

economic equality with the field service. Perhaps it may be well to arrange for an easier and more frequent transfer from the departmental service to the field, in order that the prestige of the departmental service may be increased.

With the coming session of Congress, all of these matters will doubtless be the subject of legislative consideration, and after the Foreign Relations Committee of the Senate and the Foreign Affairs Committee of the House have held hearings, Congress and the public will be in a much better position to understand the needs of our foreign service and will the better understand certain of the difficulties which the officials of the Department of State are themselves most anxious to correct. It may ultimately prove possible to combine all three branches of the service into one unified Service of Foreign Relations with a home branch and a foreign branch.

ELLERY C. STOWELL.

THE BURTON RESOLUTION ON TRADE IN MUNITIONS OF WAR

The Burton resolution, which was favorably reported by the Foreign Affairs Committee of the House of Representatives but which failed to pass that body, provided for a radical change in the policy of the United States in respect of trade in munitions of war during neutrality. By the resolution, as amended by the committee, it was "declared to be the policy of the United States of America to prohibit the exportation of arms, munitions or implements of war to any nation which is engaged in war with another." It was provided that whenever the President should issue a proclamation of neutrality "it shall be unlawful, except by the consent of Congress, to export or attempt to export any arms, munitions, or implements of war from any place in the United States or any possession thereof to the territory of either belligerent or to any place if the ultimate destination . . . is within the territory of either belligerent or any military or naval force of either belligerent."

The term "arms, munitions or implements of war" is specifically defined by listing the articles which the term includes. A penalty of not exceeding \$10,000 and imprisonment not exceeding two years, is imposed for a violation of the provisions of the resolution.

It is interesting to compare these proposed restrictions with the existing practice and law of nations in regard to trade in munitions of war. In the seventeenth and eighteenth centuries, engagements were occasionally entered into between governments not to allow individuals to ship arms and other war supplies to the enemy or rebels of either party. These treaties, applying to the enemy of either party but not to both belligerents, were in a sense treaties of alliance. Treaties of this kind were made by Spain, England, Holland, France, Denmark, Hamburg and Mecklenburg. This series of treaties was followed by the action of several countries (as for example, Bavaria, Hamburg, the Sicilies, Sweden and Denmark) prohibiting by law a subject from supplying arms to a belligerent. And the states which joined

the Armed Neutrality of 1780–1783 bound themselves to enact similar prohibitions.

In the Crimean War, most of the European neutrals prohibited their ships from carrying contraband, and some of them prohibited the exportation of contraband altogether. Prussia, however, actually authorized trade in contraband. During the Civil War in the United States, Germany and England furnished the North and the South with munitions.

In the Franco-Prussian War the Prussian Government complained that shipments of war-like stores were being made by Great Britain to France. Lord Granville replied that the British Government had invariably assumed the same attitude under similar circumstances when she was not bound to contrary action by treaty. The United States followed the same policy. However, Austria, Belgium, Denmark, Italy, Spain and Switzerland prohibited the exportation or transit of such articles, Sweden, Portugal and Spain restricted the transportation of war supplies, while Chile and Peru prohibited the sale of contraband.

In the Russo-Turkish War, 1877–78, large shipments of guns were sent to Turkey and to Russia by the Krupps without objection on the part of the belligerents, and England affirmed the right of her subjects to export arms to Turkey. In the Spanish-American War of 1898, Holland, Sweden, Norway, Denmark, Portugal, Brazil, Haiti, China and Colombia placed more or less restriction on the exportation or transportation of munitions. In the Boer War, the United States sold quantities of war supplies to Great Britain, as did also Germany, and Austria then followed the same practice.

The subsequent wars showed the same thing. The larger Powers stood for freedom of trade in contraband by individuals. England and the United States always maintained the legality of the trade. France, Italy, Germany, and latterly Austria, also allowed the trade, but the smaller nations, while not denying the right to engage in the trade, frequently prohibited or restricted it, probably for the purpose of avoiding embarrassment or controversy with powerful belligerents.

As to the opinion of jurists on the legality and propriety of trade in munitions by neutrals, it may be said that only a small minority (perhaps one-fifth) advocate unreservedly the prohibition of the export of contraband of war. While it is well established that neutral governments are not themselves to engage in arms traffic with belligerents, yet the preponderance of opinion is that neutral citizens may trade in arms, munitions and war-like stores, subject to the risk of such goods being captured and confiscated by the belligerents; with one exception, which has grown up in modern times, namely, that neutral territory shall not be used as a base for naval or military expeditions. However, when one belligerent is put at a disadvantage by reason of the trade in munitions, it is apt to complain. History shows that the answer to complainants invariably is that international law does not require the neutral to interfere to prevent its citizens from engaging in such commerce or

to protect them in pursuing it. This rule of law has been crystallized in the Hague Conventions of 1907 as follows:

Article 7. A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to any army or fleet.

Notwithstanding the practice of the great Powers, and the clear provisions of the Hague Conventions, Germany and Austria-Hungary made formal complaints to the United States during the World War against the extensive trade in munitions with the Allies from which the Central Powers were cut off. The replies of the United States stated its position and policy on munitions trade. Its arguments, among others, were that the practice of nations, including Austria and her ally Germany, had been to trade in munitions regardless of the relative situations of the belligerents; that the United States policy depended on the right to purchase arms from neutral countries in case of foreign attack; that a contrary principle would tend to force militarism on the world and turn nations into armed camps; and that the great weight of authority advocated the freedom of trade in munitions. In his note of August 12, 1915, to Austria-Hungary, Secretary Lansing said:

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.

After this forceful statement of the American position no further complaints were made by the Central Powers.

There has, however, been a tendency in the last quarter century to prohibit the exportation of munitions to *insurgents* or *rebels* engaged in civil strife. The practice of the United States is a good example. The Joint Resolution of April 22, 1898, authorized the President in his discretion to prohibit the export of coal or other material used in war from the ports of the United States, and this was in effect amended by the Joint Resolution of March 14, 1912, providing:

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.

A somewhat similar provision was incorporated in the Espionage Act of June 15, 1917. The 1912 provision was reenacted by the Act of January 31,

1922, and made applicable to "any country in which the United States exercises extraterritorial jurisdiction."

At the Paris Conference, a convention on traffic in arms was signed at St. Germain, September 10, 1919, by the Allied and Associated Powers. The parties agreed, generally speaking, to prohibit the export of arms and ammunition used in war, except for the use of the *signatory governments*, and also to prohibit the export of firearms, other than those used in war, when destined to certain closed zones and territories enumerated. This treaty has apparently been supplanted by the Geneva Convention on the same subject, signed June 17, 1925, by the United States and other Powers, which follows the same general lines as the St. Germain Convention. The new convention, however, provides in Article 33 that *in time of war* the prohibition on the exportation of munitions or implements of war shall be suspended until the restoration of peace so far as concerns consignments "to or on behalf of a belligerent."

Finally, at the recent Pan American Conference at Havana, a convention on maritime war was signed by the United States and other countries, January 20, 1928, which contains the following article:

Article 22. Neutral states are not obligated to prevent the exportation or transit, at the expense of any one of the belligerents, of arms, munitions, and in general everything that may be useful to its military forces.

It is apparent that, while the present laws of the United States restrict the shipment of munitions (1) to any American or extraterritorial country, (2) torn by domestic violence, the Burton resolution proposes to extend the restriction (1) to all the world, and (2) to international war. At the hearings, the Secretaries of War and Navy, and other members of the Government, opposed the resolution. The main argument advanced was that the United States military establishment depended on private manufacture of munitions and war supplies. The United States had no government arsenals and during the last war government arsenals supplied only 10% of the munitions. It was thought that under the Burton resolution the manufacture of articles used in war supplies, especially chemicals and other essential materials, would be slowed up in the United States, while in foreign countries these industries would be forging ahead without being hampered by this restriction on trade in these articles. It would, therefore, make it necessary to accumulate large reserves in this country for possible use in time of war, which reserves would be constantly becoming more or less obsolete. There are also certain materials essential in the manufacture of munitions which must be obtained from foreign countries. The Secretary of the Navy is reported as testifying that, "If the Burton resolution had been in effect in the World War, American participation would have been so reduced that Germany would have won the war."

In short, the resolution overlooks the fact that the peace basis of the

United States armament is dependent in time of war on the right to purchase arms from neutral countries until sufficient war materials can be obtained and prepared in this country. If the principles of the Burton resolution were adopted by other nations, it might force all nations to accumulate supplies of war materials and tend to increase militarism at home and abroad.

The prohibitions in the Burton resolution are much stricter than those in the Geneva Convention of 1925, which in time of peace allows shipments to governments or their agencies, and which in time of war is suspended. At Geneva the small nations, who depend on foreign war supplies, appear to have opposed any arrangement which would exclude them from the purchase of arms abroad. The events of the last war were still fresh in their minds. What would have been the situation of Belgium, or indeed of Holland, as to their military defenses if the purchase of war supplies in other countries had been prohibited?

Finally the Burton resolution obliterates the distinction long maintained in this country between an exportation of arms as a purely commercial venture, and an exportation involving the use of territory as a base of operations. It would place a restriction by municipal law on a trade which international law sanctions. At the same time, it would place a very onerous duty of self-imposed neutrality on the United States, violations of which would no doubt bring charges by the belligerents of laxity or bad faith on the part of this country, particularly if any change in the resolution were made by Congress during the progress of a war in which the United States was neutral. For these reasons, it has been suggested that any restriction or control of the kind proposed by the Burton resolution should be made by the importing country and not by the exporting country.

L. H. WOOLSEY.

RESTATEMENT OF THE LAW OF NEUTRALITY IN MARITIME WAR

In February, 1928, Senator Borah introduced a Senate Resolution reading as follows:¹

Whereas the rules of maritime law in time of war as codified at the Second Hague Conference and in the Declaration of London were in important respects departed from during the late war; and

Whereas it is important as a condition of the limitation of armaments and of the orderly conduct of international relations that the rules of law as developed in the course of centuries be not left in doubt or uncertainty; and

Whereas the present chaotic state of maritime law—leaving the seas subject to no definite rules save that of force and commerce to no ultimate protection save that of battle fleets—constitutes an incentive for great naval armaments; therefore be it

Resolved, That the Senate of the United States believes:

First. That there should be a restatement and recodification of the rules of law governing the conduct of belligerents and neutrals in war at sea.

¹S. Res. 157, 70th Cong. 1st sess.