making Mexico an attractive place for foreign and domestic capital—which may explain plausibly why he undertook no reprisals against American interests in Mexico. Whatever its reasons, this attitude on the part of de la Huerta made it possible for President Coolidge to pursue an open and far-reaching policy of interference and discrimination without suffering the embarrassing results of retaliation and reprisal which had been experienced by his predecessors.²

Although the de la Huerta revolution was suppressed within a few months, President Coolidge and his advisers were apparently fearful for some time thereafter that disturbances would again break out if the export of arms and ammunition across the frontier were permitted to take place freely. This was indicated by a statement issued by President Coolidge on July 30, 1926, in which it was announced that the United States Government had been studying for some time the question of lifting the arms embargo, but had decided to take no action for the time being. It was explained that the government felt the embargo should be lifted in due time, but only when it could be done with safety to the Mexican Government and people. The United States believed there should be a free movement of arms across the border when peace existed and no revolutions appeared likely to disturb the Mexican Government.³

The President declared that pressure in favor of removing the em-

¹ Parker T. Moon, *Imperialism and World Politics* (New York, 1927), p. 448. See also *Current History*, February, 1924, p. 852.

² The de la Huerta authorities took steps in January, 1924, to stop the pumping operations of American oil companies and to close their pipe lines, but this was not done in retaliation for the United States policy, but rather because the companies had refused to pay taxes to the de la Huerta administration. (*New York Times*, January 12, 1924, p. 3; January 16, p. 4.) Inasmuch as practically all the oil lands were located in territory controlled by de la Huerta, the American owners and promoters lived in constant fear that the rebels would take revenge upon them for the help which the United States had given to Obregón. (*Ibid.*, January 18, 1924, p. 3.) No action with "revenge" as its principal motive seems to have occurred, however. In subsequent months, when radical workers in Mexico seized the properties of an Anglo-Dutch oil company, the Americans again became very apprehensive that similar action might be taken against their property. This danger, however, grew out of the labor question in Mexico, and could not be directly attributed to the American discriminatory policy.

³ *New York Times*, July 31, 1926, p. 1. Cf. also the statement cited in William E. Walling, *The Mexican Question* (New York, 1927), p. 174: "It has all along been plain that the stability, if not the very existence, of the Calles Government rests upon keeping American-made arms out of the hands of would-be revolutionists."

bargo had been brought to bear by both American and Mexican residents, but he added that much of the American pressure had been from ammunition makers and that therefore the agitation had not greatly impressed the administration.¹ The President's statement followed two days after an intimation from the State Department that the embargo would not be lifted and that reports circulating in Mexico City to the effect that the prohibition had been ordered raised were not true. It was observed that, if the embargo were raised, arms could then be freely obtained in the United States, and that this would constitute an open invitation to revolution as in the past.²

Despite these announcements, the embargo was slightly modified at this time to the extent of permitting the export of commercial aircraft to Mexico without license. Prior to this, export licenses had been required for aircraft of all kinds,³ but on July 29, 1926, the Treasury informed the customs collectors that the restrictions on the export of non-military aircraft to Mexico had been removed by the State Department, and that henceforth these aircraft could move freely into Mexico without license. Aircraft intended for hostile purposes or of a distinctly military type, however, were still subject to license.⁴

This relaxation of the embargo in favor of commercial aircraft reflected a difficult problem in administration which has always presented itself in applying restrictions on the export of war material, viz., the question as to whether a valid distinction can be made between commercial and military aircraft in defining a list of "munitions of war." The Department of State has generally been disposed to consider all aircraft as "munitions of war", thereby making enforcement of the restrictions easier and at the same time reducing to a minimum the possibility of commercial planes being sent to areas where they might eventually be used for military purposes. Despite the practical advantages of applying the restrictions to aircraft of all types, there has always been the feeling in some quarters that such a practice constitutes a definite handicap to the extension of legitimate commercial aviation abroad, and, what is more keenly felt, to the securing of commercial aircraft orders for the American industry. This has been particularly true in cases where the American aircraft manufacturers had to compete with manufacturers from other countries which did not place any restrictions on the export of commercial planes. Even though American export licenses could be granted readily for all ship-

¹ *New York Times*, July 31, 1926, p. 1.

² *Ibid.*, July 29, 1926, p. 2.

³ In applying the embargo, the State Department had been following the list of May 1, 1920, defining arms and munitions of war (*supra*, pp. 91-2), the first item of which was "aircraft of all kinds."

⁴ Treasury announcement of August 4, 1926, *United States Daily*, August 5, 1926, p. 1; and January 29, 1927, p. 5.

ments of commercial planes which did not seem likely to be converted to military use, the problem of determining whether such conversion might take place was often very difficult and on some occasions constituted enough of a barrier to throw the business to a foreign competitor. This difficulty seems to have confronted the United States in the case of Mexico, and resulted in the decision of July 29, 1926, to encourage American commercial aircraft exports to Mexico as much as possible by removing all restrictions whatsoever on their shipment.

*Strained Relations Lead to a Complete Embargo
December, 1926*

The state of affairs described above was not due to last long, however. Toward the close of 1926, relations between the United States and Mexico became very critical as a result of the transshipment of arms from Mexico to the Nicaraguan rebels, and as a result the embargo on commercial aircraft was restored and all shipments of arms and munitions of war to Mexico were prohibited. On December 23, 1926, the State Department disclosed that about ten days earlier it had denied an application from the Mexican Government for licenses to export ten airplanes which it had purchased in the United States,¹ and, at about the same time, the customs collectors were instructed to allow no aircraft of any type to proceed from the United States to Mexico except under license from the Secretary of State.²

The principal reason for cutting off all exports of arms and munitions of war to Mexico at this time was the knowledge that these materials were being shipped from Mexico to Nicaragua for the use of the Sacasa revolutionary group which was then opposing American interference in that country.³ The United States had imposed an embargo on all arms shipments to Nicaragua in September, 1926, in an effort to discourage further revolutionary activity there, and had suggested to Mexico and the other Central American countries that they do likewise.⁴ All agreed to do so except Mexico which explained that since there were no arms manufacturing plants in Mexico, the matter had little practical significance. In a special message to Congress on January 10, 1927, however, President Coolidge declared that he had "most conclusive evidence" that arms and munitions in large quantities had on several

¹ *New York Times*, December 24, 1926, p. 6.

² The announcement was not made public until January 28, 1927. (*Ibid.*, January 29, 1927, p. 2.) The press reports referred primarily to the prohibition on aircraft, but it is the writer's understanding that all arms and munitions exports to Mexico were prohibited in the latter part of 1926. On January 12, 1927, it was reported that no movement of arms or munitions from the United States to Mexico had taken place for some time. *Ibid.*, January 13, 1927, p. 3.

³ *New York Times*, January 13, 1927, p. 3.

⁴ For a discussion of the details, see *infra*, Chap. vi, dealing with Nicaragua.

occasions since August, 1926, been shipped from Mexico to the revolutionists in Nicaragua with the full knowledge and in some cases with the support of the Mexican Government.¹

Moreover, Mexico had recognized the Sacasa régime as the government of Nicaragua in early December, 1926,² only three weeks after the United States had recognized Adolfo Diaz as the lawful president of the country,³ and this, combined with the Mexican support for Sacasa, was considered as an unfriendly act towards the United States. The Government of Mexico was also alleged to be supporting the efforts of Russian Bolsheviks to drive a "red" wedge between the United States and the Panama Canal.⁴

It was against this background of circumstances that the United States, provoked by the efforts of Mexico to obstruct the American policy in Nicaragua, turned again to a policy of active coercion against the Mexican Government and used as one of its methods the prohibition of arms and munitions exports. This action also served as a convenient means of bringing further pressure to bear against the Mexican Government at a time when the question of American property rights in Mexico was a bitter source of contention, and relations between the two countries had again become strained over the oil issue.⁵

When on March 22, 1927, the Department of State announced that it would not renew the treaty concluded with Mexico in 1926 for the mutual prevention of smuggling, this announcement was interpreted as a further warning to the Mexican Government and as a possible first step toward the revocation of the arms embargo. It was pointed out that so long as the treaty was in effect, the lifting of the embargo could have little if any disciplinary force against the Mexican Government. Under its provisions, notice had to be given of all shipments of mer-

¹ *New York Times*, January 11, 1927, p. 2.

² *Ibid.*, December 8, 1926, p. 12.

³ November 17, 1926.

⁴ Rippy, *The United States and Mexico*, p. 376. On January 12, 1927, Secretary of State Kellogg declared before the Senate Foreign Relations Committee that the Calles Government was seeking to establish a Bolshevik régime in Nicaragua hostile to the United States. *New York Times*, January 13, 1927, pp. 1, 2.

⁵ In December, 1925, the Mexican Congress had adopted two laws to give effect to Article 27 of the constitution of 1917 (see *supra*, p. 80)—the so-called Petroleum and Alien Land Laws, which placed very definite restrictions on foreign holdings in Mexico and were considered by the United States to be virtually confiscatory in character. The laws were to take effect in January, 1927, and during 1926, a voluminous correspondence took place between the United States and Mexico as to the effect of the laws upon American interests in Mexico. Despite the arguments of the Mexican Government, the administration at Washington remained unconvinced that the laws were not confiscatory in character. For a concise summary of the controversy, see Stuart, *Latin America and the United States* (1938 ed.), pp. 168-76. For a more detailed discussion, see Charles W. Hackett, *The Mexican Revolution and the United States, 1910-26*, World Peace Foundation Pamphlets, 1926, Vol. 9, No. 5 (texts of the Petroleum and Alien Land Laws at pp. 414 and 425); and Foreign Policy Association, Information Service, "The Mexican Land and Oil Law Issue" (December 22, 1926), Vol. 2, No. 21.

chandise to private persons in Mexico, and this procedure, if applied to arms shipments, would have made it possible for the Mexican Government to stop any consignments to its enemies. Under such circumstances, the lifting of the embargo could not help the rebels. The suspension of the treaty, however, meant that any future raising of the embargo could operate so as to aid the rebels, and in this way it constituted a warning to the Mexican Government.¹

Friendship Restored and the Embargo Modified
December, 1927

Critical relations between Mexico and the United States continued until the fall of 1927, characterized seemingly by a spirit of retaliation on both sides.² But a change for the better took place after the arrival of Ambassador Dwight Morrow in Mexico in October, 1927, when it soon became evident that the Coolidge administration, through Ambassador Morrow, had decided to pursue a more conciliatory policy toward Mexico based on friendly understanding by both parties. During the three years that he remained at Mexico City, Ambassador Morrow went far toward inspiring confidence and restoring American-Mexican relations to a status of good will and friendship.³

Three other events in the latter part of 1927 also contributed much to a restoration of friendly relations:⁴

1. The repeal by President Calles on October 27 of the decree of June 1, 1927, prohibiting the purchase of goods in the United States by the various departments of the Mexican Government.
2. The unanimous decision of the Mexican Supreme Court on November 17, 1927, declaring certain provisions of the Petroleum Law of 1925 unconstitutional. This decision led directly to the adoption of a law on December 27, 1927, and the issuance of regulations on March 27, 1928, confirming in perpetuity all oil rights obtained before May 1, 1917. This ended the dispute with the United States as to the confiscatory character of the Mexican Petroleum Law.⁵
3. The non-stop flight of Colonel Charles A. Lindbergh from Washington to Mexico City on December 14, 1927. Lindbergh was

¹ *New York Times*, March 23, 1927, p. 1. There was widespread criticism in the United States during the early part of 1927 of the Coolidge policy of pressure and coercion against Mexico, with its implications of possible armed interference or war. Cf. Rippy, *The United States and Mexico*, p. 376; and Walling, *The Mexican Question*, pp. 173-80.

² On June 1, 1927, President Calles issued a decree forbidding any department of the Mexican Government to purchase supplies in the United States. *New York Times*, June 2, 1927, p. 1.

³ Harold Nicolson, *Dwight Morrow* (New York, 1935), Chaps. xv-xvi.

⁴ Stuart, *Latin America and the United States* (1938 ed.), pp. 177-8.

⁵ For further discussion, see J. Reuben Clark, Jr., "The Oil Settlement with Mexico," *Foreign Affairs*, July, 1928, pp. 600-15.

received enthusiastically by the Mexicans, and the "good-will flight" was a decided success.

With this revival of friendly relations, it was only to be expected that consideration would be given to the question of raising the embargo on arms which had been in effect with respect to all of Mexico since the latter part of 1926. The Nicaraguan difficulty had now subsided as a result of an agreement which the United States had engineered between Diaz and Sacasa in May, 1927, and the friction occasioned by Mexican support for the latter had apparently faded away. Although intermittent bandit activity was still going on in northern Nicaragua under the leadership of a former Liberal General, Sandino, it does not appear that the latter was receiving arms or munitions from Mexico, and hence one of the original reasons for the absolute prohibition against Mexico no longer existed.¹ It had also become apparent by this time that the absolute arms embargo of the United States had led the Calles Government to place orders for war materials in Europe, and that the purposes of the American restrictions were thereby being circumvented.

As a result of these circumstances, the administration at Washington finally decided in December, 1927, that the expedient thing to do was to raise the embargo with respect to shipments for the Mexican Government and to permit such shipments under the system of State Department licenses which had been in effect previously. On December 7, accordingly, a shipment of rifles and ammunition which had been seized by the American customs officers at Laredo, Texas, the preceding April, was allowed to proceed into Mexico.²

On December 17, Representative Edith N. Rogers wrote to the Secretary of State urging the raising of the embargo on commercial planes to Mexico. She claimed that American aircraft manufacturers were losing business as a result, and that Mexico had already purchased \$265,000 worth of aircraft and equipment in Europe. She suggested that the "good-will flight" of Colonel Lindbergh ought to be followed up by the creation of commercial airlines between the two countries.³ One week later, it was intimated from Washington that the embargo on aircraft and equipment might be raised as a result of the recently improved relations between the two countries and the news that the Mexican Congress was taking steps to modify the confiscatory provisions of the Petroleum Law. Secretary Kellogg, it was said, had been favorably impressed with the suggestions of Representative Rogers.⁴

¹ The Mexican Consulate in New York City declared on January 3, 1928, that no Mexican ports were being used as bases for smuggling arms or ammunition to the Sandino rebels in Nicaragua. American marine officers in Nicaragua were also reported to have said they did not believe Sandino's outside support was from Mexico. *New York Times*, January 4, 1928, p. 3. ² *Current History*, February, 1928, p. 730.

³ *New York Times*, December 18, 1927, p. 29. ⁴ *Ibid.*, December 26, 1927, p. 1.

An indication of these improved relations between Mexico and the United States was seen on December 27, when the State Department granted permission to the Mexican Government to purchase the airplane in which Mrs. Evangeline Lindbergh had flown from Detroit to Mexico City.¹ This action was referred to as the initiation of a new policy of relaxation in the application of the embargo on shipments of arms and munitions from the United States to Mexico, a development which was borne out by the announcement from the State Department that consideration was being given to several applications from the Mexican Government for permission to ship arms and munitions to Mexico City.² Confirmation of the change in policy was finally given when Secretary Kellogg, in the closing days of December,³ informed Representative Rogers that the State Department was prepared to receive applications for permits to ship aircraft and aircraft equipment to Mexico.⁴

From December, 1927, to March, 1928, the Department of State followed the policy of dealing with each particular aircraft case on its own merits, granting the license if the facts of the case so warranted. No request to export commercial aircraft to Mexico was actually denied during this period, and on March 24, 1928, with a view to facilitating commercial aviation between the United States and Mexico, the Department announced that the license requirements with respect to such shipments would be dispensed with, and that thereafter there would be no restriction whatsoever on the export of commercial aircraft.⁵ The Department thereby returned to the position it had taken in July, 1926, of encouraging the development of commercial aviation in Mexico and placing American aircraft firms on an equal basis of competition with foreign companies.

Friendly relations continued to be strengthened during 1928, and in the spring of 1929, when revolution suddenly broke out against the recently elected President Gil, the United States again had an occasion to give concrete expression to its confidence in the Mexican Government. The outbreak of revolution coincided with the inauguration of President Hoover who, on the day after he had assumed office, announced that he would continue the Coolidge policy of affording moral and material aid to the Mexican Federal Government.⁶ The embargo on arms shipments to the rebels therefore remained in effect as provided

¹ The plane had been permitted to cross the border only on a guarantee that it would be returned to the United States.

² *New York Times*, December 28, 1927, p. 1.

³ Apparently December 30 or 31, 1927.

⁴ *New York Times*, January 3, 1928, p. 2.

⁵ *Ibid.*, March 25, 1928, p. 14. Licenses were still required for the export of military aircraft, as they were for all shipments of arms and munitions of war.

⁶ *Ibid.*, March 6, 1929, p. 1.

for under the proclamation of January 7, 1924. A similar policy to that pursued in 1924 was observed, with the United States not only prohibiting war material exports to the rebels, but also arranging to supply the Mexican Government with 10,000 rifles and ten million rounds of ammunition from the surplus stocks of the War Department.¹ Secretary Kellogg let it be known on March 11 that the United States would never recognize the belligerency of the rebels.²

In order to prevent commercial aircraft from reaching the revolutionist faction, the Department of State announced on March 8, 1929, that the embargo on such aircraft, which had been lifted a year earlier, would be restored.³ Export licenses were thenceforth required for all shipments of aircraft—commercial or military—to Mexico, but were issued readily for aircraft destined to the Mexican Government.⁴ With the help of supplies from the United States, the Gil Government succeeded in suppressing the revolution entirely by early May, 1929, and on May 8, the State Department was able to announce that the embargo on commercial planes had been lifted.⁵

Although the United States again pursued a discriminatory policy during this two-month revolution, and openly supported the Government at Mexico City as it had done five years earlier, no reprisals or acts of deliberate retaliation seem to have been directed by the rebels against American citizens or property. Apart from damages incidental to the conduct of hostilities, no injuries to American interests which might be interpreted as being in the nature of reprisals seem to have occurred, according to the press reports. On a few occasions in April, 1929, bombs from rebel airplanes fell on the American side of the border at Naco, Arizona, wounding certain American citizens, but although some circles in Mexico City attributed this to a desire on the part of the rebels to involve the United States in the conflict, it appeared more likely to have been due to the prevailing winds at that point and the poor marksmanship of the rebel aviators.⁶ The rebel authorities, moreover, apologized to the United States for the incidents.⁷ While the rebels in 1929 do not seem to have gone out of their way so much to court American favor as did the de la Huerta faction in 1924, their agent in Washington nevertheless declared that full guarantees and protection had been given to the lives and property of Mexicans and foreigners alike in the territory under their control.⁸ President Hoover, therefore, like his immediate predecessor, was more fortunate

¹ *New York Times*, March 10, 1929, p. 1.

² *Ibid.*, March 12, p. 1.

³ *United States Daily*, March 9, 1929, p. 1.

⁴ *New York Times*, March 18, 1929, p. 15; March 19, p. 2.

⁵ *Ibid.*, May 9, 1929, p. 8.

⁶ *Ibid.*, April 9, 1929, p. 3; April 28, p. 22. Active fighting along the border near Naco had been going on since the beginning of April.

⁷ *Ibid.*, April 3, 1929, p. 2; April 6, p. 4.

⁸ *Ibid.*, April 12, 1929, p. 20.

in the use of a discriminatory policy regarding Mexico than had been Presidents Taft and Wilson during the preceding decade.

Two months after the collapse of the revolution in May, 1929, the Mexican Government suggested that the embargo on arms and munitions of war be raised completely, feeling apparently that its continuation after order had been restored might be interpreted as a lack of entire confidence on the part of the United States in the ability of the constituted Mexican authorities to control the situation in Mexico. The United States responded favorably to this request, and on July 18, 1929, President Hoover issued a proclamation revoking the embargo.¹ The State Department emphasized at the same time that the Mexican Government had recently withstood successfully another revolution, and pointed out that the conditions of domestic violence which had occasioned the original embargo proclamation of January 7, 1924, no longer existed.² Thus ended the last embargo on arms exports to Mexico, no prohibition having been applied to such shipments since July, 1929.

In retrospect, it is clear that the embargo of 1924-9, like its predecessor, was very closely associated with the general policy of the United States toward Mexico, and that it again fluctuated in response to the rise and fall of friendly relations between the two countries. The motives present were conspicuously two, both of which had figured prominently in the previous embargo from 1912 to 1922:

1. To support the recognized government in its effort to suppress revolutionary activity and prevent any interferences with the orderly processes of constitutional procedure (January, 1924 to December, 1926; and December, 1927 to July, 1929).
2. To bring pressure to bear against the recognized government when it was pursuing a policy which was considered unfriendly to the United States (transshipment of arms to Nicaragua), and was threatening American properties in Mexico with possible confiscation unless the owners complied with the regulations laid down in pursuance of the constitution of 1917 (December, 1926 to December, 1927).

The new policy of supporting the recognized governments in the neighboring countries of Latin America in their efforts to maintain order and prevent revolution was given a firmer basis in American foreign policy by the action of the United States toward Mexico in 1924 and 1929. This action was made possible to a considerable extent by the fact that the Obregón Government had succeeded in winning the confidence of the administration at Washington and in passing this confidence on to its successor, the Calles Government. The latter

¹ 46 *Stat.* 3001.

² *New York Times*, July 20, 1929, p. 4.

almost lost this heritage in 1926 and 1927 as a result of the controversy over American oil lands in Mexico, but fortunately retrieved it in time to save the day for its successor, the Gil Government, which was able to benefit from American confidence and support during the revolution of 1929. The fact that American-Mexican relations, except during 1926 and 1927, were for the most part friendly contributed largely to the development of the new policy, and made possible a more permanent application of it than had been expedient during the previous decade when there had been long periods of disturbances and strained relations during the régimes of de la Huerta and Carranza (1913-15 and 1916-20).

The general policy was also more successful in suppressing revolution in 1924 and 1929 than it had been previously, although this seems to have been due mainly to the fact that the arms embargoes were supplemented by more open and extensive support for the Mexican Government than had been given in 1912-13 and 1915-16. Not only were arms shipments prohibited to the rebels, but the United States War Department sold arms and ammunition to the Mexican Government, and, in 1924, American naval vessels were sent to break up the rebel blockade. The arms embargo alone was not therefore the decisive factor, although it was one of several contributing factors. This only serves to emphasize the point which must be kept constantly in mind in considering the United States' restrictions on arms exports to Latin America, viz., that these restrictions have been only one part of the broad policy of supporting recognized governments in certain countries, and only one means of giving effect to that policy. Their effectiveness can therefore be judged only by taking into account the combined effect of the various measures which were adopted to carry out the general policy.

By 1929, the policy of applying restrictions on arms exports so as to strengthen recognized governments and discourage revolution had become a more definite part of the United States policy toward the neighboring countries of Latin America.¹ It had in the meantime been applied in the case of three other Central American and Caribbean countries, Cuba, Honduras and Nicaragua, to which attention will be presently turned. But before taking up these cases, it will be necessary

¹ The United States signed the Habana Convention of 1928 on the Duties and Rights of States in the Event of Civil Strife, Article 1 of which pledged the contracting parties to prohibit the shipment of war material to revolutionists whose belligerency had not been recognized. The United States ratified this in 1930 (*U. S. Treaty Series*, No. 814), but has actually applied its provisions by means of an embargo in only one case of a revolution in South America (Brazil, 1930, see *infra*, Chap. vii). The embargo policy which was applied to the Dominican Republic, Mexico, Cuba, Honduras and Nicaragua can scarcely be said, therefore, to represent in practice a general policy of the United States toward all of Latin America. For a further discussion, see *infra*, Chap. vii, dealing with Brazil.

to revert again to 1919, and to consider another situation in which the principles of the new policy had made themselves evident. This was not a country in Latin America, but one in another region of the world where the United States had vital interests—the Far East, and where the policy was not applied unilaterally by the United States, but in cooperation with a number of other powers. I refer of course to the case of China.

CHAPTER IV

CHINA

The Arms Embargo Agreement of 1919

The arms embargoes with respect to the Dominican Republic and Mexico were applied by the United States independently of all other nations and entirely upon its own initiative. In the case of China, however, the action was not taken independently but in cooperation with a number of other powers and as part of what seems to have been the first organized attempt to apply an international arms embargo against a particular country.¹ The initiative in behalf of the embargo came from the United States, and reflected the same principle of policy which had appeared previously in the case of Mexico and the Dominican Republic, viz., the attempt to discourage and, if possible, prevent revolutionary disturbances in countries where the United States had vital interests by means of shutting off the outside sources of arms and ammunition.²

Intermittent civil war had been going on in China since the revolution of 1911, and had been fed in large measure by the supplies of arms and ammunition obtained from foreign countries. It was obvious, under such circumstances, that a unilateral embargo by the United States, such as had been applied with respect to Mexico and the Dominican Republic, would be totally ineffective in exerting any influence on the course of the revolution in China. There were too many other sources of supply in other countries which would at once have made up

¹ A number of countries had prohibited the export of arms to China in 1900 at the time of the Boxer Rebellion, but there seems to have been no organized international embargo. A few treaties were also in existence, under which the various powers had agreed to regulate the *importation* of arms and ammunition into their respective colonial territories in Africa and into Ethiopia: The Brussels Act of July 2, 1890; the Anglo-French-Italian Agreement of December 13, 1906, which contained provisions regarding the import of arms into Ethiopia; the General Act of the Algeiras Conference of December 31, 1906, chapter 2 of which contained provisions regarding the import of arms into Morocco; and the Brussels Protocol of July 22, 1908, regarding the import of arms into Western Equatorial Africa. No general treaty or international agreement providing for an embargo on the *export* of arms was apparently in existence prior to May 5, 1919, when the agreement regarding China was announced. A few bilateral treaties, however, had been concluded by states participating in the Armed Neutrality of 1780 which forbade their respective nationals to supply or carry arms and contraband to any of the states which were then belligerents. (See *supra*, p. 7, note 1.)

² While China did not lie within the area vital to the immediate defense of the United States and the Panama Canal as did the nearby countries of Latin America, it nevertheless occupied a special position in its relations to the United States and the other principal powers by reason of the so-called "unequal treaties" which limited China's sovereignty and granted extraterritoriality and other special concessions to these powers.

for any shortages which an American embargo might have caused to the various contending factions in China. International action was clearly necessary if such supplies were to be effectively cut off, and it was to this end that the United States directed its efforts in the early months of 1919.

Already on October 8, 1918, the rôle played by foreign war materials in the prolongation of civil strife in China had led the American Legation at Peking to suggest that the Department of State might find it inadvisable as a matter of policy to sanction the continued sale of arms and ammunition to the Chinese Government when it appeared that such materials might be used to prolong the disturbances then going on in China.¹ To this, the Department replied on December 6, 1918, authorizing the legation in its discretion to discuss with the other diplomatic missions at Peking the question of restricting the supplies of arms and ammunition sent to China.² The need for an international embargo was thereby recognized as the fundamental starting point.

On the basis of these instructions, the American Minister at Peking (Reinsch) proceeded in the early part of 1919 to discuss with the other members of the diplomatic corps the possibility of adopting measures to prohibit the importation of arms into China. The Japanese Government, although in sympathy with the proposal, at first felt unable to participate in it because of certain contracts which a Japanese firm had with the Chinese Government to supply the latter with arms and ammunition in monthly installments until April, 1919, but after this date, it expressed its willingness to adhere to an embargo agreement.³ A draft declaration was accordingly drawn up in April and, on May 5, 1919, the dean of the diplomatic corps was able to present the following announcement to the Chinese Government:

The Governments of Great Britain, Spain, Portugal, the United States, Russia,⁴ Brazil, France and Japan have agreed effectively to restrain their subjects and citizens from exporting to or importing into China arms and munitions of war and material destined exclusively for their manufacture until the establishment of a government whose authority is recognized throughout the whole country and also to prohibit during the above period the delivery of arms and munitions for which contracts have been already made but not executed.⁵

The prohibition was to apply to all of China, including the regions under the control of the Peking Government as well as those under the

¹ MacMurray, American Chargé, to Secretary of State, October 8, 1918. Department of State, MSS. 693.119/254. ² *Foreign Relations*, 1919, Vol. 1, p. 667.

³ Reinsch to Secretary of State, January 10, 1919. *Foreign Relations*, 1919, Vol. 1, pp. 291-3. Also Reinsch to Secretary of State, April 5, 1919, *Ibid.*, p. 667. See also Paul S. Reinsch, *An American Diplomat in China* (New York, 1922), pp. 341-2, 344-5.

⁴ Although Russia was mentioned in the agreement of May 5, 1919, she apparently never gave effect to it, and later in the 1920's definitely refused to adhere to it. Cf. *New York Times*, March 27, 1928, p. 7. ⁵ *Foreign Relations*, 1919, Vol. 1, p. 670.

control of the several contending factions. The Netherlands, Denmark and Belgium subsequently adhered to the agreement,¹ and the Italian Government did likewise, but with a reservation in favor of war materials already contracted for.² This at once created a serious gap in the embargo arrangement, and the United States, Great Britain and other powers tried in vain to persuade the Italian Government to withdraw its reservation.³ Not until April, 1922, however, did the latter abandon its position and agree that no further deliveries of arms to China would be made even under contracts concluded prior to May, 1919.⁴

The United States was able to give effect to the embargo by virtue of its wartime regulations which were still in effect and which prohibited the export of all arms, munitions of war and other war material except under license from the War Trade Board.⁵ Already on April 26, 1919, the American Minister at Peking had informed the diplomatic body there that the United States would not thenceforth issue export licenses for arms and ammunition destined to China.⁶ For ten years thereafter the United States applied the embargo impartially with respect to all shipments of arms and munitions of war to China, and declined to modify it even at the request of the Chinese Government.⁷ Not until April, 1929, when the agreement of May 5, 1919, was terminated, were arms exports from the United States to the Chinese Central Government permitted.⁸ Because there was no discrimination between the various factions in China during this ten-year period as there had been with respect to Mexico, the embargo against China was not nearly so politically complicated as the one against Mexico.

It was fortunate that the wartime trade regulations were still in

¹ *Conference on the Limitation of Armament, Washington, November 12, 1921-February 6, 1922* (Washington, 1922), p. 1422.

² *Foreign Relations, 1919, Vol. I, p. 670.*

³ *Ibid.*, pp. 671, 673-4. Cf. also the discussions on this point at the Washington Disarmament Conference in 1922. *Conference on the Limitation of Armament*, above cited, pp. 1420, 1476, 1482-8.

⁴ *Foreign Relations, 1922, Vol. I, p. 728.*

⁵ See *supra*, p. 32.

⁶ *Foreign Relations, 1919, Vol. I, p. 669.* The United States did not consider small shipments of arms for sporting purposes or self-defense as being included in the embargo. *Ibid.*, p. 668.

⁷ July 3, 1919. *Foreign Relations, 1919, Vol. I, p. 672.* The Chinese Government had requested that the embargo be raised in order to enable it to obtain arms with which to suppress piracy.

⁸ The United States seems to have maintained formal *de jure* relations with the Peking Government until November, 1924, and *de facto* relations with the Peking authorities from December, 1924, until April, 1926. From April, 1926, to March, 1928, no *de facto* relations existed with any régime in China, although the American Legation at Peking, as occasion arose, had dealings with the various régimes there as well as with certain authorities in other parts of China. The Chinese Minister to the United States, Dr. Sze, remained here from 1921 to 1928. On March 30, 1928, *de facto* recognition was extended to the Nationalist Government at Nanking, and on July 25, 1928, *de jure* relations were established with the Nanking Government by the conclusion of a commercial treaty.

effect in the spring of 1919, because it is doubtful otherwise whether any legal basis for an embargo on arms shipments to China could have been found. As it was, this was an unusual case in which the wartime regulations were being used to serve a peacetime purpose quite different from the military purposes for which they had been originally adopted. When the wartime export regulations were repealed two years later,¹ and no other legislation authorizing an embargo on arms shipments to China had in the meantime been enacted, the United States found itself in an embarrassing predicament, being then legally unable to enforce the embargo agreement which it had initiated in the beginning. The only legislative authority concerning the regulation of arms exports, after the repeal of the wartime regulations, was the joint resolution of March 14, 1912, which was limited to American countries. Being without legal power to enforce the embargo with respect to China after March 3, 1921, and being at the same time obligated under the Peking declaration of May 5, 1919, to prohibit the export of arms and munitions of war to China, the Department of State was compelled to rely on informal methods to discourage such exports.

The Department enjoyed an advantage in this respect because the embargo had already been in effect for almost two years and American manufacturers were apparently not aware that its legal foundation had disappeared. The Department, for its part, was careful not to let it be specifically known that the legal basis of the embargo had ceased to exist. A good example of how the Department sought to discourage such arms exports by avoiding any definite commitment on the subject may be seen in the reply, dated August 11, 1921, which it gave to the Du Pont Company. The latter had inquired on June 17, 1921, as to whether it would be permitted to ship a quantity of rifle powder to the recognized Chinese Government if the sale could be made. Secretary of State Hughes wrote:

The Department regrets the delay in replying to your two letters, and can only say at this time that the matter concerning which you inquire has been under exhaustive examination. The Department is not in a position positively to give a reply to your inquiries at this time because of certain phases of the question which have a bearing on the relations between this and other Governments. It will be necessary, therefore, for the Department to defer action on your request until certain information which it is now seeking has been obtained.²

The Department of State actually had no power to prohibit such shipments at that time, but by means of vague and non-committal state-

¹ March 3, 1921. 41 Stat. 1359. See *supra*, p. 32.

² United States Senate, Special Committee on Investigation of the Munitions Industry, *Report* (Senate Report No. 944, 7 pts. 74th Cong. 2nd sess.) Pt. 3, p. 123. Hereinafter cited as Senate Munitions Committee, *Report*.

ments like the above, it endeavored to discourage arms exports to China and thereby fulfill its obligation under the 1919 agreement. In the meantime, it was endeavoring to obtain legislation from Congress which would enable it to give full legal effect to this obligation.

The Joint Resolution of 1922

The Department of State had realized from 1919 onwards that the wartime export regulations would be repealed sometime, and that it would thereafter have no legal basis upon which to continue giving effect to the Chinese embargo agreement. It had accordingly written to Senator Henry Cabot Lodge, Chairman of the Senate Foreign Relations Committee as early as December 31, 1919, requesting that the joint resolution of March 14, 1912, be amended so as to enable the government to continue cooperating in the embargo policy with respect to China in case the wartime powers should be repealed.¹ No such action, however, was taken by Congress, and hence following the repeal of the wartime powers Secretary of State Hughes on March 14, 1921, called the attention of Senator Lodge to the fact that the United States Government had been deprived of its legal authority to regulate arms exports to China. He explained that the policy behind such arms export control was identical to that which the United States had adopted in the past in connection with civil disturbances in Latin American countries, and added that the Department of State did not believe that conditions in China warranted any change in this policy. He therefore renewed the request which had been made in December, 1919, that the joint resolution of 1912 be appropriately modified so as to enable the government to continue its adherence to the embargo agreement of May 5, 1919.²

Senator Lodge replied on March 15 that upon the reconvening of Congress in special session (April, 1921), he would lay the request of Secretary Hughes before the Senate Foreign Relations Committee and ask for action on it.³ The question was not acted upon that spring, however, it being reported that the members of the committee did not favor an embargo on arms exports to China or to any other country at that time.⁴ The Department of State was nevertheless anxious to secure legislation on the subject lest American munitions manufacturers should take advantage of the repeal of the wartime export regu-

¹ Cited in letter of Secretary Hughes to Senator Lodge, March 14, 1921. *Foreign Relations*, 1921, Vol. 1, pp. 551-2.

² Hughes to Lodge, March 14, 1921. Cited in preceding note.

³ Cited in letter from Hughes to Lodge, August 12, 1921. *Foreign Relations*, 1921, Vol. 1, pp. 559-60.

⁴ Cf. Lodge's opposition to the resolution of March 14, 1912, as indicated by his speech of January 6, 1915. See *supra*, p. 101.

lations and make shipments to China, thereby making possible a charge of bad faith against the United States for not observing the 1919 agreement.

Consequently, Secretary Hughes again wrote to Senator Lodge on August 12, 1921, pointing out that in the absence of any legal authority, the Department of State was finding it difficult to meet its commitment under the declaration of May 5, 1919, and explaining that if the Senate Committee on Foreign Relations should not give favorable consideration to the proposal set forth in Secretary Hughes' letter of March 14, 1921, the Department would have to take appropriate steps to relieve the United States Government from its obligations under the 1919 agreement.¹

This time, the Senate Foreign Relations Committee responded favorably. A resolution which had been introduced on October 14, 1921, by Senator Lodge, amending the joint resolution of March 14, 1912, by extending it to countries in which the United States exercised extraterritorial jurisdiction, was reported favorably by the committee on October 15, and adopted by the Senate on November 14, 1921, without debate.²

In the House, the Committee on Interstate and Foreign Commerce, to which it was referred, accepted the Lodge resolution, but added a provision repealing the joint resolutions of April 22, 1898, and March 14, 1912. This did not change the substance of the Lodge resolution, but only meant that the provisions of the 1912 resolution as amended would be enacted as a new and independent law, rather than as an amendment to the two previous resolutions. In this form, it passed the House on January 16, 1922, with practically no debate.³ The Senate concurred in the House amendments on January 18,⁴ and the President on January 31, 1922 signed the enactment. The text of the first two sections is as follows:

That whenever the President finds that in any American country, or in any country in which the United States exercises extraterritorial jurisdiction,⁵ conditions of domestic violence exist, which are or may be promoted by the use of arms or munitions of war procured from the United States, and makes proclamation thereof, it shall be unlawful to export, except under such limitations and

¹ *Foreign Relations, 1921*, Vol. 1, pp. 559-60.

² *Congressional Record*, Vol. 61, pp. 6304, 6355, 7647.

³ *Ibid.*, Vol. 62, pp. 1085, 1230.

⁴ *Ibid.*, p. 1317.

⁵ This was the clause inserted in order to make possible an embargo with respect to China. The only other countries and territories in which the United States exercised extraterritorial jurisdiction in 1922 seem to have been Morocco, Egypt and Ethiopia. The suspension of extraterritorial rights in certain parts of the former Ottoman Empire was in the process of negotiation at that time, and the rights have since been suspended in those areas. The rights were abrogated with respect to Ethiopia and Egypt in 1936 and 1937 respectively, and negotiations were in process in 1939 for their relinquishment in Morocco.

exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.

Sec. 2. Whoever exports any arms or munitions of war in violation of section 1 shall, on conviction, be punished by fine not exceeding \$10,000, or by imprisonment not exceeding two years, or both.¹

The United States was now in a legal position to regulate arms exports to China, but its previous informal efforts to discourage such shipments had been apparently quite effective for no proclamation specifically prohibiting these shipments was actually issued under the new joint resolution until March 4, 1922. The proclamation of that date made the export of arms and munitions of war to China unlawful, and authorized the Secretary of State to prescribe exceptions and limitations to the embargo.²

During the following seven years that the embargo continued in effect, the Department of State exercised all possible diligence to prevent the export of arms and war material to China for military purposes.³ An indication of its diligence may be seen in the fact that the American armaments manufacturers repeatedly sought from 1920 to 1929 to persuade the Department to change its attitude. Their argument was based for the most part on the evidence that the embargo was operating to the almost exclusive disadvantage of the American and British arms exporters, and was merely diverting Chinese business to the exporters of other important arms-producing countries which were either not participating in the embargo, or else were not strictly enforcing it upon their nationals.⁴

Efforts to Evade the Embargo—Smuggling and indirect Shipment

Despite the strict attitude which the Department of State maintained with respect to arms exports to China, there were frequent attempts at smuggling, particularly from the Pacific Coast states, and the American customs officers were kept busy trying to detect and prevent such activities. At San Francisco, for example, the problem of preventing the smuggling of arms through secret channels was complicated by the presence in the city of a large Chinese colony, the majority of whom were Cantonese who naturally had a direct or indirect interest in sending arms to their compatriots in China.

¹ 42 Stat. 361.

² *Ibid.*, 2264.

³ As a further indication of its policy, the United States in 1922 secured an agreement from Great Britain, France, Italy and Japan that the construction of naval vessels, arsenals and dockyards for the Chinese Government or the giving of technical naval assistance would not be undertaken pending the restoration of a unified government in China. *Foreign Relations, 1922*, Vol. 1, pp. 747-55; *ibid.*, 1923, Vol. 1, pp. 617-19.

⁴ For a summary of the attitude of certain American munitions manufacturers towards the Chinese arms embargo, see Senate Munitions Committee, *Report*, Pt. 3, pp. 122-30.

False export labels and other ingenious methods were employed by unscrupulous persons for the purpose of evading the embargo, even burial coffins being used apparently on one occasion to smuggle arms out of the United States and into China. Such practices as these necessarily led the customs authorities on the Pacific Coast to intensify their supervision and examination of goods being loaded on ships bound for the Orient, and these intensified efforts seem to have succeeded in keeping smuggling down to a minimum.

Smuggling is generally carried on, of course, by private individuals or groups of individuals, and rarely, if ever, is directly engaged in by reputable firms, which can scarcely afford to be found guilty of any such evasion of the federal laws. Nevertheless, there was a perfectly legal method of evading the Chinese arms embargo, and certain American firms were apparently not disinclined to utilize it when occasion arose. This was the method of indirect shipment.¹ In the summer of 1924, for example, some twenty tons of TNT, manufactured by the Du Pont Company, were sold by the China and Japan Trading Company of New York to a Tokyo firm for delivery at Kobe, Japan. The powder was duly delivered at Kobe, but was subsequently transshipped and delivered at Antung, China, in October, 1924. Although it was described at Antung as being intended for commercial purposes, it apparently found its way ultimately to the arsenal of Chang Tso-Lin at Mukden.²

It is not definitely established whether the Du Pont Company and the China and Japan Trading Company were willing accomplices in this transshipment or whether the entire responsibility lay with the Japanese firm. The China and Japan Trading Company insisted that its responsibility ceased when the cargo was delivered in Kobe. The Du Pont Company sold another consignment of TNT to the China and Japan Trading Company a few months later, but after receiving a letter from its China representative, dated May 28, 1925, to the effect that the first shipment had reached the Mukden arsenal, it had no further dealings with the China and Japan Trading Company.³

It was apparently in connection with this subsequent shipment that the Du Pont Company arranged to ship the material in double containers, the outer one properly marked "explosives" in accordance with the regulations of the Interstate Commerce Commission, and the

¹ The joint resolution of January 31, 1922, prohibited only the direct export of arms and munitions of war, and contained no provisions regarding the export of such materials to third countries from which they might later be transshipped to a prohibited destination.

² United States Senate, Special Committee on Investigation of the Munitions Industry, *Hearings* (September, 1934 to February, 1936, 39 parts), Pt. 10, Exhibit 875, pp. 2372-3. Hereinafter cited as Senate Munitions Committee, *Hearings*.

³ Senate Munitions Committee, *Hearings*, Pt. 10, pp. 2296-7.

inner container prepared suitably for the transportation of TNT and entirely independent of the outer container which could be removed after the shipment had left the United States. The China and Japan Trading Company had requested that some way be devised for shipping the material without marking it "explosives," but the Du Pont Company had replied that it would be impossible to do this in the United States without violating the Interstate Commerce regulations. Hence the arrangement of the double containers was devised. In carrying out this rather unusual procedure, the Du Pont Company was apparently willing to accept the explanations given by the China and Japan Trading Company to the effect that the explosives were destined for Korea, and that it was feared they would be seized by bandits if they were clearly labeled "explosives."¹

The attitude of the Du Pont Company was revealed in a letter of February 14, 1924, to a German firm which had asked for a quotation on the price of smokeless powder to be shipped to Manchuria. The Du Pont reply said in part:

We note that your inquiry is for materials to be exported to Manchuria. We presume that you are aware of the fact that we are unable to export munitions from America to China, owing to the position taken by our State Department on such exports. However, we are enabled to export smokeless powder to any of the "neutral" European countries. . . .²

No such shipment, however, was ever made.³

Another case of willingness on the part of American manufacturers to export arms for indirect shipment to China occurred in December, 1923, when Colt's Patent Fire Arms Manufacturing Company quoted prices to the Belgian firm, *Fabrique Nationale d'Armes de Guerre*, for 1,000 heavy rifles for China, to be shipped by way of Antwerp.⁴ The Colt company indicated, however, that in view of the American restrictions on arms shipments to China, it could not even guarantee delivery of the rifles at Antwerp, and that its responsibility would have to cease upon delivery of the goods at the dock in New York.⁵ Again, in April, 1928, the Colt company quoted prices to a German firm on automatic pistols, but pointed out that since arms could not be shipped from the United States to China except under special permits from the Department of State, it would probably have to be arranged to ship them by way of Hamburg or some other Continental port.⁶

The evidence presented before the Senate Munitions Investigation Committee does not reveal whether sales or shipments of arms were actually made in accordance with any of these quotations. It is cer-

¹ Senate Munitions Committee, *Hearings*, Pt. 10, pp. 2295-6. ² *Ibid.*, p. 2286.

³ *Ibid.*, p. 2287. ⁴ *Ibid.*, Pt. 37, p. 12535 (Exhibits 4673-5).

⁵ *Ibid.*, pp. 12537-8 (Exhibit 4680). ⁶ *Ibid.*, p. 12536 (Exhibit 4677).

tain, nevertheless, that a method was contemplated for evading the spirit of the embargo while at the same time complying with the letter of the law. In the absence of a general licensing system applicable to arms exports to all destinations, the Department of State was not in a position to examine proposed shipments to third countries with a view to detecting probable cases of transshipment, such as the TNT shipment to Kobe mentioned above. The customs officers were the only ones who had any chance at all of discovering such cases, and their general procedure was to hold up only those shipments which were consigned directly to China, while allowing goods consigned to other countries to leave the United States freely. They were not expected to inquire whether arms shipped to third countries were destined ultimately to China,¹ and even if they were so disposed, the practical difficulties involved in making such extensive examinations would have necessitated an increase in personnel and would have delayed shipments. Under these circumstances, it was possible for indirect shipment readily to take place and for the embargo to be evaded within the letter of the law, despite all the precautions which the State Department might take. The only control which the government could exercise to prevent this, without intensifying its normal customs inspection, was the informal control resulting from the fact that the armaments manufacturers depended on the government for a large percentage of their business and therefore could not afford to disregard the government's wishes even though they had a legal right to do so. This control apparently had some success. Since 1935, these handicaps in the administration of embargoes have been greatly reduced by the establishment of a general licensing system for all arms exports.

Despite the above-mentioned opportunities for evasion, it should be emphasized that, owing to the strict control which the State Department exercised over direct arms exports to China, and the measure of informal control which it exercised over indirect shipments, together with the comprehensive efforts of the customs officials on the Pacific Coast to prevent smuggling, the record of American munitions manufacturers with respect to the Chinese embargo was considerably better than that of firms in most other countries except Great Britain.²

Difficulties in defining "Arms and Munitions of War"

The embargo agreement of 1919 applied to "arms and munitions of war and material destined exclusively for their manufacture," while the presidential proclamation of March 4, 1922, applied to "arms and

¹ Until the latter part of 1930, no formal measures were adopted by the United States to prevent even the indirect shipment of arms *via* Hong Kong to China.

² Senate Munitions Committee, *Report*, Pt. 3, pp. 125-9.

munitions of war" only. In giving effect to the embargo, the Department of State followed a broad interpretation of the term "arms and munitions of war", similar to the definition used in connection with the Mexican embargo.¹

From the outset, it interpreted the 1919 agreement as covering raw material for the manufacture of arms and ammunition, as well as the machinery used in their manufacture.² The Department actually had no authority to prohibit the export of machinery to China, however, and the most it could do was to discourage such shipments.³ The export regulations issued by the War Trade Board Section of the Department of State on July 14, 1919, prohibited only the shipment of arms, ammunition and explosives to China.⁴ Machinery could therefore be legally exported despite the Department's policy of discouraging such shipments.

The Department of State also considered at first that all types of aircraft, both military and commercial, should be prohibited, and it consequently made representations to Great Britain when the latter allowed Vickers, Ltd., in October, 1919, to conclude a contract with the Chinese Ministry of War for the supply of one hundred commercial planes.⁵ The British Government justified its action on the ground that the planes were not military aircraft and were not armed.⁶

In view of the fact that the American interpretation regarding the inclusion of commercial aircraft in the embargo was not generally accepted by other powers and that the latter were permitting their nationals to supply such aircraft to China, the Department of State on September 17, 1920, announced that it would not thenceforth object to American citizens entering into contracts for the shipment to China of airplanes designed strictly for commercial use.⁷ The question of whether or not commercial aircraft should be included in the embargo continued to be one of the chief difficulties in the application of the 1919 embargo agreement by the several powers, and remained so until the termination of the agreement in 1929. This will be discussed more fully below.

With regard to the efforts to include in the embargo machinery for the manufacture of arms and ammunition, difficulties soon arose out

¹ List of May 1, 1920. *Foreign Relations*, 1920, Vol. 3, p. 242. This list included component parts of arms and ammunition, and machinery specially designed for making arms and ammunition, as well as explosive ingredients. See *supra*, p. 91-2.

² *Foreign Relations*, 1919, Vol. 1, p. 672.

³ Machinery had been removed in December, 1918, from the list of materials subject to export control under the wartime regulations. *Report of the War Trade Board*, p. 399.

⁴ Department of State, War Trade Board Section, Special Export License No. RAC-77, W.T.B.R. 803, July 14, 1919.

⁵ *Foreign Relations*, 1919, Vol. 1, pp. 672-3.

⁶ *Ibid.*, p. 673.

⁷ *Ibid.*, 1920, Vol. 1, pp. 748-9.

of the fact that such machinery was often equally suitable for commercial and for military purposes, and that there was no way of ensuring that equipment such as lathes, hydraulic presses, or electrical apparatus, exported ostensibly for commercial purposes, would not eventually be used to equip an arsenal. This was exactly what happened in the case of a large shipment of machinery from the United States to Canton in the latter part of 1920. The shipment had been cleared from the United States labeled machine tools, pipes and fittings, generator parts and equipment, and boiler parts. It was consigned to an engine and shipbuilding company at Canton, and was a legal shipment under the export regulations of the War Trade Board Section of the State Department.¹ Before it arrived at Canton, however, it was taken over on the high seas and transferred from the original consignees to the Davis Company, Ltd., a Hong Kong firm whose directors were American citizens. In November, 1920, the Davis Company proceeded to conclude a contract to sell the machinery to the Canton authorities for the equipment of an arsenal, and this led to protests to the United States from the Chinese Government at Peking, as well as from the Japanese Government.² About one-quarter of the machinery was delivered to the Canton authorities, but the rest was held in storage pending the completion by the Canton authorities of the necessary payments. The disposal of this undelivered portion of the shipment gave rise to many difficulties and embarrassments to the United States during the course of the next three years. It was finally handed over to the Canton authorities in the summer of 1924, after an effort to sell it to Chang Tso-Lin at Mukden had been thwarted by the Canton Government. It should be borne in mind that this was a case of a shipment which had left the United States legally, which was suitable for and apparently intended for commercial purposes, yet which proved subsequently to be designed for military purposes, and which therefore led other powers to protest against apparent bad faith on the part of the United States.

The question of including commercial aircraft in the embargo was one of the chief difficulties encountered, owing to the divergencies in views of the several powers on the matter. On September 17, 1920, it will be recalled that the United States had decided to allow its citizens to sell commercial planes to China in view of the fact that other powers were permitting their nationals to do likewise. On May 19, 1922, however, the Department of State reverted to its original position of considering all airplanes and their equipment as "munitions of war" when consigned to China. It accordingly informed the Treasury

¹ *Foreign Relations*, 1921, Vol. 1, pp. 544-5. See also *supra*, p. 132, note 4.

² *Ibid.*, Vol. 1, pp. 539-41, 556-7, 558-9.

Department that under the proclamation of March 4, 1922, no shipments of aeronautical material or equipment should be allowed to leave American ports for China unless accompanied by State Department permits.¹ The British Government had also modified its position regarding commercial aircraft and had been discouraging the sale of such planes to China since 1921. Its reason for so doing, however, had not been based on the belief that such sales constituted a violation of the arms embargo, but rather upon the ground that purchases of commercial aircraft seemed to be a useless and profligate expenditure of money by the Chinese Government and would, in the case of purchases on credit, seem to be a violation of the principles of the Consortium Agreement of 1919, which had sought to regulate the conditions under which the several powers might extend financial assistance to China.² The United States and Great Britain therefore, although for somewhat different reasons, found themselves in accord on the principle of restricting commercial aircraft exports to China.

The convictions of State Department officials on the subject were strengthened by an incident which occurred subsequently in 1922 and which increased the fears that the only uses to which any planes in China might then be put were military in character. This involved an apparent attempt to deliver six Curtiss airplanes to the Chinese military authorities after they had been permitted to leave the United States for the purpose of developing a commercial air route in the neighborhood of Foochow.

Although the State Department on May 19, 1922, had decided to require licenses for commercial aircraft as well as military aircraft exports to China, it was apparently still disposed to grant such licenses if indisputable proof were submitted showing that the planes were intended solely for legitimate commercial purposes, and that they were of such a character as to make impossible their conversion to military use. In June, 1922, the Chinese representative of the Curtiss Aeroplane and Motor Corporation, James Slevin, had concluded a contract with a Chinese firm for the sale of six Curtiss planes for the purpose of starting a commercial air route in Fukien Province, China. The document was executed before the American Consul at Foochow and contained a guarantee that the planes would be used only for legitimate commercial purposes.³ In addition to this, the planes in question were not of a military type and were too slow for ordinary bombing purposes. The State Department had evidently been satisfied as to

¹ *Foreign Relations*, 1922, Vol. 1, pp. 728-9.

² *Ibid.*, pp. 545-8. For terms of the Consortium Agreement, see *ibid.*, 1920, Vol. 1, pp. 576-80.

³ The facts of the case are found in *United States v. James Slevin* (United States Court for China, February 13, 1923), 2 *Extraterritorial Cases* 460.

the commercial character of the proposed transaction, for it had subsequently issued a license for the export of the planes to Foochow.

Doubts as to the wisdom of permitting such shipments later developed when the planes arrived in China and an attempt was made to deliver them at Hankow instead of at Foochow as had been originally specified. At Hankow, the planes were seized by the American naval commanding officer on the supposition that they might be used for military purposes, it having been reported that they were destined for the Chinese Army under General Wu Pei Fu. Slevin and other representatives of the Chinese purchasing company denied any intention to use the planes for military purposes or any connection with the Chinese military leaders. They explained that the reason for sending the consignment to Hankow instead of Foochow was the outbreak of civil war in Fukien Province (Foochow) which had rendered it impracticable to undertake commercial aviation there. It was further stated that one of the purchasers was interested in business at Hankow, and that therefore it had been decided to initiate the enterprise near that point rather than in Fukien Province.¹

Slevin was arrested and tried in the United States Court for China on the charge of having aided in the shipment of munitions of war from the United States to China in violation of the joint resolution of January 31, 1922. He was acquitted, however, on February 13, 1923, on the ground that insufficient evidence had been submitted to prove that the planes were destined for military use or that Slevin had intended to violate the embargo resolution.² While it had not been proved that the planes were destined for other than commercial purposes, the case did serve to emphasize the possibility of their falling into the hands of the military authorities and the difficulty if not improbability of successfully establishing commercial aviation in a country torn by civil war. While commercial aircraft could not ordinarily be used effectively for military purposes against a well-trained and equipped army, they could none the less be used with some effect in a country like China which was relatively unprepared and untrained in military technique. Under these circumstances, and with several factions in different parts of China fighting each other, there was considerable reason to doubt the wisdom of permitting commercial aircraft to be shipped there, even though attended by guarantees that they would not be used for military purposes. At any rate the Department of State, for some time after 1922, followed the policy of prohibiting the export of commercial as well as military aircraft to China.³

¹ ² *Extraterritorial Cases* 461, 462.

³ *Ibid.*, 464, 465.

³ *Foreign Relations*, 1924, Vol. I, p. 541.

International Policies regarding the Embargo, 1922-1929

During 1922, 1923 and 1924, the Department of State, in cooperation with the British Government, made several efforts to obtain a more general acceptance of the embargo agreement and a more effective observance thereof on the part of the various participating countries.¹ The diplomatic corps at Peking had agreed on October 3, 1922, to recommend to their respective governments a declaration to replace the embargo agreement of 1919, the pertinent parts of which were as follows:

(1) The United States of America, Belgium, the British Empire, France, Italy, Japan, the Netherlands and Portugal affirm their intention to refrain from exporting to China arms or munitions of war, whether complete or in parts, and to prohibit such exportation from their territories or territories under their control, until the establishment of a Government whose authority is recognized throughout the whole of China.

(2) Each of the above powers will forthwith take such additional steps as may be necessary to make the above restrictions immediately binding.

(3) The scope of this resolution includes all concessions and settlements in China.²

The representatives had also agreed upon the following interpretation to be added to this declaration:

This is understood to include aircraft other than commercial aircraft and machinery and materials destined exclusively for the manufacture of arms or the equipment of arsenals.³

The exception in favor of commercial aircraft had been made at the insistence of the French Minister, the American, British and Japanese Ministers taking the contrary view.⁴ The United States approved the declaration, together with the interpretative note, and indicated that it would formally adhere thereto provided substantial unanimity could be had among the several governments represented at Peking.⁵

It will be observed that the declaration pledged the several powers to prevent the *exportation only* of arms and munitions to China, whereas the agreement of 1919 had obliged them to restrain their nationals from importing into China, as well as exporting thereto, arms, munitions of war, and material destined exclusively for the manufacture of arms or munitions of war. Insofar as the United States was concerned, this

¹ *Foreign Relations*, 1922, Vol. I, pp. 725-45; *ibid.*, 1923, Vol. I, pp. 606-16; and *ibid.*, 1924, Vol. I, pp. 530-43.

² *Ibid.*, 1922, Vol. I, pp. 740, 742-3. This declaration had been previously approved at the Washington Disarmament Conference in January and February, 1922, but had had to be withdrawn owing to the reservation of the Italian delegation in favor of existing contracts. (*Conference on the Limitation of Armament*, Washington, 1922, pp. 1474-8, 1480-92.) The Italian Government abandoned its reservation in April, 1922, and the United States thereafter sought to secure approval of the other powers of the Washington declaration. This led to the discussions at Peking in the fall of 1922. *Foreign Relations*, 1922, Vol. I, pp. 729 ff.

³ *Ibid.*, p. 743.

⁴ *Ibid.*, p. 744.

⁵ *Ibid.*, 1923, Vol. I, p. 614.

modification in the 1919 agreement brought the latter into closer conformity with American legislation on the subject. The United States never had had legal authority to restrain American citizens from importing arms into China from other countries than the United States, and so it had been unable to comply with this part of the 1919 agreement. It could only seek to discourage its citizens in China from undertaking such activity, which it did as a matter of policy. It had been chiefly because of this inability of the United States to prevent its citizens from importing arms into China that the modification of the original embargo declaration was made in 1922 so as to confine the prohibition to exports.¹

The efforts of the United States and Great Britain to secure a general acceptance of the formula of October 3, 1922, failed to disclose any substantial prospects of unanimity on the subject, and so they were relaxed late in 1924.² The United States nevertheless continued to apply the embargo and to improve its effectiveness, feeling that the prohibition had attained a measurable success and was of some positive value in diminishing the military resources of the various factions in China whose activities were the chief cause of the political disorder existing in that country.

Despite the position of the American and British Governments, the embargo agreement in the succeeding years seems to have become increasingly ineffective as a means of stopping the flow of war materials to China. The French Government, for example, openly permitted the shipment of aircraft to China, and, although military observers characterized them as being of a distinct military type, the French authorities maintained that since the planes possessed no actual armament or military apparatus, they were "commercial aircraft" and were therefore exempt from the embargo agreement. Arms, explosives and other war supplies were reported to have been sent from Italy, Germany, Denmark, Norway, Russia and Japan.³ The official figures of the Chinese Maritime Customs Service indicated that during 1926, arms and munitions of war valued at 330,220 pounds sterling had been imported into China through the treaty ports, and that during 1928, the amount had risen to 1,750,000 pounds sterling.⁴ This did not include consignments coming overland into China from Russia.

¹ *Conference on the Limitation of Armament*, p. 1422.

² Secretary of State Hughes to British Ambassador in Washington, December 24, 1924. *Foreign Relations*, 1924, Vol. 1, pp. 541-3.

³ Senate Munitions Committee, *Report*, Part 3, pp. 125-7. Captain I. V. Gillis, the Du Pont representative in China, was continually bemoaning the fact that the agents of other countries were able to do profitable business in China while he could not. In October, 1926, for example, he reported, "The embargo means absolutely nothing at all to the parties to it except to the British and ourselves." *Ibid.*, p. 126.

⁴ Great Britain, *Parliamentary Debates*, Commons, Vol. 219, cols. 1352-3; and Vol. 237, cols. 2217-18. These figures included arms imported for British and other for-

Discussions were held at Peking in February, 1928, among the representatives of the various signatories of the embargo agreement of 1919, with a view to seeking the adherence of non-signatory powers, notably Russia and Germany. It was evident by this time that the embargo had not prevented civil warfare in China and that in practice it had actually operated to the advantage of countries not participating in the agreement. The fact that the latter were free and willing to sell war materials to China made many of the signatory powers less disposed to enforce the embargo rigorously, all of which contributed to the general ineffectiveness of the prohibition. In view of the previous unsuccessful efforts of the United States and Great Britain to obtain a more general acceptance of the embargo, it seemed doubtful in 1928 whether any new attempts in this direction would be successful, or whether the 1919 agreement could be so strengthened as to render its continuance advisable. The representatives at Peking decided, nevertheless, to send an identical telegram on February 23, 1928, to the several powers reminding them of the importance of the arms embargo agreement, and expressing the conviction that those powers which had not yet taken any measures in this respect should be induced to do so as soon as possible.¹

Little success apparently attended this attempt to strengthen the embargo,² and a year later steps were taken looking towards its termination. The new Nationalist Government established at Nanking by Chiang Kai-Shek was now recognized by nearly all the foreign powers as the Government of China, and this served as the basis for the action. On April 26, 1929, the diplomatic body accredited to the Nanking Government presented a note to the Chinese Foreign Minister declaring that the various governments had reviewed the embargo agreement of May 5, 1919, in the light of the changed situation resulting from the establishment of the Nanking Government, and had concluded that there was no longer any reason for the continuance of the agreement. They would hence regard it as cancelled as from that date (April 26, 1929).³

It will be recalled that the 1919 agreement was to have lasted until the establishment of a government whose authority was recognized throughout all of China.⁴ It should be noted therefore that the Nanking Government was by no means recognized throughout all of

eign military and naval forces in China, as well as for such organizations as the Chinese Maritime Customs and the Shanghai Volunteer Corps (International Settlement).

¹ *New York Times*, March 11, 1928, Sec. II, pp. 1, 2.

² Germany adopted a law on March 31, 1928, prohibiting the export of arms to China (*Reichsgesetzblatt*, April 27, 1928, Pt. 1, No. 19), but Russia refused to adhere to the embargo agreement. *New York Times*, March 27, 1928, p. 7.

³ *London Times*, April 26, 1929, p. 16. *United States Daily*, May 2, 1929, pp. 1, 2.

⁴ See *supra*, p. 123.

China in the spring of 1929, despite the fact that a large number of foreign powers had recognized it as the Government of China. For that matter they had maintained diplomatic relations with the former Peking Government long after it had lost the support of various sections of the country. All indications point to the conclusion that the reason for lifting the embargo was not the "stability" of the situation in China, but rather the general ineffectiveness of the embargo agreement as a means of preventing arms and munitions of war from reaching that country.

The Policy since 1929

Although the international embargo agreement was terminated in April, 1929, the United States, Great Britain and several other powers continued to regulate their arms exports to China by requiring licenses for these exports and issuing them only for shipments destined for and approved by the Nanking Government. The purpose of this was to promote the stability of the recognized government and discourage the continuance of civil strife. Secretary of State Stimson announced on May 1, 1929, that arms exports from the United States to China would continue to be governed by the proclamation of March 4, 1922, and that they would be permitted only when requested by the Chinese Nationalist Government through its diplomatic representative in Washington, and when a license had been granted by the Department of State.¹ This policy has been followed to the present time, and corresponds to the policies which have been adhered to with respect to Honduras and Nicaragua since the middle of the 1920's, and with respect to Cuba since 1934.

On June 2, 1930, a new list of "arms and munitions of war", prepared by the Department of State in cooperation with officials of the War Department, was formally announced, comprising the articles for which export licenses would be required if shipped to China.² The new list was shorter than the one which had been previously followed, and contained only fourteen categories instead of the twenty formerly enumerated.³ The chief items deleted were commercial aircraft, chemicals used in the manufacture of explosives, poison gases and commercial wireless apparatus. The purpose in revising the list was to confine it as closely as possible to articles exclusively used for military activities, and to eliminate those which had a wide commercial use. At the same time that the new list was made public, the Secretary of State again explained the regulations regarding exports of arms and muni-

¹ *United States Daily*, May 2, 1929, pp. 1, 2.

² Department of State, *Press Releases*, June 7, 1930, pp. 273-4.

³ Cf. list of May 1, 1920, which had been followed previously in administering the embargo regarding China. See *supra*, pp. 91-2, and p. 132, note 1.

tions of war to China in order to make clear the position of the United States Government.

Under these regulations, export licenses were issued by the Department of State only when the American exporter had applied for a license and the Chinese Legation in Washington had notified the Department that the Chinese Government desired the shipment to be authorized. This procedure had the distinct advantage of centralizing in the Chinese Government the responsibility for the entrance of arms into China, and at the same time of relieving American officials of what might become the embarrassing question of deciding whether prospective arms shipments should be allowed to the various political subdivisions in China. In this way, the United States Government protected itself against the charge, which might otherwise have been made under some circumstances, that it was aiding one group against another and thereby interfering in China's internal politics. Moreover, the Department of State was also relieved of the necessity of dealing with American arms manufacturers and exporters since the latter had to present their cases first to the Chinese Legation.

The above procedure has continued in effect with one or two brief exceptions to the present time.¹ The new arms export regulations which were issued under the neutrality act of August 31, 1935, made no change in the procedure previously in effect respecting exports to China, except with regard to the list of materials requiring licenses.² The new list of "arms, ammunition and implements of war" deleted certain articles from the previous list which had been followed, but extended the licensing system to include all commercial aircraft and aircraft engines. The Department of State thereby increased its control over aircraft exports by requiring licenses for unarmed planes of commercial types as well as all planes of military types destined for China. It was now felt that all aircraft exports should be regulated, without distinction between commercial and military types. The policy of the government in this matter had fluctuated on several previous occasions, it will be remembered, but since 1935 it has consistently upheld the necessity for licensing all aircraft exports if any regulation of these exports is to be effective.

¹ After 1930 and 1931, respectively, licenses were required for the export of arms and munitions of war to Hong Kong and to the Portuguese colony of Macao on the presumption that such consignments were destined ultimately for China. In case this presumption was satisfactorily overcome by the exporter in the United States, the license requirement could be waived.

² Department of State, *International Traffic in Arms, Laws and Regulations Administered by the Secretary of State Governing the International Traffic in Arms, Ammunition and Implements of War* (1st ed., October 10, 1935).

Conclusions

The arms export restrictions with respect to China have been nowhere nearly so complicated politically as were those with respect to Mexico. This has been due in large part to the fact that in the case of China the restrictions have been administered almost exclusively with the objective of discouraging revolution, and have not been associated with other policies of supporting particular governments or groups which were friendly to American interests, and coercing those which were unfriendly to the American policy. In contrast to the Mexican case, the embargo with respect to China never seems to have been used as an instrument of pressure against the government of that country. Nor has it had occasion, like the Mexican embargo, to fluctuate with the rise and fall of friendly relations, because in the case of China, friendly relations with the United States have not been subjected in the last two decades to the disturbing interruptions which characterized American-Mexican relations.

Until 1929, the American embargo applied impartially with respect to all of China, its purpose being clearly one of trying to prevent the continuance of armed civil strife in that country. Since that time, the United States has sought to attain the same objective by strengthening the position of the Nationalist Government and enabling it better to control the import of war materials into China. It is possible to consider our action of 1929 in prohibiting all arms exports to China except those authorized by the Nationalist Government as being in the nature of interference in the internal affairs of that country, inasmuch as it represented an act of assistance to the Nationalist Government while the civil war was still in progress. Yet it seems fairly clear that the choice of this course of action in preference to the impartial embargo previously in effect was not for the purpose of deliberate interference in the course of the domestic affairs of China, but was due rather to the frank recognition of the general ineffectiveness of the international embargo agreement of 1919. Had the other principal arms exporting powers been willing to enforce effectively an impartial embargo with respect to China, the United States would in all probability have continued its impartial prohibition, as was contemplated by the 1919 agreement, until the establishment of a government recognized throughout the whole of China. But since other powers were allowing war material to be sent to China almost without restriction, it seemed impracticable for the United States and Great Britain alone to continue applying the prohibition. Yet rather than allow war material to be sent without any restriction whatsoever to China, which might perhaps only have intensified the civil strife, it was decided to permit these exports only when the newly recognized Nationalist Government had

requested them. This, it was hoped, would strengthen the position of the latter and enable it more effectively to extend its control over the remaining portions of China where civil strife was still in progress.

While this practice resulted, in a sense, in a measure of assistance and interference, it was adopted only after an impartial embargo had proved impossible on an international scale. It represented a somewhat different method of trying to achieve the same objective of terminating the civil strife in China. Its continuance as a permanent policy, now that the original conditions of domestic violence have diminished (in the face of war with Japan), seems to be sound. There is much merit in fact in the general practice of permitting arms exports only to recognized governments or to persons authorized by the latter to receive them.¹ Such a practice, if applied on an international scale, would make possible a more effective regulation of the armaments traffic by centralizing in the various governments the full responsibility for the importation of arms and preventing the shipment of such materials to unscrupulous dealers who may in turn be reshipping them to disturbed areas of the world, and thereby fostering conditions of conflict. In addition to this, such a policy, by keeping arms out of the hands of the opponents of a government, should, in theory at least, be an influence in the direction of a peaceful settlement of domestic differences. The arms restrictions with respect to China have been continued in effect for this latter purpose.

Although, as an instrument of policy, the embargo with respect to China does not stand out so conspicuously as do the embargoes with respect to the neighboring countries of Latin America, it nevertheless offers a valuable case study in the administration of such export restrictions. The most significant points to be observed in this connection seem to be the following:

First: In the application of any joint embargo against a particular country, it is necessary to have the cooperation of all powers which are in a position either to export arms to that country or to allow them to pass in transit thereto. Otherwise, the embargo will not be effective, and will only operate to divert business from the participating countries to those which are not participating.

Second: In the application of any arms embargo, it is essential that a well-defined list of prohibited materials be drawn up and announced. The need for this had already made itself evident in the case of the previous prohibitions with respect to the Dominican Republic and Mexico, but despite the desirability of such action, the State Department from 1919 to 1930 did not publicly announce any list of the arti-

¹ The Geneva Arms Traffic Convention of June 17, 1925, contained such a provision. See *infra*, p. 175.

cles which it considered to be covered by the embargo regarding China. It actually followed the same list of "arms and munitions of war" as it used in connection with the embargo against Mexico (list of May 1, 1920), with slight modifications, but it apparently never distributed copies of this to exporters who inquired what articles were prohibited. Not until June 2, 1930, did the Department publicly issue a list of articles which it considered subject to regulation.

Third: In addition to having a well-defined list of prohibited materials, it is essential, if the embargo is to be effective, that other countries apply the prohibition on the basis of similar lists. Some of the chief difficulties encountered in applying the embargo with respect to China resulted from the fact that the various powers interpreted differently the term, "arms and munitions of war". This was particularly true in connection with unarmed aircraft and machinery for the manufacture of arms and ammunition.

Fourth: The difficulties of the United States in regulating the export of commercial aircraft lead to the conclusion that an embargo will be more effective and more easily administered if licenses are required for both commercial and military aircraft. It is of course essential that other countries adopt the same interpretation in this respect. The possible use of commercial aircraft for military purposes in a country torn by warfare proved to be very great, and their continued export to China probably helped to prolong hostilities. Moreover, if licenses are required for both types of aircraft, the customs officers will not be obliged to decide whether all planes presented for export without license are of a commercial type. Inasmuch as airplanes are often un-assembled when exported, it could conceivably be very difficult to distinguish between commercial and military types.

Fifth: Finally, the problem of preventing indirect shipment is very difficult in the absence of a general licensing system for all arms exports such as was established in 1935. Prior to this, arms were allowed to leave the United States without license for countries other than China, and could be readily transshipped to the latter afterwards. The customs officers maintained that they could not be expected to inquire into the ultimate destination of every shipment of arms which left the country, and this attitude revealed the difficulty of detecting attempts at transshipment in the absence of some central bureau authorized to scrutinize all arms exports. After 1930, the State Department did require licenses for arms shipments to Hong Kong and Macao in order to prevent indirect consignments through these territories.

CHAPTER V

CUBA

Attention is now invited to another case in Latin America in which the export of arms and munitions of war from the United States was regulated for the purpose of supporting recognized governments, promoting political stability, and discouraging revolution. This time it was Cuba, a country which had already witnessed the fruits of intermittent intervention by the United States for nearly three decades.¹

Since 1900, the United States had taken various steps as occasion arose to preserve order and stability in Cuba, among them being the despatching of naval vessels to Cuban waters, the landing of marines, open support in other ways for the Cuban Government, and, on one occasion, the actual establishment of a provisional government under the direct supervision of the United States (1906-9). In February, 1917, the American Government had sold 10,000 arms and 5,000,000 rounds of ammunition to the Cuban Government when the latter was confronted with revolution.² But it was not until 1924 that the United States turned to the application of arms export restrictions to aid in carrying out its settled policy of maintaining order in the island republic. It should be borne in mind therefore that the use of arms export restrictions has been only one of the methods adopted to carry out its general Cuban policy, and a relatively inconspicuous one at that.

Revolutionary disturbances had broken out in Santa Clara Province, Cuba, in the latter part of April, 1924,³ but prior to that date reports had been reaching Washington, during March and April, to the effect that certain arms and munitions of war were being accumulated in Florida for possible export to those groups in Cuba which were opposed to the Government of President Zayas. In March, the situation did not appear serious enough to require the issuance of an embargo proclamation under the joint resolution of 1922, but after the outbreak of open hostilities matters were viewed differently.

Finally, in early May, 1924, the Cuban Government formally requested the United States to prohibit the export of arms and munitions of war to Cuba, unless consigned to the Cuban Government, pointing

¹ For concise summaries of American relations with Cuba since 1900, see Chester Lloyd Jones, *The Caribbean since 1900* (New York, 1936), Chap. iii; and Graham H. Stuart, *Latin America and the United States* (1938 ed.), Chap. viii.

² *New York Times*, February 14, 1917, p. 1.

³ *Ibid.*, April 30, 1924, p. 1. The revolution seems to have been based on discontent with the widespread graft and corruption in the Zayas Government. See Jones, *op. cit.*, pp. 57-62; Stuart, *op. cit.*, pp. 235-6.

out that the revolution could be quickly suppressed if it were not aided by war materials from the United States.¹ In view of this request, together with the reports concerning the deposits of arms, munitions and airplanes in Florida, President Coolidge on May 2, 1924, issued a proclamation under the joint resolution of January 31, 1922, prohibiting the export of arms and munitions of war to Cuba with the exception of:

- (a) such shipments as were approved by the United States Government for export to the recognized government of Cuba; and
- (b) such arms or munitions of war for industrial or commercial uses as might be permitted by the Secretary of State.²

The proclamation was similar to the one which had been issued four months earlier with respect to Mexico, both of them openly discriminating against the rebels.

Not only did the United States attempt to discourage the revolution in Cuba by prohibiting arms shipments to the insurrectionists and allowing them to the Cuban Government, but it went further as it had in the Mexican case and permitted the Cuban Government to purchase arms from the surplus stocks of the United States War Department.³ In their combined effect these two forms of material support played an important part in enabling the Cuban Government to suppress the revolution within three months.⁴

By midsummer, the revolution was completely over and the embargo no longer seemed necessary. It was accordingly revoked by a presidential proclamation of August 29, 1924, with the full approval of the Cuban Government.⁵ It should be noted that throughout the period of the prohibition, the United States acted in full cooperation with the Cuban Government, applying the measure originally at that government's request, permitting no shipments of which the Cuban authorities had not approved, and not revoking the prohibition until the Cuban authorities had agreed to the proposal.

No further restrictions on the export of arms to Cuba seem to have been formally applied until 1934, although it is believed that from 1931 onwards an informal surveillance of all arms shipments to Cuba was maintained by the United States customs officers, following the outbreak of new revolutionary activity in the island republic. Cuban conditions at this time were apparently not such as to require the United States of its own accord to place a formal embargo on arms

¹ *New York Times*, May 3, 1924, p. 1.

² 43 *Stat.* 1946-7.

³ *New York Times*, May 4, 1924, p. 7; May 11, p. 3. The Cuban Government had appealed to the United States Government on May 3 for permission to obtain such supplies. Cf. also the similar action in February, 1917.

⁴ Cf. Stuart, *op. cit.*, p. 236.

⁵ 43 *Stat.* 1965. *New York Times*, August 31, 1924, p. 11.

shipments, and since the Cuban Government does not seem to have requested such action, the United States confined itself to the informal measures mentioned above. This was entirely in keeping with the announced policy of the United States at that time of "no intervention till anarchy exists."¹

Civil disorders continued to disturb the country, however, abetted apparently by arms smuggled from the United States, and by June, 1934, the government at Washington decided it would be desirable to proclaim a formal embargo once again. Many bombings and acts of terrorism had been reported from Habana in the spring of 1934, and it appeared that these acts had been fostered by the smuggling of explosives and war materials from the United States to Cuba.² When the terrorist campaign culminated in mid-June in the attempt, by means of bombing, to assassinate President Mendieta, whose government had been recognized by the United States the previous January, the fear arose that he might possibly be overthrown if steps were not taken at once to prevent more effectively the smuggling of arms and explosives into Cuba from the United States.

It was now recalled that the United States and Cuba had signed on March 11, 1926, a Convention to Suppress Smuggling, in Article II of which both parties had agreed to deny clearance of shipments to each other if the goods involved were subject to import restrictions in the other country and had not complied with such restrictions.³ Although this had been originally designed primarily to prevent the smuggling of liquor from Cuba to the United States in the days of prohibition, it was now pointed out that the United States had an obligation thereunder to prevent the smuggling of arms into Cuba. Since the import of arms into the latter country was restricted except under the authorization of the Cuban Government, the United States was considered obligated under the 1926 convention to deny clearance to such shipments unless they had been duly authorized by the Cuban Government. In the absence of an embargo proclamation, however, there appeared to be no legal means at that time by which the American customs officials could withhold such clearance and thereby give effect to the requirements of the 1926 convention.⁴

In view of this situation, Secretary Hull, on June 29, 1934, suggested to President Roosevelt that a proclamation be issued under the joint resolution of 1922 subjecting the export of arms and munitions of war to Cuba to the supervision of the United States Government. He explained that the Cuban Government, through its ambassador at

¹ Jones, *op. cit.*, p. 69. Cf. also Stuart, *op. cit.*, p. 239.

² Cf. *New York Times*, June 30, 1934, pp. 1, 7. ³ 44 Stat. 2403.

⁴ Department of State, *Press Releases*, June 30, 1934, pp. 454-5.

Washington, had expressed its approval of this action.¹ The President accordingly issued the proclamation, making the export of arms and munitions of war to Cuba unlawful, and authorizing the Secretary of State to prescribe exceptions and limitations to the prohibition.² The latter immediately announced that arms and munitions exports to Cuba would be permitted when an application for an export license had been submitted to the Department of State and when the Department had been informed by the Cuban Embassy in Washington that the Cuban Government desired the shipment to be authorized. It was emphasized that the initiative and responsibility for notifying the Department of State of the Cuban Government's approval would rest with that government and with the potential exporter. Furthermore, in order that there might be no misunderstanding as to what constituted "arms and munitions of war", a list was made public of the materials for which export licenses were to be required.³

The action of the United States in establishing control over arms exports to Cuba at this time was in line with the broad program of the Roosevelt Administration of trying to aid Cuba politically and economically in stabilizing her domestic order. It will be recalled that a treaty had been concluded with Cuba in May, 1934, abrogating the Platt Amendment, that steps had been undertaken to permit the entry of a larger quota of sugar from Cuba into the United States, and that negotiations had been begun leading up to the reciprocal trade agreement signed in August, 1934.⁴

A new list of "arms, ammunition and implements of war", announced by the presidential proclamation of September 25, 1935, took effect with respect to exports to Cuba on October 10, 1935.⁵ For technical and administrative reasons, certain items which had been included in the original list of June, 1934, were deleted from the new list (machinery for the manufacture of arms, radio apparatus for military use, other equipment for military purposes, certain explosives generally used for industrial purposes). Because of these deletions, the list of September, 1935, did not include all of the articles which were considered as "arms" by the Cuban Government and therefore subjected to the latter's import permit. The Department of State, therefore, in order to give full compliance to its treaty obligations respecting the export of arms to Cuba, was obliged to draw up a supplementary list of

¹ Department of State, *Press Releases*, June 30, 1934, pp. 454-5.

² 49 Stat. 3399. The proclamation made no specific exception in favor of shipments to the Cuban Government as had the proclamation of May 2, 1924.

³ Department of State, *Press Releases*, June 30, 1934, pp. 456-7.

⁴ Cf. Stuart, *Latin America and the United States* (1938 ed.), pp. 241-3.

⁵ Department of State, *International Traffic in Arms, Laws and Regulations Administered by the Secretary of State Governing the International Traffic in Arms, Ammunition and Implements of War* (1st ed., October 10, 1935).

articles which were considered as arms, ammunition and implements of war only for the purposes of the special restrictions placed upon the export of these articles to Cuba.¹ This special Cuban list was issued in pursuance of the proclamation of June 29, 1934, and was not based on the authority conferred by the Neutrality Law of August 31, 1935.

The new list of arms, ammunition and implements of war which revised the list of September 25, 1935, and which was announced by the presidential proclamation of May 1, 1937, contained a number of articles (certain explosives generally used for commercial purposes) which had previously been included only in the special Cuban list. The latter was therefore modified and the number of articles reduced.² The articles contained now in the special Cuban list represent, in the eyes of the Department of State, items which have a wide commercial non-military use, and for the general export of which it would therefore be administratively impractical to require export licenses. Yet if their export were not regulated with respect to Cuba the problem of smuggling them there might assume dimensions of practical importance for the Cuban Government and lead the latter to complain that the United States was not completely living up to its obligations under the 1926 convention.

The regulations laid down in June, 1934, with respect to the issuance of licenses for arms exports to Cuba have continued in effect to the present time, although the "conditions of domestic violence" which existed when the original proclamation was issued disappeared some time ago.³ Nominally, the continuance of these restrictions has been for the purpose of fulfilling the anti-smuggling convention of 1926, but actually it has served to facilitate the broad American policy of encouraging the maintenance of stability in the island republic. By enabling the Cuban Government effectively to control the import of war material from the United States, the position of that Government has been strengthened and the likelihood of armed revolution reduced.

¹ Department of State, *International Traffic in Arms, Laws and Regulations Administered by the Secretary of State Governing the International Traffic in Arms, Ammunition and Implements of War* (1st ed., October 10, 1935), pp. 17-18.

² For the special Cuban list which has been in effect since May 1, 1937, cf. *Fourth Annual Report of the National Munitions Control Board* (1939), pp. 29-30.

³ As this book goes to press, the Department of State has just announced the revocation of the special restrictions on arms exports to Cuba, September 22, 1941. The reason given for this action is that the special regulations of June, 1934, are no longer considered necessary inasmuch as all the materials affected by those regulations are now subject to control under the national defense program. *Department of State Bulletin*, September 27, 1941, pp. 235-6.

CHAPTER VI

HONDURAS AND NICARAGUA

The use of arms export restrictions to facilitate and make effective our general policy of assuring the maintenance of order in Central America was clearly demonstrated in the case of Honduras in 1924 and Nicaragua in 1926. Although inconspicuous in contrast to the periodic despatching of American warships and the landing of American marines, the arms embargoes seem to have been part of the same policy motivating these more forceful measures of protecting American interests from the consequences of revolution and disorder. As in the case of Cuba, the regulation of arms exports to Honduras and Nicaragua has been a relatively recent method adopted by the United States to promote stability in that part of the world.

When revolution broke out in Honduras in February, 1924, American marines were landed to protect American lives and property, and on February 13, following the failure of the three contending factions to reach an agreement for the restoration of a constitutional government, the United States severed diplomatic relations.¹ On March 22, the Department of State learned that a representative of the Carias revolutionary faction, which then was in *de facto* control of a considerable part of Honduras, had ordered a large quantity of arms and ammunition from a New Orleans firm. Desirous of preventing such arms shipments to Honduras and thereby discouraging further revolutionary activities, Secretary of State Hughes at once requested President Coolidge to issue a proclamation prohibiting the export of all arms and munitions of war to that country in view of the chaotic conditions existing there.² The desired proclamation was issued on the same day, March 22, 1924.³

Owing to an apparent oversight, the proclamation of March 22 failed to provide for the granting of exceptions by the Secretary of State, as had the proclamations of March 4, 1922 and January 7, 1924, regarding China and Mexico, and so a second proclamation had to be issued on May 15, 1924, authorizing the Secretary of State to make dispensations from the embargo.⁴ In recommending this action, Secretary Hughes pointed out that the original proclamation had made no provision for allowing the shipment of arms or munitions for commercial purposes or for permitting any shipments to the newly constituted

¹ *Current History*, April, 1924, p. 125.

² *Foreign Relations*, 1924, Vol. 2, pp. 321-2. ³ 43 *Stat.* 1942-3. ⁴ *Ibid.*, 1950.

provisional government to assist in maintaining order.¹ No exceptions to the embargo seem to have been allowed, however, other than for certain shipments of blasting and mining explosives, until February, 1925, when formal diplomatic relations between the United States and Honduras were resumed.

The United States never accorded formal recognition to the provisional government, and it apparently felt that pending the reestablishment of constitutional authority in Honduras any shipments of arms would only be likely to prolong the fighting between the several factions. Moreover, the United States was none too favorably disposed toward the provisional government because the latter had organized its cabinet so as to give a preponderance to the Nationalist Party,² and because efforts had been made to support for the candidacy of president in the forthcoming elections General Carias, head of the Nationalist Party, who as a prominent revolutionary leader could not be recognized as president under the Central American Treaty of Peace and Amity of February 7, 1923.³ Consequently, when the provisional government was threatened with revolution in August, 1924, no assistance in its behalf was forthcoming from the United States although marines were sent to aid in the protection of American lives and property.⁴

The revolution was completely suppressed by the provisional government by the end of October, 1924,⁵ and arrangements were made to hold the presidential election late in December. The latter took place in a free and orderly manner, and resulted in the election of Dr. Paz Barahona, who was inaugurated on February 1, 1925, and recognized

¹ Secretary Hughes to President Coolidge, May 14, 1924. *Foreign Relations, 1924*, Vol. 2, p. 323. The provisional government had been set up as a result of an agreement between the several political factions concluded at Amapala on May 3, 1924, at a peace conference which had been arranged through the efforts of Mr. Sumner Welles, specially appointed representative of President Coolidge. The agreement also called for the holding of a free election to choose a new constitutional government. Text in *Foreign Relations, 1924*, Vol. 2, pp. 317-19.

² This was in violation of the Amapala Pact of May, 1924, Article 4 of which had provided that just representation should be granted to all political parties in the appointment of cabinet members.

³ Article 2 of the General Treaty of Peace and Amity of the Central American States, signed at Washington, February 7, 1923, provided that the signatory powers (the five Central American States) would not recognize as president or vice president of any other signatory state any person who had been a leader of a revolution or who was closely related to such a leader. (For text, see Manley O. Hudson, *International Legislation*, Vol. 2, pp. 901 ff. at p. 903.) The United States Government had announced that it would not recognize any government in Honduras if headed by a revolutionary leader or by one who held a high post or command in the revolt. It indicated that its future policy in recognizing Central American Governments would be based on Article 2 of the above treaty of February 7, 1923. (*New York Times*, July 19, 1924, p. 2.) As a result of the United States attitude, General Carias did withdraw from the presidential candidacy. *Current History*, October, 1924, p. 105.

⁴ Summarized from despatches in the *New York Times* during August, 1924.

⁵ *Current History*, December, 1924, p. 443.

by the United States as the constitutional President of Honduras.¹ With the reestablishment of formal diplomatic relations, the arms export restrictions of the United States were appropriately modified so as to permit the Honduran Government to obtain war materials and to prohibit any revolutionary or other groups from doing so.² Applications to export war material to Honduras were thereafter considered only when submitted directly by the Honduran Legation in Washington.

Conditions in Honduras were relatively tranquil after 1925, but the arms export restrictions were continued in effect, it being felt apparently that revolutionary disturbances would be less likely to break out if the flow of arms from the United States to that country were subject to regulation. Another reason for continuing these restrictions, particularly from 1926 onwards, lay in the desire of the United States to prevent the indirect shipment of arms to Nicaragua following the application of an embargo with respect to that country in September, 1926. Revolutionary activity had been going on intermittently in Nicaragua since the fall of 1925, following the withdrawal of the American marines in August of that year, and by the middle of 1926, the marines were back in the country, and the United States was once again intervening in Central America. As in the case of Cuba and Honduras, arms export restrictions were again used by the United States to supplement its more active and conspicuous methods of discouraging revolution and supporting what it considered to be constitutional government.

The background against which the arms embargo was applied with respect to Nicaragua may be briefly summarized as follows. In January, 1926, General Chamorro, the leader of the revolutionists, succeeded in forcing the constitutionally elected president of Nicaragua out of office and assuming that position himself. Since this was a *coup d'état*, the United States and the four other Central American republics refused to recognize the Chamorro Government in accordance with the terms of the Central American Treaty of Peace and Amity of February, 1923.³ Revolutionary activity continued, directed this time

¹ *Current History*, February, 1925, p. 763, and March, 1925, pp. 929-30.

² The Honduran Government was permitted to buy a quantity of surplus arms and ammunition from the United States War Department in March, 1925, and on several occasions thereafter in 1925, 1926 and 1927. As in the cases of Mexico and Cuba in 1924, this constituted an exception to the general policy laid down in April, 1923, of not selling surplus government arms to foreign nations. See *supra*, p. 105, note 2.

³ Article 2 of this treaty pledged the signatories (the five Central American Republics) not to recognize any government which might come into power in any of the five republics through a *coup d'état* or revolution against a recognized government so long as the freely elected representatives of the people had not constitutionally reorganized the country. For full text see Hudson, *International Legislation*, Vol. 2, pp. 901 ff. at p. 903. See also *supra*, p. 150, note 3. The treaty had been signed on Feb-

against Chamorro, and American marines were landed at Bluefields in May and again in August, 1926, to protect American lives and property. In September, the Chamorro Government appealed to the United States Chargé d'Affaires for good offices in mediating with the revolutionists, and the Chargé was authorized by Washington to comply with the request. An armistice was arranged in October, but no agreement was reached, as the Liberal delegates quit the conference and apparently refused to accept any government other than one presided over by their leader, Dr. Sacasa. Chamorro realized his inability to continue in office, and on October 30, 1926, turned the government over to one Senator Uriza, who had been designated by the Nicaraguan Congress. Inasmuch as the latter was controlled by Chamorro, who had previously removed some eighteen opposition members, the United States refused to recognize Uriza as the constitutionally chosen president, and insisted that his government had no legal basis. Uriza thereupon convoked a special session of Congress in November, 1926, and reinstated the eighteen members who had been expelled by Chamorro. The new Congress, whose membership represented substantially the results of the election of 1924, was viewed by the United States as the constitutionally elected body whose acts were legal. It proceeded to elect Adolfo Diaz as President, and the latter took office on November 14, 1926. Since his election was considered legal, the United States recognized him as Constitutional President of Nicaragua on November 17, 1926.¹

Three weeks later, on December 2, 1926, a rival government was set up in Nicaragua under the Liberal leader and former Vice President, Sacasa. The two rival governments existed for some time thereafter, with the United States supporting Diaz more and more openly, and Mexico apparently supporting Sacasa.²

So much for the background and setting in which the arms export restrictions were to take place. The embargo was not applied until September, 1926, despite the fact that the United States had withdrawn formal diplomatic relations following the Chamorro *coup d'état* in January of that year. This may have been due, however, to the fact

ruary 7, 1923, at a conference held in Washington at the invitation of the United States. Although the United States did not sign the treaty, it nevertheless accepted and adhered to the provisions regarding the non-recognition of revolutionary governments. The treaty of 1923 lasted until the end of 1933 when it was denounced by El Salvador, in which a government had been set up by a military junta two years earlier. Stuart, *Latin America and the United States* (1938 ed.), p. 361.

¹ For a summary of the facts concerning the revolutionary movement in Nicaragua in 1926, cf. President Coolidge's message to Congress of January 10, 1927, *Congressional Record*, Vol. 68, pp. 1324-6. Cf. also Jones, *The Caribbean since 1900*, pp. 384 ff.; Dana G. Munro, *The United States and the Caribbean Area* (Boston, 1934), pp. 248 ff.; Henry L. Stimson, *American Policy in Nicaragua* (New York, 1927), pp. 21 ff.

² *Current History*, February, 1927, pp. 734-6.

that Chamorro was then well armed, and that an embargo might even have served to his advantage by preventing his opponents from obtaining arms. Since the United States did not in any way wish to strengthen Chamorro in what was considered to be his illegal position as President of Nicaragua, an embargo at that time might not have been expedient.

By September, however, the situation had changed. Chamorro, as has been noted, had appealed for the good offices of the United States. The latter had accepted, and it now seemed that an arms embargo might contribute toward an early cessation of hostilities and might facilitate the success of the forthcoming negotiations between Chamorro and his opponents. On September 15, therefore, President Coolidge issued a formal proclamation, prohibiting all shipments of arms and munitions of war to Nicaragua except those which might be permitted by the Secretary of State.¹ There was then no government in Nicaragua recognized by the United States, and so, as had been the case in Honduras, no exceptions were allowed for either side. Within two months after the United States had accorded recognition to the Diaz Government, however, it modified its embargo policy so as to permit arms shipments to the Diaz forces.² Thereafter, the regulation of arms exports to Nicaragua was administered with a view to aiding the recognized Diaz Government in its efforts to suppress the revolution. This was of course only one of the methods used by the United States in its support of Diaz.³

With a view towards preventing the transshipment of arms to Nicaragua, the United States notified the four other Central American governments and Mexico of its action and suggested that they too might take similar action in preventing the export of arms to Nicaragua. The four Central American governments indicated a willingness to cooperate in this measure, but the Mexican Government replied

¹ 44 Stat. 2625.

² *New York Times*, January 6, 1927, pp. 1, 5.

³ Immediately after assuming office in November, 1926, Diaz had requested the support of the United States in suppressing the Liberal revolution in Nicaragua which he declared was being supported by Mexico. (*New York Times*, November 18, 1926, p. 1.) The United States subsequently informed Diaz that it had assumed no obligation to protect his government against the revolutionists, and that it was not prepared to go further than the "moral encouragement" ordinarily granted to "constitutional governments." (Jones, *The Caribbean since 1900*, p. 388.) Despite this position, the United States seemingly gave Diaz much more than "moral encouragement." In December, 1926, American marines were landed at the Liberal capital and a neutral zone established. This was done ostensibly for the protection of American and foreign lives and property there, but it brought charges of unjustifiable intervention from the Liberal leaders. More marines were landed in January and February, 1927, in various parts of Nicaragua, and in February, the United States indicated that it would not recognize any other government in Nicaragua until after the legal elections of 1928, even though such government should gain control of the entire country. *Current History*, February, 1927, pp. 735-6, 765; April, 1927, p. 104.

that since there were no arms manufacturing plants in Mexico, the matter had little practical significance and no action would be taken.¹ Despite the Mexican position that the matter had "little practical significance", the United States continued to receive many reports during the latter part of 1926 that arms and munitions in large quantities were being shipped from Mexico to Nicaragua with the full knowledge and sometimes with the full support of the Mexican Government.² This was in part responsible for the change in the impartial embargo policy of the United States with respect to Nicaragua and the decision to permit arms shipments to the newly recognized Diaz Government. President Coolidge, in his message to Congress on January 10, 1927, declared that he had "most conclusive evidence" that arms had been shipped from Mexico to the Liberal revolutionists in Nicaragua since August, 1926, and that under such circumstances, he had deemed it unfair to prevent the recognized government from purchasing arms. It would be inconsistent, President Coolidge declared, not to support the recognized government while the revolutionists were receiving arms from abroad.³ Thereafter, in pursuance of this policy, not only were licenses issued for the export of war materials to the Diaz Government, but in February, 1927, the latter was allowed to purchase on credit a considerable supply of arms and ammunition from the United States War Department.⁴ Thus did the United States aid the Diaz Government in its efforts to crush its opponents as it had previously aided the Mexican, Cuban and Honduran governments.

Conditions of stability were restored in May, 1927, as a result of a peace agreement between the Diaz Government and the Liberal leaders, brought about through the efforts of Mr. Henry L. Stimson, personal representative of President Coolidge.⁵ Disturbances persisted,

¹ Cf. President Coolidge's message to Congress of January 10, 1927. Under Article 3 of the Convention on the Limitation of Armaments of the Central American States signed at Washington, February 7, 1923, those states undertook not to export or permit the export of arms, munitions or military stores to each other. Hudson, *International Legislation*, Vol. 2, pp. 942 ff. at p. 944.

² President Coolidge's message to Congress, January 10, 1927. Cf. also Stimson, *American Policy in Nicaragua*, p. 33.

³ As a symbol of its disapproval of the Mexican policy, the United States had refused after December, 1926, to issue any licenses for arms exports to Mexico. In March, 1927, it went further and denounced a smuggling treaty it had with Mexico. See *supra*, pp. 113-15.

⁴ *New York Times*, March 24, 1927, p. 1. Senator Norris sharply criticized the action of the United States in selling arms to Diaz and denouncing the Mexican smuggling treaty, declaring this would cost the United States the friendship of all Latin America. *Ibid.*, March 25, 1927, p. 23.

⁵ The agreement provided for complete disarmament on both sides; a general amnesty to all those in rebellion; the continuance of Diaz as President until the elections of 1928; participation by representative Liberals in the Diaz Cabinet; organization of a non-partisan Nicaraguan constabulary, commanded by American officers; temporary maintenance of enough American marines in Nicaragua to guarantee order

however, in the northern part of Nicaragua and along the Honduran frontier where one of the Liberal generals, Sandino, who had refused to accept the Stimson agreement, continued to carry on guerrilla warfare and harass the American marines stationed in that part of the country.¹ Sandino repeatedly declared that he would not lay down arms until the marines had been entirely withdrawn from Nicaragua. These disturbances continued until 1933,² during which period the United States maintained its restrictions on arms exports to both Nicaragua and Honduras in order to prevent arms from reaching the followers of Sandino, who in turn used such arms as came into his possession against the American marines. It is not believed that the embargo entirely achieved its purpose, for the Sandino forces apparently obtained war materials on various occasions by smuggling or capture, regardless of the United States prohibition.³

The termination of the Sandino revolt in 1933 was climaxed by the assassination of Sandino a year later in February, 1934. Although his death removed one of the principal reasons for which the embargoes had been maintained with respect to Honduras and Nicaragua since 1927, and although the two countries were now relatively calm and peaceful, the arms prohibitions were not revoked. Instead they were continued in effect and administered in such a way as to permit the shipment of arms to those countries only when approved by their respective governments. It is not unlikely that these governments welcomed the continuance of the embargoes on this basis, inasmuch as they were thereby given the opportunity to decide what shipments

pending the organization of the constabulary; and American supervision of the 1928 elections in Nicaragua. The Liberals were apparently persuaded to accept these conditions, particularly the provision for the retention of Diaz as President, only after Mr. Stimson had indicated that the United States intended to insist upon them. (*Current History*, July, 1927, pp. 634-7. Stimson, *American Policy in Nicaragua*, Chap. ii.) The elections, which took place in November, 1928, under American supervision, resulted in victory for the Liberal candidate, General Moncada. *Current History*, December, 1928, p. 486.

¹ Stuart, *Latin America and the United States* (1938 ed.), pp. 373-5. For convenient summaries of the disturbances in Nicaragua, cf. the monthly reports in *Current History*, beginning in September, 1927.

² The Sandino revolt came to an end in February, 1933, with the conclusion of an agreement between Sandino and the Nicaraguan Government. This followed the withdrawal of the American marines in January, 1933. *Current History*, April, 1933, p. 87; April, 1934, pp. 78-80.

³ In an effort to prevent surreptitious exports of war materials to the Nicaraguan rebels by way of Honduras, the United States Customs Collectors were instructed on October 20, 1930, to make certain that all shipments of arms and ammunition to Honduras were exactly as represented in the export license. This action followed a report from the State Department that applications for export licenses had been recently received involving the shipment of considerable amounts of small caliber rifles and cartridges to certain firms in Honduras suspected of trafficking with the Nicaraguan rebels. It was suspected that these rifles and cartridges might be larger in caliber than had been specified in the license applications, and the customs collectors were hence instructed to make more careful examination of such shipments. *United States Daily*, October 21, 1930, p. 1.

should be licensed, and thus were enabled to regulate more effectively the import of arms into their respective territories. The procedure in issuing arms export licenses since 1934 has been to require prior notification from the Honduran or Nicaraguan legation in Washington, depending upon which country is involved, indicating that their respective governments have no objection to the proposed shipment. Since 1935, the list of materials subject to this regulation has been the list of "arms, ammunition and implements of war" used in connection with the neutrality laws of August 31, 1935, May 1, 1937, and November 4, 1939.

With respect to Honduras and Nicaragua, therefore, as with respect to China and Cuba, the regulation of arms exports from the United States has been continued, despite the fact that the original conditions of domestic violence which led to the embargoes have ceased to exist. We now have, with respect to these countries, a seemingly permanent policy of allowing only those exports of arms which the respective governments of these countries have authorized. Having intervened in the past to bring about the establishment of what we considered to be constitutional government in these countries, we are now pursuing an arms export policy which has the effect of strengthening the recognized governments thereof and making it more difficult for opponents of those governments to obtain the necessary war materials with which to start any armed uprising. However questionable may have been the United States policy of intervention in Central America in the 1920's, the present method of regulating arms shipments to Honduras, Nicaragua, Cuba and China tends to assure the peaceful resolution of domestic differences therein, and as such would seem to merit a wider application.¹

¹ The Geneva Arms Traffic Convention of 1925 provided for the restriction of arms exports to those shipments which had been authorized by the government of the importing country. See *infra*, p. 175. See also *supra*, p. 148, note 3.

CHAPTER VII

BRAZIL

When revolution broke out in Brazil in October, 1930, the question of whether or not to apply an arms embargo gave rise to considerable difficulty and eventual embarrassment. Theoretically, at least, the policy which had been authorized in the joint resolution of January 31, 1922, was applicable to any American country or any country in which the United States exercised extraterritorial jurisdiction. Actually, as has been seen, it was applied only with respect to certain American countries (Mexico, Cuba, Honduras, Nicaragua) and to China, where long periods of civil disturbance had directly menaced the property and interests of United States citizens and, in the case of the Caribbean area, the defense position of the United States. So far as its practical application was concerned, the interest of the United States in promoting constitutional government and discouraging revolution seems to have been confined prior to 1930 to those countries where the strategic military position of the United States and the property of American citizens were endangered by the absence of political stability and security. Our interest, as demonstrated by our action, was not therefore a purely theoretical one of desiring to discourage revolution *per se* anywhere in Latin America, but rather a very practical one of doing so only in those areas where American vital interests were seriously endangered by its consequences.¹

There was, of course, another very practical reason why the United States may not have applied its arms export restrictions to Latin American countries in general during periods of civil strife, and this was the realization that the United States alone could not stop the entry of arms into most of these countries. It had not entirely succeeded in doing this even in the countries close at hand where American influence was greatest, and to attempt it with respect to the more distant countries of Latin America, without some cooperation from other arms exporting countries, would have been certainly less successful.

¹ In signing and ratifying the Pan American Convention of February 20, 1928, on the Duties and Rights of States in the Event of Civil Strife, the United States did, of course, undertake certain general obligations regarding Latin America in the matter of regulating arms exports to countries engaged in civil strife. Article I of this convention provided in part as follows:

"The contracting states bind themselves to observe the following rules with regard to civil strife in another one of them:

" . . . 3. To forbid the traffic in arms and war material, except when intended for the government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied."

The convention was proclaimed in effect by the United States on June 6, 1930. (*U. S. Treaty Series*, No. 814.) On January 1, 1941, thirteen states had ratified it.

This general reluctance to apply arms export restrictions to the countries of South America was particularly evident during the Brazilian uprising of October, 1930. In this case, revolution broke out and triumphed within three weeks without causing any serious damage to American interests or affording any material reason for the application of an arms embargo by the United States.¹ This feeling was reflected on October 10, when the State Department indicated that it had not considered imposing an embargo, and that it probably would not do so at that time, unless the Brazilian Government should request it.² It was pointed out that the application of embargoes with respect to countries such as Mexico and Cuba had been occasioned by the very special character of the relations between the United States and those countries arising out of proximity and, in the case of Cuba, special treaty provisions. Inasmuch as such special considerations were not present in the case of Brazil, it was apparently hoped that the question of applying an embargo would not be raised.³ It was evident that there was no general disposition to take the same steps with respect to Brazil that there had been with respect to Mexico, Cuba, or the Central American countries, which seems to indicate quite clearly that the interest of the United States in restricting arms exports to revolutionary groups was confined primarily to those countries in the immediate neighborhood of the United States where American interests were frequently endangered by civil disorder.

No objection was raised when the Government of Brazil purchased ten Curtiss-Wright military planes, Secretary Stimson announcing on October 15 that the Brazilian Government, like any other government with which we were in friendly relations, had "a perfect right to buy munitions in this country."⁴ But when the Brazilian Ambassador requested the United States one week later to establish an embargo on arms shipments to the rebels,⁵ the question which it had been hoped would be avoided was squarely raised. Conditions in Brazil were

¹ The revolution was led by Dr. Getulio Vargas, the defeated Liberal candidate in the preceding presidential elections, and was directed toward preventing the inauguration of the victorious Conservative candidate, who, it was alleged, had won his election by fraud. For the background developments, see *Current History*, November, 1930, pp. 277-9, and December, 1930, pp. 440-3. Vargas is still the head of the Brazilian Government, having suppressed revolutions in 1932 and 1935, and having assumed dictatorial powers in November, 1937. Stuart, *Latin America and the United States* (1938 ed.), pp. 493-4. ² *New York Times*, October 11, 1930, p. 5. ³ *Ibid.*

⁴ Department of State, *Press Releases*, October 18, 1930, pp. 250-1. Whether or not an embargo would be applied against the revolutionists was still considered problematical, but it was pointed out that no attempt had been made thus far by the rebels to buy supplies in this country. It was made clear, nevertheless, that the United States Government did not intend to sell war supplies to the revolutionists. *New York Times*, October 16, 1930, p. 11.

⁵ Brazilian Ambassador to the Secretary of State, October 22, 1930. Department of State, *Press Releases*, October 25, 1930, pp. 265-6.

not causing any immediate disturbances to American interests such as to warrant an embargo, as had been the case in Cuba, Mexico, Honduras or Nicaragua. Yet the United States could scarcely refuse the Brazilian request, for such a refusal might have been interpreted not only as an unfriendly act, but also as an act which was quite inconsistent with our professed policy of supporting recognized governments in Latin America and discouraging revolution. The decision was therefore made to apply an embargo, and on October 22, 1930, President Hoover issued a proclamation prohibiting the export of arms or munitions of war to Brazil, with the exception of such shipments as were approved by the Government of the United States for the recognized Government of Brazil, and such arms and munitions for industrial and commercial use as might be permitted by the Secretary of State.¹

On October 23, Secretary Stimson explained that the embargo was not an unprecedented act, although this happened to be the first occasion when such action had been taken with respect to a South American country.² He called attention to the embargoes which had been applied on arms shipments to Mexico, Cuba, Honduras, Nicaragua, and China, during periods of domestic violence, and stated that "a situation requiring the application of this principle" had not previously come up in South America. It was important, therefore, he said, that people should not misunderstand it as a new principle since otherwise the revolutionists who might be hurt by our action could assert that we were taking sides with one or the other of the combatants for ulterior reasons. This was not the case, Secretary Stimson declared, for our action was based on the broader principles of international law:

. . . we are acting according to general principles of international law. Those principles declare that where we are in friendly relations through diplomatic channels with a government which has been recognized as the legitimate government of a country, that government is entitled to the ordinary rights of any government to buy arms in this country; while the people who are opposing and trying to overthrow that government and are not yet recognized as belligerents are not entitled to that right. It is not a matter of choice on our part, but is a practice of mankind known as international law. We have no personal bias and are doing nothing but attempting to carry out the law of mankind.³

The Secretary of State apparently had in mind the provisions of the Pan American Convention of February 20, 1928, on the Duties and Rights of States in the Event of Civil Strife which prohibited the export of war material except to governments so long as the belligerency of the rebels had not been recognized.⁴ It would have been clearer and

¹ Proclamation of October 22, 1930. 46 *Stat.* 3036-7.

² Department of State, *Press Releases*, October 25, 1930, pp. 266-7.

³ *Ibid.*, p. 267.

⁴ *Supra*, p. 157, note 1.

more accurate, however, if he had expressly stated that our action was based on specific treaty obligations rather than trying to give the impression that we were obliged to do so by the general principles of international law. His implication that an embargo on the shipment of arms to unrecognized revolutionists was "a practice of mankind known as international law" certainly was not in line with the general practice of states, outside of the few instances in which the United States had taken action of that nature. Moreover, the United States had never applied such a measure as a general policy toward states engaged in revolution, but only toward those states close at hand in which our interests had been seriously disturbed, and into which the general entry of arms could be fairly well regulated by an independent United States embargo.¹ The United States was, of course, bound by the Pan American Convention of 1928 to prohibit the export of arms to the unrecognized Brazilian rebels, but to declare that we were acting according to the general principles of international law, or even to imply that the convention constituted general international law,² seems to have been stretching the point considerably.³

Having decided to apply a formal embargo on arms shipments to the Brazilian rebels, the United States was almost immediately confronted with an embarrassing situation when the revolution triumphed completely two days later (October 24, 1930).⁴ The government which the United States had supported was obliged to resign, and a provisional military junta took its place. Ten days later, Dr. Getulio Vargas, the leader of the revolution, was inaugurated as Provisional President of Brazil. The action of the United States was defended by administration officials at Washington as being free from any bias, and prompted only by a desire to prevent American citizens from assisting in injuring a friendly foreign government by selling arms to its opponents. In this respect, it was again asserted that the United States was merely carrying out "a normal and regular policy", but it was explained that in the future each case would be considered on its own merits, and no general rule laid down as to our conduct.⁵ The representatives in the United States of the new revolutionary government nevertheless declared that the United States had incurred the enmity of the Brazilian people as a result of its support of the former

¹ In the case of China, our action was taken in cooperation with several other powers.

² By July, 1931, only six states had ratified the convention, the United States, Brazil, Colombia, Mexico, Nicaragua, and Panama. (Hudson, *International Legislation*, Vol. 4, p. 2416.) The United States' obligation under the convention was confined, of course, to those states which had ratified it.

³ See further, John Bassett Moore, "Candor and Common Sense," An Address before the Bar Association of New York, December 4, 1930, pp. 16-20.

⁴ *New York Times*, October 25, 1930, p. 1. The quick victory of the revolutionists was attributed to the sudden and unexpected desertion of large sections of the government army and navy to the rebels.

⁵ *Ibid.*, p. 2.

government,¹ and observers predicted that the United States would move more slowly in the future in imposing an arms embargo or supporting one side or the other in the civil wars of South America.² This prediction has thus far been true, and no formal prohibitions have since been applied with respect to the export of arms to South American countries.

Although the United States formally recognized the new government of Brazil on November 8, 1930,³ the embargo was not immediately revoked, but was instead continued for several months and applied so as to prevent all shipments of arms to Brazil except to the newly recognized government. This was one way of endeavoring to gain the friendship of the Vargas Government which had been somewhat prejudiced by the support which the United States Government had lent to its predecessor. It was also undoubtedly hoped that the continuation of the embargo so as to favor the Vargas Government would serve to prove that the original arms prohibition had not been motivated by any partisan feeling in the Brazilian revolution, but rather had been applied in pursuance of the Habana Convention of February 20, 1928, regarding the duties and rights of states in the event of civil strife, to which both the United States and Brazil were parties.

The embargo remained in effect until March 2, 1931, during which time licenses for arms exports to Brazil were granted by the State Department at the request of the Brazilian Embassy in Washington. The termination of the embargo was brought about by a presidential proclamation, following a communication from the Brazilian Ambassador which explained that in view of the "perfect order" then existing in Brazil, the Brazilian Government considered it unnecessary to continue prohibiting the free export of arms and ammunition.⁴

This was the only formal embargo thus far proclaimed by the United States with respect to any South American country in which civil strife existed. Civil war of considerable proportions broke out again in Brazil in July, 1932, and lasted for approximately three months, but no formal prohibition on the export of arms was established by the United States or requested by Brazil. The United States Government did, however, take informal steps in two instances to prevent the shipment of airplanes to the Brazilian rebels in accordance with its obligations under the 1928 convention on the Duties and Rights of States in the Event of Civil Strife.⁵

¹ *New York Times*, October 26, p. 2.

² *Ibid.*, October 25, p. 2.

³ Department of State, *Press Releases*, November 8, 1930, pp. 322-3.

⁴ *Press Releases*, March 7, 1931, p. 155. Proclamation of March 2, 1931, 46 *Stat.* 3050-1.

⁵ The United States also lent its support to the Brazilian Government at this time to the extent of permitting twenty-eight airplanes constructed by the United Aircraft Corporation for the United States Navy Department to be diverted to the Brazilian Government in order that the latter might obtain them more quickly. (August-September, 1932. Senate Munitions Committee, *Report*, Pt. 3, pp. 201-2.)

CHAPTER VIII

OBSERVATIONS

The eight cases which have been discussed in the preceding chapters illustrate the first of the two principal purposes for which the export of arms from the United States has been subjected to control. This has been the promotion of stability and the discouragement of revolution in those areas in which the special interests and position of the United States were considered jeopardized by the prevailing conditions of disturbance and insecurity. The encouragement of order and stable government in these areas, it was felt, would not only make it safer for American and foreign interests, thereby reducing the occasion for foreign intervention, but would also make possible, in theory at least, a greater prosperity and welfare for all concerned, natives as well as foreigners.

In some cases, the restrictions on arms exports have been applied for certain corollary reasons such as (a) bringing pressure to bear against a particular government whose policies or actions were displeasing to the United States; (b) promoting "constitutional" or "lawful" government as contrasted with government which came into power by violent revolution; and (c) keeping arms from reaching those who were actively opposing American military or naval forces which had entered certain countries to assist in restoring or maintaining order.

It should be clear by now that this policy of regulating arms exports has not been applied by the United States with respect to Latin America as a whole, but only (except in the case of Brazil) with respect to those neighboring countries which occupied positions of strategic importance to the defense of the United States and the Panama Canal and in which American investments and property holdings were very substantial.¹ Despite the fact that the joint resolutions of March 14, 1912, and January 31, 1922, authorized the President to apply the policy to any American country in which conditions of domestic violence existed, this power has been exercised in only one instance of revolution in South America, and otherwise has been confined to our immediate neighbors in Mexico, Central America and the Caribbean. The United States is theoretically bound under the Pan American Convention of February 20, 1928, concerning the Duties and Rights of

¹ With respect to China, it has been noted that while that country did not lie within the immediate sphere of influence of the United States, it nevertheless occupied a special position in its relations to the United States and other principal powers by reason of various treaties which limited China's sovereignty and granted extraterritoriality and other concessions to foreign powers.

States in the Event of Civil Strife, to prohibit the export of war material to any unrecognized revolutionary groups in the various contracting states.¹ Aside from the Brazilian case in 1930, however, the United States has never formally proclaimed any embargo under this convention, although in one instance at least,² and perhaps in others, the Department of State has taken informal action to prevent certain war supplies from being sent to the rebels.

The regulation of arms exports has been only one of the methods used by the United States to carry out its broad policy of promoting stability and discouraging revolution in the neighboring countries of Latin America. While it is therefore difficult to measure the relative effectiveness of these restrictions as a factor in the policy as a whole, it nevertheless seems doubtful in most cases whether they can be considered in and of themselves to have been a decisive factor. During the 1920's when the policy of supporting the recognized governments of Mexico, Cuba, Honduras and Nicaragua seemed to be attaining that end fairly successfully, it was the open support which the United States lent those governments in the form of despatching naval vessels, landing marines and selling War Department surplus arms on credit which was more effective in ending the revolts than the mere prohibition of arms exports to the revolutionary groups. The latter was of course a contributory, but hardly a decisive factor. This suggestion is borne out further by the fact that in the case of the early embargoes with respect to Mexico (1912-13 and 1915-16), when the United States confined its action largely to the prohibition of arms exports to the Mexican rebels, and did not go so far in its open support of the government as it did a decade later, revolution was not suppressed, and the result was anything but stability and order.³ Furthermore, in connection with the Honduran and Nicaraguan revolutions during the mid-1920's, the arms export restrictions on several occasions had little effect in stopping the disturbances inasmuch as the fighting forces often succeeded in obtaining war materials indirectly through neighboring countries or by clandestine methods such as smuggling.

¹ By January 1, 1941, the following states in addition to the United States had ratified this convention: Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Haiti, Mexico, Nicaragua, Panama, Dominican Republic, and Uruguay. (Information from the Pan American Union.)

² The Brazilian revolution of 1932 (see *supra*, p. 161). Because of the informal control which the United States Government is able to exercise over the armaments industry, it would of course be possible to discourage the export of arms to revolutionary groups, if the Department of State were called upon to do so, without issuing any formal embargo proclamation. This was done in 1932, and may have been done in other cases of revolution in Latin America not noted in the previous chapters.

³ The raising of the arms embargo in February, 1914, together with more forceful acts such as the occupation of Vera Cruz in April, 1914, did contribute however to the realization of Wilson's objective of eliminating de la Huerta from Mexico in July, 1914.

As a means of preventing armed revolution in the future, the permanent regulation of arms exports which has been in effect for some time with respect to China, Honduras, Nicaragua and Cuba¹ may nevertheless be of some help. Under this regulation, arms exports to those countries are allowed only when the authorities thereof have given their approval. This is a means of keeping arms out of the hands of the opponents of those governments, and thereby making armed revolution more difficult. While the prohibition of arms exports to revolutionary groups may not be sufficient in itself to stop the fighting once a revolution has broken out, the prohibition of such shipments in peacetime to those who might use them for revolutionary purposes may be more effective in preventing the actual outbreak of hostilities. More will be said of this at the end of the present chapter.

It should be noted at this point that the policy which the United States has pursued during the past three decades of preventing revolution and supporting recognized governments has resulted in much hostility and resentment in Latin America and led to cries of "Yankee imperialism" and "dollar diplomacy" from the entire continent. Only during the past few years, particularly since the inauguration of the "good neighbor" policy of President Franklin D. Roosevelt, have concrete steps been taken to abandon our coercive policies of previous decades, to allay suspicions and to endeavor to regain the friendship of the countries to the south of us.

The sudden concern which the United States began to manifest after the turn of the century in the prevention of revolutions in the nearby countries of Latin America came as a seemingly strange reversal of the historic sympathy with which the American people have generally viewed the subject of revolution and the inherent right of a people to overthrow a government which they believed to be oppressing them. Our insistence that only "constitutional" governments which had been "lawfully" chosen would receive our support represented in some ways a strange sort of "legitivist" policy in contrast to the *de facto* policy generally pursued by the United States in the recognition of foreign governments. The reason for the change is not so strange, however, for the new attitude seems to have arisen from the realization that armed revolution and civil strife would definitely jeopardize the special interests and position of the United States in the Central American and Caribbean area, as well as raise the possibility of European intervention in behalf of its interests. We had acquired the Panama Canal, the protection of which had led us to extend our defense responsibilities to the entire Caribbean-Central American area. Furthermore, American investments in this region were rapidly increasing, and as a result of these circumstances it was not unnatural that the existence of friendly

¹See *supra*, p. 148, note 3.

and stable governments in this region should become of vital concern to us. The protection of our own interests and the forestalling of any European intervention in this strategic area led us, therefore, to throw our influence on the side of "law and order" and against any revolutionary activities.

We convinced ourselves (or at least some of us did) that the interests of everyone in Latin America—natives and foreigners alike—would benefit from conditions of order and stability, and that it would be distinctly to their advantage if revolutionary disturbances could be prevented. We therefore took upon ourselves in the name of "constitutional government" the task of making those countries a secure place for all concerned, with special emphasis on security for the increasing economic interests and investments of the United States in those areas. We did not probably have any intention of denying the inherent right of revolution to the Latin Americans, but only of obliging them to settle their domestic rivalries in a peaceful way, within the limits of orderly constitutional procedure, and without endangering the position of the foreign interests in their countries.

The theory of eliminating armed revolution from Latin American politics and thereby compelling rival groups to settle their differences peacefully is perhaps desirable. It overlooks the fact, however, that in certain of these countries, formal constitutional processes, as we know them in the United States, have as yet little real significance, and that sometimes a revolution is the only way in which reform can be effected or in which the people can rid themselves of a government of which they no longer approve. Under such circumstances, for the United States to attempt to apply the theory in question may lead to very practical difficulties. In fact, it has been in connection with the application of this theory that the United States became the object of widespread criticism during the 1920's.

We were charged with supporting governments which were sympathetic to American financial interests and which were able to stay in power only because of the presence of American marines. As a result of taking active measures to prevent revolution, we were accused of denying the citizens of those countries the only means they could effectively apply to get rid of a government which they disliked, while in trying to hoist American standards of democracy upon them, we only added confusion to chaos, naïvely believing that what was good for us was necessarily good for them. The theory we believed we were following may have been good, but the way in which it was applied gave rise to frequent charges that we were favoring one side as against another. Not only this, but the support which the United States lent to the suppression of revolution in some cases (chiefly Mexico in 1912-13

and 1915-16) actually led to definite measures of retaliation against American interests on the part of those who were discriminated against.

In the light of this experience, it is difficult to agree with Secretary of State Stimson who in the spring of 1933, made the following statement to the House Foreign Affairs Committee:

The Joint Resolution of 1922 providing for an embargo in cases of domestic violence in this hemisphere and in China has been employed with great effect and negligible friction. . . . Our experience has shown that the refusal of the United States to allow munitions to revolutionists has never provoked serious resentment among the adherents of the revolutionaries and has substantially stabilized conditions in the smaller countries and prevented a number of incipient revolts.¹

In expressing his inability to agree entirely with this statement, the present writer would respectfully suggest three points for consideration. In the first place, the policy of which Mr. Stimson has spoken did not begin in 1922, but had been applied with respect to the Dominican Republic and Mexico for a number of years previously. In the case of Mexico, from 1912 to 1922, its results were certainly neither stability nor absence of resentment. Revolutionary activity continued apace, and American citizens in Mexico suffered reprisals because of the discriminatory policy which the administration at Washington pursued.

In the second place, while deliberate reprisals as a result of the application of embargoes during the 1920's seem to have been inconspicuous (except perhaps in the case of attacks by the Sandino bandits upon American marines in Nicaragua from 1927 onwards), considerable ill-will toward the United States was provoked throughout Latin America by our general policy, of which the arms embargoes were a part. It is impossible to dissociate the embargo policy from the general policy of maintaining order in the nearby countries of Latin America, and this was certainly unpopular in those countries.

Finally, the apparent success of the general policy during the 1920's was not due primarily to the fact that arms exports were prohibited to revolutionary groups, but instead to the more open measures of support which the United States accorded to the governments of those countries in the form of landing American marines, despatching American war vessels, and selling War Department arms on credit.

The writer cannot help but feel that if the United States is to lend its influence in the future toward the discouragement of revolution and the encouragement of the peaceful settlement of domestic differences in Latin America, it is essential that we be extremely prudent in the way we do so, realizing that we are using dangerous weapons, and that we

¹ Cited in Edwin M. Borchard and William P. Lage, *Neutrality for the United States* (New Haven, 1937), p. 306.

may easily offend one side or another even though we have the best intentions in the world. We need to keep in mind the apt criticism which Professor Borchard has made:

Contrary to a common assumption, there is no duty upon the United States to stop a revolution abroad any more than it was the duty of Russia or Spain to stop the American Revolution. To undertake such a function, indeed, is a breach of neutrality, and hence illegal as a matter of international law. It involves intervention in the affairs of a foreign country and has already incurred for the United States distrust on the American continent. It enables the Administration to play favorites abroad, interfere when it should abstain, and thus forfeit that impartiality and neutrality which is the keystone of foreign respect. The interfering partisan often invites and enlists the hatred and contempt of both sides, and experience might indicate that the government is as likely to be mistaken as it is to be correct in estimating the merits of a foreign controversy, even if such judgments were possible and even if it were deemed an American duty to be a judge.¹

The principal objection to the use of arms export restrictions or other methods to help suppress revolution in foreign countries is the fact that it is difficult, if not impossible, to avoid giving the impression that one is favoring one side or the other in the conflict. This was the difficulty which the United States encountered in its efforts to restore order and stability in Mexico, Cuba, Honduras, Nicaragua and Brazil.

But there seems to be one way in which revolution may be discouraged without seeming to take sides, and that is through the adoption of a permanent policy of permitting the export of war material only to recognized governments or to persons authorized by such governments. This policy is already observed by several of the European powers, and was envisaged in the Geneva Arms Traffic Convention of June 17, 1925. Inasmuch as it would be a permanent regulation, and not one laid down at the outbreak or during the course of a civil war, it could scarcely give legitimate offense to a revolutionary group, while at the same time the very fact that it would be in effect continuously would operate to prevent arms from reaching those who might be disposed to organize a violent revolution. This is the type of policy which the United States has for some time followed with respect to China, Honduras, Nicaragua and Cuba.² It is much sounder, in the opinion of the writer, to have such a policy in effect permanently than to wait and apply it after a civil war has broken out. Whereas the latter course can scarcely be pursued without giving rise to legitimate charges of favoritism, the permanent policy achieves the same objectives without the appearance of partisanship, and is actually more effective as a preventive measure since it tends at all times to keep arms out of the hands of those who might use them to stir up a violent revolution. In so doing, it might

¹ *A.J.I.L.*, Vol. 27 (1933), p. 295.

² See *supra*, p. 148, note 3.

operate to encourage the peaceful settlement of domestic differences, provided, of course, that a condition of affairs exists in each country under which such peaceful settlement can take place.

However embarrassing and unfortunate at times may have been the policy of the United States in restricting the export of arms to promote stability in the neighboring countries of Latin America, it provided valuable experience in the application of arms embargoes. In fact, it was thus that the United States gained a major part of its experience with arms export regulation, upon the basis of which an effective and permanent system of regulation was established in 1935. It is therefore somewhat unfortunate that the history of the policy and its application has until now constituted a relatively neglected chapter in the general discussions on embargo legislation and its effects.

PART III

REGULATION OF ARMS EXPORTS TO DISCOURAGE FOREIGN WARS AND TO KEEP THE UNITED STATES OUT OF WAR

CHAPTER I

IDEALISM, ISOLATIONISM AND INTERNATIONALISM

Apart from purposes of national defense in time of war or threat of war, the regulation of arms exports from the United States has been applied, broadly speaking, for two purposes. The first of these—the promotion of stability and the discouragement of revolution in certain countries of Latin America and in China—has already been discussed in Part II. Prior to 1934, the practice of the United States in regulating arms exports had been confined to this general purpose, and the historic Jeffersonian principle of freedom for the private arms trade had been set aside in only this limited measure.

Since 1934, however, we have witnessed the successful culmination of a movement to have the United States restrict the export of arms for a second broad purpose of far-reaching scope—the discouragement of foreign wars and the keeping of this country out of war. This second purpose is far more ambitious than the first and represents a peculiar and often confusing combination of idealism, isolationism and internationalism. It has had its roots largely in the increasing popular suspicion of the munitions manufacturers and the conviction that the latter and the trade which they promote have had a good deal to do with the fomenting of wars and the involvement of the United States therein. Other prominent factors have been the belief that the United States ought not to encourage warfare abroad by selling arms to belligerent powers, and the belief on the part of some that the export of war materials ought to be prohibited to nations which have been guilty of "aggression" or violation of the Briand-Kellogg Pact. The net result of all this has been the complete abandonment of the Jeffersonian principle, and the substitution therefor of a system of permanent regulation of all exports of arms, ammunition and implements of war. In addition to this, Congress attempted, from 1935 to 1939, to lay down a general policy of prohibiting the export of these materials to all belligerent powers in case of war. It is this policy which has provoked widespread discussion throughout the country in connection with the broader subject of American neutrality.

Increasing Interest in Regulation during the 1920's

The movement to regulate the export of arms for the reasons outlined above was not translated into national action until 1934-5, but it had been attracting increased support since the 1920's as a result of the

general post-war interest in disarmament and the preservation of peace. The United States Government, moreover, had begun to manifest an interest in the international regulation of the arms traffic. It had signed, though it later refused to ratify, the Convention of Saint Germain of September 10, 1919, providing for the general regulation of the international arms traffic under the supervision of the League of Nations. This convention had envisaged a system of national licensing and publicity for arms exports by each country, and furthermore proposed to prohibit the export of arms and ammunition except to the governments of the contracting states.¹ It had been drawn up for the purpose of controlling more adequately the large supplies of arms and ammunition which were on hand at the conclusion of the World War and preventing their falling into the hands of those who might use them for undesirable or irresponsible ends.

There was no legislation in effect in the United States at that time under which the government could have carried out the provisions of such a convention except the general wartime export regulations, and these had been relaxed after the middle of 1919 with regard to arms exports to all countries but Mexico, China, Soviet Russia, Austria, Hungary, Bulgaria and Turkey.² Moreover, after March 3, 1921, when the wartime export regulations were entirely repealed, there was no legislative basis whatsoever in the United States for the general control of arms exports.³ Cooperation by the United States in the international regulation of the arms traffic would therefore have required new legislation, and the government at Washington finally decided in the summer of 1922 not to ask for such legislation and not to ratify the Convention of Saint Germain.⁴

The principal reasons behind this decision may be summarized as follows:⁵

1. The provision in the convention for prohibiting arms exports to non-contracting states might operate so as to prevent the United States from shipping arms to any Latin American countries not parties to the convention.

¹ For text, cf. *Foreign Relations*, 1920, Vol. 1, pp. 180-96.

² *Ibid.*, pp. 205-6, 207. Cf. also Department of State, War Trade Board Section, Special Export Licenses of July 20, 1919 (W.T.B.R. 815) and September 30, 1919 (W.T.B.R. 833), under which the export of arms and munitions of war could take place freely unless destined to Mexico, China, Russia, Austria, Hungary, Bulgaria or Turkey. A similar Special Export License of July 8, 1920 (W.T.B.R. 841) is published in *Foreign Relations*, 1920, Vol. 1, pp. 743-5.

³ The only legislation on the subject was the joint resolution of March 14, 1912, which applied solely to American countries engaged in civil strife.

⁴ Secretary of State to the Secretary General of the League of Nations, July 28, 1922. *Foreign Relations*, 1922, Vol. 1, pp. 550-1.

⁵ Summarized from *Foreign Relations*, 1922, Vol. 1, pp. 547-55; *ibid.*, 1923, Vol. 1, pp. 38-42; and *ibid.*, 1924, Vol. 1, pp. 18-19, 27-8, 77-9.

2. The convention would not materially limit the manufacture and sale of arms since the contracting parties would be free to manufacture and sell for their own use in unlimited quantities.
3. The convention proposed to restrict the export of arms to certain native areas in Africa and the Middle East in which Great Britain, France and Italy rather than the United States were primarily concerned.
4. The convention would necessitate the enactment of legislation by the United States providing penalties applicable against private armaments firms, and the government did not feel that it was in a position to obtain the enactment of such legislation.¹
5. The provisions of the convention were so intertwined with the League of Nations as to make it impracticable for the United States to ratify it.
6. The Secretaries of War and Navy observed that the convention would probably restrict the export opportunities of the American munitions industry, and would therefore be undesirable from a military viewpoint since it would weaken the industry upon which the government relied heavily for purposes of national defense.

In spite of its decision not to ratify the Convention of Saint Germain, the Department of State took pains to announce that its refusal to ratify the convention did not mean that the United States was any less anxious than other powers *suitably* to control the international traffic in arms.² As evidence of its desires in this respect, the Department

¹This view was presumably based upon the position that the United States Government could not constitutionally regulate the private armaments industry, and that only the states could do so. It should be observed, however, that such regulation would have been undertaken in pursuance of a treaty dealing with the international traffic in arms, and that as such, it could scarcely have been challenged on constitutional grounds. Cf. *Missouri v. Holland*, 252 U. S. 416, upholding the power of the federal government to regulate, in pursuance of treaties, matters which otherwise would fall within the proper jurisdiction of the states. Despite the fact that the Supreme Court would undoubtedly have upheld federal regulation of the munitions industry in pursuance of an international treaty, the United States Government continued to maintain until the latter part of 1932 that it was powerless to prescribe or enforce a prohibition or a system of licenses upon private arms manufacturers in the United States.

On November 14, 1932, Secretary of State Stimson admitted that the United States Government undoubtedly possessed the constitutional power to regulate the manufacture of arms, and thereafter the United States looked with more favor upon proposals to control the manufacture and export of arms through some form of licensing system. Two years later, in November, 1934, the American Government submitted to the Disarmament Conference a draft convention for the regulation and control of the manufacture of and trade in arms by means of a system of national licenses and international supervision. This convention never got beyond the discussion stage, however, at Geneva. For a convenient summary, cf. Benjamin H. Williams, *American Diplomacy, Policies and Practices* (New York, 1936), pp. 380-2.

² *Foreign Relations*, 1922, Vol. I, pp. 550-1.

pointed to the joint resolution of January 31, 1922, authorizing the President to prohibit the export of arms to any American country, or any country in which the United States exercised extraterritorial jurisdiction, whenever conditions of domestic violence in those countries were being promoted by arms from the United States.

The Department of State, furthermore, called attention to the policy laid down by President Harding of not selling surplus government arms to foreign powers, and of attempting to discourage the shipment of war materials by private individuals to troubled areas of the world.¹ This policy appears to have originated in January, 1923, at which time it was reported that President Harding had ordered that no surplus rifles from the government stocks should be sold to any foreign power, or to any individual persons, alien or citizen. The President had concluded that for the United States to sell arms to any foreign nation was to encourage war, and a White House spokesman had declared, "We shall never sell arms again under this Administration." This action had followed upon inquiries from a European Government (said to be Yugoslavia) as to the possibility of purchasing perhaps 500,000 surplus rifles from the United States War Department.²

On April 23, 1923, this policy was clarified by a letter from President Harding to the Secretaries of War and Navy in which he said:

I hope it will be the policy of the War (and Navy) Department not only to make no sales of war equipment to any foreign power, but that you will go further and make certain that public sales to our own citizens will be attended by proper guarantees that such supplies are not to be transferred to any foreign power. I would gladly waive aside any financial advantage that might attend such sales to make sure that none of our surplus equipment is employed in encouraging warfare any place in the world.³

While President Harding did not go so far as to prohibit the private sale and export of war materials (non-government materials), the general attitude of the administration was not to encourage such shipments to troubled areas of the world.⁴ It has already been indicated that the United States probably never intended this policy to be applied to those

¹ *Foreign Relations*, 1923, Vol. 1, pp. 42-3. See also *supra*, pp. 105 ff.

² *New York Times*, January 13, 1923, p. 2.

³ *Ibid.*, April 25, 1923, p. 1.

⁴ *Foreign Relations*, 1923, Vol. 1, p. 43. As further evidence of this policy, the United States in December, 1923, following inquiries from the British Government, indicated that it would not sell government war supplies to countries in troubled areas in the Near East, and in particular would not support its nationals in any effort to ship such supplies to Turkey. This policy was not altered even after Great Britain in the spring of 1924 informed the United States that it had been impossible to secure an international agreement on the prohibition of arms shipments to Turkey and that the British restrictions on such shipments were therefore being removed. *Ibid.*, 1924, Vol. 2, pp. 741-3.

neighboring countries of Latin America where it was endeavoring by various means to support and strengthen the cause of "constitutional government".¹ But it was nevertheless symptomatic of an increasing interest on the part of the United States Government in the regulation of arms exports for the purpose of discouraging warfare throughout the world.²

Further manifestation of at least a theoretical interest in supervising the arms traffic was seen in the participation by the United States in the drafting and negotiating of the Geneva Arms Traffic Convention of June 17, 1925. Following the refusal of the American Government to ratify the Convention of Saint Germain, the League of Nations had sought to learn the objections of the United States to that convention in order that a new document might be drafted which would reconcile the views of the United States with those of the other interested powers. The result of these negotiations was the Geneva Convention of 1925. It provided for a system of national licensing and publicity for the export of arms, ammunition and implements of war, and permitted the export of these materials to any government, and, with certain exceptions, to persons or groups authorized by their respective governments.³ By allowing arms exports to *any government*, instead of limiting them to the governments of the signatory states, the convention met one of the principal objections which the United States had raised to the Convention of Saint Germain. Moreover, the 1925 convention contained no provisions for international supervision through the League of Nations as had its predecessor, and this represented another effort to meet the objections of the United States to the earlier document.

Despite these attempts to draft a convention which would be acceptable to the United States, and despite the fact that the American delegates to the Geneva Conference in 1925 had signed the convention, popular interest in the subject was apparently not yet great enough or not sufficiently organized in the United States to bring about its immediate ratification. At any rate, the Senate refrained from taking any action upon it for nearly a decade. Successive administrations appealed on various occasions for ratification, but the document was allowed to slumber in the files of the Senate Foreign Relations Commit-

¹ See *supra*, p. 106. War materials from surplus government stocks were sold to the recognized governments of Mexico in 1924 and 1929, Cuba in 1924, Honduras in 1925, 1926 and 1927, and Nicaragua in 1927.

² The general policy of not selling surplus government war materials to foreign states remained in effect with but few exceptions until the summer of 1940 when, in the midst of the European conflict, it gave way to the policy of "all aid to the Allies short of war." On several occasions since then, surplus or obsolete war materials from the United States Government stocks have been transferred to the British Government. See *infra*, pp. 253 ff.

³ For text, cf. Hudson, *International Legislation*, Vol. 3, pp. 1634 ff.

tee until 1934.¹ The convention was finally ratified in June, 1935, although it has not as yet taken effect owing to the failure of certain other states to ratify it.²

The Legislative Struggle, 1928-1934

The movement to restrict arms exports from the United States in the event of foreign wars was further reflected in a series of legislative proposals which came before Congress from December, 1927, onwards. While none of these actually materialized into law until 1934 (the Chaco embargo), they did nevertheless provide a basis for an increased public discussion of the subject, and stimulated active consideration of the relative advantages and disadvantages of any general arms embargo policy. The establishment by Congress in 1935 of a permanent system of arms export regulation, and the adoption at the same time of a policy prohibiting such exports to all belligerents in the event of war, was the culmination of this seven-years' legislative struggle and represented a synthesis of a number of divergent views which had manifested themselves during this period.

The first proposal to be made in this legislative struggle came on December 5, 1927, when Representative Theodore E. Burton³ introduced a bill authorizing a prohibition on the export of arms, munitions or implements of war to any aggressor nation making war on another in violation of its treaty obligations.⁴ This gave rise to objections, however, on the ground that it was often difficult to determine which of two nations was the aggressor, and that it was sometimes difficult to determine whether treaty obligations had been violated.⁵ The House Foreign Affairs Committee, moreover, was convinced that an impartial instead of a partial law should be adopted, and so Representative Burton on January 25, 1928, introduced another resolution providing for an embargo on a specifically defined list of arms, munitions and implements of war *to all belligerents*, the export of such goods to be *unlawful except*

¹ The reasons for the Senate's attitude are not clear, although the most probable reason seems to be the absence of any aroused public opinion on the subject, together with the fact that few members of the Senate Foreign Relations Committee had any particular interest in the matter. No hearings on the convention were held, and no definite opposition appears to have developed. By 1934 and 1935, however, American public opinion had become aroused over the arms traffic as a result of the Senate Munitions Investigation, and this undoubtedly contributed to the movement in behalf of ratification of the Geneva Convention as well as to the movement favoring the adoption of arms embargo legislation. Cf. "Arms Manufacturers and the Public," *Foreign Affairs*, July, 1934, pp. 639 ff., esp. p. 642. See also *infra*, p. 203.

² Department of State, *Press Releases*, June 29, 1935, pp. 484-5.

³ Mr. Burton had been Chairman of the American delegation to the Geneva Conference for the Supervision of the International Trade in Arms in 1925.

⁴ H. J. Res. 1 (70th Congress), *Congressional Record*, Vol. 69, pp. 97 and 3268.

⁵ *Ibid.*, p. 3268.

by the consent of Congress.¹ This resolution declared it to be the policy of the United States "to prohibit the exportation of arms, munitions, or implements of war to any nation which is engaged in war with another."

The Foreign Affairs Committee unanimously reported this resolution without amendment on January 30, 1928, and it was placed on the House calendar.² Before it could be called up for consideration, however, representatives of the Military Affairs Committee, who had suddenly become aware of its provisions, requested the Foreign Affairs Committee to give further attention to the bill. They expressed the fear that it might possibly impair the preparedness and national defense program of the United States, and indicated that officials of the War and Navy Departments ought to be given a chance to be heard on the proposal.³ Representative Andrew (Massachusetts) of the Naval Affairs Committee criticized the bill because it proposed to destroy the industries on which the Army and Navy depended in time of emergency, and because it sought to do this unilaterally, without any agreement from other countries. He declared that no report on this proposed legislation had been requested from the War or Navy Departments even though it vitally affected the national defense of the country, nor had any reports been requested from the State Department despite the fact that it proposed a change in our foreign policy. He concluded, therefore, that the bill ought to be referred back for more extensive hearings.⁴

In view of the request of the Military Affairs Committee, the Foreign Affairs Committee arranged to hold public hearings on the Burton Resolution from March 15 to 22, 1928, and representatives of the War and Navy Departments were given a chance to express their views.⁵ The Secretary of War, the Assistant Secretary of War and the Secretary of the Navy all appeared in person, and criticized the embargo proposal on the ground that it would weaken the private armaments industry of the United States upon which the government relied heavily for national defense in times of emergency. To prohibit the export of war materials to belligerent nations would divert business from the American industry, and in so doing would make it less prepared to serve our own needs if we should become involved in war. The only alternative,

¹ H. J. Res. 183 (70th Congress), *ibid.*, p. 2045. For text of the resolution, see p. 3269; also *International Conciliation*, No. 251, June, 1929, p. 333.

² House Report No. 492, 70th Congress, 1st session. *Congressional Record*, Vol. 69, p. 2222.

³ House of Representatives, Committee on Foreign Affairs, "Exportation of Arms, Munitions or Implements of War to Belligerent Nations," *Hearings on H. J. Res. 183*, March, 1928, p. 1.

⁴ *Congressional Record*, Vol. 69, p. 4646.

⁵ *Hearings on H. J. Res. 183*, March, 1928.

it was contended, to relying on a strong private armaments industry was to develop a large government-owned munitions industry.¹

The Burton Resolution was also opposed on the ground that it would adversely affect the small non-arms producing countries, particularly in Latin America, which would be unable to get supplies from us if they became involved in war, and would therefore be obliged either to seek such supplies elsewhere or to develop armaments industries of their own. It was furthermore suggested that the application of an arms embargo would place a difficult and onerous duty of administration upon the United States, while at the same time binding the government to a specific course of action without leaving any initiative or discretion to the Executive.

In contrast to the Secretaries of War and Navy, the members of the House Foreign Affairs Committee seemed to be almost unanimously in favor of the resolution and the policy it proposed.² They argued at length with the Secretaries and took issue with the latter's contention that any restriction on the opportunities to export arms would weaken the private armaments industry of the United States. They declared that the efficiency of national defense ought not to be made dependent on the business derived from foreign wars. Representative Temple, in particular, disagreed with the argument that the private arms industry would be better able to serve the United States if it were not restricted in its opportunities to sell to foreign nations. He called attention to the fact that the guns, ammunition and equipment of foreign armies often differed considerably in specifications and dimensions from the equipment used by the United States, and that consequently different types of machinery, dies and gauges were required. To change from one type of production to another would demand a considerable, if not complete, readaptation of machinery which might involve costly delays in time. Mr. Temple cited the case of one large arms manufacturer during the World War who was obliged to spend thirteen months readapting his plant in order to be able to produce Enfield rifles for Great Britain. After the United States entered the war, the same manufacturer spent nearly a year re-transforming his machinery and equipment so as to manufacture Springfield rifles and ammunition for the United States Army.³ Even though an American

¹ *Hearings on H. J. Res. 183, March, 1928, passim.* Several American armaments firms were deeply concerned about the possible effects of an arms embargo law on their business, but it did not seem necessary for them to take any active or concerted measures to oppose the bill because the opposition from the War and Navy Departments and other sources was believed to be enough to prevent its passage. Senate Munitions Committee, *Report*, Pt. 3, pp. 143-4.

² It may be of interest to note that the late R. Walton Moore, then a member of the House Foreign Affairs Committee, and later Counselor of the Department of State, was one of the leading supporters of the Burton Resolution.

³ *Hearings on H. J. Res. 183, March, 1928, pp. 77-8.* The manufacturer was reported to have said "that the fact that they were manufacturing rifles did not en-

armaments factory was operating at full capacity producing materials for a foreign government, that did not mean that the factory was equipped to produce materials of the specifications desired by the United States. It might even constitute a handicap if the factory had become so geared to the production of foreign supplies that it could not without considerable transformation be readapted to production for the United States.¹

The members of the Foreign Affairs Committee were not therefore convinced that an embargo on arms shipments to belligerents would operate to the disadvantage of the United States. Even if it should prove to do so, however, the Burton Resolution contained an escape clause whereby Congress could permit such exports by way of exception to the prohibition.

The chief reasons advanced by the committee members in support of the Burton Resolution may be summarized as follows:²

1. To prevent the United States from supplying the instruments of destruction with which foreign wars are fought, and to prevent American citizens from profiting from such transactions. To some, the prohibition of the arms traffic seemed to be a moral obligation, while to others it was considered to be only a logical extension of the neutral duty of non-participation.
2. To exert a restraining influence upon nations about to embark on war, or to shorten or terminate wars which might break out despite these efforts.
3. To keep the United States out of war.

For the most part, these arguments resembled those which were heard during the World War in connection with the proposals that the United States place an embargo on the shipment of arms and munitions of war to the belligerent powers.³ The idea that such action was necessary in order to keep the United States out of war was given prominence, however, for the first time in the debates of 1928. Representative Hamilton Fish, Jr., who was himself the author of two arms

able them to manufacture the Enfield rifle, that they would have to equip themselves with jigs and dies and gauges, and that it would have been about as easy for the National Cash Register people or the Burroughs Adding Machine people to get out and manufacture small arms."

¹ Much of the time delays involved in transforming arms manufacturing machinery from foreign specifications to United States specifications might be avoided if the special dies, jigs and other machine tools necessary for the United States specifications were obtained in advance and stored. Then if an emergency should arise, the transformation could be effected in a few days. The basic machinery is often the same, and it is only the special machine tools, dies, etc., which have to be changed. If these were not on hand, it might require several months to obtain them, but if they had been previously acquired and stored, the transition could be made very quickly. With the necessary machine tools in storage in case of an emergency, it is not likely that the manufacture of arms for foreign countries would tie American production to foreign specifications or render difficult the transformation back to American specifications.

² Summarized from the *Hearings on H. J. Res. 183*.

³ See *supra*, pp. 26-7.

embargo resolutions in 1928, and who has been an active supporter of such proposals ever since,¹ frequently emphasized the idea that the continued exportation of munitions to belligerent powers would eventually drag the United States into war, and that an embargo on such exports would help to keep us out.²

The Department of State did not take any active interest in the Burton Resolution, despite the fact that it was then vigorously trying to apply arms embargoes with respect to China, Mexico, Honduras and Nicaragua. It was apparently not convinced as yet of the desirability of any general arms embargo legislation of this character applicable to foreign wars,³ although it never expressed any open opposition to the proposal as did the War and Navy Departments. Its only formal comment was a non-committal statement from Secretary Kellogg to the effect that there was no obligation on the part of neutral states to permit or forbid the private exportation of arms, and that therefore the proposed resolution, which was non-discriminatory in character, would not violate the obligations of neutrality.⁴

No further action was taken on the Burton Resolution after the hearings in March, 1928, the opposition of the War and Navy Departments having apparently proved strong enough to weigh against the recommendations of the House Foreign Affairs Committee. It nevertheless marked the beginning of a movement in Congress to control the private export of war materials, which gained strength in succeeding years, and which finally succeeded in writing a new law on the statute books in 1935.⁵

The signing of the Briand-Kellogg Pact in August, 1928, stimulated the movement to adopt an arms embargo law, and numerous resolutions to that end were introduced during 1929 by Senator Arthur Capper and Representatives Korell, Porter and Fish.⁶ The Capper

¹ Mr. Fish's support has been limited to arms embargo proposals which were impartial, non-discriminatory, and non-discretionary in character. He has opposed proposals to give the President discretionary authority to apply restrictions on arms exports in general. ² Cf. *Hearings* on H. J. Res. 183, March, 1928, pp. 65-71, 82.

³ Two letters of March 15 and April 2, 1928, from the files of the Du Pont Company indicate the belief that both the State and Commerce Departments, as well as the War and Navy Departments, were not in favor of the Burton Resolution. Senate Munitions Committee, *Hearings*, Pt. 12, pp. 2737, 2743.

⁴ Kellogg to Porter, Chairman of the House Foreign Affairs Committee, March 19, 1928. *Hearings* on H. J. Res. 183, March, 1928, pp. 78-9.

⁵ There were actually five arms embargo resolutions introduced in Congress in December, 1927, and January, 1928, three of these being sponsored by Representative Burton (H. J. Res. 1, 171, and 183), and two by Representative Fish (H. J. Res. 167 and 172). No action, however, was recorded on any except H. J. Res. 183. For a further discussion of the Burton Resolution, see Lester H. Woolsey, "The Burton Resolution on Trade in Munitions of War," *A.J.I.L.*, Vol. 22 (1928), pp. 610-14; and Joseph P. Chamberlain, "The Embargo Resolutions and Neutrality," *International Conciliation*, June, 1929, No. 251, pp. 281-90.

⁶ Five resolutions were introduced during the second session of the 70th Congress ending in March, 1929, and four similar resolutions were reintroduced during the special session of the 71st Congress which met from April to November, 1929.

and Korell Resolutions authorized the application of an embargo on arms, munitions and implements of war against any country declared by the President to have violated the Kellogg Pact; the Porter Resolutions would have amended the joint resolution of January 31, 1922, so as to make it applicable to cases of international or civil war anywhere; while the Fish Resolution was similar to the Burton Resolution of a year earlier.¹

Secretary of State Kellogg was somewhat more openly sympathetic at that time to the idea of arms embargo legislation than he had been a year previously. In a statement before the House Foreign Affairs Committee on the Porter Resolution, he indicated that he saw no objection to the resolution or to giving the President the authority to apply an arms embargo at his discretion. It was necessary to assume, he said, that the President would exercise judgment in the matter, and would not apply the embargo unless it would do some good. He expressed the opinion, furthermore, that it would be better to place the power in the hands of the President than to have the embargo apply automatically as under the Burton Resolution, without any assurances that it would do any good or that other countries would cooperate.²

Mr. Kellogg, however, did not urge the adoption of the resolution, but merely contented himself with the statement that he saw no objection to it. It was left to his successor, Mr. Henry L. Stimson, to take up the case actively and positively four years later.

No further public hearings were held in 1929 on any of the above-mentioned resolutions, and none of them were reported out of committee. They had, however, served the purpose of stimulating discussion on the subject.³

The question slumbered thereafter until the latter part of 1931 when the outbreak of hostilities between Japan and China again awakened public opinion to a state of concern over the shipment of war materials to belligerent nations. Another series of resolutions was introduced; there was much talk of an embargo against Japan; but no action was taken.⁴ Interestingly enough, in the light of the recent

¹ Texts of these resolutions are reproduced in *International Conciliation*, June, 1929, No. 251, pp. 334-40.

² House of Representatives, Committee on Foreign Affairs, "Prohibiting the Exportation of Arms or Munitions of War from the United States to Certain Countries," *Hearing on H. J. Res. 416*, February 16, 1929.

³ Cf. e.g., "Teeth for the Kellogg Treaty," *The Nation*, February 27, 1929, p. 246; "War Embargoes — Planned or Involuntary," *The New Republic*, February 27, 1929, pp. 29-31; "Teeth in the Kellogg Pact," *The Commonwealth*, February 27, 1929, pp. 474-5; "To Keep Guns from Warring Nations," *Literary Digest*, February 23, 1929, pp. 10-11.

⁴ Between December, 1931, and April, 1932, seven embargo resolutions were introduced in Congress. Three of these envisaged general or limited trade prohibitions against nations which had violated the Kellogg Pact; one provided for an embargo on the export of arms and munitions of war to Japan and China; two envisaged general arms embargoes against belligerent nations; and one, introduced by Representative

denunciation by the United States of the American-Japanese Commercial Treaty of 1911, one of the reasons why action was deferred in 1932 on the proposed embargo against Japan and China was the feeling that such a step would violate Article 5 of that treaty, which provided as follows:

Nor shall any prohibition be imposed by either country on the importation or exportation of any article from or to the territories of the other which shall not equally extend to the like article imported from or exported to any other country. . . .¹

In 1933, the stage seemed to be more favorably set for definite legislative action on the question of giving the President authority to proclaim arms embargoes in cases of foreign war. The continuous flow of foreign arms and ammunition to the Chaco belligerents in South America, together with the resumption of active warfare by the Japanese in Jehol Province, China, stimulated renewed consideration of the question, and this time, the President and Secretary of State definitely took the initiative in requesting Congress to adopt embargo legislation.

On January 10, 1933, President Hoover sent a special message to Congress urging the ratification of the Geneva Arms Traffic Convention of June 17, 1925, or, if this seemed impossible, the adoption of legislation conferring upon the President authority in his discretion to limit or forbid the shipment of arms for military purposes in cooperation with the principal arms manufacturing nations. "Recent events," he said, "have emphasized the urgent need of more authority to the Executive in control of the shipment of arms from the United States for military purposes." There could be no doubt, he added, "that the control of such shipments to areas of prospective and actual international conflict would greatly aid the earnest and unceasing efforts which all nations now make to prevent and lessen the dangers of such conflicts."²

A letter from Secretary of State Stimson to the President, dated January 6, 1933, urging the ratification of the 1925 convention and the adoption of the legislation suggested above, was also transmitted to Congress at the same time.³ In this letter, Secretary Stimson pointed out that

Fish, proposed a multilateral agreement renouncing the sale or export of arms to any foreign nations in accordance with the Kellogg Pact. The Fish Resolution was considered and reported favorably by the House Foreign Affairs Committee on March 30, 1932, but not acted upon by the House as a whole. No formal action was taken on any of the other embargo resolutions. See H. J. Res. 53, H. J. Res. 228, S. J. Res. 140, S. J. Res. 89, H. J. Res. 137, H. J. Res. 270, and H. J. Res. 282. 72nd Congress, 1st session. *Congressional Record*, Vol. 75, Pt. 15.

¹ 37 Stat. 1506. ² Department of State, *Press Releases*, January 14, 1933, pp. 18-19.

³ *Ibid.*, pp. 19-22.

the international traffic in arms often tends to undo the effects of our diplomatic efforts and of the international efforts which are being made to preserve the peace of the world. It is becoming more and more evident that the international traffic in arms must be supervised and controlled by national and international action if these efforts are not to be frustrated.¹

And at the close of his letter, he said:

I respectfully recommend that you commend to the favorable consideration of the Congress legislation which in addition to the present authority applicable to conditions of domestic violence should confer upon the President authority in his discretion to limit or forbid in cooperation with other producing nations the shipment of arms and munitions of war to any foreign State when in his judgment such shipments may promote or encourage the employment of force in the course of a dispute or conflict between nations. Such authority would of course be exercised by any Chief Magistrate of the United States in consonance with the principles of treaty sanctity, with international obligations and with a due and prudent regard to our national policies. There are times when the hands of the Executive in negotiations for the orderly settlement of international differences would be greatly strengthened if he were in a position in cooperation with other producing nations to control the shipment of arms. The United States should never, in justice to its own convictions and its own dignity, be placed in such a position that it could not join in preventing the supply of arms or munitions for the furtherance of an international conflict while exercising its influence and prestige to prevent or bring to an end such a conflict. Although we are more often and especially concerned in banishing the use of force in our own hemisphere and the principal field of operation of the existing Joint Resolution is within our own hemisphere, I suggest that the proposed legislation should be made to apply to the whole world. The day is gone when the spread of a conflagration is easily confined to any continent or hemisphere. The taking by the United States of this additional step in its domestic policy will tend to give encouragement and momentum to the struggle for world peace and against the use of force from which arise some of the most critical problems of this unsettled period in international relationships.²

This was indeed a far cry from the position taken by the Department of State during the World War, and consistently held during the preceding century, regarding any proposals for restricting the traffic in arms.³ The administration had at last become convinced that the unrestrained export of war materials by private individuals might indeed disturb the peace, and interfere with the efforts of diplomacy to terminate or prevent war. It was therefore prepared to set aside completely the historic policy of non-regulation, and to lodge in the Executive the power to regulate the shipment of arms for the purpose of promoting world peace.

In prompt compliance with President Hoover's request of January 10, 1933, the Senate Foreign Relations Committee, of which Mr.

¹ Department of State, *Press Releases*, January 14, 1933, p. 20. ² *Ibid.*, p. 22.

³ See *supra*, pp. 16-20, and 22-5.

Borah was then chairman, unanimously reported a joint resolution on the following day which provided as follows:

That whenever the President finds that in any part of the world conditions exist such that the shipment of arms or munitions of war from countries which produce these commodities may promote or encourage the employment of force in the course of a dispute or conflict between nations, and, after securing the cooperation of such governments as the President may deem necessary, he makes proclamation thereof, it shall be unlawful to export, or sell for export, except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country or countries as he may designate, until otherwise ordered by the President or by Congress.¹

The quick action on the resolution was said to be due to the existence of the Chaco dispute between Bolivia and Paraguay.² In fact, the Senate Committee understood that the proposed legislation was intended solely to be used with reference to the Chaco dispute and not with respect to other parts of the world such as the Far East.³ Otherwise, it probably would have been impossible to have secured action either unanimously or quickly. In the light of the well-known opposition of many leading members of the Senate to any policy which might imply participation or taking sides in foreign conflicts, it is little short of remarkable that the resolution above quoted could have been reported within such a short time and by unanimous vote. The resolution clearly gave the President complete discretionary authority to apply an arms embargo in cooperation with other powers against such *country or countries* as he might designate, thereby definitely opening the way for an embargo against an "aggressor" nation if the President wished to take such action. Even if the Senate Foreign Relations Committee believed that the authority conferred by the resolution would only be used with regard to the Chaco belligerents, it is surprising that a safeguarding clause to this effect was not inserted.

On January 19, 1933, the Senate adopted the resolution by unanimous consent and without debate, Senator Borah taking the initiative in calling it up for consideration and urging its immediate adoption.⁴ If the Foreign Relations Committee had not fully realized the implications of the proposal, it seems still less likely that the Senate as a whole was aware of the vast discretionary powers which it had voted to confer upon the President. This became evident a few months later when a similar resolution was again being considered by the Foreign Relations Committee, and Senators Borah and Johnson this time insisted

¹ S. J. Res. 229, 72nd Congress, 2nd session. *New York Times*, January 12, 1933, p. 2. *Congressional Record*, Vol. 76, p. 1551. The committee took no action at that time on the President's request regarding the ratification of the 1925 arms convention.

² *New York Times*, January 12, 1933, p. 2.

³ *Congressional Record*, Vol. 76, p. 3590.

⁴ *Ibid.*, p. 2096.

that it be worded so as to apply impartially with respect to all belligerents.

The resolution as approved on January 19, 1933, never went to the House, however, for on the following day, Senator Bingham moved that it be held over for reconsideration.¹ Senator Borah subsequently tried to persuade Mr. Bingham to withdraw his motion, but the latter refused,² and the resolution was not voted on again before Congress adjourned in March, 1933. Mr. Bingham's objection was that the measure gave the President the power to be so unneutral as to lead us directly into difficulties if not war with foreign nations. He also maintained that the Chief of Staff of the Army and the Assistant Secretary of War opposed the bill.³

As might have been expected, Senator Bingham's action in blocking the embargo resolution was enthusiastically hailed by representatives of the munitions industry who had been working energetically behind the scenes to secure its defeat.⁴ The executive secretary of the Army Ordnance Association, for example, congratulated him as follows on February 20, 1933: "Hats off to you for your magnificent stand on the arms embargo legislation."⁵

Of particular significance in this legislative struggle were the steps taken by various munitions concerns, especially Du Pont, to get the War and Navy Departments to oppose the resolution which the President and the State Department were urging. The cross purposes which were at work within the government itself on this matter became evident when the Acting Secretary of War wrote to Senator Bingham on February 2, 1933, explaining why the War Department felt that the enactment of embargo legislation by the United States would be unwise. The reasons were similar to those advanced by the War Department in 1928 at the time of the Burton Resolution, and are indicated in the following excerpt from the Acting Secretary's letter:

The opinions given below are . . . confined to the military aspects of the matter and make no attempt to comment upon the efficacy of such an embargo in preserving peace, or of its possible effects upon the ability of this country to maintain a strict neutrality in any dispute between foreign countries.

* * *

In the United States reserve stocks are very inadequate, and aside from a few manufacturing depots operated by the Ordnance Department, complete reliance in this regard is placed upon a small number of commercial plants engaged in the production of various types of arms and equipment. None of these operate under governmental subsidy. Their products are sold in part to the United

¹ *Congressional Record*, Vol. 76, pp. 2134-5.

² *Ibid.*, pp. 3589-91.

³ *Ibid.*, pp. 3590, 3591. Cf. also Borchard and Lage, *Neutrality for the United States* (1937 ed.), pp. 304-5.

⁴ Senate Munitions Committee, *Report*, Pt. 3, pp. 145-8.

⁵ Senate Munitions Committee, *Hearings*, Pt. 37, p. 12405.

States Army and Navy, and in part to foreign nations, particularly to the smaller ones in which no adequate munitions industry has been established.

In the foreign market these companies compete with the munitions industries of other producing nations, and their continued life depends largely upon success in that field. They must meet this competition in every requirement of the importing nation. One of these requirements is assured continuity of supply. Replacement and repair necessitates stability in types and no nation could afford to purchase vital items of equipment from an exporter who could not give equal assurance with all competitors that the supply would be continuous. Therefore, any announced determination of this government to prohibit, under certain conditions, the export of arms to other countries would, unless it were definitely shown that this action would be taken in any specific case only in concert with all other principal producing nations, place our manufacturers at a material disadvantage in competing for foreign markets. The result of this would be to cripple if not to eliminate most of the munitions producing establishments in the United States.

* * *

Widespread belief that the United States might proceed independently in cutting off arms exports will result in driving foreign buyers to other manufacturers and in destroying our small munitions producing nucleus. I repeat that upon this nucleus rests our chief hope for equipping our citizen armies adequately in time of grave emergency.¹

If this statement be read in connection with the letter of Secretary Stimson of January 6, 1933, cited above (p. 183), the conflict of motive between the State and War Departments on the matter of arms embargo legislation becomes apparent. The War Department does not seem to have noted the fact that the embargo resolution then pending before Congress authorized the President to prohibit the export of arms only in cooperation with other arms-producing countries and that therefore no discrimination against American manufacturers would result.

As it became evident that the embargo resolution might be held up indefinitely in the Senate for reconsideration, the State Department sought the assistance of the House Foreign Affairs Committee, and on January 27, 1933, Under Secretary of State Castle urged Representative Sam D. McReynolds, chairman of that committee, to expedite action on the arms embargo proposal since it would help out in the Chaco situation.² Mr. McReynolds responded, and three days later intro-

¹ Senate Munitions Committee, *Report*, Pt. 3, pp. 149-50. The fears of the War Department that independent arms embargo legislation would drive foreign business to other manufacturers and destroy our small munitions producing nucleus do not seem to have been borne out by the actual exports of arms since 1935 when permanent embargo legislation was enacted. Export licenses were issued in 1936 for \$24,243,565 worth of arms, ammunition and implements of war; in 1937 for \$46,155,393 worth; and in 1938 for \$83,692,589. The figure for 1939 was \$204,555,780, but this is not entirely comparable with the previous figures since the embargo legislation was repealed on November 4, 1939. *Fourth Annual Report of the National Munitions Control Board*, 1939, pp. 57-9.

² *New York Times*, January 28, 1933, p. 6.

The possibility of applying an embargo to the Far Eastern conflict does not seem to have impressed the State Department very favorably at this time, or to have been

duced in the House a joint resolution identical to that which had passed the Senate but was being held up for reconsideration.¹

The House Foreign Affairs Committee proceeded at once to hold hearings on the question, the first of such hearings to take place on an arms embargo proposal since 1928 and 1929.² Support for the proposal came this time from the Department of State and various peace organizations, while the opposition was furnished by the representatives of the aircraft and small arms industries. The latter took up two-thirds of the hearings with their arguments that any restrictions on their opportunities to export would weaken the industry and place them at a serious disadvantage with their foreign competitors. This was particularly emphasized by the aircraft producers who were afraid that the resolution would impose restrictions on the export of commercial aircraft and would thereby seriously weaken the industry at a time when every effort was being made to strengthen it. Even though the pending resolution contained a clause requiring foreign cooperation before the United States acted, the measure was considered unsatisfactory because it was felt that it would lead other nations which normally depended upon us for aircraft supplies to develop similar industries of their own, thereby reducing our potential market. Members of the committee tried in vain to convince the aircraft representatives that the resolution could not be applied without the cooperation of other powers, and that therefore it could not discriminate against American industries. The spokesman for the latter insisted, however, that foreign purchasers would not come here to buy if they feared that their sources of supply might be cut off in time of war.³ Despite their assertions that they were not opposed to a truly international or world-wide embargo, it seems more evident from their opposition to the 1933 embargo resolution that the American producers of arms and war material were unsympathetic to any form of interference with their export trade, regardless of whether it were international or national in character.⁴

one of the reasons why it was urging the adoption of the embargo resolution. This was understandable in view of the fact that an arms embargo alone would probably not have had much material effect in restraining Japan, regardless of whether it applied to both China and Japan, or to Japan alone. If applied to both countries, it would probably have hurt China more than Japan, while if applied to Japan alone, it would have probably led to a Japanese blockade of China which would have prevented the United States from supplying arms to China anyway. In either case, it appeared possible that an arms embargo would only facilitate Japan's efforts to coerce China, and would therefore be undesirable.

¹ H. J. Res. 580, 72nd Congress. *Congressional Record*, Vol. 76, p. 2943.

² House of Representatives, Committee on Foreign Affairs, "Exportation of Arms or Munitions of War," *Hearings on H. J. Res. 580*, February 7-14, 1933.

³ *Hearings on H. J. Res. 580, passim.*

⁴ Cf. Senate Munitions Committee, *Report*, Pt. 3, p. 147.

In the light of the dire predictions of the representatives of the aircraft industry, it may be of interest to note what has happened to aircraft exports since the adoption in 1935 of the neutrality law with its provision for an *automatic arms embargo* against

When the House Foreign Affairs Committee came to consider the McReynolds Resolution in executive session with a view to reporting it to the House, it was apparently more aware of the implications of the proposal than had been the Senate Foreign Relations Committee. At least it amended the bill so as to limit its application to American countries. This amendment was suggested by Representative Fish who feared that the original resolution granting the President discretionary power to apply arms embargoes against any country in the world might be used with respect to the Far Eastern conflict.¹ The resolution in amended form was reported to the House on February 15, 1933,² but was not brought to a vote before Congress adjourned in March. The Hoover administration therefore went out of office without having secured the embargo legislation which it sought, but it had made an important contribution toward the movement favoring such legislation since it had thrown the weight of the Executive behind the proposal.

Thus matters stood when the Roosevelt administration came into power in March, 1933. President Roosevelt had already indicated where his sympathies lay, for on January 11, 1933, two months before his inauguration, he had declared that he had long favored the principle of embargoes on arms shipments, particularly to aggressor nations.³ Almost immediately after taking office, the new administration announced that it would press for authority to declare arms embargoes applicable to any part of the world where war might threaten,⁴ and on March 16, Representative McReynolds introduced a resolution to grant such authority.⁵ It was identical with the resolutions which

all belligerents in case of war, regardless of the action of other nations. The figures summarized below are taken from the *Fourth Annual Report of the National Munitions Control Board, 1939, p. 57:*

Year	Military aircraft exports	Commercial aircraft exports	Total
1936.....	\$ 7,353,842.86	\$14,652,006.44	\$ 22,005,839.30
1937.....	14,354,357.76	23,564,205.37	37,918,563.13
1938.....	49,181,179.28	29,256,166.78	78,437,346.06
1939.....	136,113,113.36	61,725,671.03	197,838,784.39

These figures represent the value of the export licenses issued, and may not for this reason correspond precisely with the amounts exported during the same periods. Whether there might have been a still greater increase in the export of aircraft had there been no neutrality law on the statute books is of course a debatable question. It is clear, however, that the existence of a potential embargo, even in a unilateral form, has not resulted in any decrease in business. See also *supra*, p. 186, note 1. The 1939 figures are not entirely comparable with those for preceding years in view of the outbreak of the European war and the repeal of the embargo on November 4, 1939.

¹ *New York Times*, February 16, 1933, p. 15.

² House Report No. 2040, 72nd Congress, 2nd session. *Congressional Record*, Vol. 76, p. 4209.

³ *New York Times*, January 12, 1933, p. 1.

⁴ *Ibid.*, March 15, 1933, p. 1.

⁵ H. J. Res. 93, 73rd Congress. *Congressional Record*, Vol. 77, p. 581.

had been considered by the Senate and House during January and February.

Extensive debate now took place, and the basic issue proved to be whether or not the President should have discretionary authority to apply embargoes against any nation or nations which he might designate, or whether he should be obliged to apply them against all belligerent nations alike.¹ A distinct change in the character of the debate now became noticeable, as well as a definite shift in the emphasis of the discussions. Whereas the question previously had centered on the desirability or undesirability of an arms embargo, with the opposition coming mainly from the armaments interests and the War and Navy Departments, after March, 1933, the desirability of an embargo seems to have become more or less accepted, and the debate turned to the question of what type of embargo should be authorized and whether or not the President should be given power to apply it in a discriminatory way. The opposition now came chiefly from those who felt that a discretionary embargo law would confer dangerous powers on the President by permitting him to apply embargoes in an unneutral or discriminatory way.

With this shift in emphasis, the arms embargo resolution became the center of a debate which has not yet ended on the general policy of the United States regarding the whole framework of international peace machinery and collective security. It became, indeed, almost a symbol in the debate between those who felt that the United States should cooperate more openly in the efforts to prevent aggression, and those who believed that a policy of impartial neutrality and general abstention from collective peace efforts was most desirable.

The position of the administration was made clear in a letter from Secretary of State Cordell Hull to Representative McReynolds on April 5, 1933, in which Mr. Hull declared:

In justice to the firm convictions of the American people and to its own dignity, this Government should no longer be left in the position of being unable to join the other governments of the world in preventing the supply of arms and munitions for use in an international conflict when it is exercising its diplomacy and the whole weight of our national influence and prestige to prevent or put an end to that conflict. The enactment of this legislation would strengthen the position of this Government in its international relations and would enable us to cooperate more efficiently in efforts to maintain the peace of the world.²

Judge John Bassett Moore and Professor Edwin M. Borchard joined hands in criticizing the embargo resolution because of the authority which it gave to the Executive to discriminate against aggressors.

¹ *Congressional Record*, Vol. 77, April 13 and 14, 1933, *passim*. Borchard and Lage, *Neutrality for the United States* (1937 ed.), pp. 307-11. *Foreign Affairs*, July, 1934, pp. 649-51.

² *Congressional Record*, Vol. 77, p. 1752.

While they did not oppose the impartial application of an arms embargo, they emphatically objected to any resolution which gave discretionary authority to the President to apply such prohibitions in an unneutral fashion. An arms embargo against one belligerent and not against the other would constitute an act of interference in a military sense, they declared, and would make the United States a party to the war, whether declared or undeclared. In this respect, the Executive would be given the virtual power to engage in hostilities without the prerequisite constitutional declaration of war by Congress.¹

Supporters of the resolution replied that the Executive already had the power to involve the country in war without the consent of Congress, if he were minded to abuse his authority in such a manner. It was necessary to trust the good judgment of the Executive, they said, and it was unwarranted to deny to him an additional power which could be employed constructively in the promotion of world peace simply because he might abuse that power.²

When the resolution came up for a vote in the House on April 17, 1933, Representative Fish sought to have it recommitted to the Foreign Affairs Committee with instructions to amend it so as to provide "that nothing in this resolution shall violate or authorize the President to violate the neutrality of the United States." This effort to assure the application of impartial embargoes was defeated by a vote of 248-114, and immediately thereafter the resolution in its original form was adopted 254-109.³ The House had now passed a resolution identical with the one approved by the Senate in January, 1933, but since this was a new session of Congress, the measure had to go in regular procedure through the Senate Foreign Relations Committee. This time it met a much different fate at the hands of the committee from that which it had met a few months earlier.

If the full implications of the discretionary embargo resolution approved by the House had not been entirely appreciated in April, 1933, they were made very clear by the declaration of Mr. Norman Davis before the General Commission of the Disarmament Conference at Geneva on May 22. Speaking on behalf of the American Government, Mr. Davis stated that in the event of a general disarmament agreement, the United States would be prepared to contribute to the organization of peace by consulting with other states in case of a threat of war, with a view to averting conflict. Further than this, in the

¹ For a further elaboration of these views, see the letter from Judge Moore to Representative Fish of March 27, 1933, printed as part of the minority views accompanying the report on H. J. Res. 93. House Report No. 22, 73rd Congress, 1st session, Pt. 2, pp. 5-9. See also Borchard, "The Arms Embargo and Neutrality," *A.J.I.L.*, Vol. 27 (1933), p. 293, and Borchard and Lage, *Neutrality for the United States* (1937 ed.), pp. 305-11.

² *Congressional Record*, Vol. 77, p. 1700.

³ *Ibid.*, pp. 1849-50.

event of collective action against any state deemed to have broken the peace in violation of its international obligations, the United States would not take any steps calculated to defeat such collective effort provided we concurred in the identification of the aggressor.¹ While the United States did not thereby promise any positive action, it at least indicated that in the event of general disarmament it would not interfere with any League of Nations action against an aggressor state, provided we agreed on the identification of the aggressor.

Although Mr. Davis' declaration of May 22, 1933, was made conditional upon the conclusion of a general disarmament agreement, his pronouncement served to give a more practical and realistic aspect to the arms embargo resolution before the Senate Foreign Relations Committee.² Despite assurances from the State Department that the administration was disposed then to apply the measure only with respect to the Chaco belligerents in South America, there were increasing fears that its general discretionary authority would give the President power to cooperate in such a way as to make the United States a virtual participant in foreign wars.

The effect upon the Senate Foreign Relations Committee was immediate. Whereas it had been confidently predicted a few days before that the embargo resolution in its original form would be favorably reported by the committee and adopted by the Senate with little opposition,³ a group led by Senators Hiram Johnson of California and Arthur Vandenberg of Michigan now demanded that the resolution be amended so as to apply impartially against all belligerents, and to eliminate the possibility of its being used in a discriminatory way against an "aggressor" nation.⁴ The force behind this demand was so strong that the administration agreed to yield on this point, rather than provoke a conflict with the Senate at a time when every effort was being made to secure Congressional approval of the New Deal program.⁵ The embargo resolution was accordingly reported on May 27, 1933, with the so-called Johnson amendment which read as follows:

Provided, however, that any prohibition of export, or of sale for export, proclaimed under this resolution shall apply impartially to all the parties to the dispute or conflict to which it refers.⁶

It was at once recognized that the effect of this amendment might virtually be to nullify the pledge made by Mr. Norman Davis five days earlier, but although Secretary Hull and President Roosevelt indicated

¹ Department of State, *Press Releases*, May 27, 1933, p. 390.

² Cf. *The United States in World Affairs* (published by the Council on Foreign Relations), 1933, p. 97.

³ *New York Times*, May 18, 1933, p. 1; and May 25, p. 12.

⁴ *Ibid.*, May 26, 1933, p. 3.

⁵ *Ibid.*, p. 3; and May 28, p. 3.

⁶ Senate Report No. 101, 73rd Congress, 1st session.

that the amended resolution was not in accord with their views, it seemed likely that they would accept it as the best measure available at that time.¹ It was not called up for a vote in the Senate, however, before the special session of the New Deal Congress adjourned on June 15, 1933. There was still no general embargo law on the statute books, therefore, despite the widespread debate which had taken place and the increased public interest which had manifested itself.²

The divergent points of view in the House and Senate on the subject of arms embargo legislation, which crystallized during the deliberations of April and May, 1933, have remained substantially the same to the present time. The House in general has been in favor of a more discretionary type of bill, while the Senate has insisted on the inclusion of certain mandatory provisions which would assure the impartiality of its application. In the actual legislation which was finally adopted in 1935, the views of the Senate in this respect prevailed.

While no permanent legislation establishing control over the export of arms or envisaging the application of embargoes in the event of foreign wars was approved by Congress before 1935, special action was taken in 1934 to prohibit the sale of arms to the Chaco belligerents in South America. This represented the first fruit of the legislative struggle which had been going on since 1928, and marked the first instance in which the United States attempted to throw its weight on the side of "starving" a foreign war by restricting the supplies of war materials to the two belligerents. The action which was taken, and the difficulties which were encountered, will be discussed in detail in the following chapter.

¹ *New York Times*, May 30, 1933, p. 4.

² The tremendous increase in public interest in the question of the munitions traffic and its control beginning about 1933 is evidenced by the long list of articles under the title, "Munitions of War" in the *Reader's Guide to Periodical Literature*, July, 1932-June, 1935. The Sino-Japanese and Chaco Wars, together with the general discussions at the Geneva Disarmament Conference, seem to have been largely responsible for this increased interest. Beginning in 1934, however, public opinion was aroused still further by a number of books and articles dramatizing the evils of the international arms traffic and the alleged efforts of the armament manufacturers to foment wars. See e.g., Fenner Brockway, *The Bloody Traffic* (London, 1933); "Arms and the Men," *Fortune*, March, 1934; H. C. Engelbrecht and F. C. Hanighen, *Merchants of Death* (New York, 1934); George Seldes, *Iron, Blood and Profits* (New York, 1934). See also *infra*, pp. 203 ff.

CHAPTER II

THE CHACO EMBARGO—1934—1935

Despite its failure to secure from Congress any general arms embargo legislation in 1933, the Roosevelt administration was still anxious to prohibit the shipment of war materials to Bolivia and Paraguay in an effort to terminate the conflict which had been going on for several years between those powers, and which was being fought almost entirely with arms and ammunition obtained from foreign countries. Recognizing, however, that it was politically impossible to obtain passage of the discretionary embargo resolution proposed in 1933,¹ the President decided to change his tactics. Accordingly, in May, 1934, efforts were begun to secure the adoption of a special arms embargo resolution, applicable only to the Chaco conflict.

Identical resolutions were introduced in the House and Senate authorizing the President, in cooperation with other nations, to prohibit the sale of arms and munitions of war to Bolivia and Paraguay if, in his opinion, such action would contribute to the reestablishment of peace between those countries.² The proposed embargo was confined to the "sale" of arms rather than "exports" because it was felt that a prohibition on exports to Bolivia and Paraguay would violate the commercial treaties which the United States had with those two governments. Article 6 of the treaty of May 13, 1858, with Bolivia, and Article 4 of the treaty of February 4, 1859, with Paraguay provided that no prohibitions would be imposed on the export or import of goods produced in the territories of the contracting parties which did not extend equally to all other nations.³ In order to circumvent these provisions, it was proposed to apply the embargo simply to the sale of arms and munitions of war.⁴

Secretary Hull on May 22, 1934, wrote to both Senator Pittman and Representative McReynolds stating that the proposed resolutions met with the full approval of the President and that he hoped they would be adopted in order that the international efforts to restore peace in the Chaco could be reinforced by more direct measures. In this connection, Mr. Hull stated:

¹ On February 28, 1934, the Senate by unanimous consent had adopted the 1933 embargo resolution with the Johnson amendment making it applicable to all belligerents. *Congressional Record*, Vol. 78, p. 3390.

² S. J. Res. 125, introduced by Senator Pittman on May 18, 1934, and H. J. Res. 347, introduced by Representative McReynolds on May 21, 1934. 73rd Congress, 2nd session. *Congressional Record*, Vol. 78, pp. 9072, 9207.

³ 12 Stat. 1007-8, 1093. ⁴ This point will be discussed further, *infra*, pp. 195 ff.

War in any part of the world is a matter of concern to this Government. But war between two American Republics is of special and vital concern, which neither our humanitarian sentiment nor our feeling of American solidarity will permit us to ignore.¹

No objection was raised in Congress to the proposed resolution, limited as it was to the Chaco belligerents and containing no provisions of discrimination, and it was quickly approved by both houses by unanimous consent.² It was signed by the President on May 28, 1934, at which time he also issued a proclamation formally prohibiting the sale of arms and munitions of war to both Bolivia and Paraguay, and authorizing the Secretary of State to make exceptions to the prohibition.³ A few days later, the Secretary of State announced that the prohibition did not apply to sales completed or contracted for prior to May 28, 1934, and on which full or partial payment had been made by either belligerent government.⁴

The administration had finally received power, though restricted to a special case, and confined to the sale of arms and munitions of war, to impose restrictions on the private trade in these materials for the purpose of discouraging or terminating foreign war. The very limited power granted at this time was a reflection of the many still unsolved differences of opinion on the subject of any general embargo legislation for the purpose of discouraging foreign war or keeping the United States out of war. But, limited though it was, the Chaco embargo of 1934-5 represented the first occasion in American diplomatic history on which the United States attempted to regulate the private export of arms for this ambitious and idealistic purpose. It marks the beginning of a new type of arms export regulation in American practice, a type which was crystallized into general law a year later and which has provoked endless discussion ever since.

Although the United States acted independently in prohibiting the sale of arms to Bolivia and Paraguay, it nevertheless was not acting alone, for a number of other states applied embargoes at about the same time as part of an international effort to terminate the Chaco conflict.⁵ By September, 1934, approximately thirty governments had taken steps to prohibit the export of arms and war material to both belligerents. While the action of the United States therefore paralleled and facilitated the international efforts to prevent arms from reaching the Chaco, it differed in at least three respects from the steps taken by most of the other powers:

¹ Department of State, *Press Releases*, May 26, 1934, pp. 301-3.

² In the House on May 23, and in the Senate on May 24, 1934. *Congressional Record*, Vol. 78, pp. 9375, 9432-3.

³ 48 *Stat.* 811, 1744.

⁴ Department of State, *Press Releases*, June 16, 1934, p. 409.

⁵ For a concise summary of the action taken, see Manley O. Hudson, "The Chaco Arms Embargo," *International Conciliation*, May, 1936, No. 320, pp. 217-46.

1. The United States prohibited only the *sale* of arms and munitions of war to Bolivia and Paraguay, while the other powers prohibited the *export* of those materials.
2. After January, 1935, many of the other powers raised the embargo against Bolivia inasmuch as the latter had accepted, and Paraguay had declined, the League's recommendations concerning a method for settling the dispute. From then until July, 1935, many of the other powers continued the embargo with respect to Paraguay alone. The United States, however, continued its prohibition impartially against both belligerents. (None of the other American states participating in the embargo raised the prohibition against Bolivia, either.)¹
3. The embargoes of the other powers were raised altogether in July, 1935, following the conclusion of an armistice between Bolivia and Paraguay on June 12, 1935, in which both parties had agreed not to make any new purchases of war material, other than that indispensable for replacement, until the conclusion of the treaty of peace.² The United States, however, continued its embargo until after the two countries had met in a peace conference in October, 1935, and had actually declared the war at an end. The United States then proceeded to raise its embargo on November 29, 1935.³

Within three days after the United States had imposed the embargo, the Bolivian Minister at Washington protested to the Secretary of State that the prohibition of the sale of arms to Bolivia was in violation of the commercial treaty of 1858 between the two countries, and that the United States could not lawfully prohibit Bolivia from obtaining such materials within its territory unless it at the same time prohibited all other governments from doing so. He also contended that the embargo operated to the disadvantage of Bolivia in comparison with Paraguay inasmuch as the latter enjoyed the benefits of an international river waterway which enabled her to obtain war material directly.⁴

In reply, Secretary Hull pointed out that the sale of arms and munitions was prohibited in identical terms to both governments, and that the benefits of an international waterway could not constitute any advantage to Paraguay. The latter could not obtain arms sold in the United States through this waterway or by any other means of transportation. With respect to the alleged violation of the commercial treaty of 1858, Mr. Hull made the technical distinction between the sale and the export of goods, and observed that the treaty concerned

¹ *Ibid.*, pp. 235-7.

² *Ibid.*, p. 238.

³ Proclamation of November 14, 1935, suspending the embargo as from November 29, 1935. 49 *Stat.* 3480.

⁴ Bolivian Minister to the Secretary of State, June 1, 1934. Department of State, *Press Releases*, June 16, 1934, p. 407.

exportation, whereas the embargo of May 28, 1934, applied only to the sale of arms and munitions of war.¹

In the opinion of the writer, it is regrettable that the Department of State should have sought to justify its position by such a technicality when a much stronger justification could have been made on other grounds. If it was felt that a prohibition on the export of arms violated the commercial treaty of 1858, then surely a prohibition on the sale of arms violated the spirit if not the letter of that treaty, and its justification should have been sought on other grounds than a mere technicality in wording. In the first place, it would seem that the Department of State might have cited Article 17 of the treaty of 1858, in answer to the Bolivian contention that the United States embargo constituted a violation of the most-favored-nation clause of that treaty. In this article, the two countries had agreed that in the event of war, the freedom of neutral commerce should not extend to contraband goods, specifically defined to include arms and ammunition.² While this presumably was intended to mean that the two governments, when neutral, would not attempt to protect any of their nationals engaged in contraband trade, it would seem that the United States could have cited this as ample justification for prohibiting its nationals from engaging not only in the sale but also the export of such goods.³ If belligerents had the right to seize contraband goods, then surely neutrals were entitled to prohibit the export of such goods, provided this was done impartially.

Furthermore, it might have been argued, contraband goods such as arms and munitions of war have long been distinguished under the laws of neutrality from the ordinary products of peacetime commerce, and since the laws of war and neutrality are tacitly superimposed on all commercial treaties, it would seem to follow that a neutral government could voluntarily restrict the export of contraband goods to both belligerents without violating its obligations under the most-favored-nation clause of a commercial treaty.⁴ Moreover, the post-war growth in many countries of national controls over the arms traffic, together with the increasing tendency of states to except such trade from the

¹ Hull, Secretary of State to the Bolivian Minister, June 13, 1934. Department of State, *Press Releases*, June 16, 1934, pp. 408-9. ² *12 Stat.*, 1012.

³ The treaty of 1859 with Paraguay contained no such exception in favor of contraband commerce in time of war. However, it is the writer's opinion that the United States could have prohibited the export as well as the sale of war material to Paraguay for the reasons to be developed in the following paragraph.

⁴ Professor Borchard has expressed the opinion that an arms embargo applied impartially against all belligerents would not violate the most-favored-nation clause of commercial treaties. In support of this position, he refers to the increasing tendency of the small European neutral states since the Crimean War to prohibit the export of arms to belligerent powers in the event of war. He concludes that impartial arms embargoes may be considered as a neutral's privilege, though not yet as an obligation. "Neutral Embargoes and Commercial Treaties," *A.J.I.L.*, Vol. 30 (1936), pp. 501-3.

operation of modern commercial agreements,¹ leads one to believe that the United States could justifiably have prohibited both the export and sale of arms and munitions of war to Bolivia and Paraguay, regardless of its seventy-five-year-old commercial treaties.

Had the export as well as the sale of arms and munitions of war to Bolivia and Paraguay been prohibited, the embargo could have been enforced much more easily and effectively. As it was, only the sale and not the shipment of such materials constituted a violation of law, and there was nothing to prevent the shipment of arms to other Latin American countries for eventual sale to the Chaco belligerents after the goods had left the United States. Merely prohibiting the sale of war materials in the United States left open many possibilities for evading the objectives which the government had in mind, and it is therefore all the more regrettable that the Department of State took the unnecessary view that its powers to regulate arms exports were restricted by its nineteenth century commercial treaties.

The application of the embargo, particularly at the beginning, was complicated by the fact that arms and munitions contracted and paid for prior to May 28, 1934, were exempt from the prohibition. This created especial difficulties for the customs authorities whose problem became one not primarily of stopping arms exports to the two specified countries, but rather of finding out whether any such exports had been sold prior to May 28 and could therefore be exported legally. To this end, the services of the United States district attorneys were used. The practice was for the customs officials to hold up every consignment of munitions destined for Bolivia or Paraguay until the shipper had presented his export declaration to the United States district attorney and convinced the latter that the goods had been sold and paid for prior to May 28, 1934. If the district attorney was satisfied as to the lawfulness of the shipment, he would so indicate on the export declaration, and the customs authorities would then allow the shipment to depart. Otherwise, it would be detained.²

The difficulty with regard to previously existing contracts largely disappeared after July, 1934, following the announcement by the Secretary of State of a specific list of contracts which had been excepted from the embargo, and his statement that no further exceptions would

¹ Practically all of the reciprocal trade agreements which have been concluded by the United States since 1934 have contained a provision stipulating that they should not be construed to prevent the domestic regulation of the export of arms, ammunition and implements of war, and, in exceptional circumstances, all other military supplies. For further discussion, see Phoebe Morrison, "The Embargo Clause in the Trade Agreements," *Proceedings, American Society of International Law, 1937*, pp. 67-73.

² Cf. testimony of S. W. Hamilton, Deputy Customs Collector at the port of New York. Senate Munitions Committee, *Hearings*, Pt. 8, pp. 2025-6.

be made thereafter.¹ The exceptions related only to shipments for the Bolivian Government, the Paraguayan Minister having informed the Department of State that all contracts between the Paraguayan Government and American companies had been terminated before the date of the embargo.² Some \$615,000 worth of materials, comprising aircraft, arms and ammunition, were permitted to be shipped to Bolivia by this action.³ These materials represented the undelivered portion of contracts concluded and paid for prior to May 28, 1934, on which manufacture had already been begun or was completed by that date. Some \$2,000,000 worth of supplies, largely aircraft, for which the Bolivian Minister had also requested an exception, were not included in the dispensation, the reason apparently being that sufficient payments had not been made prior to May 28, 1934, or that manufacture had not begun on the materials.⁴

With the announcement of this complete list of exceptions and the statement that no further ones would be made, it was felt that all future shipments of arms and munitions to either belligerent would be prohibited. This was by no means certain, however, for war materials could still be shipped from the United States to other countries not participating in the embargo where they could be "sold" to Bolivian or Paraguayan agents. The Brazilian agent of the Boeing Aircraft Company, for example, suggested in April, 1935, that the embargo might be evaded by shipping aircraft to Arica, Chile, by way of some European port, and he added that the Curtiss and Bellanca companies were following this procedure.⁵ In the absence of a general licensing system applicable to all exports of arms and munitions of war, it was virtually impossible to detect and prevent such attempts at indirect shipment where the exporter deliberately set out to evade the embargo. The customs authorities had neither the means nor the time to investigate carefully all arms shipments with a view to detecting any possible attempts to send prohibited materials to Bolivia or Paraguay by indirect routes. There was hence ample opportunity for evasion by a perfectly "legal" procedure.⁶

Enforcement of the embargo was also rendered more difficult and uncertain because the customs authorities at that time had no very

¹ July 27, 1934. Department of State, *Press Releases*, July 28, 1934, pp. 71-4.

² *Ibid.*, p. 74.

³ *New York Times*, July 28, 1934, p. 4.

⁴ Department of State, *Press Releases*, July 28, 1934, p. 74. The Paraguayan Minister in Washington was reported to have said that Secretary Hull had been very fair in taking the action above described, but the Paraguayan Foreign Office nevertheless announced that the exception granted in favor of Bolivia had "caused a painful surprise in Paraguay." *New York Times*, July 28, 1934, p. 4; and July 31, p. 4.

⁵ Senate Munitions Committee, *Report*, Pt. 3, p. 155.

⁶ Cf. *supra*, pp. 128-31, for similar difficulties with indirect shipment in the case of the Chinese embargo.

effective method of detecting falsified export declarations.¹ If machine guns or aircraft engines were labeled "machinery" or "sewing machines," for example, or if poison gas were entered as "quinine," the customs officials would not likely have known the difference unless they had opened all boxes and packages for inspection, a course which would have been impossible in practice without a tremendous increase in customs inspectors.²

Had it not been for the cooperation of the steamship companies in complying with the embargo, the customs officials, by their own admission, would have been helpless in many cases, and would never have learned about various illegal shipments.³ The steamship companies were interested in knowing exactly what goods they were carrying because of the differences in freight and insurance rates for different types of goods. Explosives, for example, would carry a higher rate than wheat because of the danger involved. The steamship lines were therefore very careful about having the correct labelling of their cargoes, and could inform the customs authorities of any attempts to ship prohibited arms or munitions of war. The customs officials endeavored to persuade the steamship companies to refuse shipments unless accompanied by the shipper's export declaration, thereby making certain that the shipper had complied with the customs regulations, but the steamship companies did not comply with these requests.

In the light of these circumstances, it was evident that a complete and effective enforcement of the embargo was impossible under the regulations existing at that time. The customs officials were primarily responsible for preventing violations, and they had neither the power nor the means to detect in any comprehensive way attempts at evading the prohibition. It would seem that the Treasury Department, had it been so minded, could have issued more effective regulations on the subject—such as requiring all export declarations to be filed before shipments left the country—but no action in this direction was taken until the establishment of the general arms export licensing system in the fall of 1935.

Still further difficulties and uncertainties in observing the embargo were caused by the consistent refusal of the Department of State to

¹ There was no penalty for falsifying export declarations, except the penalty prescribed for false oath. There was a \$50 fine for failure to file such a declaration, and a \$500 fine if a ship failed to file a manifest or cargo list before departing.

² The problem was complicated still further because of the fact that at times export declarations were not filed until several days and sometimes weeks after the cargoes had left the country. They were supposed to be filed within four days after sailing date, but this rule was not always observed in practice. These facts, and the information contained in the paragraphs above, are summarized from the testimony of Mr. S. W. Hamilton, Deputy Collector of Customs at the port of New York, on September 21, 1934. Senate Munitions Committee, *Hearings*, Pt. 8, pp. 2024-35.

³ *Ibid.*, p. 2026.

interpret the joint resolution of May 28, 1934, or to define what was included in the term, "arms and munitions of war." Completely overlooking the requirements of effective administration, the Department took the legalistic point of view that the interpretation of Congressional statutes was a function of the Department of Justice and the courts, which were charged with the prosecution and punishment of offenses.¹ Instead of clarifying the regulations for the guidance of American manufacturers and exporters, and making it easier for them to comply with the law, the Department left the entire question in a state of uncertainty by saying nothing and passing the responsibility for the administration of the embargo on to the customs authorities, the Justice Department and the courts. According to one manufacturer, the State Department's attitude was: "Try to ship your stuff, and if the Government's agencies (presumably the customs) block your way, hire the best lawyer available and get an injunction against the Government."² This was, of course, a "rather unsatisfactory" and expensive method in the eyes of the manufacturer. It could have been obviated to a considerable extent if the Department of State had issued a specific list of prohibited materials, instead of using only the ambiguous term, "arms and munitions of war." While in the eyes of some, it might have seemed desirable to leave such a definition in a continual status of uncertainty, and thereby keep the manufacturers guessing as to its scope and comprehensiveness, it was certainly ineffective administration. In April, 1935, after the embargo had been in effect for almost a year, the State Department was finally persuaded to issue a specific list of materials, the sale of which was prohibited to Bolivia and Paraguay.³

By 1935, the general ineffectiveness of the procedure and methods used to apply the Chaco embargo seems to have impressed itself upon the majority of State Department officials, and they finally became converted to the idea of setting up some permanent system for the supervision of arms exports which would enable the government to inform itself more satisfactorily on the arms trade, and to apply the restrictions then in force more effectively.⁴ At the suggestion of the State De-

¹ Cf. announcement of September 11, 1934. Department of State, *Press Releases*, September 15, 1934, p. 197.

² American Armament Corporation to Messrs. Webster and Ashton, June 9, 1934. Senate Munitions Committee, *Hearings*, Pt. 3, pp. 675-8, at p. 677.

³ April 10, 1935. The list corresponded to the definition of arms, ammunition and implements of war incorporated in the draft texts of April, 1935, for an international convention on the regulation of the trade in and manufacture of arms, drawn up by a special committee of the Geneva Disarmament Conference. It embraced five categories of articles: I - Military Armaments; II - Naval Armaments; III - Air Armaments; IV - Arms and ammunition capable of use for both military and non-military purposes; and V - Non-military aircraft, aircraft engines and equipment. For full text, see League of Nations Document No. Conf. D. 168, April 13, 1935.

⁴ Cf. House of Representatives, Committee on Foreign Affairs, "National Munitions Act," *Hearings on H. R. 8788*, July, 1935. This bill provided for the establish-

partment, a permanent arms export licensing system was included in the neutrality law of August 31, 1935,¹ and the following October, steps were begun thereunder to improve the efficiency of the Chaco embargo administration. A complete list of regulations was issued on October 10, concerning the registration of arms manufacturers and dealers and the issuance of licenses for arms exports.² While these regulations did not take effect with respect to arms shipments in general until November 29, 1935,³ they were effective at once with respect to Bolivia and Paraguay.⁴ Exports as well as the sale of arms, ammunition and implements of war were now prohibited to the two Chaco belligerents, and indirect shipments were also covered. To this end, licenses were required for shipments to South American ports in the neighborhood of Bolivia and Paraguay from which transshipment to those countries would have been readily possible.⁵ The customs regulations were tightened up at the same time, and shippers were required to file their arms export declarations at least twenty-four hours before the departure of the ship in case of consignments to non-prohibited areas. Unfortunately, these improvements in administration did not come until late in the history of the Chaco embargo, being in effect only for approximately seven weeks before the embargo was revoked (October 10 to November 29, 1935). Had they come earlier, the effectiveness of the embargo, from the viewpoint of the United States, might have been much greater.

Before concluding this account of the Chaco embargo, attention must be called to one very significant court decision which arose in connection with the enforcement of the prohibition. This was the case of the *United States v. Curtiss-Wright Export Corporation*, and it involved the constitutionality of the embargo resolution of May 28, 1934. The corporation was charged with having conspired to export four disarmed

ment of a National Munitions Control Board and a permanent system of arms export licensing. A similar bill was before the Senate (S. 2998). They were incorporated as Section 2 of the neutrality law of August 31, 1935. See also *infra*, pp. 209-10.

¹ The State Department would actually have preferred to have the permanent licensing system provided for in an independent bill which contained no references to arms export or neutrality policy. Such a bill was the National Munitions Act, cited above, p. 200, note 4. Congress insisted, however, in adding to this bill the arms embargo and other provisions designed to keep the United States out of war. The result of this amalgamation of proposals was the neutrality law of August 31, 1935.

² Department of State, *International Traffic in Arms, Laws and Regulations Administered by the Secretary of State Governing the International Traffic in Arms, Ammunition and Implements of War* (1st ed. October 10, 1935).

³ The law of August 31, 1935, provided that the system of licenses and registrations would take effect 90 days thereafter.

⁴ Also regarding China, Honduras, Nicaragua and Cuba.

⁵ The international embargo had been raised in July, 1935, and the United States seems to have been the only power which continued its prohibition for any length of time thereafter. Transshipment could therefore have taken place through any number of South American countries in the fall of 1935.

bombing planes indirectly to Bolivia by way of Chile, and also with having shipped a quantity of machine guns to Bolivia under a false export declaration.¹ The case was tried in the United States District Court for the Southern District of New York, and an opinion handed down on March 24, 1936, to the effect that the delegation to the President by Congress of the power to find that the prohibition of the sale of arms and munitions of war in the United States to the Chaco belligerents might contribute to the reestablishment of peace between those countries was an invalid delegation of legislative power.² The demurrers were reargued, and a supplementary opinion issued on April 18, 1936, sustaining the original position of the court. It was contended that the President had been delegated virtually unlimited legislative power to apply the embargo, determine its conditions and revoke it.

The case was taken to the United States Supreme Court which on December 21, 1936, reversed the opinion of the District Court, and sustained the validity of the joint resolution of May 28, 1934.³ In so doing, it enunciated certain principles of great importance regarding the conduct of foreign relations. It pointed out that the case in question involved the subject of foreign affairs, and that therefore its nature was different from what it would have been if domestic affairs were involved. The doctrine of enumerated and implied powers of the national government, the Court observed, applied primarily to domestic affairs, and did not constitute any limitation in the field of international relations where the powers of the President as the spokesman for the nation were implicit. The delegation of broad discretionary authority to the latter to determine whether the application of an embargo law would be beneficial towards the reestablishment of peace between the two foreign countries was therefore upheld as valid.

The significance of this decision to the question of governmental regulation of arms exports can scarcely be overestimated. Had the opinion of the District Court been sustained, not only would the joint resolution of January 31, 1922, have been placed in serious jeopardy, but the scope of the neutrality law of August, 1935, particularly the embargo section, would also have been limited very considerably, and the difficulties in the way of effectively controlling the export of arms from the United States would have been increased.⁴

¹ Senate Munitions Committee, *Report*, Pt. 3, pp. 155-6. See also *First Annual Report of the National Munitions Control Board*, pp. 68-72; and Department of State, *Press Releases*, March 30, 1935, pp. 200-2.

² 14 Fed. Supp. 230.

³ 299 U. S. 304.

⁴ Cf. Joseph C. Green, "Supervising the American Traffic in Arms," *Foreign Affairs*, July, 1937, pp. 729 ff. at p. 740.

CHAPTER III

ARMS EXPORTS AND NEUTRALITY

Public interest in the regulation of the arms traffic increased tremendously during 1934 and 1935, stimulated by the sensational revelations of the Senate Munitions Investigation Committee, as well as by several books and articles dramatizing the activities of the munitions manufacturers in fomenting war scares and stimulating armament races.¹ An increasing number of people came to believe that the munitions makers, together with their allies, the international financiers, had been largely responsible for the state of affairs which led the United States to enter the World War in 1917. The inevitable result of this popular conviction was the conclusion that the armament interests ought to be curbed and their trade controlled, in both the interests of world peace and keeping the United States out of war. The urge for immediate action was intensified in the summer of 1935 by the impending outbreak of hostilities between Italy and Ethiopia; and the stage was set for the complete abandonment by the United States of its historic insistence upon the right of American citizens to sell and export arms freely. This time the munitions manufacturers, presumably because of the public opinion aroused against them, made no efforts to oppose the movement in favor of arms export regulation as they had in 1928 and 1933.

Some fifteen bills were introduced in Congress in 1935, providing in whole or in part for various types of restrictions on the export of arms. Out of this maze of proposals, representing many different points of view, the neutrality law of August 31, 1935, finally emerged, the primary objective of which, in the popular mind, was to keep the United States out of war, and more specifically out of any general European war which might develop out of the Italo-Ethiopian conflict.² It contained two provisions affecting the question of arms export regulation, which represented the culmination of the post-war movement to secure some form of arms export control in the interests of international peace and keeping this country out of war. These provisions were:

1. The establishment of a permanent licensing system for the export of all arms, ammunition and implements of war, and a system of registration for all manufacturers of and dealers in these

¹ The Senate Munitions Committee began its lengthy investigation of the armaments industry in September, 1934, and hearings were held intermittently thereafter until February, 1936. See also *supra*, p. 192, note 2.

² Public Resolution No. 67, 74th Congress. 49 *Stat.* 1081.

articles. The President was instructed to define by proclamation the term, "arms, ammunition and implements of war."¹

2. The authorization of an impartial embargo on the export of arms, ammunition and implements of war to all belligerent states, upon the President's finding a state of war to exist. This provision was to remain in effect only until February 29, 1936.

The administration had been especially interested in obtaining authority to establish a system of licensing and registration as contained in the first provision, but it had not been sympathetic with the adoption of an embargo provision unless worded in such a way as to leave it to the discretion of the Executive as to when and how it should be applied. An important bloc in the Senate, however, led by various members of the Munitions Investigation Committee, had insisted that a law embracing a mandatory embargo on shipments of war materials to all belligerents in case of foreign wars be adopted, and they had threatened to filibuster against important pending domestic measures unless such action were taken.² In consequence of this pressure, and with a view to reconciling as many of the conflicting proposals as possible, the Senate Foreign Relations Committee on August 20, reported a bill embodying a number of provisions supported by various groups, among them the licensing system desired by the State Department and the mandatory arms embargo demanded by the Senate bloc.³ This bill passed the Senate on the following day.⁴

The House of Representatives, however, as had been the case in 1933, was more disposed to favor a bill giving the President discretion to apply embargoes as he saw fit. A resolution to this effect, introduced by Representative McReynolds on August 17, was already before the Foreign Affairs Committee where the Democratic majority was not inclined to report favorably any bill which promised to tie the hands of the President and the State Department as would a mandatory embargo law. The arguments which had been heard in 1933 over the advisability of a discretionary as opposed to a mandatory policy were again brought forth and expanded.⁵ The immediate outcome, however, was a compromise under which the mandatory embargo was accepted, but limited to a period of six months' validity, until March 1,

¹ Cf. proclamations of September 25, 1935 (49 Stat. 3471), April 10, 1936 (49 Stat. 3503) and May 1, 1937 (50 Stat. 1834), defining the term, "arms, ammunition and implements of war."

² Cf. *The United States in World Affairs, 1934-5*, Council on Foreign Relations, pp. 265-6.

³ Senate Report No. 1419, 74th Congress, 1st session. *Congressional Record*, Vol. 79, p. 13795.

⁴ *Congressional Record*, Vol. 79, pp. 13952-6.

⁵ See *supra*, pp. 188-92. For a convenient summary of the discretionary-mandatory arguments heard during the neutrality debates of 1935-7, see the writer's monograph, "Neutrality Revision before Congress," *International Law and Relations*, Vol. 6, No. 7, January 19, 1937 (Washington, D. C.).

1936. President Roosevelt agreed to this compromise arrangement, despite his dislike for the mandatory embargo, and the law with this provision was then quickly approved,¹ further debate being postponed until the following session of Congress.²

Despite the fact that the mandatory embargo provision was the most controversial section of the neutrality law of August 31, 1935, and was for this reason limited to a period of six-months' validity, it actually was extended and made part of the permanent legislation of the United States. Not until 1939 did the opponents of the embargo wage an intensified campaign in behalf of its repeal. In February, 1936, it was extended until May 1, 1937, and on the latter date, in what was then thought would be a permanent neutrality law, it was extended indefinitely.³ Section 1(a) of the latter law, embodying the mandatory embargo policy, provided as follows:

Whenever the President shall find that there exists a state of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to any belligerent state named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent State.

The debate in both 1936 and 1937 was devoted primarily to the question of applying restrictions on the trade in materials other than arms, ammunition and implements of war, and few suggestions were made regarding any change in the mandatory arms embargo section.⁴ The administration, it is believed, was willing to make this concession

¹ By the House on August 23 and the Senate on August 24, 1935. *Congressional Record*, Vol. 79, pp. 14370, 14434.

² For further discussion concerning the adoption and implications of the neutrality act, see *The United States in World Affairs, 1934-5*, Council on Foreign Relations, Chap. xiii; Allen W. Dulles and Hamilton Fish Armstrong, *Can We Be Neutral?* (New York, 1936), Chaps. iv and v; Philip C. Jessup, *Neutrality, Its History, Economics and Law* (New York, 1936), Vol. 4, Chap. v; Raymond Leslie Buell, *The New American Neutrality*, Foreign Policy Reports, January 15, 1936; James W. Garner, "Recent Neutrality Legislation of the United States," *British Yearbook of International Law*, 1936, pp. 45-53; and Phillips Bradley, "Current Neutrality Problems—Some Precedents, An Appraisal, and a Draft Statute," *American Political Science Review*, Vol. 29 (December, 1935), pp. 1022-41.

³ Joint Resolutions of February 29, 1936 (49 Stat. 1152) and May 1, 1937 (50 Stat. 121). The embargo provisions were repealed on November 4, 1939, two months after the outbreak of the European War. (Public Resolution No. 54, 76th Congress.) This will be discussed more fully *infra*, Chap. v, p. 235.

⁴ In 1936, it was proposed to limit to normal peacetime quotas American trade with belligerent countries in war materials other than arms. (See *infra*, p. 206, note 1.) In 1937, the debate centered on the proposal to confine such trade to a "cash-and-carry" basis. Cf. United States Senate, Committee on Foreign Relations, "Neutrality," *Hearings* on S. 3474, January-February, 1936; and "Neutrality," *Hearing* relative to Proposed Legislation on Neutrality, February 13, 1937. House of Representatives, Committee on Foreign Affairs, "American Neutrality Policy," *Hearings* on H. J. Res. 422, January 1936; and "American Neutrality Policy," *Hearings* on H. J. Res. 147 and 242, February 1937.

in the hope of thereby winning support for its proposals regarding the trade in other commodities.¹

Two significant additions, however, were made in 1936 and 1937 affecting the arms embargo section. The first, contained in the 1936 resolution, specified that none of the provisions of the 1935 or 1936 resolutions would apply to an American republic engaged in war against a non-American state, provided the American republic was not cooperating with a non-American state in such war. In the haste of passing the neutrality law of August, 1935, Congress had overlooked the fact that the mandatory embargo would apply against an American state which might be attacked by a European or Asiatic power. Inasmuch as it was highly unlikely that the United States would remain neutral in the event of such an attack, the above-mentioned exemption was added to the law. This addition also, of course, removed an important obstacle which might otherwise have hampered any effective enforcement of the Monroe Doctrine by the United States.

The second addition occurred in the 1937 resolution and concerned the extension of the arms embargo section to cases of civil strife in foreign countries when conditions existed which made the export of arms from the United States to that country a danger to the peace of the United States. The purpose of this was to generalize in relation to all countries the policy which had been applied with respect to the Spanish civil war, and for which no provision had been made in either the 1935 or 1936 neutrality resolutions. This topic will be discussed more fully in a subsequent chapter.²

The legislative struggle culminating in the enactment of the neutrality resolutions of 1935, 1936 and 1937 was long and complicated, and only a brief summary of the points most pertinent to the regulation of arms exports has been given above.³ With the enactment of the

¹ *The United States in World Affairs*, 1936, Council on Foreign Relations, p. 139. For a convenient summary of the debates in 1936 and 1937, see *ibid.*, pp. 137-44, and *ibid.*, 1937, pp. 43-60. President Roosevelt and the Department of State were apparently desirous of cooperating as much as possible in the program of sanctions which the League of Nations had applied against Italy, and they had made several informal attempts in the fall of 1935 to discourage the shipment of such materials as oil, copper, trucks, and scrap iron to Italy. (Department of State, *Press Releases*, October 5, October 12, November 2 and November 16, 1935, pp. 255, 303-4, 338-9, 382.) These efforts were not very successful, however, and hence it was hoped to secure legislation from Congress which would permit definite restrictions on other essential war materials than arms, ammunition and implements of war. The bills before Congress on which hearings were held during January and February, 1936, would have authorized the President to restrict the export of other war materials to belligerent countries to normal peacetime quotas. (H. J. Res. 422 and S. 3474.) While these restrictions would have applied to all belligerents impartially, they would have affected Italy primarily at that time, since Ethiopia was not importing oil, scrap iron or similar commodities. Thus, the desire of the administration to restrict such exports to Italy might have been carried out had such legislation been enacted. ² *Infra*, pp. 221 ff.

³ The subject has been widely discussed in the current literature. See *supra*, p. 205, note 2. See also, Borchard and Lage, *Neutrality for the United States* (1937 ed.),

joint resolution of August 31, 1935, the American policy and practice with respect to the regulation of arms exports entered its third phase. The historic principle announced by Jefferson in 1793, and adhered to by his successors for over a century, was now completely set aside. It had been on the way out, of course, for some time, and at least since January, 1933, it could no longer be said that the Department of State favored non-interference with the private export of war materials. But prior to 1935, the actual regulation and control of such exports from the United States, outside of wartime, had been confined to special cases in Latin America and China, and, with the exception of the Chaco embargo of 1934, had been applied principally for the purpose of promoting stability and discouraging revolutionary disturbances in those areas where American interests were considered jeopardized. In 1935, however, the fear of another European war and the specter of sinister activity by the munitions makers produced sufficient impetus at Washington to bring all arms exports under government supervision and to provide for an automatic arms embargo against all belligerents as soon as the President found a state of war to exist.

The regulation which took effect in 1935 was of two types: (a) the permanent supervision of all arms exports by means of the general export licensing system; and (b) the special embargoes or restrictions which were subsequently applied within the framework of the licensing system in pursuance of the various laws of Congress and proclamations of the President. In this second category are included the embargoes with respect to Italy and Ethiopia from 1935 to 1936, with respect to Spain from 1936 to 1939, and with respect to the European belligerents from September to November, 1939. Included here also are the restrictions on arms shipments to China, Honduras, Nicaragua and Cuba which had been applied prior to 1935 but have continued in effect since then.¹ The remaining portion of this study will be devoted to an examination of these measures of regulation and a comparison of them with our previous experience in regulating the export of arms.

pp. 313-43; Raymond L. Buell, *The Neutrality Act of 1937*, Foreign Policy Reports, Oct. 1, 1937; and James W. Garner, "The United States Neutrality Act of 1937," *A.J.I.L.*, Vol. 31 (1937), pp. 385-97.

¹ See *supra*, p. 148, note 3.

CHAPTER IV

REGULATION SINCE 1935

The Permanent Arms Export Licensing System

One of the clearest conclusions to be drawn from the American regulation of arms exports prior to 1935 is that effective administration of embargoes is almost impossible in the absence of a general system for supervising all arms exports. This was particularly true in cases such as China and the Chaco where the prohibited countries were situated at some distance from the United States, and where the opportunities for evading the embargo by indirect shipment were multifold. In the absence of a general licensing system, the full burden of enforcing the embargoes fell upon the customs authorities (with the support of the courts, of course, in cases of prosecution for violation of the embargo). It was up to the customs officers to prevent the shipment of arms and munitions of war to the prohibited country, a task which was by no means easy, as has been seen especially in the case of China, Bolivia and Paraguay. Prevention, more than punishment, was important in the effective application of an embargo, and the customs officers alone did not have the time or the powers necessary to deal with this responsibility in the effective way required if evasions of the law were to be detected.

Under a licensing system, on the other hand, the responsibility for preventing and detecting attempts at embargo violation is divided between the customs authorities and the licensing officials, and the tasks of the former are correspondingly lightened and made more commensurate with their normal official duties. With all arms exports subject to license, the customs authorities have only to make sure that every consignment of such material is accompanied by the proper license. Problems of detecting indirect shipments, often necessitating careful and detailed investigation which the customs officers would seldom have time to do without an increase in personnel, become the responsibility of the licensing bureau. The latter, moreover, is able to watch carefully the arms export trade as a whole and quickly detect any abnormal developments or movements which might indicate that trade is reaching a prohibited destination indirectly.

The advantages of an export licensing system as a means of supervising and regulating the armaments traffic have been appreciated by a number of European countries for several years. In Great Britain, France, the Netherlands, and the Scandinavian countries, for example,

the licensing systems which had been utilized during the World War with respect to all types of goods were retained afterwards in a limited form and adapted to the control of arms exports.¹ The reason for this action seems to have been that large stocks of unused arms and ammunition had accumulated in the various countries, and that it was feared these might find their way into undesirable hands unless steps were taken to control their export.² The United States, however, abandoned its wartime licensing system entirely in 1921, and thereafter no general control over arms exports existed until the adoption of the neutrality act of August 31, 1935. In comparison with most other arms-producing countries, therefore, the United States was relatively late in adopting a permanent system of arms export supervision.³

The Department of State had requested Congress in the summer of 1935 to establish a system of licensing for arms exports and imports, together with a system of registrations for arms manufacturers and dealers.⁴ The administration indicated that it was especially anxious to establish the licensing system for the following reasons:⁵

1. To enable the government to give effect to the Arms Traffic Convention of June 17, 1925, which had finally been ratified by the United States in June, 1935, and which obliged the contracting powers to subject the export of arms, ammunition and implements of war to a system of government licensing and publicity.⁶
2. To provide the government with complete statistical information on the export of arms, ammunition and implements of war, and thus to keep the government fully acquainted with the size, nature and direction of our armaments export trade.
3. To provide suitable machinery for applying those arms export restrictions already in effect (China, Honduras, Nicaragua,

¹ Elton Atwater, *The Administration of Export and Import Embargoes, 1935-1936*, Geneva Research Centre, Geneva Studies, Vol. 9, No. 6, December, 1938, pp. 11-13, 25-8, 36-41.

² This was also one of the principal reasons for the conclusion of the Convention of St. Germain of September 10, 1919, regarding the international regulation of the arms traffic. See *supra*, p. 172.

³ Germany, Belgium and Czechoslovakia, however, did not have such regulation in effect until 1935, and Switzerland did not adopt it until 1938. Germany, it will be recalled, was forbidden under the Versailles Treaty to export or import arms. League of Nations, *National Control of the Manufacture of and Trade in Arms*, Document No. Conf. D. 184, April 14, 1938, pp. 59-60, 124, 127, 186. Also Atwater, *op. cit.*, p. 36.

⁴ House of Representatives, Committee on Foreign Affairs, *Hearings on H. R. 8788, "National Munitions Act,"* July, 1935; also House Report 1602, and Senate Report 915, 74th Congress, 1st session.

⁵ *Hearings on H. R. 8788, passim*, esp. pp. 30-1.

⁶ The convention was ratified by the President on June 21, 1935, after the Senate had given its consent on June 6. A reservation was attached, however, providing that the convention should not come into force, so far as the United States was concerned, until it should also have come into force in Belgium, the British Empire, Czechoslovakia, France, Germany, Italy, Japan, Sweden and the U.S.S.R. The convention is not yet operative owing to similar reservations on the part of other powers. Cf. Department of State, *Press Releases*, June 29, 1935, pp. 484-5.

Cuba, Bolivia and Paraguay), as well as any such restrictions which might be decided upon in the future.

Bills creating a National Munitions Control Board, and authorizing a licensing system and system of registrations for arms manufacturers and dealers, were accordingly introduced in both Houses of Congress and favorably reported by the respective Committees on Foreign Relations and Foreign Affairs.¹ Instead of being adopted as independent legislation, however, as the State Department had wished,² they were made part of the neutrality act of August 31, 1935. They were adopted as permanent legislation, nevertheless, and were not limited as was the embargo section to a period of six-months' validity.

The essential provisions of the licensing system which was created at this time, and which has been in effect since November 29, 1935,³ are in brief as follows:

1. All exports of arms, ammunition and implements of war must be licensed by the Secretary of State. The latter has designated the Division of Controls in the Department of State (known as the Office of Arms and Munitions Control prior to 1939) as the agency through which he exercises this authority, together with all other authority vested in him by the neutrality resolutions of 1935, 1937 and 1939.
2. No licenses are issued except to persons who have registered with the Secretary of State as arms manufacturers or dealers.
3. Licenses will be issued to registered manufacturers and dealers upon application to the Department of State in all cases in which the proposed exportation will not violate a law or treaty of the United States, or proclamation issued thereunder.⁴

¹ Senate Report No. 915 and House Report No. 1602, 74th Congress, 1st session.

² See *supra*, p. 201, note 1. The State Department felt that the proposal to establish administrative machinery for licensing arms exports and registering arms manufacturers and dealers should be an independent law and should contain no provisions of policy regarding neutrality or the application of arms embargoes. If Congress wished to adopt an embargo or neutrality law, the Department felt that it should be introduced as a separate bill inasmuch as it involved many controversial matters of high policy. See *Hearings on H. R. 8788*, pp. 13-19. The wisdom of the Department's position has been borne out by the fact that Congress has on two occasions (May, 1937, and November, 1939) completely overhauled the original neutrality law of August, 1935, and on each occasion has found it necessary to reenact the provisions setting up the system of licenses and registrations. Had the latter been enacted originally as an independent law, it would not have been necessary to reenact them each time Congress decided to modify its neutrality or embargo policy.

³ The regulations took effect with respect to China, Cuba, Honduras, Nicaragua, Bolivia and Paraguay on October 10, 1935. With respect to all other countries, concerning which no arms export restrictions were in effect immediately preceding August 31, 1935, the regulations did not become effective until ninety days after the approval of the neutrality act. Department of State, *International Traffic in Arms, Laws and Regulations Administered by the Secretary of State Governing the International Traffic in Arms, Ammunition and Implements of War* (hereinafter cited as *International Traffic in Arms, Regulations*), 1st ed., October 10, 1935.

⁴ Proclamations are at present (January 1, 1941) in effect regarding China, Cuba, Honduras and Nicaragua, in pursuance of which licenses for arms exports to those

4. Licenses will be withheld in cases involving military secrets which in the opinion of the War or Navy Departments are of interest to the national defense. This merely supplements the provisions of Title I of the Espionage Act of June 15, 1917, which made it a crime to transmit to a foreign country anything involving such military secrets.¹

In submitting applications for export licenses, it is necessary to give full and explicit details describing the goods, the purposes for which they are to be used, the final destination and the foreign consignee and purchaser. This information is of particular value in detecting attempts to evade an embargo by means of indirect shipment. If for any reason it is considered inadequate, further inquiry may be made of the exporter as well as of the American diplomatic or consular officers in the country of destination. With such a system in effect regarding all arms exports, it is obvious how much more effectively indirect shipment can be prevented than it could be when the entire responsibility for enforcing an embargo fell upon the customs officers. The latter were not in a position to examine in detail the circumstances surrounding all shipments of arms as are the State Department officials now charged with this function.

American arms exporters no longer have cause to complain because of any vagueness in the requirements with which they are expected to comply. It will be recalled that on many occasions prior to 1935, the Department of State had declined to interpret the embargo proclamations or to define specifically the ambiguous term, "arms and munitions of war." The neutrality law of August 31, 1935, which established the permanent arms export licensing system, sought to obviate this difficulty by requiring the President to issue a specific list of "arms, ammunition and implements of war" and authorizing the Secretary of State to promulgate the regulations necessary for the enforcement of the licensing system. In pursuance of this statutory provision, the Department of State since October, 1935, has issued and distributed several detailed and comprehensive editions of the regulations which are to be followed by American arms manufacturers, exporters and importers.² The new editions have been issued as the regulations have been modified, and exporters and manufacturers are thereby enabled to know precisely what is expected of them. The term, "arms, ammuni-

countries are issued only when the governments thereof have indicated through their diplomatic representatives in Washington that they desire the shipment to be authorized.

¹ 40 Stat. 218-19.

² Department of State, *International Traffic in Arms, Regulations, op. cit. (supra)*, p. 210, note 3), 1st ed. October 10, 1935; 2nd ed., identical to 1st; 3rd ed. May 1, 1936; 4th ed. June 1, 1937; 5th ed. April 1, 1938; 6th ed. September 15, 1939; and 7th ed. November 6, 1939.

tion and implements of war", has been specifically defined by presidential proclamation and the definition included in the various editions of the regulations.¹ As changes have been made in the definition, appropriate indication thereof has been given in the succeeding editions. In this way, the regulation of arms exports from the United States has been administered since 1935 with a degree of specificness and certainty in sharp contrast with the vague and ambiguous procedure which frequently characterized the regulation prior to that time.

Since its establishment in 1935, the arms export licensing system has served two purposes: (a) furnishing comprehensive statistical information on the American arms export trade; and (b) facilitating the application of such embargoes and export restrictions as have been authorized by the laws of Congress. Special attention should be called to the fact that the United States is not permitted by law to use its licensing system freely as an instrument of foreign policy as is the case in numerous foreign countries.² In Great Britain and other European countries, for example, export licenses may be withheld for reasons of policy as well as for reasons of national defense or treaty obligations.³ This means that shipments of arms may be prohibited at the discretion of those governments for any reason which seems necessary. In the United States, on the other hand, shipments can be only prohibited when they would violate a law or treaty.⁴

¹ Proclamations of September 25, 1935, April 10, 1936, and May 1, 1937 (49 *Stat.* 3471, 3503, and 50 *Stat.* 1834). For administrative reasons, these definitions have been confined almost exclusively (except for commercial aircraft) to arms, ammunition and implements used for the destruction of life. They are more restricted than the lists formerly used in connection with the Mexican, Chinese and Latin American embargoes.

² The Secretary of State is not permitted to withhold export licenses at his discretion, but is required to issue them to registered exporters in all cases not prohibited by law or treaty. Cf. Sec. 12(f) of the Neutrality Law of November 4, 1939. Also Sec. 2(c) of the Neutrality Law of August 31, 1935, and Sec. 5(f) of the Neutrality Law of May 1, 1937.

³ Atwater, "British Control over the Export of War Materials," *A.J.I.L.*, Vol. 33 (1939), pp. 314-15.

⁴ An interesting legal question with considerable political implications arose in 1938 in connection with the export of arms to Germany. Did such exports constitute a violation of a treaty to which the United States was a party? The treaty of peace between the United States and Germany of August 25, 1921, had incorporated a clause from the Versailles Treaty which provided: "Importation into Germany of arms, munitions and war material of every kind shall be strictly prohibited." The Department of State had never considered that this made the export of arms from the United States to Germany *ipso facto* illegal, but it had on occasion, especially after 1931, declared that such exports would not be regarded with favor, and in this manner had sought to discourage such exports as a matter of policy. (Memorandum of August 5, 1933. Reproduced in Senate Munitions Committee, *Hearings*, Pt. 6, pp. 1596-7. Cf. also Department of State, *Press Releases*, September 22, 1934, pp. 203-4.)

After 1935, however, when it became necessary to issue licenses except in cases of law or treaty violation, the Department considered that it could no longer discourage arms exports to Germany on the ground of policy. It held that the export of arms from the United States to Germany did not specifically violate the treaty of peace of 1921, and that hence there was no alternative but to issue the licenses. (Memoranda

This significant difference between the American and European arms export licensing systems is not always understood either at home or abroad. Proceeding on the incorrect assumption that the American Secretary of State can withhold licenses for reasons of policy, individuals and groups at times urge the State Department to withhold licenses which it is legally obliged to issue, and also criticize it for issuing licenses which it has no legal authority to withhold. This difference between the American and European systems reflects further the theory held in the United States that Congress and not the Executive should be responsible for promulgating the American policy regarding arms exports.¹ Licenses, therefore, may not be withheld by the Executive for reasons of policy unless that policy has been approved by Congress in the form of a law or treaty.

of Press Conferences of the Secretary of State, May 6 and 7, 1938. *Press Releases* May 7, 1938, pp. 545-9.)

This position was criticized on the ground that the export of arms to Germany and the import of arms into Germany were not distinguishable in fact, but constituted in effect the same transaction viewed from two different approaches. If one was forbidden by treaty, then the other certainly was, and the neutrality act, instead of precluding the United States from prohibiting what it had previously disapproved of, actually gave the government full authority for effecting such a prohibition. (Cf. Report of the National Lawyers Guild, "The Legality of Munitions Shipments to Germany," which appeared in the *National Lawyers Guild Quarterly*, September, 1938.)

The position of the State Department was based on a technical distinction between exportation and importation which is not altogether satisfactory, particularly in the light of its efforts to discourage arms exports to Germany prior to 1935. Furthermore, it should be noted that in 1936, notwithstanding the licensing provisions of the 1935 neutrality law, the State Department had definitely sought to discourage arms shipments to Spain during the civil war in that country, despite the fact that there was no legal authority for such action. (See *infra*, p. 214.) In the light of this, it would seem more likely that reasons of policy rather than of law dictated the Department's decision to abandon its informal efforts to discourage arms exports to Germany after 1935. Perhaps the Department was even disposed to recognize tacitly that the military clauses of the Versailles Treaty had been in effect abrogated by the new conditions in Europe.

In connection with this question, Professor Borchard has ably pointed out that it was never intended to incorporate the provisions of the Versailles Treaty regarding German disarmament in the Treaty of Peace between the United States and Germany; that furthermore German disarmament had been conditioned upon a general limitation of armaments which never materialized; and that finally Great Britain and France in February, 1935, had recognized the obsolescence of the German disarmament provisions when they agreed to release Germany from those provisions on certain conditions. *A.J.I.L.*, Vol. 29 (1935), pp. 286-90; and *ibid.*, Vol. 32 (1938), pp. 547-9.

The question of the legality of arms exports to Germany was to a large extent theoretical, however, in view of the fact that the licenses issued for such exports to Germany after November 29, 1935, were very small, totaling for the three-year period, November 29, 1935, to November 30, 1938, slightly less than \$1,720,000, nearly all of which represented aircraft engines and equipment. This sum amounted to only a trifle over 1 per cent. of the total value of arms export licenses issued by the United States Government during the same three-year period (\$164,000,000). (Summarized from statistics given in the *Third Annual Report of the National Munitions Control Board*, pp. 62, 66.)

¹ This theory has not always been realized in practice. Cf. below, pp. 229 ff. for an illustration of how the Executive determined the arms export policy of the United States despite the legislation of Congress.

Moral Embargoes

Despite the fact that the Department of State cannot withhold licenses for the export of arms except in accordance with a law or treaty, it has on a few occasions accomplished what amounted in effect to an informal embargo by simply requesting the American manufacturers and exporters not to ship arms to a particular destination. Inasmuch as the American Government is the best potential customer of the armaments industry, the latter is generally willing to follow the government's wishes, and the government is thereby able to exercise an informal degree of control over the export of war material from the United States regardless of any law which Congress may pass.

The leading examples of this since 1935 have been the cases of Spain in 1936, Japan in 1938, and Russia in 1939-40.¹ When civil war broke out in Spain in July, 1936, attended by the possibility of its spreading into a general European conflict, it appeared desirable for reasons of policy to prohibit the export of arms to that country.² Yet under the existing neutrality laws of August, 1935, and February, 1936, there was no authority to prohibit the exports of such materials except in cases of conflict between two or more foreign states. Despite the fact that he had no legal authority, therefore, to withhold licenses for arms exports to Spain, the Secretary of State informed all prospective exporters that such shipments would nevertheless be contrary to the policy of the United States Government.³ Thereafter, although they still had a legal right to insist upon receiving licenses, the American manufacturers and dealers, with only two exceptions, refrained from doing so, and cooperated with the State Department in making possible an informal or voluntary embargo with respect to Spain. This lasted until January 8, 1937, when all arms exports to Spain were prohibited by special act of Congress.⁴

The second instance of such action since 1935 by the Secretary of State occurred in the case of Japan in 1938. Inasmuch as President

¹ Similar cases in which the State Department by means of requests to American arms industries has endeavored to discourage arms exports to particular countries took place with respect to China from 1921-2 (*supra*, pp. 125-6), Soviet Russia from 1921 onwards (*supra*, p. 32, note 4), Germany since the World War and up to 1935 (*supra*, p. 212, note 4), and Brazil in 1932 (*supra*, p. 161).

² The principal European countries, in the Non-Intervention Agreement of August, 1936, had agreed to prohibit the export of arms, ammunition and implements of war to Spain in an effort to terminate that conflict and prevent it from spreading into a general war. The Department of State was anxious not to be in a position of seeming to jeopardize the success of this non-intervention policy by allowing arms exports from the United States to Spain.

³ Department of State, *Press Releases*, August 22, 1936, p. 177.

⁴ 50 *Stat.* 3. The law of January 8, 1937, was speedily adopted by Congress after two second-hand munitions dealers had insisted upon their legal rights to receive licenses for the export of over \$7,000,000 worth of aircraft, aircraft engines, guns and ammunition to the Loyalist Government of Spain. See *infra*, pp. 221 ff.

Roosevelt had declined to find a state of war existing between Japan and China, no embargo on arms shipments to either country was ever applied during the time the neutrality law of 1937 was in effect. Nevertheless, as a result of repeated bombings of civilian populations by the Japanese, the Department of State on June 11, 1938, began a policy of discouraging the export of aircraft and aircraft armament to that country. On July 1, 1938, the Department addressed a letter to all aircraft manufacturers and exporters stating that the United States Government was "strongly opposed" to the sale of airplanes or aeronautical equipment which would materially aid or encourage the practice of civilian bombings, and that therefore it "would with great regret issue any licenses authorizing exportation, direct or indirect, of any aircraft, aircraft armament, aircraft engines, aircraft parts, aircraft accessories, aerial bombs or torpedoes to countries the armed forces of which are making use of airplanes for attack upon civilian populations."¹ Japan was not specifically mentioned, but there was no doubt as to what country the State Department had in mind.

As had been the case with respect to Spain, American manufacturers complied with this request of the Department of State, and an informal embargo on aircraft shipments has been in effect since the latter part of 1938. Shipments were not measurably diminished at first, on account of contracts and orders concluded prior to July 1 and then in the process of completion, but since the beginning of 1939, they have dropped off almost entirely.²

The third instance of what is now popularly known as the "moral embargo" occurred in the case of Soviet Russia in December, 1939, following the Soviet invasion of Finland. Having received reports from the American Minister to Finland concerning the indiscriminate bombing of civilians by Soviet planes, President Roosevelt on December 2, 1939, issued the following statement:

The American Government and the American people have for some time pursued a policy of wholeheartedly condemning the unprovoked bombing and machine-gunning of civilian populations from the air.

This Government hopes, to the end that such unprovoked bombing shall not be given material encouragement in the light of recent recurrence of such acts, that American manufacturers and exporters of airplanes, aeronautical equipment, and materials essential to airplane manufacture, will bear this fact in mind before

¹ *Third Annual Report of the National Munitions Control Board*, pp. 79-80.

² Only three licenses were issued during 1939 for the export of arms, ammunition and implements of war from the United States to Japan. The value of these licenses was \$761,684, in contrast to the 1938 figure of \$8,799,219. (*Fourth Annual Report of the National Munitions Control Board*, pp. 58, 63.) No licenses for such shipments were applied for or issued during the first ten months of 1940. (*Department of State Bulletin*, November 30, 1940, pp. 467 ff.) Aircraft had been the principal item in the American export of arms to Japan and hence the voluntary embargo on aircraft meant that virtually no arms, ammunition and implements of war were being shipped from the United States to Japan.

negotiating contracts for the exportation of these articles to nations obviously guilty of such unprovoked bombings.¹

The Department of State followed this up ten days later with a letter to all manufacturers and exporters of aircraft, aircraft parts and aircraft armament, enclosing a copy of the President's statement and expressing the hope that no applications would be received for licenses to export aircraft, aircraft armament, aircraft engines, aircraft parts, aircraft accessories, aerial bombs or torpedoes to countries engaged in the bombing or machine-gunning of civilian populations. Manufacturers or exporters who had already concluded contracts for such shipments were invited to inform the Department concerning these contracts before applying for any licenses. It was furthermore pointed out that the President's statement applied not only to aircraft and aircraft materials requiring export licenses, but also to aeronautical equipment of all kinds and to materials essential to airplane manufacture.²

Russia was not specifically mentioned, either in the President's statement or in the Department of State's letter, but, as in the case of Japan in 1938, it was perfectly obvious what country was meant. The importance which the administration at Washington attached to this action was seen in the fact that its statements in December, 1939, were not strictly necessary inasmuch as the statements which had been issued concerning Japan a year earlier had been couched in general terms and were equally applicable to the Russian situation. Nevertheless, in order to avoid misunderstanding and furthermore to emphasize its position with respect to the Finnish invasion, the American Government chose to reiterate its policy of the moral embargo. American manufacturers and exporters cooperated fully in this policy, and no licenses for the export of arms, ammunition or implements of war to Russia were applied for or issued during the first ten months of 1940.³ A virtually complete embargo on such shipments was therefore brought about with respect to both Russia and Japan through informal methods entirely apart from law. It should be noted furthermore that the moral embargo policy was continued with respect to Russia for some time even after the close of the Russo-Finnish War in March, 1940.⁴

¹ *Fourth Annual Report of the National Munitions Control Board*, 1939, pp. 105-6. Also *New York Times*, December 3, 1939, p. 1.

² *Fourth Annual Report of the National Munitions Control Board*, 1939, p. 106. *Department of State Bulletin*, December 16, 1939, p. 685.

³ *Department of State Bulletin*, November 30, 1940, pp. 467 ff. Although no licenses were issued during this period, there were actual exports of \$142,488 worth of aircraft and aircraft material under previously issued licenses. (*Ibid.*, p. 478.) During 1939, licenses were issued for the export of \$1,178,062 worth of arms, ammunition and implements of war (all aircraft and aircraft material) and actual exports were \$1,097,015. *Ibid.*, January 27, 1940, pp. 114, 119.

⁴ Secretary of State Hull indicated at his press conference on April 2, 1940, that the moral embargo was being maintained against Russia, notwithstanding the termina-

In connection with its application since December, 1939, the moral embargo has been significantly extended to cover additional strategic aircraft materials which are not included in the list of "arms, ammunition and implements of war" requiring export licenses. The Presidential statement of December 2, 1939, had included in its scope "materials essential to airplane manufacture", and in pursuance of this statement, the Department of State announced on December 15, that the moral embargo had been extended to include aluminum and molybdenum, two important metals which are used in aircraft construction.¹ Five days later, on December 20, 1939, the moral embargo was extended to include plans, plants, manufacturing rights and technical information required for the production of high quality aviation gasoline.² This was viewed as a step which would make it extremely difficult for Russia and Japan to become self-sufficient in the production of the highest quality of aviation gasoline. Both countries had but few plants producing aviation gasoline, and the processes which they used were far behind those used in the United States. Both countries, moreover, were buying aviation gasoline in the United States and recently had begun to acquire the technical information and plans necessary to produce such gasoline themselves. The moral embargo, while not applying to aviation gasoline itself, nevertheless did extend to the plans and processes for producing such gasoline. It thereby struck directly at any Japanese or Russian ambition to become a producer of high quality aviation gasoline, and in so doing increased the potential danger of any future embargo on such gasoline which might be applied against them.³

The use of the moral embargo in the above-mentioned manner by means of informal appeals to American manufacturers of war material is highly significant, for it illustrates a method by which the shipment of such material to certain countries or areas can be reduced if not entirely prevented, regardless of any embargo legislation which Congress may have enacted. It represents a way in which the Executive

tion of the Russo-Finnish War. (*New York Times*, April 3, 1940, p. 17.) Moreover, it was reported on April 15, 1940, that the government proposed to add pewter, babbitt and solder to the list of materials covered by the moral embargo in view of reports that Russia had been buying these materials for their tin content. *Ibid.*, April 16, 1940, p. 5. The embargo was finally terminated on January 21, 1941.

¹ Department of State Bulletin, December 16, 1939, p. 685.

² *Ibid.*, December 23, 1939, p. 714.

³ *New York Times*, December 21, 1939, pp. 1, 10. On July 31, 1940, the United States, as part of its national defense program, prohibited the export of aviation gasoline to all countries outside the Western Hemisphere, except where such gasoline might be necessary for the operation of American owned companies. (*Ibid.*, August 1, 1940, p. 1.) This followed closely the issuance of Presidential proclamations on July 2 and 25, 1940, subjecting various strategic materials, including aluminum, molybdenum, petroleum, petroleum products and scrap metal, to specific export licenses. *Ibid.*, July 3, p. 1, and July 26, p. 1.

can at least discourage the export of war materials for reasons of policy, even if it cannot legally prohibit such exports. The informal suggestions of the government in this respect carry considerable weight with the war material industries in view of the special position which the latter occupy in connection with the government's program of national defense. Failure to comply with such suggestions might easily mean the loss of important governmental contracts or embarrassing public censure.¹ "Voluntary" cooperation, therefore, is likely to be readily forthcoming in response to any requests from the Department of State with respect to the export of war material.²

It is also significant to note that the moral embargoes did not give rise to diplomatic protests from Japan or Russia, despite the fact that they resulted in the virtual prohibition of all arms exports to those countries. Whereas a formal embargo directed against those countries might justifiably have been looked upon as a hostile act and led to reprisals, the informal or moral embargo achieved practically the same results without the corresponding danger of retaliation.³

¹ In a press release of August 11, 1939, for example, the State Department called public attention to the fact that the Douglas Aircraft Company and the Kellett Autogiro Corporation had applied for and received two licenses for small aircraft shipments to Japan. The moral embargo policy was reiterated, and the observation made that American firms in general had been cooperating with this policy. The two licenses in question were the first which had been issued since December, 1938. The implied criticism by the State Department was somewhat offset in the case of the Douglas Company by an explanation that the license which it had applied for had been in pursuance of a contract of March, 1938, concluded some time prior to the announcement of the moral embargo. *Department of State Bulletin*, August 12, 1939, p. 121.

² Similar to the moral embargo in method, but distinct in purpose, have been the efforts of the War and Navy Departments to persuade American producers and dealers not to export or reexport various strategic raw materials essential for national defense. On October 11, 1939, the two departments called attention to the fact that the government was endeavoring to purchase and store for any possible war emergency adequate stocks of twelve vital raw materials in which the United States was deficient: antimony, chromium, manganese, ferrograde ore, manila fiber, quartz crystal, quicksilver, quinine, rubber, silk, tin and tungsten. American producers and dealers were invited to cooperate in this program by not shipping abroad any of these materials which they might have acquired. Department of Commerce, *Comparative Law Series*, May, 1940, pp. 288-9.

These appeals were apparently not altogether successful. During December, 1939, and January, 1940, for example, Russia was reported to have purchased some 2,000 tons of tin in the United States, as well as a considerable quantity of rubber. In an effort to discourage further transactions such as this, the State Department, which was then applying its moral embargo against Russia, solicited the cooperation of the New York Commodity Exchange in controlling the export of the twelve materials mentioned above. The Exchange was reported to have drawn up a form of sale for these materials which would require purchasers thereof to certify that they would not be exported. *New York Times*, April 16, 1940, p. 5.

Finally, in July, 1940, the export of a large number of strategic raw materials was subjected to specific license. *Ibid.*, July 3, p. 1, and July 26, p. 1.

³ In contrast, the formal restrictions on the export of oil and scrap iron in July, 1940, even though based on national defense needs, led to rumors of possible retaliation on the part of Japan, while the embargo on aviation gasoline occasioned a formal protest from the Japanese Government. *New York Times*, July 27, 1940, p. 4 and August 4, 1940, p. 1.

The Italo-Ethiopian and Spanish Embargoes

During the Italo-Ethiopian and Spanish civil conflicts, the United States applied arms embargoes as part of its newly legislated policy of discouraging foreign wars and reducing the risk of American involvement therein. The Chaco embargo of 1934-5 had been applied primarily to shorten or terminate the war between Bolivia and Paraguay, and not because of any fear of involvement in that conflict. In the case of the Italo-Ethiopian and Spanish conflicts, on the other hand, there was widespread fear in the United States that these conflicts might develop into a general European conflict and that the United States might become involved in such conflict unless it prohibited the export of arms to the belligerent states. Furthermore, it should not be overlooked that during the Italo-Ethiopian conflict there were many groups and individuals in the United States, including the President and the Department of State, who were apparently desirous of cooperating as much as possible in the program of sanctions being applied by the League of Nations against Italy.¹ While the arms embargo applied impartially against both Italy and Ethiopia and was therefore not very satisfactory to those who wished it to apply to Italy alone, it nevertheless did operate to cut off American supplies of arms to Italy and thereby closed an otherwise possible gap in the League system of sanctions.

In the application of the Italo-Ethiopian and Spanish embargoes, the general arms export licensing system established in 1935 proved to be of considerable value both in simplifying administration and in improving effectiveness. With all exports of arms, ammunition and implements of war subject to license, and with the customs authorities under standing instructions to prevent all unlicensed shipments of such materials, the embargoes could be applied simply by withholding licenses for all exports which appeared to be destined directly or indirectly for the prohibited countries. The responsibility for deciding what shipments could leave the United States lay now with the Department of State, instead of with the customs authorities, and the functions of the latter were limited, as they properly should be, to duties of a police character. This has lightened the unreasonable tasks imposed upon them in administering and interpreting previous arms embargoes, and has resulted in a general improvement in efficiency of the prohibitions.

The prohibition on exports of arms, ammunition and implements of

¹ The desire of the President and the Department of State to cooperate in the League program of sanctions was indicated by the informal efforts which were made to discourage the shipment of important war commodities such as oil to the belligerents. (See *supra*, p. 206, note 1.) Since our trade with Ethiopia was negligible, this amounted virtually to an effort to cut off trade from Italy as the League powers were doing.

war to Italy and Ethiopia was in effect from October 5, 1935, to June 20, 1936, in pursuance of the embargo section of the neutrality act of August 31, 1935. Formal hostilities between the two countries began on October 3, and two days later President Roosevelt proclaimed that a state of war existed, thereby automatically putting the arms embargo into effect with respect to both belligerents.¹ The Secretary of State announced on the same day that no export licenses would be issued for shipments destined to Ethiopia, Italy or Italian possessions, and that furthermore exporters of arms, ammunition and implements of war to other destinations might be required, before any licenses would be issued, to present convincing evidence that the materials were not destined to either of the prohibited countries. Inasmuch as the general arms export licensing system did not take effect until November 29, 1935, shipments to other countries than Italy and Ethiopia did not legally have to be licensed before that date,² and the Secretary's requirements could scarcely have been applied in their entirety as outlined above. After November 29, however, the Department of State was in a position to use its general licensing powers as a means of preventing indirect shipment to Italy. The problem was facilitated considerably by the fact that some fifty members of the League of Nations were also applying an arms embargo against Italy, and that they were hence anxious and able to prevent any transshipment of American arms across their territory. Certain attempts at transshipment were reported to have been prevented through the good offices of other countries, and it is believed that this was due to the fact that they too had prohibitions in effect on arms shipments to Italy. So far as the United States was concerned, the arms embargo was enforced effectively, and there were believed to have been no successful attempts at violation.³

The embargo was revoked on June 20, 1936, following the cessation of active, organized fighting in Ethiopia.⁴ It should be noted, in connection with both the application and revocation of the embargo, that the United States acted independently and in advance of the League of Nations.⁵ Furthermore, although the United States action paralleled that taken by the League, the embargo was not applied as a sanction against Italy alone, as was the case in the action taken by most of the League members.⁶ The American prohibition applied impartially

¹ 49 Stat. 3474.

² See *supra*, p. 210, note 3.

³ *First Annual Report of the National Munitions Control Board*, p. 72.

⁴ 49 Stat. 3527.

⁵ The arms embargo proposal was adopted by the League Coordination Committee on October 11, 1935, and revoked on July 15, 1936. League of Nations, *Official Journal, Special Supplement*, No. 150, pp. 2, 340.

⁶ Switzerland and Luxemburg likewise prohibited the export of arms to both Italy and Ethiopia, the Swiss basing their position on the requirements of impartial treatment laid down in Articles 7 and 9 of the Hague Convention of 1907 on neutral rights and duties. *Ibid.*, pp. 188, 274.

with respect to both Italy and Ethiopia, and as such reflected the strong desire of the people of the United States to keep out of any European conflict which it was feared would develop. By cutting off arms exports to Italy, it also of course rendered more effective the League embargo on arms, and in this respect brought limited satisfaction to those who favored more open American cooperation in the program of sanctions.

A commercial treaty providing for most-favored-nation treatment in the matter of export and import restrictions was in effect between the United States and Italy,¹ but no protest was apparently made by the latter that the American embargo constituted a violation of that treaty. As has already been indicated in the discussion of the Chaco embargo, the writer is not of the opinion that an impartial arms embargo by a neutral power, such as that applied by the United States with respect to Italy and Ethiopia, can give rise to justified protest as being in violation of a commercial treaty.²

The embargo with respect to Italy and Ethiopia had scarcely been revoked when a new disturbance broke out in Europe which many feared would develop into a general European conflict. This was the civil war in Spain which began on July 18, 1936. Because of the open sympathies shown by Germany and Italy for the Franco revolutionists and by Soviet Russia for the Loyalist Government, what was nominally a civil war threatened at many times to spread beyond the confines of Spain, and possibly to Europe as a whole. Sentiment in the United States was strongly in favor of keeping out of any such struggle, and an arms embargo such as had been applied during the Italo-Ethiopian conflict seemed desirable. Furthermore, an agreement on non-intervention, including a general arms embargo, had been concluded by the principal European powers in August, 1936, with a view to localizing the Spanish conflict, and the Department of State did not want to jeopardize the success of this agreement by permitting the export of arms to Spain.

Although an embargo was not immediately possible under the existing neutrality legislation which applied only to international wars, and not to cases of civil strife, the Department of State from August to December, 1936, successfully persuaded American arms exporters to give up what might have been a very profitable business and to conform to the government's policy of non-interference.³ When therefore an obscure second-hand arms dealer appeared at the Department of State in December, 1936, and insisted that he be granted a license for the export of a quantity of used planes to the Loyalist

¹ Treaty of February 26, 1871. Article 6. 17 *Stat.* 845, 848.

² See *supra*, pp. 195-7.

³ See *supra* p. 214.

parts were shipped to a Canadian company, ostensibly for assembly there and for ultimate shipment to Turkey. The Canadian Government licensed them for reexport to Turkey on the basis of documents purporting to have been signed by high Turkish officials establishing the authenticity of the order. These documents later proved to be forgeries which had been prepared by agents of the Spanish Government, and the planes (approximately forty) eventually reached Spain by way of France.¹

While even a licensing system, therefore, is not infallible as a method of preventing such deliberate violations of an embargo, it is, nevertheless, a very helpful deterrent to such violations, and it was successful in a number of other cases in preventing what appeared to be attempts to send war material to Spain by indirect routes.² Furthermore, it should be remembered that while an initial attempt at transshipment may succeed now and then, the Department of State is in a position to withhold all further licenses for exports to the intermediary country until convincing assurances are produced that no additional attempts at transshipment will be made.

The Spanish arms embargo was adopted for two principal reasons, both of which illustrate the purposes for which arms exports have been regulated by the United States since 1934-5: (a) to keep the United States out of a possible European war; and (b) to cooperate independently to shorten and localize the conflict in Spain by cutting off the supplies of arms from both sides. The embargo subsequently became the subject of violent controversy in American public opinion and the central theme of debate between various American groups which sympathized with one side or the other in the Spanish conflict. Those who sympathized with the Loyalist Government urged that the embargo be repealed inasmuch as it was operating to the disadvantage of a friendly, recognized government, and since the Franco rebels were receiving continuous supplies from Germany and Italy, despite the Non-Intervention Agreement. Those, on the other hand, who sympathized with Franco insisted with equal vehemence that the embargo be left intact. Intensive campaigns took place in the spring of 1938 and again during the early part of 1939 to secure repeal of the embargo, and the question became a momentous issue in the eyes of the American people. Senator Nye, one of the staunchest supporters of the original neutrality legislation, introduced a resolution in Congress on May 2, 1938, to repeal the Spanish embargo law of January 8, 1937, and to authorize the President to raise the embargo with respect to the Loyalist Government.³ The resolution was favorably received at first and

¹ *Third Annual Report of the National Munitions Control Board*, pp. 85-6.

² *Ibid.*, p. 86. *Fourth Annual Report of the National Munitions Control Board*, p. 111.

³ *Congressional Record*, Vol. 83, Pt. 6, p. 6030.

apparently might have passed had not Secretary of State Hull written to Senator Pittman on May 12 expressing opposition to any repeal of the embargo. The State Department felt that to lift the prohibition with respect to one side, as was proposed in the Nye resolution, would expose the United States to unnecessary risks of involvement in what might become a very critical European situation.¹ Catholic organizations and the Catholic press waged an active drive against repeal of the embargo, and this was also believed to have been a powerful political factor in the Administration's decision not to support the matter. Supporters of the Loyalist Government, in turn, alleged that certain "fascist sympathizers" in the State Department had been responsible for the latter's opposition to repeal, and accused the Secretary of State of being a close accomplice of the Chamberlain Government in England.²

Another intensive campaign to repeal the Spanish embargo was launched after the convening of Congress in January, 1939. Prominent citizens were heard on both sides of the question, and public opinion was again deeply stirred on the matter.³ The State Department on this occasion declined to take any public stand on the question, and Congress likewise seemed reluctant to initiate any immediate action. The imminence of a Franco victory in Spain may have explained the attitude of caution at Washington at this time. At any rate, it was soon too late to consider any active measures of aid to the Loyalist Government, for by the middle of February the Loyalist leaders had indicated a willingness to sue for peace, and the British and French Governments had agreed in principle on the recognition of Franco. Full recognition was accorded in the closing days of February, and by the end of March the Franco victory was complete. The United States recognized the new government on April 1, 1939, and revoked the arms embargo at the same time.⁴

Inasmuch as the embargo controversy in the United States raised several important questions with regard to American neutrality policy, a few observations should be made on the subject.

First: It was suggested that the original conditions for applying the embargo (viz. cooperation in the Non-Intervention Agreement) had changed, owing to the failure of that agreement as a result of the action of Germany and Italy, and that therefore the United States was justi-

¹ Department of State, *Press Releases*, May 14, 1938, pp. 578-9.

² *The Nation*, May 21 and 28, 1938, pp. 576, 607-10.

³ Senator Pittman reported on January 25, 1939, that the Senate Foreign Relations Committee, during the preceding week, had received 35,000 letters on the question of the Spanish embargo. *New York Times*, January 26, 1939, p. 4. On January 16, following a radio appeal of Father Coughlin, it was reported that more than 100,000 telegraph messages opposing repeal of the embargo had been sent to members of Congress. *Ibid.*, January 17, 1939, p. 10.

⁴ Department of State, *Press Releases*, April 1, 1939, pp. 246-7.

fied in revoking its prohibition.¹ In this connection, it should be recalled that there were originally two reasons for applying the embargo: (a) to cooperate in the Non-Intervention Agreement, and (b) to reduce the risk of American involvement in what might become a general European war. In the eyes of many, the latter reason still existed and was adequate ground for keeping the embargo in effect.² The Department of State moreover observed that the danger of the Spanish conflict spreading into a European war continued to exist and that to lift the embargo even impartially would still subject the United States to unnecessary risks which had theretofore been avoided.³

Second: It was submitted that since the Loyalist Government had been recognized as the lawful government of Spain, it was entitled under international law to purchase supplies in other countries for the purpose of suppressing the rebellion. No nation had gone further than the United States, it was pointed out, in sustaining this general right of a nation against which civil strife had broken out.⁴ To this, it may only be remarked that the right of a recognized friendly government to purchase war supplies abroad does not *ipso facto* oblige third states to sell such supplies to that government. A state is entirely justified in prohibiting the export of arms if it deems that action necessary or desirable, the only requirement being that if supplies are prohibited to the government, they must also be prohibited to the rebels, as otherwise the state applying the prohibition would be guilty of committing a hostile act against that government.

Third: Those who favored raising the Spanish embargo called attention approvingly to the support which the United States had on occasion given to the recognized governments of certain Latin American countries in their efforts to suppress revolution.⁵ It will be recalled, however, from the preceding discussions in Part II, that the policy of supporting recognized governments in the Americas and discouraging revolution has, with the single exception of Brazil, been confined to the nearby countries of Mexico, Central America and the Caribbean which occupied a very special position in their relation to the United States. Our action with respect to these countries was dictated by

¹ Letter of Burlingham and Jessup in the *New York Times*, January 31, 1939, p. 2.

² Cf. e.g., letter of Martin Conboy in the *New York Times*, January 26, 1939, p. 4. But on the extent to which an arms embargo would be likely to keep the United States out of war, cf. *infra*, pp. 239-40, 245, 262 ff.

³ Hull, Secretary of State, to Senator Pittman, May 12, 1938. Department of State, *Press Releases*, May 14, 1938, pp. 578-9.

⁴ Letter of Henry L. Stimson in the *New York Times*, January 24, 1939, p. 6. The Spanish embargo was also criticized by Professor Borchart on the ground that it reversed the legal position of a recognized government under international law and placed it on a level with unrecognized insurgents. "Neutrality and Civil Wars," *A.J.I.L.*, Vol. 31 (1937), pp. 304-6.

⁵ Cf. Stimson letter, *New York Times*, January 24, 1939, p. 6.

special considerations affecting the defense of the Panama Canal and the protection of large American property rights in that region. It was never generalized for application to Latin America as a whole, and can hardly be construed therefore as a precedent for similar action with respect to distant countries in which the position or interests of the United States are not directly jeopardized. Moreover, in the case of Latin America, the United States has not been averse to prohibiting the export of war materials even to recognized governments in cases where it was desired to secure from those governments a policy more favorable to the United States.¹ The Spanish embargo must therefore be considered on its own merits, and not as a logical extension of our embargo policy with respect to civil strife in Latin America.

Fourth: It may be of interest at this point to recall that the embargo with respect to China from 1919 to 1929 constitutes in some ways a parallel to the Spanish embargo of 1936-9. Here also a prohibition was applied through international agreement for the purpose of shortening a civil war, although in this case the United States was a party to the agreement, whereas in the Spanish case we took independent but parallel action. Here, likewise, the international agreement was not very effective in keeping war materials out of China (for which reason it was eventually abandoned), but the United States nevertheless continued to apply the prohibition for ten years despite the fact that Great Britain and herself were the only powers effectively doing so. The embargo with respect to China also applied impartially to the entire country during this period, despite the fact that we maintained *de jure* relations with the Peking Government until 1924 and *de facto* relations thereafter until 1926. It should be remembered, however, that China occupied a special position in her relations with the United States by reason of the treaties granting extraterritoriality and other privileges to the latter, and that in this important respect, the case of China differs from that of Spain.

Fifth: It was suggested by those opposed to any raising of the embargo against Spain that such action would constitute a change in policy during the course of the war which would affect the two sides unequally and which would therefore be a breach of neutrality and tantamount to an act of interference.² The Department of State was constantly besieged by groups favoring one side or the other in Spain and demanding that the embargo be raised or maintained according to

¹ Cf. especially the cases of Mexico in 1919-20 and 1926-7; also in 1913-14. See *supra*, pp. 62 ff., pp. 80 ff., and pp. 113 ff.

² The American embargo had of course not been formally applied under law until January, 1937, six months after the Spanish war had broken out, but its application did not represent any fundamental change of policy during the conflict because an informal embargo had been in effect at the request of the State Department since shortly after the outbreak of the war.

the particular direction of their sympathies. For the United States to have made any change in its policy under such circumstances would at once have exposed it to a charge of partisanship such as was directed against President Wilson when he raised the embargo against Mexico in February, 1914. Even though the embargo was raised impartially with respect to both sides in the Mexican case, its purpose and result were to enable the rebels to intensify their campaign against de la Huerta, and as such it was an act of open interference in the Mexican struggle. To have revoked the embargo with respect to Spain while the war was still going on might have been construed as a similar act of interference, though in this case the Loyalist Government instead of the rebels would have benefited by the action.

Those who favored raising the embargo maintained that it could scarcely be considered an act of interference since the belligerency of the rebels had not been recognized and the ordinary rules of neutrality were therefore not applicable. Under these circumstances, it was held that the United States was entirely justified in extending aid to the recognized Spanish Government. On the other side of the argument, it was contended that although the belligerency of the rebels had not been formally recognized, it had nevertheless been implicitly recognized by the conclusion of the Non-Intervention Agreement and the application of an impartial arms embargo against both parties to the conflict. The position of the United States in this matter was somewhat anomalous. For while the American Government had persistently refused to recognize the belligerency of the Franco forces, it had at the same time proceeded in its embargo policy to treat the Loyalist Government and the Franco forces on an equal basis. It had been doing this for more than two years, and, in the opinion of the opponents of repeal, had thereby admitted implicitly that a war was going on, that there were two parties to it, and that the rules of neutrality required that these parties be treated impartially.¹

It may have been unwise and irregular to have applied the embargo in the first place. But having done so, and having applied it for over two years to both the Madrid Government and the Franco régime alike, it is the opinion of this writer that it would have been politically unwise (if not unneutral) to change this policy in the midst of the war for the obvious purpose of aiding one of the parties to the conflict. Even if one accepts the position that no legal status of belligerency existed and that the rules of neutrality were not applicable, it is still

¹ Borchard and Lage, *Neutrality for the United States* (2d ed., 1940), p. 355. Cf. also Vernon A. O'Rourke, "Recognition of Belligerency and the Spanish Civil War," *A.J.I.L.*, Vol. 31 (1937), pp. 408-11. For a thorough discussion of the position that the belligerency of the rebels had not been recognized, cf. Norman J. Padelford, *International Law and Diplomacy in the Spanish Civil Strife* (New York, 1939), Chap. i.

true that the Franco forces would undoubtedly have viewed our action as unfriendly and discriminatory, and might have resorted to retaliation in one form or another. The question of possible retaliation does not seem to have been considered by many of those who advocated raising the embargo. If we had raised the embargo as the Loyalist supporters urged, and if then the Franco forces had seen fit to retaliate against American citizens and property in Spain, serious complications might have arisen which would have obliged us to decide whether to take still further steps in Spain to stop such retaliation, or whether to content ourselves with mere diplomatic protests.

Sixth: It has finally been suggested that even if the embargo had been lifted with respect to Spain, the Loyalist Government might not have benefited to any considerable extent because of the effectiveness of the Franco *de facto* blockade¹—i.e., unless the United States was prepared to defend American ships attempting to carry arms through that unrecognized blockade, or unless France opened her frontier to the transshipment of goods. To the extent that the Loyalists would have been shut off from American arms supplies anyway, the revocation of the embargo would not have served the purposes for which it was urged, and would only have invited further complications with the rebels.

The controversy over the Spanish embargo deserves careful and dispassionate analysis because it was only a forewarning of the still more violent controversy which was destined to arise a few months later over the question of maintaining or repealing the embargo legislation in the face of a major war in Europe.

When Is a War Not a War?—The Far Eastern Imbrolio since 1937-

Despite the fact that organized hostilities between Japan and China were resumed in July, 1937, the embargo section of the neutrality law of May 1, 1937, was never formally applied to those countries during its existence inasmuch as President Roosevelt never found a "state of war" to exist.² Although Congress had provided what was believed to

¹ Cf. letter of F. R. Coudert in the *New York Times*, January 25, 1939, p. 20.

² It was perhaps as a gesture to those who had been demanding that an embargo be applied against Japan and China under the neutrality law that President Roosevelt on September 14, 1937, announced that merchant vessels owned by the United States Government would not thereafter be permitted to transport arms, ammunition or implements of war to China or Japan, and that other merchant vessels flying the American flag which attempted to do so would do so at their own risk. Department of State, *Press Releases*, September 18, 1937, p. 227.

This action made no measurable difference in the shipment of arms to the Far East as is indicated by the fact that the value of the licenses issued for such exports to Japan increased from \$1,173,942 for the year ending November 30, 1937, to \$9,241,282 for the year ending November 30, 1938. In the case of China, the increase was from \$6,579,093 to \$9,180,800. *Third Annual Report of the National Munitions Control Board*, pp. 60, 63.

Secretary of State Hull summed up the position of the government on this question in the following words:

In connection with the Far Eastern situation, this Government was confronted with the question of applying the existing neutrality legislation, which was designed primarily to keep our Nation out of war. After mature deliberation the conclusion was reached that in the circumstances attending the controversy in the Far East—a type of circumstances which the authors of the legislation could scarcely have visualized—application of the law would be most likely to endanger the very objectives which the law was designed to promote. Accordingly, exercising the discretion vested in him by the law itself, the President has refrained from putting the provisions of that law into operation.¹

There does not seem to have been any widespread popular dissatisfaction with the course of action above-mentioned insofar as it affected the Far East, which may have been due to the fact that the neutrality law and the mandatory embargo had been drafted primarily with the European situation in mind, and represented essentially a part of the United States policy with respect to that area of the world.² The failure to apply the embargo to the Far Eastern conflict raised some doubts, however, as to the value of having any embargo law at all if the Executive was able to avoid applying it whenever he wished. This feeling was undoubtedly responsible for the amendment which the House of Representatives added to the Bloom Neutrality Resolution in June, 1939, under which Congress, as well as the Executive, was authorized to find that a state of war exists, thereby bringing the other sections of the bill into operation.³

The administration not only exercised its discretion in the Far Eastern case so as to avoid having to apply the mandatory embargo law of Congress, but it also gave a remarkable demonstration of how it was possible for the Executive on his own initiative to carry out a policy at considerable variance with that law. I refer of course to the informal and "voluntary" embargo on shipments of aircraft to Japan which the American manufacturers have been observing since 1938 at the re-

¹ "Our Foreign Policy." Address of March 17, 1938, Department of State Publication No. 1146, pp. 8-9.

² Various resolutions were introduced in Congress from November, 1937, onwards calling upon the President to proclaim a state of war to exist in the Far East and thereby to put the neutrality act into effect. Some discussion of them took place on the floor of Congress, but no definite action resulted.

³ *Congressional Record*, Vol. 64, p. 8313. The Bloom Bill, introduced as a substitute for the 1937 neutrality act, passed the House on June 30, 1939, with the above-mentioned amendment and with a provision for an automatic arms embargo. The Senate Foreign Relations Committee on July 11, however, voted to postpone action on the subject until the next session of Congress. (*New York Times*, July 12, 1939, p. 1.) The amendment was eventually incorporated in the Neutrality Act of November 4, 1939. The power of Congress, by concurrent resolution, to declare a state of war to exist and thereby compel the Executive to proclaim neutrality has been questioned as unconstitutional. Cf. Quincy Wright, "The Power to Declare Neutrality under American Law," *A.J.I.L.*, Vol. 34 (1940), pp. 302-10.

quest of the State Department. Since aircraft represented the principal item in the export of arms, ammunition and implements of war to Japan, the effect of this "voluntary" action on the part of American manufacturers has amounted to practically a complete cessation of all arms exports from the United States to Japan. During 1939, licenses for the export of arms, ammunition and implements of war to Japan totaled only \$761,684 in contrast to \$8,799,219 for 1938, and during the first ten months of 1940, no licenses at all have been issued for such shipments.¹ This result has been possible only because American manufacturers in compliance with the request of Secretary Hull on July 1, 1938, have refrained from contracting new orders with Japan since that time, and have not applied for the export licenses to which they are legally entitled. A discriminatory embargo against Japan was thereby put into effect through Executive action, despite the fact that the neutrality law of Congress had expressly stipulated that any embargoes which might be applied should apply in an impartial, non-discriminatory manner. A similar discriminatory embargo was instituted against Soviet Russia in December, 1939, following that country's invasion of Finland, although by that time the mandatory embargo legislation of Congress had been repealed in the wake of the European war.

The Far Eastern case seems to demonstrate quite clearly that the actual policy which the United States will follow in the future with respect to the regulation of arms exports is likely to be determined very largely by the Executive regardless of what policy the Congress may attempt to legislate on the subject. It is possible of course that the policy of the Executive and the policy favored by Congress may coincide, as was the case in the Chaco, Italo-Ethiopian² and Spanish embargoes. But in the event that they do not coincide, as has been the case in the Far East, the policy of the Executive will probably prevail, no matter what may be on the statute books. Even if Congress should go to the extreme and pass a law prohibiting arms exports to all belligerents independently of any action or policy which the Executive might favor, the latter may still exercise sufficient informal control over the arms and aircraft industry to "persuade" these industries to comply with the Executive's policy. So long as Congress and the

¹ See *supra*, p. 215, note 2.

² Although President Roosevelt expressed dissatisfaction with the mandatory embargo provisions of the neutrality law of August 31, 1935, there does not seem to have been any doubt that he would apply the embargo against both Italy and Ethiopia when hostilities broke out between the two states. As a matter of fact, he told Representative McReynolds before the resolution was adopted that Congress could rest assured that he (Roosevelt) would apply the embargo against both Italy and Ethiopia in case of a war in East Africa. (Statement by Mr. McReynolds to the writer, October, 1935.)

Executive see eye to eye on policy, or so long as one is willing to accept the policy of the other, all will work smoothly. But if for any reason the Executive considers the policy or legislation of Congress inexpedient or unwise, it is likely that his views will prevail in practice, and that Congress will find the spirit if not the letter of its arms embargo legislation circumvented.

CHAPTER V

THE UNITED STATES CHANGES ITS MIND

The Policy Begins To Weaken

The year 1939 witnessed a decisive challenge to the American arms embargo policy and at the same time brought to a head the question of whether Congress or the Executive would have the final word in determining that policy. Ironically enough, when it became likely that the policy would be put to a test in a major European war, many of its original supporters began to fall by the wayside. Desirous of staying out of war, yet at the same time anxious to strengthen the hands of the European democracies as much as possible against the challenges from the dictatorships, an increasing number of Americans began to wonder if the automatic and impartial arms embargo would really serve the ends they desired.¹

Congress, it will be remembered, had originally adopted the impartial, mandatory embargo legislation because it did not wish to give the President broad discretionary powers to regulate the arms traffic as he saw fit. It had been feared that he might use such powers in an unneutral way by discriminating between belligerent states, thereby inviting retaliation and possibly war. There had also been vehement objection from anti-New Dealers who for various political reasons were opposed to centralizing any further broad discretionary powers in the executive branch of the government. The net result of these fears and objections was the adoption of an embargo law in which Congress attempted to prescribe in advance the conditions under which the prohibitions should be applied, namely, that they take effect in all cases of foreign war and that they be applied impartially with respect to all belligerents. Thus was manifest a fundamental difference of opinion between Congress and the Executive as to which branch of the government was to determine the arms embargo policy of the United States.

In contrast, both the joint resolutions of March 14, 1912, and January 31, 1922, had given the President complete discretionary authority to prohibit or restrict the shipment of arms or munitions of war to Latin American or extraterritorial countries in cases of domestic strife.

¹ According to a poll conducted by the American Institute of Public Opinion (Gallup) in April, 1939, after the complete absorption of Czechoslovakia by Germany in March, 57 per cent. of those Americans with opinions on the subject favored a change in the neutrality law so as to permit England and France, in the event of war, to buy war materials in the United States.

Congress did not attempt to prescribe that embargoes be applied to all cases of civil war in Latin America, but left this and other questions of policy to the judgment of the Executive. Utilizing this discretionary authority, the various presidents had applied restrictions on arms exports only in those cases where the special interests and position of the United States seemed to be jeopardized by continued revolutionary disturbances. The policy was never generalized so as to be applicable to all of Latin America, but was confined for the most part to the countries of Mexico, Central America and the Caribbean which occupied a special position in their relation to the United States. Moreover, it was possible under the discretionary powers of the 1912 and 1922 resolutions to discriminate between the government and revolutionary factions in the application of embargoes, and this opportunity was utilized by the Executive in a number of cases to supplement the other more forceful efforts of the United States to maintain order in nearby Latin America.

When the Executive in January, 1933, decided to seek from Congress general authority to restrict the export of arms for the purpose of discouraging or terminating war between foreign countries, the effort was made to secure similar legislation which would grant the President full discretionary powers to prohibit or restrict the arms traffic as he deemed best in the interests of peace. Congress, however, although willing to grant this power with respect to Latin America, was not willing to grant it with respect to the world at large, and the mandatory embargo laws of 1935 and 1937 were the result.¹ The only discretion left to the President was contained in the provision that the embargoes would not take effect until the President had found and proclaimed a state of war to exist—discretion thereby being granted to decide when, if not how, the embargoes would be applied.

This difference of opinion over mandatory and discretionary embargo powers did not cause any special difficulties in the Chaco, Italo-Ethiopian or Spanish embargoes because both the Executive and Congress seemed disposed to apply the prohibitions in these particular cases, and to apply them impartially. In the case of the Sino-Japanese conflict in 1937, however, the difference became more evident, with the result that the Executive not only refrained from taking the necessary steps to put an impartial embargo into effect, but further-

¹ It would be more accurate to point out that the House of Representatives prior to 1939 was, for the most part, disposed to grant such discretionary powers to the President, but that a sizable bloc in the Senate was continually insisting upon inserting provisions in the legislation requiring that any embargoes be applied impartially against all belligerents. By threatening to filibuster against other important legislation if its views on the arms embargo were not accepted, the Senate bloc succeeded in 1935 in writing these mandatory provisions into the neutrality law where they stayed until 1939 when the embargo provisions were repealed.

more used his informal powers to discourage the shipment of aircraft to Japan as a penalty for the latter's practice of bombing civilian populations. A discriminatory prohibition was therefore informally effected, the first occasion, it is believed, on which the United States has ever attempted to discourage the shipment of arms as a sanction or penalty against a nation engaged in war with another power.

The controversy finally came to a head in 1939 when President Roosevelt, who had never disguised his lack of sympathy for the mandatory embargo sections of the 1935 and 1937 neutrality acts, but who had realized at the same time that it was politically impossible to secure a discretionary law, began an active campaign to have the embargo provisions repealed. In his opinion, no embargo legislation was preferable to legislation which tied the hands of the Executive in its application. There was also increasing objection in Administration circles on the ground that the existing embargo legislation, if applied to a general war between the European democracies and dictatorships, would prevent the shipment of arms, ammunition and implements of war to the democracies, thereby weakening them and strengthening the position of the dictatorships which presumably would be unable to obtain arms from the United States anyway because the democratic powers controlled the seas. By thus encouraging the dictatorships, it was feared that the mandatory embargo, instead of decreasing the likelihood of foreign war, might actually increase it.¹ President Roosevelt gave voice to this feeling in his message to Congress on January 4, 1939, when he said:

There are many methods short of war, but stronger and more effective than mere words, of bringing home to aggressor governments the aggregate sentiments of our own people.

At the very least, we can and should avoid any action, or any lack of action, which will encourage, assist, or build up an aggressor. We have learned that when we deliberately try to legislate neutrality, our neutrality laws may operate unevenly and unfairly—may actually give aid to an aggressor and deny it to the victim.²

Two months later, on March 7, 1939, President Roosevelt indicated definite opposition to the embargo law by stating that it had tended to contribute to the cause of war rather than of peace.³ Thus the controversy which had previously raged between Congress and the Executive over the question of discretionary versus mandatory embargo

¹ Had a discretionary law been in effect, the Executive would have been free to have applied an embargo or not, as circumstances seemed to warrant. In the event of a war between the European democracies and dictatorships, he could then have refrained from applying any embargo, thereby enabling the democracies to utilize their control of the seas to obtain arms for themselves and to prevent their enemies from so doing.

² *Congressional Record*, Vol. 84, p. 75.

³ *New York Times*, March 8, 1939, p. 1.

legislation now became transformed into the question of mandatory versus no embargo legislation. It was in this form that the controversy continued to rage during the rest of 1939.

With the danger of a general European conflict mounting following the complete German absorption of Czechoslovakia and the Italian occupation of Albania in the spring of 1939, Congress began to consider seriously the question of repealing the existing arms embargo legislation and adopting in its place legislation which would permit the shipment of all goods, arms included, to all belligerents on a "cash-and-carry" basis.¹ The "cash-and-carry" provisions of the 1937 neutrality law were due to expire on May 1, 1939, and it was felt that the extension of these provisions to cover all commodities would remove the principal risks involved in trading with belligerent states, while the repeal of the arms embargo would at the same time enable the democratic powers to take full advantage of their control of the seas in obtaining needed supplies from the United States. Here then was a plan by which it seemed possible to meet the conflicting desires of the American people to stay out of war and at the same time to lend material economic aid to the European democracies. In the face of this situation, the arms embargo policy which Congress had adopted in 1935 was eventually destined to be set aside, but not until after a vigorous resistance had been put up by those for whom the embargo had become a symbol of America's determination to stay out of foreign wars.

Extensive hearings were held during April and May, 1939, on the question of revising the neutrality law of 1937, and many of the arguments heard in 1935, 1936 and 1937 were reiterated.² As had been the case in all previous discussions of the arms embargo question since 1933, the debate was characterized by a confusing blend of idealism, isolationism and internationalism.³ Arguments were heard in favor of legislation to authorize the application of embargoes against nations found to have violated the Kellogg Pact or committed acts of aggres-

¹ On March 20, 1939, Senator Pittman, chairman of the Senate Foreign Relations Committee, introduced on his own responsibility a bill to repeal the existing arms embargo and place the shipment of all goods to belligerent powers on a "cash-and-carry" basis. Although the bill did not have official Administration backing, it corresponded closely to the views of the Administration on the matter. S. J. Res. 97. *Congressional Record*, Vol. 84, p. 2923.

² United States Senate, Committee on Foreign Relations, "Neutrality, Peace Legislation and Our Foreign Policy," *Hearings*, April-May, 1939; House of Representatives, Committee on Foreign Affairs, "American Neutrality Policy," *Hearings*, April-May, 1939. The hearings were of course devoted to all phases of American neutrality policy, of which the arms embargo question was but one part.

³ More than a score of resolutions were introduced in Congress on the subject. They have been discussed and analyzed in some detail in Philip C. Jessup, "The Reconsideration of 'Neutrality' Legislation in 1939," *A.J.I.L.*, Vol. 33 (1939), pp. 549-57; and Francis O. Wilcox, "The Neutrality Fight in Congress: 1939," *American Political Science Review*, Vol. 33 (1939), pp. 811-25.

sion.¹ Those who particularly wished to stop the flow of war materials to Japan introduced bills to this effect.² Others who were more concerned with cutting off the export of arms to all belligerents urged that the existing embargo law be strengthened and that Executive discretion as to its application be limited by giving Congress concurrent power to find that a state of war existed and thereby put the embargo provisions into effect.³ A few proposed a general peacetime embargo on all arms shipments,⁴ while various others advocated the outright repeal of all embargo legislation and a return to the policy of non-regulation permitted by international law and followed, with certain exceptions, by the United States prior to 1934.⁵ Considerable support was also manifested for the Pittman proposal to drop the arms embargo and adopt in its place a "cash-and-carry" system for all trade with belligerent nations.⁶

The hearings came to a close in the early part of May, 1939, with no prospect in sight of immediate agreement on any proposal. Toward the end of the month, however, the atmosphere cleared when Secretary of State Hull addressed a letter to the chairmen of the Senate and House Committees in which he set forth the position of the Administration on the matter of revising the neutrality legislation.⁷ Aside from the general references of the President earlier in the year to his dissatisfaction with the existing neutrality law, this was the first time that the Administration had publicly disclosed its views on the situation. In brief, Secretary Hull advocated the repeal of the arms embargo, and the adoption of legislation prohibiting the sale of all goods to belligerent powers except on a cash basis, together with a prohibition upon the entry of American citizens or ships into combat areas.⁸ He

¹ Cf. statements of Colonel Henry L. Stimson, Mrs. Louise L. Wright and Professor Charles G. Fenwick before the Senate Committee on Foreign Relations, and Mr. Clark Eichelberger before the House Committee on Foreign Affairs. They were supporting a resolution introduced by Senator Thomas. S. J. Res. 67, 76th Congress.

² H. R. 5432 (Rep. Coffee, Washington) and S. J. Res. 123 (Sen. Pittman). Advocates of this idea before the Senate and House Committees also supported the Thomas resolution. S. J. Res. 67.

³ Cf. statements of Frederick J. Libby and Fred J. Sisson before the House Committee, and Dean Helen Taft Manning before the Senate Committee. They were supporting a resolution introduced by Senators Nye, Clark and Bone. S. J. Res. 106.

⁴ H. J. Res. 3 (Rep. Ludlow), H. J. Res. 113 (Rep. Fish), and S. J. Res. 21 (Sen. Nye). These in general provided for a prohibition on all arms shipments from the United States except to American countries which might be engaged in war with a non-American state.

⁵ H. R. 79 (Rep. Maas), H. J. Res. 44 (Rep. Faddis), S. 203 (Sen. King), and S. 1745 (Sen. Lewis). Cf. statements of Representatives Maas, Faddis and Wadsworth before the House Committee, and former Secretary of State Bainbridge Colby before the Senate Committee.

⁶ Cf. statements of Bernard Baruch and former Assistant Secretary of State Breckinridge Long before the Senate Committee.

⁷ May 27, 1939. Department of State, *Press Releases*, June 3, 1939, pp. 475-7.

⁸ The "cash-and-carry" provisions of the 1937 law, which had been valid for only two years, had been allowed to expire on May 1, 1939. New legislation was therefore necessary to cover the trade in goods other than arms.

emphasized the idea that an arms embargo alone would contribute little to a successful policy of staying out of war, and pointed out that the danger of involvement was far more likely to arise from the destruction of American lives and property in the zones of belligerent activity. If the United States were to endeavor to stay out of war through a policy of embargoes, it would be necessary to make such embargoes all-inclusive, and not confine them simply to arms, ammunition and implements of war. A complete embargo, however, would be "ruinous to our economic life", Secretary Hull observed, and some other method should therefore be sought. The solution seemed to lie in a policy of placing all trade with belligerent powers on a "cash-and-carry" basis, and of taking steps to keep American citizens and ships out of dangerous combat zones. Under such an arrangement, an arms embargo would be neither necessary nor desirable.

With this stimulus from the State Department, the House Foreign Affairs Committee settled down to a consideration of the Administration proposals, and on June 17, 1939, reported favorably a resolution embodying these proposals which had been introduced by Representative Bloom, Acting Chairman of the Committee, on May 29.¹ When the measure was taken up in the House on June 27, however, it provoked a bitter but dramatic debate, and the Administration received one of its most severe setbacks of that particular session of Congress.

The advocates of repealing the arms embargo, it should be noted, were divided into two main groups: (a) those who favored repealing the embargo and adopting a "cash-and-carry" plan for all goods, including arms, as proposed by the Administration; and (b) those who favored repealing the embargo and adopting little or no legislation at all in its place, but relying instead on the international law of neutrality to keep the United States out of war.² The former group maintained,

¹ H. J. Res. 306. *Congressional Record*, Vol. 84, p. 6309. *House Report No. 856*, 76th Congress. Even before Secretary Hull formally set forth the Administration's position in his letter of May 27, 1939, he had been holding informal conferences at his apartment with Democratic members of the House Foreign Affairs Committee for the purpose of discussing neutrality revision and answering questions from the committee members. The rather unusual procedure of conferences at the home of the Secretary of State was resorted to in order to avoid a formal appearance of the Secretary before the committee, and perhaps also to make for a more peaceful exchange of views than might have been possible if Republican opponents of the Administration policy, like Representatives Fish and Tinkham, were present. The latter were apparently not invited to the conferences at the home of Secretary Hull. *New York Times*, May 27, 1939, p. 1.

² There were also a few who favored repealing the mandatory, impartial embargo and adopting in its place a law which would have allowed the President, with the consent of Congress, to apply embargoes against nations found to have violated the Kellogg Pact and similar treaties to which the United States was a party. This course of action had been urged during the committee hearings by a number of prominent persons, but it never gained much support among the members of Congress.

On the other hand, the idea of repealing the 1935 and 1937 neutrality legislation and relying solely upon international law showed surprising strength during the

as had Secretary Hull, that an arms embargo alone would not keep the United States out of war, and that the surest way of avoiding controversies would be to adopt legislation which would keep American ships and citizens out of dangerous combat zones and permit no goods to be shipped to belligerent nations until all American rights and title thereto had been transferred. The latter group insisted that it was impossible to legislate neutrality, and that it would be far more practicable to rely on the rules of international law, which, if vigorously and impartially enforced, offered the best safeguards against involvement in war. In the final analysis, it was contended, staying out of war would depend upon the attitude and will of the American people, rather than upon any laws which might be upon the statute books. If the will to stay out of war were not present, then no legislation could accomplish the purpose.

Although neither group openly emphasized the point very much, both believed that repeal of the embargo would strengthen the position of the European democracies and might thereby serve to discourage or postpone the outbreak of a general war overseas. Speaker Bankhead, in one of his rare speeches before the House of Representatives, laid his finger upon the real motive for repeal when he urged his colleagues to "lift this inhibition against the shipment of arms and ammunition to those who need them . . . to defend their liberties, to defend their homes, and to defend their principles of self-government and personal liberty. . . ."¹

Opponents of repeal vehemently pounced upon this issue, declaring that such action would be a certain step toward war, that it would be aligning the United States with Great Britain and France against Germany, that it would encourage the development of an abnormal armament industry in the United States, and that it would make the United States the arsenal of the world and a profiteer in the "blood money" of the armaments traffic. Said Representative Fish:

I am convinced that if this unneutral Bloom bill passes without . . . an embargo on arms, ammunition, and deadly weapons, it will mean that the United States of America will follow our arms traffic for blood money and war profits into the war itself.²

The bill was passionately debated for four days in the House of Representatives and finally, in a highly dramatic night session reminiscent of the World War debates, was adopted in a severely emasculated form from which the principal Administration proposals had been elimi-

debates in June, 1939. An amendment to this effect, introduced by Representative Allen, received 68 votes, although it was rejected 195-68. (*Congressional Record*, Vol. 84, pp. 8288, 8311.) In 1937, there had been only 13 votes cast against the neutrality resolution in the House of Representatives. *Ibid.*, Vol. 81, p. 2410.

¹ *Congressional Record*, Vol. 84, p. 8510.

² *Ibid.*, p. 8509.

nated.¹ Most significant of all the Administration reversals was the Vorys amendment, adopted by a vote of 214-173, which reincorporated a mandatory arms embargo into the bill, but which as a compromise gesture confined the prohibition to "arms and ammunition" and omitted "implements of war" which had been previously included.² Also adopted was an amendment giving Congress as well as the President the power to find a state of war existing and thereby to put the embargo into effect. The effect of this amendment was to restrict considerably the discretion of the President to decide when the embargo should be applied. Its adoption was a reflection mainly of dissatisfaction on the part of the opposition in Congress with the failure of the President to find a state of war existing in the Far East and to apply an arms embargo against Japan and China.³

The Administration was naturally disappointed over this rejection of its proposals, particularly the reincorporation of the arms embargo into the Bloom bill, and shortly thereafter President Roosevelt expressed the opinion that the likelihood of war in Europe had been increased by the action of the House of Representatives. He indicated the belief that the dictators would be encouraged by this action to resort to force in pressing their demands on the European democracies. Furthermore, the Administration, in the President's opinion, would be hampered in its efforts to prevent war abroad, and the impression might be gained in foreign countries that the American people were not in sympathy with such efforts.⁴

Despite such appeals from the Executive, all further efforts to secure repeal of the arms embargo at that time came to naught when the Senate Foreign Relations Committee on July 11, 1939, decided by a vote of 12-11 to defer consideration of all neutrality proposals until the following session of Congress.⁵ The President reluctantly accepted the

¹ June 30, 1939. The vote was 201-187. *Congressional Record*, Vol. 84, pp. 8513-14.

² As might have been expected, nobody was quite sure what "arms and ammunition" included—whether, e.g., it included military airplanes or tanks, etc. Representative Vorys, the author of the embargo amendment, indicated that it was intended to cover only lethal or death-dealing weapons, and would not include articles like commercial airplanes, trucks, foodstuffs and the like. He declined, however, to include any provision authorizing the President to proclaim a definition of the term, and said the question should be left for decision by the courts. For purely administrative reasons, this would have been extremely undesirable because it would have meant going back to the uncertainty and confusion of the period prior to 1935. *Ibid.*, pp. 8320-1, 8511.

³ The chief attack upon the discretionary powers granted the President by the Bloom resolution centered on Section 3 of that resolution which authorized the President to designate "combat areas" into which American citizens and ships would be forbidden to enter. Opponents of the measure declared, "With this power, the President can effectively quarantine an aggressor from American ships and citizens by simply naming the aggressor as a 'combat area'." (House Report No. 856, 76th Congress, p. 22.) The Administration supporters quickly conceded defeat on this issue when the bill came up for debate, and Section 3 was eliminated. *Congressional Record*, Vol. 84, p. 8333. ⁴ *New York Times*, July 4, 1939, p. 1. ⁵ *Ibid.*, July 12, 1939, p. 1.

verdict, but indicated that he would summon a special session of Congress to consider the arms embargo and neutrality question if a major war crisis should threaten.¹ The views of Congress had therefore momentarily prevailed in this renewed struggle between the executive and legislative branches of the government for the power to determine the American arms embargo policy.

Inasmuch as the arms embargo debates of June, 1939, were among the high lights of that session of Congress, a few observations should be made on the subject:

First: The Administration supporters laid great emphasis on the argument that the arms embargo was a departure from international law, and that its repeal would bring us back into line with the traditional practice of nations in this respect. While this contention was in the main true,² the argument as it was used bore many traces of inconsistency inasmuch as the Administration was at the same time urging other measures which were equally out of line with international law. The "cash-and-carry" program, for example, together with the proposed restrictions on the entry of American ships and citizens into dangerous combat areas, represented a considerable modification of the principle of freedom of the seas so far as the United States was concerned, and as such constituted a departure from international law equal to if not greater than the arms embargo. In one breath, Congress was urged to repeal the embargo and return to international law, while in another, it was urged to adopt a "cash-and-carry" program which departed from international law. There were valid reasons, of course, for repealing the arms embargo, but the Administration supporters were inconsistent in suggesting that the international law argument was one of them. The only consistent way in which this argument could have been used would have been to urge the repeal of the entire neutrality law of 1937 and the adoption of no substitute in its place. Such action would really have been a return to international law.

Second: Those who were advocating repeal of the embargo frequently argued that while the embargo was *neutral in form*, it was *unneutral in effect* inasmuch as it would operate unevenly between belligerent states

¹ *New York Times*, July 20, 1939, p. 1, and August 12, 1939, p. 1. On July 14, President Roosevelt sent a message to Congress enclosing a statement from Secretary Hull reiterating the Administration position and again urging Congress to revise the 1937 neutrality law without delay. *Department of State Bulletin*, July 15, 1939, pp. 43-7.

² It should be observed that while international law does not oblige a neutral state to prohibit the export of arms to belligerent nations, neither does it forbid such prohibitions provided they apply impartially with respect to all belligerents. Impartial arms embargoes may be said to be permitted by international law, even though they do constitute a departure from the traditional practice of most nations in this respect. Cf. *Draft Convention on Rights and Duties of Neutral States in Naval and Aerial War*, A.J.I.L., Vol. 33 (1939), Supp., pp. 281 ff.

and would affect adversely that belligerent group which happened to control the seas. A land power, it was observed, would be unable to get arms from the United States anyway if its enemy happened to control the seas, and an American embargo would therefore only prevent the dominant sea power from enjoying the full benefit of its position. It was furthermore contended that the embargo would operate to the advantage of those nations which were well prepared for war, and to the disadvantage of those countries which were relatively unprepared for war and subjected to sudden attack by their more powerful neighbors.¹ All this was of course a polite way of saying that the embargo law would operate to the disadvantage of Great Britain and her allies in the event of war and to the advantage of Germany and Italy. Inasmuch as such a result would not have been satisfying to many American people, a "neutrality" law was sought which would still be neutral in form but would operate to the advantage of Great Britain and those powers with whom our sympathies lay. The "cash-and-carry" plan was ideally suited to this situation. Impartial in form, it would in effect open the resources of the United States to the European democracies which controlled the seas, and shut those resources off from the dictatorships which had neither the cash with which to buy the goods nor enough ships to carry them safely home. While this plan was certainly as *unneutral in effect* as the impartial arms embargo, that aspect was conveniently overlooked by those who were advocating repeal of the embargo. It is quite clear that what was wanted was not a "neutrality" law, but a law by which the United States could stay out of war and at the same time help the European democracies to the fullest possible extent. From the standpoint of policy, this may have been a desirable objective, but it was hardly correct for its advocates to invoke neutrality in attempting to build up support for their program.

The foregoing argument also illustrated a tendency on the part of both advocates and opponents of embargo repeal to confuse the *status of neutrality* with the *effects of neutrality*. Generally speaking, the status of neutrality imposes upon the neutral government the obligation to maintain an official and formal position of impartiality, and to adopt no laws, executive orders or regulations which deliberately discriminate between belligerent nations. It does not require a neutral government to adopt laws which will be impartial in effect or will equalize the relative position of the belligerents. Any such requirement would impose an impossible task upon a neutral state since it would have to be continually changing its regulations to equalize the

¹ Opponents of repeal also alleged that to lift the embargo would be taking a step which would be unneutral in its consequences since it would aid Great Britain and France to the disadvantage of Germany.

constantly shifting position of the belligerents. Moreover, any impartial law or regulation which a neutral might adopt would in all probability affect the belligerent powers unequally because of their respective differences in geographic position, economic resources and military preparation. With the effect of such laws, neutrality is not concerned. It is concerned only with a legal impartiality and an official policy of non-discrimination *vis à vis* the belligerents on the part of the neutral government. The arms embargo legislation of 1935 and 1937 fully met this requirement, and while it could be attacked as an undesirable law from the standpoint of policy, it could not validly be criticized as a violation of neutrality or international law. For the same reason, repeal of the embargo *during peacetime* would have been entirely permissible from the standpoint of neutrality and could not be validly held up as a violation of international law.

Third: The debates in June, 1939, further revealed in a striking manner how the arms embargo had come to represent in the minds of many a policy of staying out of war. Although the Administration seemed to be correct in maintaining that a prohibition on arms exports alone would not suffice to keep the country out of war, opponents of repeal stressed the retention of the embargo as the all-important issue, and brushed aside as of no moment proposals to restrict the trade in other commodities. The discussion of the Bloom bill and its amendments lasted four days in the House of Representatives, and most of the debate narrowed down to the question of whether or not there should be an arms embargo. That question received attention far out of proportion to its importance in comparison with the more vital question of trade and shipping in the field of other commodities. One even gained the still more unfortunate impression from the debates that many members of the House felt that by reincorporating a limited arms embargo into the Bloom resolution they had discharged their duty with respect to reducing the risk of involvement in foreign wars. Surprisingly little support, for example, was manifest for any proposals designed to keep American vessels out of belligerent zones where they would run the risk of being destroyed.¹ Unhappily, it seemed at times as though many advocates of the embargo were more bent upon opposing the Administration proposals than upon drafting a comprehensive program to keep the United States out of war.

Although the embargo question was temporarily shelved during the summer of 1939, the swiftly moving tide of European events compelled

¹ Amendments to this effect were shouted down by voice vote. (*Congressional Record*, Vol. 84, pp. 8324-9, 8336-7.) Representative Fish, leader of the group which favored retaining the embargo, opposed any such restrictions on American merchant ships. He advocated instead allowing such ships to carry all goods but arms and to do so at their own risk.

a reconsideration of the question within two months, and this time Congress was finally persuaded to accept the Executive's policy in the matter. It took a major war in Europe, however, to bring about the necessary change of mind.

Congress Repeals the Embargo

The outbreak of the European conflict in September, 1939, at once transferred the question of maintaining or repealing the arms embargo from the realm of theory to the realm of stern reality. President Roosevelt proceeded immediately, in conformity with the neutrality law of 1937, to proclaim an arms embargo in effect with respect to all the belligerents.¹ But within the next week he summoned Congress into special session to consider lifting the embargo and revising the neutrality legislation which it had declined to revise earlier in the summer.

Congress convened for its historic session on September 21, 1939, to hear a message from the President again urging a repeal of the arms embargo and the adoption of a "cash-and-carry" system for all trade with belligerent nations.² The arguments which had been advanced by the Administration earlier in the summer were now reiterated, and, as before, they carefully avoided reference to the real purpose of the program, which was all possible aid to the Allies with a minimum of risk of involvement in the war. The President again emphasized that the embargo legislation of 1935 and 1937 was a departure from international law, that it gave a definite advantage to one belligerent group as against another, and that it was inconsistent to prohibit the export of arms while leaving the trade in other essential war supplies entirely free. He declared:

Repeal of the embargo and a return to international law are the crux of this issue. The enactment of the embargo provisions did more than merely reverse our traditional policy. It had the effect of putting land powers on the same footing as naval powers, so far as sea-borne commerce was concerned. A land power which threatened war could thus feel assured in advance that any prospective sea-power antagonist would be weakened through denial of its ancient right to buy anything anywhere.

This . . . gave a definite advantage to one belligerent as against another, not through his own strength or geographic position, but through an affirmative act of ours. Removal of the embargo is merely reverting to the sounder international practice and pursuing in time of war as in time of peace our ordinary trade

¹ Proclamation of September 5, 1939, with respect to France, Germany, Poland, United Kingdom, India, Australia and New Zealand. Proclamation of September 8, 1939, with respect to South Africa. Proclamation of September 10, 1939, with respect to Canada. *Department of State Bulletin*, September 9, 1939, pp. 208-11; and September 16, 1939, pp. 246-7.

² *Department of State Bulletin*, September 23, 1939, pp. 275-80. *New York Times*, September 22, 1939, pp. 1, 14.

policies. . . . The step I recommend is to put this country back on the solid footing of real and traditional neutrality.¹

The motives behind the President's recommendations may have been sound from the standpoint of policy, but the arguments which he advanced were in many respects confusing and inconsistent. This may have been due, however, to the effort which he was apparently making to rationalize in a plausible manner the real motives for repealing the embargo, viz., aid to the Allies. In arguing that the impartial embargo gave a definite advantage to one belligerent as against another, he also was confusing, as had members of Congress,² the status of neutrality with the effects of neutrality. The impartial prohibition on arms exports did not violate international law or neutrality simply because it happened to affect the belligerents unequally. Furthermore, in urging a return to international law by repeal of the arms embargo, he took an inconsistent position inasmuch as in the next breath he urged the adoption of other measures such as the "cash-and-carry" program which represented considerable departures from international law.

In seeking further to prove the unwisdom of the arms embargo legislation, the President attempted to draw an analogy between the policy underlying that legislation and the Jeffersonian embargo policy which he declared had been a "disastrous failure" because it had brought the country close to economic ruin and had been a major cause of the War of 1812. Leaving aside the fact that historians might differ on the last point, the analogy was scarcely a valid one inasmuch as the Jeffersonian embargoes had applied to *all foreign trade and shipping*, whereas the neutrality laws of 1935 and 1937 applied only to the export of arms, ammunition and implements of war. The complete prohibition of all foreign trade would of course necessitate a profound readjustment in the American economy. But such a step could in no way be validly compared with a limited embargo on arms.³

The President's message illustrated very well the confusion and the attempts at rationalization which characterized so much of the debate on the embargo question. The main purpose of repeal, as everyone knew, was to enable the Allies to purchase arms in the United States. As a policy, this issue was perfectly clear and debatable in the sense that much could be said both in favor of and against it. Yet the Administration and particularly the President could scarcely base their official arguments on such an issue, and hence it became necessary to resort to other arguments and rationalizations to justify the program.

The Senate Foreign Relations Committee went to work at once on

¹ *Department of State Bulletin*, September 23, 1939, p. 278.

² *Supra*, p. 244.

³ For a discussion of the Jeffersonian embargoes, see *supra*, pp. 14-15.

the recommendations of the President, and one week later reported a bill repealing the arms embargo, establishing a "cash-and-carry" system for all overseas belligerent trade, and authorizing the establishment of combat areas into which American vessels and citizens might not enter.¹ Formal debate in the Senate began on October 2, with the Administration supporters claiming sixty votes in favor of the revised bill,² and public sentiment running clearly in its favor as well.³ Apparently the United States had already changed its mind with regard to the arms embargo policy which had been adopted four years earlier for the purpose of keeping the country out of war.

The debates continued in the Senate for three and one-half weeks as a resolute minority led by Senators Borah, Vandenberg, Nye and Clark conducted an intensive campaign of opposition to any modification of the embargo. But despite their arguments that repeal of the embargo would be a step toward American involvement in the war, the majority of their colleagues remained unconvinced. The Administration lines held firm, and on October 27, 1939, the bill was finally approved by an overwhelming vote of 63-30, after two amendments to reincorporate an arms embargo had been decisively defeated 67-22 and 60-33.⁴

In the House of Representatives which, four months earlier, had upset the Administration proposals by insisting on the retention of the embargo, the sentiment for repeal had increased as a result of the war, and motions to retain the embargo were now defeated by approximately the same margin by which the embargo provision had passed in June.⁵

With the embargo question definitely settled, the bill in its final form passed both houses by sizable majorities on November 3, and was signed by the President on November 4, 1939.⁶ Thus the policy of forbidding arms exports for the purpose of discouraging foreign wars and keeping the United States out of war came to a rather ignominious end—the more so because it was abandoned in the midst of a major

¹ *New York Times*, September 29, 1939, p. 1. *Congressional Record*, Vol. 85, pp. 58-63. In order to expedite action, the bill was reported as an amendment to the Bloom resolution which had passed the House of Representatives on June 30, 1939, and had been tabled by the Senate Foreign Relations Committee in July.

² *Ibid.*, October 3, 1939, p. 1.

³ According to polls conducted by the American Institute of Public Opinion (Gallup) during September and October, 1939, approximately 60 per cent. of the American people with opinions on the subject favored lifting the arms embargo.

⁴ *Congressional Record*, Vol. 85, pp. 986, 1022-3, 1024.

⁵ The votes were 245-179 and 243-181 against continuing the arms embargo. *Ibid.*, pp. 1343, 1344.

⁶ *Ibid.*, pp. 1356, 1389. Public Resolution No. 54, 76th Congress. While the new legislation repealed the arms embargo provisions of the previous neutrality laws, it reenacted the provisions for licensing all arms exports and imports and registering all arms manufacturers and dealers. All arms exports from the United States are therefore still subject to government license, and complete statistical information on the arms traffic is thus made available.

European conflict, the fear of which four years earlier had been responsible for its adoption.

Although the embargo debates in the fall of 1939 were in most respects a continuation of the discussion which had taken place earlier in the summer, there was one significant difference between the two occasions. In October, 1939, Europe was at war, and the United States was being asked to change its embargo policy during the course of hostilities in order that one group of belligerents might be aided. The opponents of repeal made a great deal of this point, declaring that the proposed action was tantamount to an official declaration of hostility against Germany, that it was a definite breach of neutrality, that it would justify German retaliation, and that it might sooner or later lead to American involvement in the war. This question had not been present during the debates earlier in the year because Europe had then been at peace and the United States unquestionably could have repealed its embargo legislation without any violation of its neutrality obligations under international law. With the outbreak of war, however, the legal situation at once became different, and repeal of the embargo at that time, after it had been impartially applied against all belligerents, raised a very serious and controversial question as to the compatibility of such repeal with the neutral obligations of the United States. Eminent lawyers and authorities were ranged on both sides of the question.¹

Much of the discussion centered upon the extent to which a neutral government could change its neutrality regulations during the course of a war without violating international law. Both advocates and opponents of repeal agreed that a neutral was entitled to make certain changes in its laws and regulations in time of war, but there was much disagreement over what type of change was permissible. The advocates of repeal tended to interpret this principle of neutrality change very liberally, while the opponents of repeal adopted a stricter interpretation. Both groups cited with approval, though with different interpretations, Article 13 of the *Draft Convention on Rights and Duties of Neutral States in Naval and Aerial War*, compiled by the Harvard Research in International Law, which provided as follows:

A neutral State, for the purpose of better safeguarding its rights and interests as a neutral or of better fulfilling its duties as a neutral, may, during the course

¹ The following authorities on international law held the opinion that repeal of the embargo after the outbreak of war would be a breach of neutrality: J. B. Moore, Borchard, Lage, Hyde, Jessup, Corwin, Dennis, Dunn and Fraser. Those who held that repeal would not constitute a breach of neutrality included Breckinridge, Briggs, Burdick, Coudert, Dulles, Eagleton, Fenwick, Kuhn, Turlington, Woolsey and Q. Wright. (Cf. *Congressional Record*, Vol. 85, Appendix, pp. 761-3; *New York Herald-Tribune*, October 25, 1939; and letters to the editor of the *New York Times* in the latter's issues of September 21, 25, October 1, 5, 7, 14 and 15, 1939.)

of a war, adopt new measures or alter the measures which it has previously adopted, provided, however, that the new measures adopted do not violate any provision of this Convention.¹

Advocates of repeal contended that the course of action which they were recommending could reasonably be construed as being for the purpose of better safeguarding the rights and interests of the United States as a neutral and of better fulfilling its duties as a neutral.² Opponents of repeal replied that any modification in the laws of a neutral state for the purpose of giving aid to one or the other of the belligerent groups was not the sort of change permitted by the article quoted above and would scarcely contribute to a better fulfillment of neutral duties. While a neutral state might lawfully change its laws or regulations for the purpose of strengthening or tightening its neutral duties, it could not lawfully do so for the purpose of aiding one of the belligerents.³ This position seemed to correspond to the interpretation of the drafters of Article 13 of the *Draft Convention*, cited above, for in their comment on this article they declared:

The task confronting the neutral State which takes action under this article is to make certain to itself and clear to other States that the motive inducing the adoption of a new rule or regulation, during the course of a war, is the product of its concern to act strictly in accordance with the laws of neutrality and not the result of a desire to aid one or the other belligerent.⁴

In answer to this interpretation, the advocates of embargo repeal declared that there was nothing in the wording of the law or in the report of the Congressional committees on the subject which could serve as positive proof that the proposed action was intended primarily as an aid to one of the belligerents rather than as a means of better safeguarding American neutrality. While this of course was true, it could scarcely be contended that the debates in Congress and the discussion of the subject in the newspaper and periodical press of the country left this impression. In virtually every debate and discussion of the subject, the issue narrowed down sooner or later to the question of whether or not it was desirable to aid the Allies by repealing the embargo. This phase of the question overshadowed all others and indicated quite clearly that the real motive of repeal in the eyes of the American people was to aid the Allies in their hour of need. From the standpoint of policy, this motive had many plausible arguments in its behalf, but

¹ *A.J.I.L.*, Vol. 33 (1939), Supp., p. 316.

² Cf. letters of Messrs. Eagleton and Breckinridge in the *New York Times*, September 25, October 1, 8 and 15, 1939; also Eagleton, "The Duty of Impartiality on the Part of a Neutral," *A.J.I.L.*, Vol. 34 (1940), pp. 99-104, and Fenwick, "The Revision of Neutrality Legislation in Time of Foreign War," *A.J.I.L.*, Vol. 33 (1939), pp. 728-30.

³ Cf. letters of Messrs. Hyde and Jessup in the *New York Times*, September 21 and October 5, 1939.

⁴ *A.J.I.L.*, Vol. 33 (1939), Supp., p. 316.

from the standpoint of international law, it is difficult to escape the conclusion that repeal constituted a technical breach of neutrality. Certainly it was a manifestation of unneutrality and indicated that the American people were more concerned about aiding the Allies than about any scrupulous regard for their legal duties as a neutral nation.

The advocates of repeal likewise argued that if, as their opponents maintained, it were unneutral to repeal the embargo, it was also unneutral to adopt the "cash-and-carry" program. Both steps represented changes of policy during wartime, they contended, and if one were unneutral, the other certainly was also. This argument illustrates the way in which many advocates of repeal failed to distinguish between different types of change in neutrality regulations. Repeal of the embargo and the adoption of the "cash-and-carry" program were both changes, but they were far different in motive. The "cash-and-carry" program was clearly a measure to safeguard American neutrality by preventing the destruction of American lives and property in belligerent areas. Its motive was not one of aiding either belligerent, despite the fact that it amounted to somewhat of a handicap for the Allies by obliging them to buy for cash and forbidding them to employ American ships to transport their supplies to Europe. Because it was restrictive in character, and because it was designed primarily to prevent American losses on the high seas, the adoption of the "cash-and-carry" program, even after the outbreak of war, was entirely permissible under international law.

Repeal of the embargo, on the other hand, was intended primarily as an aid to the Allies. While many persons sincerely believed that aiding the Allies to an early victory was the best way of preventing American involvement in the war, this did not destroy the fundamental character of the action, which was aid to one belligerent as against another. This being the case, it seems clear that repeal of the embargo was not the type of change in domestic neutrality regulations permitted by international law.

The Administration declined to accept the view that repeal of the embargo was an unneutral act, and pointed out that it was simply the culmination of a movement which had been in progress for several months, full notice of which had been given well in advance of the war. Secretary Hull expressed this position as follows:

The question whether such . . . action is unneutral should not, in my judgment, be a matter of serious debate. There has never in our time been more widespread publicity and notice in advance of the outbreak of war of a change in our policy than there has in this instance. This Government has given notice for well-nigh a year—at least since the first of the present year—that such a change of policy was in contemplation. Numerous bills were introduced in Con-

gress, long hearings were held in both Houses, and it was generally understood when Congress adjourned that this subject would be on the agenda when it again convened. The President gave notice through a public statement, which would hardly be supposed to have escaped the attention of all governments and people, that if war should occur he would reconvene the Congress for the purpose of renewing consideration by it of the neutrality legislation that was pending as unfinished business when Congress adjourned.¹

While the fact that the question was not entirely new in the fall of 1939 placed it on a somewhat different level from a subject on which action might have been initiated in the fall, it is not believed that this circumstance substantially altered the character of the measure as a technically unneutral act. It need only be recalled, for example, that the House of Representatives had voted to continue the arms embargo in June, 1939, despite the appeals of the Administration to the contrary, and that the Senate by its inaction had also acquiesced in the House decision. The policy of Congress in the summer of 1939 had therefore been one of maintaining the embargo, and it was this policy which was reversed after the outbreak of war because of the desire to aid the Allies.

It is extremely interesting to compare the position of the Administration in 1939 with the position of the Administration in 1915, when a similar but reverse situation had confronted the United States with regard to the export of arms. No embargo existed in 1915, and it will be recalled that a one-sided armaments trade of considerable proportions had developed with the Allies. The Central Powers pointed out that this one-sided trade with the Allies violated the "spirit of neutrality" and that the United States ought to prohibit the export of arms in order to equalize the positions of the belligerents. The United States, however, declined to accept this "novel principle," and insisted furthermore that to adopt an embargo during the course of hostilities would be a direct violation of neutrality since it would mean a change in its neutrality laws during the course of hostilities, which would affect unequally the two belligerent groups.² In 1915, therefore, the United States Government had held the opinion that the application of an embargo during the course of the war was unneutral, but in 1939, when the tables were turned, it maintained that the repeal of an embargo during the course of a war was entirely permissible. From the standpoint of neutrality, it is difficult to see how a similar change of policy could have been unneutral in one case and neutral in another.³

¹ *Department of State Bulletin*, September 23, 1939, p. 280.

² See *supra*, pp. 23-6.

³ It is also interesting to recall that in 1938 when an intensive campaign was being waged to repeal the embargo with respect to Spain, the State Department opposed such action on the ground that it would expose the United States to unnecessary risks of involvement in a critical European situation. *Department of State, Press Releases*, May 14, 1938, pp. 578-9.

Epilogue—1940

While repeal of the embargo may have been an unneutral act and thus might have justified retaliation on the part of Germany, it must be noted that the United States did not suffer any such retaliation in the months that followed; nor did it become involved in war as a result of its action, as many opponents of repeal had predicted that it would. Germany apparently did not even make an official protest against the one-sided arms traffic which developed after November, 1939, but contented herself instead with denunciations of the American policy voiced through the officially inspired German press. This fact is extremely significant in any appraisal of the repeal of the embargo, for it indicates that one of the main arguments which was advanced against such action has not since been borne out. Two factors have probably accounted for this fortunate turn of events: (a) it was presumably not in Germany's interest to bring the United States into the war on the side of her enemies; and (b) with American shipping prohibited from belligerent zones and American trade cut off almost entirely from Germany, there were virtually no opportunities whereby reprisals against the United States could have been carried out even if Germany had considered them desirable from the standpoint of policy.

It was undoubtedly due to these same factors that the United States in 1940 was able to take several further unneutral steps in its policy of aid to the Allies without suffering retaliation or being drawn into the war. In June, 1940, following the loss on the part of the Allies of considerable quantities of war material in their retreat from Flanders, some 600,000 rifles, 800 75 mm. field guns, together with a large quantity of machine guns, mortars and ammunition from the World War stocks of the American Government were indirectly transferred to the Allies. In addition, between 200 and 300 Army and Navy Reserve planes were made available to Great Britain at the same time.¹ These transfers of government war materials were accomplished indirectly by turning them over to private manufacturers for "trade-in" credit on new materials. The private manufacturers, in turn, sold the supplies to Great Britain. In this way, it was hoped to comply technically with the provisions of international law which forbid governmental aid or the sale of governmental supplies by neutral powers to any belligerent state.²

¹ Cf. despatches in the *New York Times*, June 5, 1940, ff., especially June 16, Sec. 4, p. 5.

² For a discussion of this question, cf. Lester H. Woolsey, "Government Traffic in Contraband," *A.J.I.L.*, Vol. 34 (1940), pp. 498-503. It should be noted that international law forbids the indirect as well as the direct transfer of war materials by a neutral government to a belligerent state. Cf. Article 6 of the Thirteenth Hague

The collapse of France in the latter part of June, 1940, and the fear that Great Britain might soon suffer a similar fate temporarily brought to an end the sale of government war materials to the Allies. By early July, it appeared that the government had practically shut down on the sale of war materials from the Army and Navy stocks.¹ Previously, on June 24, President Roosevelt had abruptly cancelled the Navy Department's release to the British Government of twenty motor torpedo boats, following receipt of an opinion from the Attorney General that such action would be in violation of Section 3, Title V, of the law of June 15, 1917, which (in accordance with international law) forbids the fitting out of any war vessels in the United States for the use of a belligerent power.² Four days later, on June 28, 1940, a law to expedite the national defense program had been approved, Section 14 of which prohibited the sale, transfer or disposal in any manner whatsoever of any vessels, weapons or munitions by the United States Government unless the Army Chief of Staff or the Chief of Naval Operations had certified that they were not essential for the national defense.³

The policy of governmental aid to Great Britain had only temporarily ceased, however. On September 3, 1940, after it had become increasingly clear that British resistance was not only holding its own but growing stronger, President Roosevelt announced the epoch-making agreement whereby the United States Government transferred fifty obsolete destroyers to Great Britain in exchange for a number of naval bases in British possessions in the Western Hemisphere.⁴ Although an opinion of the Attorney General attempted to show that the transfer of *obsolete* destroyers was not a breach of either domestic or international law,⁵ the transaction nevertheless represented a clear breach of the system of neutrality which had developed during the late 18th, 19th and early 20th centuries, one of the basic principles of which had been impartiality and non-assistance on the part of neutral *governments vis-à-vis* belligerent states.⁶ Two and one-half months later, the

Convention of 1907 which is generally regarded as expressive of international law on the subject of neutral rights and duties.

¹ *New York Times*, July 2, 1940, p. 1.

² *Ibid.*, June 25, 1940, p. 10.

³ Public No. 671, 76th Congress.

⁴ *New York Times*, September 4, 1940.

⁵ *Ibid.*, September 4, 1940, p. 16. The opinion attempted to show that international and domestic law forbade only the fitting out or the delivery of armed vessels which had been built with the intent of being used in the service of a belligerent state, and that they did not forbid the transfer of obsolete war vessels which had never been built with such intent.

⁶ The opinion of the Attorney General, referred to above, maintained that according to Oppenheim, the sale of armed vessels by *neutral subjects* to belligerent states was permissible provided that such vessels had not been expressly constructed at the order of one of the belligerents or with the intent that they would be used in the service of a belligerent state. International lawyers would differ on this point, but regardless of this, the contention of the Attorney General was really beside the point inasmuch as the transaction of September, 1940, contemplated the transfer of destroyers *from the United States Navy by the United States Government*. This was a *governmental act*,

United States Government released to the British Government twenty-six of the so-called "flying fortress" type of bombing plane, then under construction for the United States Army.¹ With this series of steps, the United States completely shelved the policy followed since 1923 of not selling surplus government war materials to countries outside this hemisphere.² By the close of 1940, President Roosevelt appeared to have cast aside all semblance of neutrality and to have definitely committed the government to a policy of full aid to Great Britain short of a military expedition.³

Despite these unneutral acts on the part of the American Government, no official German protests or reprisals have occurred, and there is reasonable ground to believe that they will not occur so long as Germany is engaged in war with Great Britain, and *so long as the United States does not provide any opportunity for Germany to retaliate— as, for example, by permitting American merchant vessels to enter belligerent zones or by using American warships to convoy supplies to Great Britain.*⁴ This should not be interpreted as meaning that the United States can as a general rule ignore the recognized principles of neutrality and at the same time stay out of war. It means only that under the existing circumstances, owing to the peculiar geographic position of the belligerent powers and to the difficulty which Germany would have in adopting reprisals against the United States even if she wanted to, the United States may be in the unique position where it is not necessary to observe the strict rules of neutrality in order to stay out of war. Whether in fact the United States is in such a position, and whether it can continue to be unneutral without eventually becoming an actual belligerent, is a grave question which only the future can answer.

In concluding this epilogue, mention should be made of the fact that

not an act of private citizens, and as such was a clear breach of the neutral duty of giving no governmental assistance to a belligerent state. It expressly violated Article 6 of the Thirteenth Hague Convention of 1907, which forbade the supply of warships or war material, directly or indirectly, by a neutral *government* to a belligerent state. The United States Senate ratified this convention, and although it never came into operation because of the failure of other states to ratify it, it nevertheless had been regarded as representing the generally accepted principles of international law on the subject of neutrality. For a detailed discussion of the legality of the destroyer deal, cf. Herbert W. Briggs, "Neglected Aspects of the Destroyer Deal"; Quincy Wright, "The Transfer of Destroyers to Great Britain"; and Edwin Borah, "The Attorney General's Opinion on the Exchange of Destroyers for Naval Bases." *A.J.I.L.*, Vol. 34 (1940), pp. 569 ff., pp. 680 ff., and pp. 690 ff.

¹ *New York Times*, November 21, 1940, p. 1.

² See *supra*, pp. 174-5.

³ Cf. his fireside chat of December 29, 1940, in which he proclaimed that the United States "must be the great arsenal of democracy." *New York Times*, December 30, 1940. The policy of governmental aid to Great Britain and her Allies was extended considerably further after the passage of the "Lend-Lease" Bill in March, 1941.

⁴ This was written, of course, prior to the adoption of the program of limited convoying by the American Navy (September, 1941), and the repeal of those sections of the Neutrality Act of 1939 forbidding the arming of American merchant ships and the entry of such ships into belligerent zones (November, 1941).

during 1940 the United States again began to adopt restrictions on the export of many war materials, including arms, in order to conserve domestic supplies necessary for national defense. Basic legislation authorizing such restrictions was adopted on July 2, 1940,¹ and in pursuance of this, several proclamations were issued subjecting the export of a large number of basic commodities and appliances used in the manufacture of war materials to government license. The proclamations also authorized the withholding of such licenses whenever the commodities involved were considered essential to the defense program of the United States.²

The first of these proclamations, issued July 2, 1940, subjected arms, ammunition and implements of war to the above-mentioned regulations, together with approximately fifty other categories of strategic defense materials.³ As a result, the free export of arms from the United States under the "cash-and-carry" system was conditionally limited and made subject to restriction or prohibition if necessary in the interests of national defense. While it is difficult to know in precisely how many cases the export of arms has actually been prohibited under these regulations, it is known that in October, 1940, permission was withheld for the shipment of 110 military planes to Sweden on the ground that their export would be contrary to the interests of national defense. In a letter to the Swedish Minister in Washington, Secretary of State Hull explained that the planes in question were "urgently needed by the armed forces of this country for their own use."⁴

While arms exports have thus been subjected to at least potential restriction in the interests of national defense and conservation, it should not be overlooked that this regulation may conceivably be used in some instances as a sanction or instrument of economic pressure against countries of whose policies we happen to disapprove. Licenses may be withheld for shipments to these countries, or to the general area of the world in which they are located, on the ostensible ground that the commodities in question are needed for domestic use. This has actually been done in the case of certain basic raw materials, the export of which has been forbidden or restricted except to countries in the Western Hemisphere and the British Empire.⁵ In the case of arms

¹ Public No. 703, 76th Congress, Sec. 6.

² Cf. *Department of State Bulletin*, July 6, July 27, September 14, September 28, October 5, December 14 and December 21, 1940. The administration of these provisions was vested in an Administrator of Export Control, Colonel Russell L. Maxwell of the United States Army, while the mechanical work of issuing the export licenses was centralized in the Division of Controls of the Department of State, the division which was responsible for issuing arms export licenses under the Neutrality Acts of 1935, 1937 and 1939.

³ *Department of State Bulletin*, July 6, 1940, pp. 11-13.

⁴ *Ibid.*, October 26, 1940, pp. 338-9.

⁵ The export of high-grade aviation gasoline has been restricted to countries of the

shipments, the same purpose had been achieved in recent years with respect to Japan and Russia by means of the so-called moral embargo. A restriction of that nature, however, is entirely informal in character and has no legal basis whatsoever. As such, it cannot be legally enforced. With the defense legislation now on the statute books, the situation is changed—at least for the duration of the war. The government now has full legal power to control the export of arms needed for domestic use and to keep such exports from directly or indirectly reaching countries which it regards as “aggressors” or as potential enemies. It is no longer necessary to rely upon the informal procedure of the moral embargo to accomplish this purpose.

Western Hemisphere. Exports of iron and steel scrap have been limited to Great Britain and the Western Hemisphere, while exports of iron ore, pig iron, ferro alloys and certain iron and steel manufactured goods to countries outside the British Empire and the Western Hemisphere have been limited to normal pre-war quotas. *Department of State Bulletin*, August 3, 1940, p. 94; September 28, 1940, p. 250; and December 14, 1940, p. 529. These restrictions have operated primarily to cut off the above supplies from Japan which has been a heavy purchaser thereof in the past. As such, they have amounted to a form of economic sanction against Japan.

CONCLUSIONS

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The repeal of the embargo in 1939 represented a return to a modified form of the traditional policy of non-regulation of arms exports, followed so consistently by the United States prior to 1917, and not definitely abandoned until 1935. It should not be interpreted, however, as meaning that the American people desired to return to the policy of non-regulation or that they were not convinced of the wisdom of governmental supervision of the arms traffic.¹ The embargo was repealed in 1939, not because the American people thought the arms traffic should be free and unrestrained, but rather because the inflexible law which had been adopted four years before was not working as they wanted it to work, and was actually operating to deprive the European democracies of much needed war material in their struggle with the dictatorships. Repeal of the embargo seemed to reflect more of a dissatisfaction with a particular type of embargo legislation—the mandatory, inflexible type—than with embargo legislation in general. It seemed to indicate that the American people were willing to use their power over arms exports for the purpose of helping those countries with which they sympathized and which they regarded as the “victims of aggression.” Instead of meaning that the American people wanted to return to a policy of *laissez-faire* regarding the export of arms, repeal of the embargo seemed to indicate in a negative sort of way that the American people were actually willing to regulate the export of arms so as to help the “victims of aggression” and hamper the “aggressors.”² Furthermore, in spite of the seemingly unneutral character of their action, the majority of people remained unconvinced by the arguments that such action would lead them into war.

Despite the fact that it has now been repealed, the embargo legislation which was in effect from 1935 to 1939 was a significant milestone in the evolution of American foreign policy. In that legislation is to be found the one instance, it is believed, in which an important arms-producing country has unilaterally attempted to prohibit the export of arms because it believed the unrestricted armaments traffic would be likely to involve it in foreign wars. Other neutral powers have prohibited arms exports in order to conserve their domestic supplies of war

¹ The licensing system for all arms exports was retained in the neutrality law of 1939, despite the fact that the embargo was repealed. This means, as has been pointed out, that the government is enabled to keep a continual supervision over the arms traffic, and that it is in a position more effectively to discourage any arms shipments which it considers undesirable from the standpoint of policy. Cf. e.g., the moral embargoes against Japan and Russia.

² The moral embargoes against Japan and Russia also reflect this feeling.

materials or because of pressure from neighboring belligerent states. Since the World War, furthermore, several countries have subjected the export of arms to government license, which licenses could be granted or withheld as the government deemed advisable. But in no case, so far as the writer is aware, has any government adopted a policy of automatically shutting off arms exports to all belligerent states in an effort to avoid involvement in war. There seems to be no parallel instance of another country in which the idea of an arms embargo has become so closely associated with the idea of staying out of war.

Unfortunately, there was a tendency during this period on the part of many people to magnify the importance of arms embargoes out of all proportion to their practical significance in the matter of staying out of war. The idea had become current, owing presumably to the extensive publicity focused on the evils of the armaments traffic, that if the export of arms were prohibited, the risks of becoming involved in foreign wars would be considerably reduced if not eliminated. It was because of this popular notion concerning the armaments traffic that in the minds of many people the question of maintaining or repealing the embargo in 1939 became so intimately bound up with the problem of whether or not we would stay out of war. Indeed, the mere existence of embargo legislation on the statute books may have lulled some individuals into a false sense of security regarding the dangers of becoming involved in a major war abroad.

This was most unfortunate. Staying out of war is a far more complicated problem than merely deciding whether to permit or prohibit the export of arms to belligerent nations. The export of arms, ammunition and implements of war constitutes only a very small proportion of the total export trade of the United States—in recent peacetime years less than three per cent., and during the first six months of 1940, a wartime year, only seven and one-half per cent.¹ If only the trade in arms is prohibited, the remaining trade in all other goods may still give rise to friction with the belligerent nations unless it is placed on a "cash-and-carry" basis or restricted altogether. Reducing the risks of friction on the high seas requires restrictions on the entire export trade of the United States, not merely on that in arms.

¹ Out of a total export trade of approximately \$3,000,000,000 per year, the export of arms, ammunition and implements of war in 1936, 1937 and 1938, respectively, was roughly \$24,243,000, \$46,155,000, and \$83,692,000. During the first six months of 1940, out of a total export trade of \$2,021,628,000, the actual export of arms, ammunition and implements of war amounted to only \$151,679,128, or about seven and one-half per cent. (United States Department of Commerce, *Monthly Summary of Foreign Commerce of the United States*, June, 1940; *Fourth Annual Report of the National Munitions Control Board*, p. 57; and *Department of State Bulletin*, July 27, 1940, p. 58.)

Furthermore, insofar as controversies on the high seas are concerned, the shipment of arms seems less likely to cause friction between neutrals and belligerents than does the shipment of other goods. Arms are recognized by all nations as articles of absolute contraband which are carried at the shipper's peril, and their capture or destruction on the high seas can occasion no justifiable complaint either by the shipper or his government. The status of other goods such as foodstuffs and raw materials is not so unanimously agreed upon, and the seizure and destruction of such articles when being shipped or carried by a neutral party may lead to considerable controversy between the neutral and belligerent governments.

It is highly important, therefore, to recognize that restrictions on arms exports alone are not sufficient to keep a country out of war, but that further measures are necessary to reduce the risk involved in trade in other materials. Indeed, if all goods, including arms, are subjected to a "cash-and-carry" system, and if American ships and citizens are forbidden to enter belligerent zones and combat areas, as provided by the neutrality law of 1939, the principal risks of controversies on the high seas will be eliminated and an arms embargo will contribute little or nothing to the policy of staying out of war. It might, of course, serve as a moral gesture, calculated to soothe the consciences of those who dislike the idea of supplying instruments of death to belligerent states and making profits out of the armaments traffic. Or it might serve to prevent the development of an abnormal and economically undesirable armaments industry in the United States which would only have to be disbanded after the war with all the attendant problems of economic readjustment. But while an arms embargo might serve such ends, it is scarcely essential to a program designed to reduce the risks of controversy on the high seas and consequent involvement in war.

For similar reasons, arms embargoes in and of themselves are not likely to contribute a great deal to the discouragement of foreign wars or "aggression" on the part of other nations. Wars today are fought not alone with arms and ammunition, but with a multitude of other materials essential to the continued operation of the industrial and economic life of the belligerent nations. Warfare has become totalitarian, and articles such as foodstuffs, oil, cotton or steel are just as important to the functioning of the national war machine as are arms and ammunition. This being the case, it seems clear that an embargo on arms exports alone will not be enough to stop or discourage foreign wars, except in the case of conflicts between small non-arms producing countries like Bolivia and Paraguay which are almost entirely dependent upon outside sources of supply for such materials. In order to

have much effect upon the course of a major war, export restrictions would have to apply to a great many commodities, and even then their effectiveness would depend upon the degree of self-sufficiency which could be achieved in the various belligerent countries to which they were applied. One of the reasons why the economic sanctions against Italy in 1935-6 failed to stop her invasion of Ethiopia was that they did not apply to a broad enough list of commodities.¹

Although any attempt to predict the possible effect of arms export or other trade restrictions upon the course of a foreign war must necessarily be speculative, it may be pertinent to recall that the previous experience of the United States with arms embargoes against Latin American revolutionary groups indicates that prohibitions on arms exports alone were not the decisive factors in terminating or discouraging revolution. It was the more open aid and support which the United States lent to the governments of those countries which seem to have determined the outcome of the struggle. If this has been mainly true in the cases of revolution in Latin America, how much more likely it is to be true in the case of a major foreign war in which the belligerents are all in a position to manufacture a large share of their own armament. The influence of an arms embargo will be further lessened if it cannot be applied until hostilities have broken out, and if the government has no legal power to withhold arms shipments to areas where war is in danger of breaking out, with a view to preventing such an outbreak.

The discouragement of foreign wars, like staying out of war, calls for measures of a considerably more far-reaching scope than embargoes on the export of arms and ammunition. Moreover, the measures taken will in many cases have to be carried out on a cooperative international basis in order to be effective, else the countries against which the prohibitions are applied will be able to turn to other sources for their supplies.

It has been seen that prior to November, 1939, arms export restrictions were applied by the United States for two broad purposes: (1) to discourage revolution in China and the neighboring countries of Latin America; and (2) to discourage foreign war and keep the United States out of war. Despite this fact, it can scarcely be said that any general policies on the subject have as yet emerged. Almost without exception, each of the arms embargoes applied by the United States has been

¹ While an import embargo was applied to all Italian goods by the League of Nations, the export embargoes were confined to those goods, the supply of which was largely within the control of the member states applying sanctions. These included, in addition to arms, ammunition and implements of war, the following supplementary goods: transport animals, rubber, bauxite, aluminum, iron ore and scrap iron, tin and tin ore, chromium, manganese, nickel, tungsten, titanium, vanadium and certain other minerals and metals. The chief omission was oil. League of Nations, *Official Journal, Special Supplement*, No. 150, pp. 9-10.

applied because it appeared desirable to do so under the circumstances surrounding that particular case. Even the repeal of the embargo legislation in 1939 did not take place because the American people wanted as a general policy to give up the regulation of arms exports and return to the policy of *laissez-faire*, but because the existing embargo law of 1937 was not operating to their satisfaction in the European war which had recently broken out. In actual practice, no general policy of restricting or permitting arms exports to discourage revolution abroad, to prevent or shorten foreign wars, or to keep the United States out of war has as yet crystallized. With two exceptions, the most that can be said is that the United States has considered each case on its own merits as it arose, and taken whatever action seemed to be most desirable and practicable under the existing circumstances.

The first of these two exceptions relates to the provision which has been in effect since 1935 requiring all exports of arms, ammunition and implements of war to be licensed by the Department of State. There seems to be general agreement on the desirability of having such a licensing system in effect permanently. It not only provides the government with complete information about the American armaments traffic, but also facilitates to a considerable extent the application of any embargoes or restrictions which may be decided upon.

The second exception concerns the policy which has been in effect for some time regarding China, Cuba,¹ Honduras and Nicaragua. Under this policy, the export of arms to those countries is permitted only upon receipt of notification from their respective diplomatic representatives in Washington to the effect that their governments have approved the shipment. In this way, the United States assists those governments to regulate the import of arms from this country more effectively, and in so doing cooperates in keeping such weapons out of the hands of those who might be disposed to start revolutionary disturbances. The permanent policy of permitting arms exports only when authorized by some foreign government merits extension as a general policy. It has the advantage of centralizing in the various governments the responsibility for all arms shipments and at the same time of keeping such shipments from reaching irresponsible or unscrupulous persons who might use them to stir up domestic or international disturbances. In so doing, it should contribute toward eliminating some of the alleged evils of the international armaments traffic.

Aside from these two exceptions, no general policy seems to have developed regarding the export of arms from the United States. There is an increasing tendency, however, as indicated by the moral embargoes against Japan and Russia, by the repeal of the mandatory em-

¹See *supra*, p. 148, note 3.

bargo legislation in 1939, and by the sale of surplus government war materials to Great Britain, to use the power over arms exports in such a way as to discourage nations which are viewed as "aggressors" and to help nations which are the "victims of aggression." Whether this tendency will develop into a settled policy in the future is a question which cannot now be answered, but the outcome will be awaited with great interest.

BIBLIOGRAPHY

I.—MANUSCRIPT SOURCES (OFFICIAL)

DEPARTMENT OF STATE OF THE UNITED STATES

Dominican Republic

Despatches, Vols. 14, 15 (1905-6).

Instructions, Vol. 1 (1905-6).

Notes to, Vol. 1 (1905-6).

Notes, Vol. 5 (1905-6).

Correspondence relating to the export of arms and munitions of war from the United States to the Dominican Republic, 1906-18.

Numerical File (Vol. 98): 672/1-134.

Decimal Files: 839.113/135 ff.

Mexico

Correspondence relating to the export of arms and munitions of war from the United States to Mexico, 1912-18.

Decimal Files: 812.113/218 ff.

NAVY DEPARTMENT OF THE UNITED STATES

Office of Naval Records and Library

Santo Domingo Correspondence, January 10, 1905 to March 24, 1906.

II.—PRINTED SOURCES (OFFICIAL AND UNOFFICIAL)

A. UNITED STATES

Department of State

Foreign Relations of the United States.

International Traffic in Arms—Laws and Regulations Administered by the Secretary of State Governing the International Traffic in Arms, Ammunition and Implements of War (7 editions, since October 10, 1935).

Policy of the United States toward Maritime Commerce in War (edited by Carlton Savage). Vol. 2. Washington, 1936.

Press Releases, 1929—June, 1939.

Department of State Bulletin, July, 1939——.

Treasury Department

Circular Instructions of the Treasury Department relative to the Tariff, Navigation and Other Laws. (Cited as *Treasury Circulars*).
Treasury Decisions.

Department of Justice

Opinions of the Attorney General.

Recommendations by the Attorney General for Legislation Amending

the Criminal and Other Laws of the United States with Reference to
Neutrality and Foreign Relations (1916).

National Munitions Control Board

Annual Reports, 1936——.

Naval War College

International Law Topics, Documents on Neutrality and War, 1915.
Washington, 1916. Chaps. 3 and 4.

International Law Topics, Neutrality Proclamations and Regulations,
1916. Washington, 1917.

Congress

Statutes at Large.

Annals of the Congress of the United States (1789-1824).

Congressional Debates (1824-37).

Congressional Globe (1833-73).

Congressional Record (1873——).

Senate Committee on Foreign Relations

"Revolutions in Mexico," Hearing pursuant to S. Res. 335, September
7, 1912 to January 9, 1913.

"Prohibition of Exportation of Munitions of War," Hearing on S. 6688
and 6862, February 3, 1915.

"Neutrality," Hearings on S. 3474, January 10 to February 5, 1936.

"Neutrality," Hearing relative to Proposed Legislation on Neutrality,
February 13, 1937.

"Neutrality, Peace Legislation, and Our Foreign Policy," Hearings on
S. J. Res. 21, 67, 97, 106; S. Con. Res. 8; S. 203, 1745, April 5 to May
8, 1939, 22 Parts.

Senate, Special Committee on Investigation of the Munitions Industry

Hearings, September, 1934, to February, 1936, 39 Parts.

Report (Senate Report No. 944, 74th Congress, 2nd session, 7 Parts),
especially Pt. 3.

Senate Documents

No. 104, 68th Congress, 1st session. "Letter from the Secretary of War
. . . concerning the Sale of Arms and Munitions to the Government
of Mexico," March 31, 1924.

No. 285, 66th Congress, 2nd session. "Investigation of Mexican Af-
fairs." 2 vols. 1920.

House of Representatives, Committee on Foreign Affairs

"Exportation of Munitions of War," Hearings on H. J. Res. 377, 378,
December 30, 1914, to January 5, 1915.

"Exportation of Arms, Munitions or Implements of War to Belligerent
Nations," Hearings on H. J. Res. 183, March 15 to 22, 1928.

"Prohibiting the Exportation of Arms or Munitions of War from the
United States to Certain Countries," Hearings on H. J. Res. 416,
February 16, 1929.

- "Exportation of Arms or Munitions of War," Hearings on H. J. Res. 580, February 7 to 14, 1933.
- "Exportation of Arms or Munitions of War," Hearings on H. J. Res. 93, March 28, 1933.
- "American Neutrality Policy," Hearings on H. R. 7125 and H. J. Res. 259, June 18 and July 30, 1935.
- "National Munitions Act," Hearings on H. R. 8788, July 16 to 18, 1935.
- "American Neutrality Policy," Hearings on H. J. Res. 422, January 7 to 15, 1936.
- "American Neutrality Policy," Hearings on H. J. Res. 147 and 242, February 16 to 23, 1937.
- "American Neutrality Policy," Hearings on Present Neutrality Law, April 11 to May 2, 1939.

Miscellaneous

- The Embargo Laws. Boston, 1809.
- Proclamations and Decrees during the War with Spain. Washington, 1899.
- RICHARDSON, J. D. Messages and Papers of the Presidents, 1789-1897. 10 vols. Washington, 1896-9.
- SCOTT, JAMES BROWN (ed.). The Controversy over Neutral Rights between the United States and France, 1797-1800. New York, 1917.

B. FOREIGN AND INTERNATIONAL

- GREAT BRITAIN. Parliamentary Debates.
- . British and Foreign State Papers.
- HUDSON, MANLEY O. (ed.). International Legislation.
- LEAGUE OF NATIONS. National Control of the Manufacture of and Trade in Arms. Document No. Conf. D. 184, April 14, 1938.
- . Official Journal, Special Supplement, No. 150 (contains legislation and regulations adopted by member states to give effect to sanctions against Italy).
- DE MARTENS, G. F. Recueil de Traités.
- SCOTT, JAMES BROWN (ed.). The Armed Neutralities of 1780 and 1800. New York, 1918.

III.—GENERAL WORKS, HISTORIES, BIOGRAPHIES, ETC.

- ADAMS, HENRY, History of the United States of America. 9 vols. New York, 1889-91.
- ALLEN, ELEANOR W., "The Case for American Aid to Obregón." Current History, April, 1924, pp. 71-8.
- ALLEN, GARDNER W., Our Naval War with France. Boston, 1909.
- BAKER, RAY STANNARD, Woodrow Wilson, Life and Letters, Vols. 4 and 6 (sections on Mexico). New York, 1931, 1937.
- BEMIS, SAMUEL F., A Diplomatic History of the United States. New York, 1936.

- BEMIS, SAMUEL F., *Jay's Treaty, A Study in Commerce and Diplomacy.* New York, 1923.
- BISHOP, JOSEPH B., *Theodore Roosevelt and His Time.* 2 vols. New York, 1920.
- CALLAHAN, JAMES M., *American Foreign Policy in Mexican Relations.* New York, 1932.
- COUNCIL ON FOREIGN RELATIONS, *The United States in World Affairs* (annual).
- HACKETT, CHARLES W., *The Mexican Revolution and the United States, 1910-1926.* World Peace Foundation Pamphlets, 1926, Vol. 9, No. 5.
- HILL, HOWARD C., *Roosevelt and the Caribbean.* Chicago, 1927.
- HINMAN, GEORGE W., JR., "The United States' Ban on Latin American Rebels." *Current History*, April, 1924, pp. 63-70.
- HUGHES, CHARLES E., *Our Relations to the Nations of the Western Hemisphere.* Princeton, 1928.
- JONES, CHESTER LLOYD, *The Caribbean since 1900.* New York, 1936.
- , *et al.*, *The United States and the Caribbean.* Chicago, 1929.
- LAUTERPACHT, H., "'Resort to War' and the Interpretation of the Covenant during the Manchurian Dispute," *American Journal of International Law*, Vol. 28 (1934), p. 43.
- MCNAIR, ARNOLD D., "The Legal Meaning of War, and the Relation of War to Reprisals." *Transactions of the Grotius Society*, Vol. 11 (1925), p. 29.
- MOON, PARKER T., *Imperialism and World Politics.* New York, 1927.
- MUNRO, DANA G., *The United States and the Caribbean Area.* Boston, 1934.
- NICOLSON, HAROLD, *Dwight Morrow.* New York, 1935, especially Chaps. xv and xvi, dealing with Mexico.
- NOTTER, HARLEY, *The Origins of the Foreign Policy of Woodrow Wilson.* Baltimore, 1937.
- PARKES, HENRY B., *A History of Mexico.* Boston, 1938.
- PERKINS, DEXTER, *The Monroe Doctrine, 1867-1907.* Baltimore, 1937.
- REINSCH, PAUL S., *An American Diplomat in China.* New York, 1922.
- RIPPY, J. FRED, *The United States and Mexico.* New York, 1931.
- ROBINSON (EDGAR E.) and WEST (VICTOR J.), *The Foreign Policy of Woodrow Wilson.* New York, 1917.
- SEARS, LOUIS M., *Jefferson and the Embargo.* Durham, N. C., 1927.
- STIMSON, HENRY L., *American Policy in Nicaragua.* New York, 1927.
- STOWELL, ELLERY C., *Intervention in International Law.* Washington, 1921.
- STUART, GRAHAM H., *Latin America and the United States.* 3d edition. New York, 1938.
- TANSILL, CHARLES C., *America Goes to War.* Boston, 1938.
- WALLING, WILLIAM E., *The Mexican Question.* New York, 1927.
- WELLES, SUMNER, *Naboth's Vineyard, The Dominican Republic, 1844-1924.* 2 vols. New York, 1928.
- WHITE, ANDREW DICKSON, *Autobiography of Andrew Dickson White.* 2 vols. New York, 1905.

IV.—SPECIAL WORKS AND ARTICLES DEALING WITH THE AMERICAN REGULATION OF ARMS EXPORTS AND NEUTRALITY

- Anonymous, "Arms and the Men," *Fortune*, March, 1934.
- , "Arms Manufacturers and the Public," *Foreign Affairs*, July, 1934, pp. 639-53.
- , "The Arms Embargo Resolution and American Neutrality," *Yale Law Journal*, Vol. 42 (1933), pp. 1109-21.
- ATWATER, ELTON, *Administration of Export and Import Embargoes, 1935-1936*. Geneva Studies, Vol. 9, No. 6, December, 1938.
- , "British Control Over the Export of War Materials," *American Journal of International Law*, Vol. 33 (1939), pp. 292-317.
- , "Neutrality Revision before Congress," *International Law and Relations*, Vol. 6, No. 7, January 19, 1937.
- BORCHARD, EDWIN M., "The Arms Embargo and Neutrality," *American Journal of International Law*, Vol. 27 (1933), p. 293.
- , "Neutral Embargoes and Commercial Treaties," *American Journal of International Law*, Vol. 30 (1936), p. 501.
- BORCHARD (EDWIN M.) and LAGE (WILLIAM P.), *Neutrality for the United States*. New Haven, 1937. 2d edition. 1940.
- BRADLEY, PHILLIPS, "Current Neutrality Problems—Some Precedents, An Appraisal, and a Draft Statute," *American Political Science Review*, Vol. 29 (1935), pp. 1022-41.
- BROCKWAY, FENNER, *The Bloody Traffic*. London, 1933.
- BUELL, RAYMOND LESLIE, *The New American Neutrality*. Foreign Policy Reports. January 15, 1936.
- , *The Neutrality Act of 1937*. Foreign Policy Reports, October 1, 1937.
- CHAMBERLAIN, JOSEPH P., *The Embargo Resolutions and Neutrality*. International Conciliation, June, 1929, No. 251.
- CONGRESSIONAL DIGEST, April, 1938, "The Proposed Japanese Boycott."
- , October, 1939, "Should Congress Amend the Present Neutrality Law?"
- DEÁK (FRANCIS) and JESSUP (PHILIP C.), *A Collection of Neutrality Laws, Regulations, and Treaties of Various Countries*. 2 vols. Washington, 1939.
- DENNIS, WILLIAM C., "The Right of Citizens of Neutral Countries to Sell and Export Arms and Munitions of War to Belligerents," *Annals of the American Academy of Political and Social Science*, 1915, p. 168.
- DUMBAULD, EDWARD, "Neutrality Laws of the United States," *American Journal of International Law*, Vol. 31 (1937), pp. 258-70.
- EAGLETON, CLYDE, "The Duty of Impartiality on the Part of a Neutral," *American Journal of International Law*, Vol. 34 (1940), pp. 99-104.
- ENGELBRECHT (H. C.) and HANIGHEN (F. C.), *Merchants of Death*. New York, 1934.
- FENWICK, CHARLES G., "The Arms Embargo against Bolivia and Paraguay," *American Journal of International Law*, Vol. 28 (1934), pp. 534-8.
- , *The Neutrality Laws of the United States*. Washington, 1913.

- FENWICK, CHARLES G., "The Revision of Neutrality Legislation in Time of Foreign War," *American Journal of International Law*, Vol. 33 (1939), pp. 728-30.
- GARNER, JAMES W., "Recent Neutrality Legislation of the United States," *British Yearbook of International Law*, 1936, pp. 45-53.
- , "The Sale and Exportation of Arms and Munitions of War to Belligerents," *American Journal of International Law*, Vol. 10 (1916), pp. 749-97.
- , "The United States Neutrality Act of 1937," *American Journal of International Law*, Vol. 31 (1937), pp. 385-97.
- , "The United States 'Neutrality' Law of 1937," *British Yearbook of International Law*, 1938, pp. 44-46.
- GREGORY, CHARLES N., "Neutrality and the Sale of Arms," *American Journal of International Law*, Vol. 10 (1916), pp. 543-45.
- , "The Sale of Munitions of War by Neutrals to Belligerents," *Annals of the American Academy of Political and Social Science*, 1915, pp. 183-91.
- GREEN, JOSEPH C., "Supervising the American Traffic in Arms," *Foreign Affairs*, July, 1937, pp. 729-44.
- HUDSON, MANLEY O., "The Chaco Arms Embargo." *International Conciliation*, May, 1936, No. 320, pp. 217-46.
- , *Munitions Industry. International Regulation of the Trade in and Manufacture of Arms and Ammunition*, United States Senate Committee Print No. 1, 1935, 73rd Congress, 2d session.
- HYNEMAN, CHARLES S., *The First American Neutrality. Illinois Studies in the Social Sciences*, Vol. 20, Nos. 1-2 (1934).
- JENNINGS, WALTER W., *The American Embargo, 1807-1809; with Particular Reference to its Effect on Industry.* Iowa City, 1921.
- JESSUP, PHILIP C., *American Neutrality and International Police.* World Peace Foundation Pamphlets, 1928, No. 3.
- , (ed.), *Neutrality, Its History, Economics and Law.* 4 vols. New York, 1935, 1936.
- , "The Reconsideration of 'Neutrality' Legislation in 1939," *American Journal of International Law*, Vol. 33 (1939), pp. 549-57.
- JESSUP, PHILIP C. (reporter), "Draft Convention on Rights and Duties of Neutral States in Naval and Aerial War" (*Harvard Research in International Law*). *American Journal of International Law*, July, 1939, Supplement, pp. 167 ff.
- MATTISON, MARY, "The Chaco Arms Embargo." *Geneva Special Studies*, 1934, Vol. 5, No. 5.
- MEYER, HERMAN H. B. (compiler), *List of References on Embargoes.* Washington, 1917.
- MOORE, JOHN BASSETT, *A Digest of International Law.* 8 vols. Washington, 1906, especially Vol. 7, Sections 1308, 1309: "Sale of Contraband"; and Section 1117: "Prohibition of Exports."
- MORRISON, PHOEBE, "The Embargo Clause in the Trade Agreements," *Proceedings of the American Society of International Law*, 1937, pp. 67-73.
- NATIONAL LAWYERS GUILD, "The Legality of Munitions Shipments to Germany," *National Lawyers Guild Quarterly*, September, 1938.

- PATCH, BUEL W., "Boycotts and Embargoes." *Editorial Research Reports*, 1932, Vol. 1, pp. 193-209.
- PREUSS, LAWRENCE, "The Effect of Government Controls on Neutral Duties," *Proceedings of the American Society of International Law*, 1937, pp. 108-19.
- PYKE, HAROLD R., *The Law of Contraband of War*. Oxford, England, 1915.
- ROGERS, LINDSAY, "The American Congress and the Export of War Munitions," *Contemporary Review*, December, 1915, Vol. 108, pp. 718-28.
- SELDES, GEORGE, *Iron, Blood and Profits*. New York, 1934.
- THOMAS, CHARLES M., *American Neutrality in 1793, A Study in Cabinet Government*. New York, 1931.
- WEAVER, CHARLES R., "Arms Embargoes and the Traffic in Munitions." *Editorial Research Reports*, 1933, Vol. 1, pp. 339-54.
- WILCOX, FRANCIS O., "The Neutrality Fight in Congress: 1939," *American Political Science Review*, Vol. 33 (1939), pp. 811-25.
- WILLIAMS, BENJAMIN H., *American Diplomacy, Policies and Practice*. New York, 1936, especially Chap. xx, "Control of the Arms Traffic."
- WOOLSEY, LESTER H., "The Burton Resolution on Trade in Munitions of War," *American Journal of International Law*, Vol. 22 (1928), pp. 610-14.
- , "The Porter and Capper Resolutions against Traffic in Arms," *American Journal of International Law*, Vol. 23 (1929), pp. 379-83.
- , "Government Traffic in Contraband," *American Journal of International Law*, Vol. 34 (1940), pp. 498-503.
- WRIGHT, QUINCY, "The Power to Declare Neutrality under American Law," *American Journal of International Law*, Vol. 34 (1940), pp. 302-10.

V.—NEWSPAPERS AND PERIODICALS

- American Journal of International Law*.
American Political Science Review.
Annals of the American Academy of Political and Social Science.
British Yearbook of International Law.
Current History.
Foreign Affairs.
New York Times.
United States Daily.

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