always be willing to defray such expenses in order to preserve its valuable property in the ship.

## THE JOINT RESOLUTION OF CONGRESS TO EMPOWER THE PRESIDENT TO BETTER ENFORCE AND MAINTAIN THE NEUTRALITY OF THE UNITED STATES

The late Mr. W. E. Hall was no lover of the United States, as appears from many passages from his treatise on international law. It is therefore consoling at the present time to recall his commendation of our neutral policy when that policy is being questioned by a belligerent better known for its efficiency in war than for its contributions to neutrality. In the first edition of his International Law, published in 1880, Mr. Hall said, and the passage has been retained in the subsequent editions of his work:

> The policy of the United States in 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative international custom has up to the present time advanced. In the main however it is identical with the standard of conduct which is now adopted by the community of nations. (Hall, 4th Ed., p. 616.)

Admitting this statement to be substantially true, it is a fact that the United States has, by reason of its domestic law and procedure, found it very difficult to comply with those neutral duties which have recently made their appearance in international law. This is, in a way, surprising when it is borne in mind that international law has, since the beginning of our country, been regarded as a part of our municipal law, enforceable in and binding upon our courts. Thus, in a comparatively recent decision, the Supreme Court stated that "foreign municipal laws must indeed be proved as facts, but it is not so with the law of nations." (*The Scotia*, 14 Wallace, 170.) That is to say, the court takes judicial notice of international law. In a still more recent case the Supreme Court held that "international law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." (*The Paquete Habana*, 1899, 175 U. S. 677.) The court next proceeded to enumerate the sources of international law, or rather, the authorities by which it would be bound. "For this purpose, where

there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who, by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat." This decision settles the relation of international law to the municipal law of the United States as clearly and finally as a court can settle anything properly submitted to it.

As our government is a government of law, it follows that the government is bound by international law and is responsible for failure to comply with its dictates. It follows also that, in purely civil matters, international law will be taken notice of judicially and applied by the courts to the questions submitted to them for decision.

The government, however, has great difficulty in preventing the commission of an act within its jurisdiction which, if committed, violates international law; and it has even greater difficulty in punishing an act in violation of international law because, since the case of United States *v.* Hudson (7 Cranch, 32), decided in 1812, it has been held that there is no federal law of crimes and that, to punish any person for the commission of any act within the United States, "the legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offence." It thus appears that the United States can itself be liable to a foreign nation for the commission of an act which it could neither prevent nor punish in the absence of a statute. This was not the theory of Washington's administration, and, on the advice of his cabinet, he issued a proclamation of neutrality on April 22, 1793, in the European wars. The material portion of this, for present purposes, is the following paragraph:

> And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States, against such punishment or forfeiture; and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the courts of the United States, violate the law of nations, with respect to the Powers at war, or any of them. (American State Papers, Foreign Relations, I, p. 140.)

The second proclamation, issued by President Washington on March 24, 1794, was much more specific in its terms. It was felt wise,

and indeed necessary, to enact legislation. President Washington, in his annual address at the opening of Congress on December 3, 1793, called upon Congress to enact appropriate legislation, and the act approved June 5, 1794, was passed. This act, the first neutrality law of the United States, was in the nature of an experiment and was limited to two years. It was renewed in 1797 for a further period of two years, and, with some amendments, was made permanent by the act of April 20, 1818. It was included in the Revised Statutes as issued in 1878, and, with slight modifications of form but not of substance, it was issued as Chapter II of the so-called Penal Laws of the United States, approved March 4, 1909.

Now, applying the doctrine laid down in United States *v.* Hudson, only those offenses specified in the neutrality statutes can be punished. The Hague conventions, where they differ from the neutrality laws of the United States, are not enforceable within our country. Therefore, a joint resolution was introduced in Congress, and, after modification in the Senate, in which modification the House concurred, it was approved by the President on March 4, 1915. The purpose of this resolution was not to modify the statutory duties of the United States, or to change the punishments hitherto imposed for offenses against them. It was to supplement these statutes by enabling the President to prevent the commission of an unneutral act which, when committed, would be in violation of international law or of treaties to which the United States was a party. The simplest of expedients was devised, namely, the refusal of clearance to a vessel about to depart from the jurisdiction of the United States. The remedy, however, is, for this class of cases, adequate, because the land and naval forces are specifically placed at the disposal of the President to prevent the commission of the particular act, and the courts are competent to punish it when properly called to their attention. The text of the joint resolution follows:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That, from and after the passage of this resolution, and during the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply

ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation.

In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel shall severally be liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States.

That the President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

That the provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States.

Approved, March 4, 1915.[1]

The view has been expressed in some quarters that the President of the United States might utilize the joint resolution to prevent the exportation of arms, munitions of war, and contraband in general. It is true that the attempt might be made so to construe the joint resolution, but it does not vest the President with power to refuse all clearances, but only clearances to vessels violating the neutrality of the United States, and whether the particular act is or is not a violation of neutrality can be tested by the courts. Thus, a collector of the port of Tacoma, Washington, felt that a vessel carrying a cargo of lead should not be given a clearance, as, in his opinion, it was illegal to ship a cargo of lead to China, which was then at war with Japan. The Supreme Court of the United States thought differently, and the collector was properly held in damages (Northern Pacific R. Co. *v.* American Trading Co., 195 U. S. 439).

The neutrality laws of the United States as they stood in 1818, supplemented by the joint resolution of March 4, 1915, enabling the President of the United States to prevent the commission or to secure the punishment of all acts of an unneutral nature committed within the United States contrary to the neutral duty of the United States, not otherwise covered by statute, enable our country to comply with the requirements of neutrality as they exist at the present day.

[1] Public Resolution, No. 72, 63d Congress.