

numerous and adequate, and offer definite and authoritative guidance to the political and judicial departments of the government.³²

The Act announces that loss of nationality under the provisions thereof "shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this Act."³³ This statement renders significant the fact that the Act does not declare that mere protracted residence abroad of an American national born within the domain of the United States (and who has not become naturalized by a foreign state) is productive of loss of American nationality in consequence of such residence.³⁴ It may be added that nothing in the Act is to be applied in contravention of the provisions of any treaty or convention to which the United States was a party upon the date of the approval of the Act.³⁵

In the foregoing sketch the effort is made merely to focus attention upon some of the salient features of the Act. They are perhaps self-explanatory and, after careful examination, will reveal a legislative achievement which is successful in indicating with precision how American nationality may be acquired or lost by man, woman or child.

CHARLES CHENEY HYDE

"LET THE CONSULS TAKE HEED THAT THE REPUBLIC SUFFER NO HARM"

On March 5, 1941, Secretary of State Hull sent the following note to the Italian Ambassador:

The Secretary of State presents his compliments to His Excellency the Royal Italian Ambassador and has the honor to refer to his oral communication of February 12, 1941, with respect to the Italian Government's request that the consulates now established at Palermo and Naples should be moved to a place as far north as Rome or farther north, and to a place which was not on the sea coast.

Instructions to these offices of the American Government have been issued in accordance with this request and the supervisory consulate general of the United States in Italy is being established in Rome.

The Secretary of State avails himself of this opportunity to make request of the Italian Ambassador that all officials of his Government

³² Secs. 405 and 406. It is significantly declared in Sec. 407: "A person having American nationality, who is a minor and is residing in a foreign State with or under the legal custody of a parent who loses American nationality under section 404 of this Act, shall at the same time lose his American nationality if such minor has or acquires the nationality of such foreign State: *Provided*, That, in such case, American nationality shall not be lost as the result of loss of American nationality by the parent unless and until the child attains the age of twenty-three years without having acquired permanent residence in the United States."

³³ Sec. 408.

³⁴ This is true despite the provisions of Sec. 402 which cause a presumption of expatriation in consequence of residence abroad to be operative in two special situations where specified acts are also committed by the individual concerned, as mentioned in Sec. 401 (c) and 401 (d).

³⁵ Sec. 410.

within the territory of the United States will confine their movements to those areas in which they exercise the recognized duties of their respective offices. This request does not include the personnel of the Italian Embassy in Washington whose names appear on the Diplomatic List. It would be appreciated, however, if the Italian Ambassador would keep the Department of State currently informed of the movements outside of Washington of the military and naval personnel attached to the Italian Embassy.

As regards the Italian consular offices at Newark, New Jersey, and Detroit, Michigan, the Italian Ambassador is informed that the American Ambassador in Rome has been requested to convey orally to the appropriate Italian authorities the desire of the United States Government that these offices should be closed and that the Italian personnel be withdrawn from these places. Should they remain within the jurisdiction of the United States the Department of State should be kept fully informed of their place of residence.¹

It is to be noted that the Ambassador is not addressed as the Imperial but only as the Royal Italian Ambassador, thus reaffirming the fact that this country has and will continue to refuse to recognize the conquest of Ethiopia which has so recently turned to ashes in Italian hands. It is also to be noted that the closing of the Italian consulates in these two important industrial regions is requested at the same time that Secretary Hull acquiesces in the request of the Italian Government and withdraws our consulates from Palermo and Naples. Furthermore, the request that the Department of State be kept informed of movements outside of Washington of the military and naval personnel attached to the Italian Embassy balances the restrictions imposed upon Ambassador Phillips, who is virtually held a prisoner in Rome contrary to all established usage. If the Italian Government by such regulations is able to prevent our officials from acquiring exact information as to any weakness in the morale and the situation of Italy, we for our part are enabled to protect ourselves from any danger of the military and naval attachés of Italy engaging in spying and sabotage operations such as those carried on by the staff of the Austrian and German Embassies during the last war.

The Department may announce that the request for the withdrawal of the consuls is made for reasons of policy,² but that does not change the fact that it is also a commendable instance of a self-respecting application of retaliation such as will warn the Axis Powers that we shall meet any hostile or restricting regulation with tit for tat. That is the conduct best calculated to impress totalitarian Powers. Any other course is likely to be taken as a sign of weakness and encourage the commission of fresh offenses. But in the application of reprisals and retaliation this country will always observe a due regard for the rule of measure for measure. If we can believe reports, the German Government, when it resents an alleged illegal act, is in the habit of declaring that it will impose a penalty ten times or more greater than the

¹ State Department Press Release No. 96, March 6, 1941.

² *Ibid.*

original offense. Such a course can only be regarded as another German violation of the fundamental principles of the laws of war. And it is one which will, if adopted, certainly recoil most heavily on the offenders who first break down the respect for that most ancient of all legal principals—the law of the talion.

ELLERY C. STOWELL

“ACTS OF WAR”

In the course of recent debates as to the policy to be followed by the United States in a world filled with war, the term “act of war” has often been heard in the halls of Congress, and elsewhere. Newspapers have reported that the landing of Australian troops at Singapore was regarded by Japan as an “act of war.” As used, the term has apparently been intended to convey the implication that certain proposed steps, such as the “Lease-Lend” bill, being allegedly acts of war, would have the inescapable consequence, under international law, of putting the nation into war. Like other terms of international law, this one has had unwonted use and has been employed as an instrument for shaping public opinion; its use in this fashion, with the implication of legal consequences, justifies inquiry as to what an “act of war” is, and whether it has the consequences attributed to it.

A search of authorities is disappointing. The term is not to be found in the index of a dozen or more texts of international law, including Moore's *Digest*; it is not listed in Calvo's *Dictionnaire*, nor in Strupp's *Wörterbuch*, nor in the *Dictionnaire Diplomatique*. If the term is of such vast importance as has been suggested to voters, it is surprising that it is not easily to be found in the literature of international law. If there really does exist a number of known and specified acts the commission of which inevitably produces war, these acts should surely have been identified and listed by the authorities.

Closer search, involving wide reading, will discover an occasional use of the phrase, usually without explanation or attempt at definition, and from these uses it would appear that it possesses a number of meanings. It is to be found in debates in Congress, similar to those of today, with reference to the constitutional power of the President of the United States. John Bassett Moore, summarizing speeches in Congress in 1871, in which the President was defended for directing the Navy to protect Santo Domingo during negotiations for its annexation, says that “A distinction was drawn in the speeches in defense of the President between making war and merely committing acts of war in the sense of acts involving the employment of force.”¹ This is clear enough; it is not so clear what was meant by Secretary of State Cass who, in reply to a request for the use of armed force to protect American interests in Nicaragua, asserted that “The employment of the national force, under such circumstances, for the invasion of Nicaragua

¹ J. B. Moore, *Digest of International Law*, Vol. VII, pp. 166–167.