In view of the delicate situation in the world today, it is incumbent upon every official in the United States, be he federal, state, or municipal, to remember his responsibility and to refrain from any attacks upon the head of a foreign state. If he must indulge in such irresponsible conduct, let him select as his target one who does not require the maintenance of personal prestige for the security of his person and the continuance of his political régime.

When the mayor of the second city in this country sought to secure the support of ignorant masses by promising to free them from the control of a foreign king and to chastise him when they should meet, we failed to note any official protests from the government of that august personage beyond the seas. When the soldiers of Diocletian brought in the zealots who had been guilty of smashing the noses of his own replicas in marble, the emperor, running his hand over his visage, remarked, "I do not feel the injury," and let them go.

Yet we cannot push the principle of state independence to the limit of refusing to recognize that we have any concern in that which occurs beyond our borders. That great jurist John Westlake, referring to the moral effect on neighboring populations of the treatment of individuals in another state, declared:

> Where these include considerable numbers allied by religion, language or race to the populations suffering from misrule, to restrain the former from giving support to the latter in volation of the legal rights of the misruled state may be a task beyond the power of their governments, or requiring it to resort to modes of constraint irksome to its subjects, and not necessary for their good order if they were not excited by the spectacle of miseries which they must feel acutely. It is idle to argue in such a case that the duty of the neighboring peoples is to look on quietly. Laws are made for men and not for creatures of the imagination, and they must not create or tolerate for them situations which are beyond the endurance, we will not say of average human nature, since laws may fairly expect to raise the standard by their operation, but of the best human nature that at the time and place they can hope to meet with.[5]

It is the task of international law to find some equitable and workable compromise to reconcile the right, on the one hand, of each state within its territory to apply such rules and principles as it deems best with its obligation; on the other hand, to refrain from conduct which is so arbitrary and extreme as to disregard the generally recognized principles of humane treatment as understood by the majority of civilized states. ELLERY C. STOWELL

"NEUTRALITY" AND CIVIL WARS

Weird things are done nowadays in the guise and under the name of "neutrality." An interesting exemplification of this conclusion may be found in the Spanish Civil War embargo enacted by Congress last January and in the provisions governing civil strife of the Pittman and McReynolds Resolutions

[5] John Westlake, International Law, Vol. 1, pp. 319–320.

recently passed by the Senate and House, respectively, but still in conference at the time of writing.

Early in January, 1937, great excitement was aroused by the fact that a New Jersey dealer in used machinery had taken out a license to ship second-hand airplanes and parts to the Spanish Government at Madrid. A so-called Non-Intervention Committee sitting at London had resolved, with problematical success, to keep arms and ammunition from both the constituent government and the rebel government in Spain. Civil wars having been unprovided for by the American neutrality legislation of 1935 and 1936, the Department of State at once sought an amendment of the law so as to cover such conflicts. In unseemly haste, and after an attempt by coast guard vessels to stop the sailing of a freighter carrying some of the airplane parts, Congress passed on January 9 the Pittman Resolution extending the prohibitions of the 1935 act to Spain.[1]

This was thought to be neutrality legislation. But it seems more like the precise opposite. International law requires the United States to treat the elected government of Spain as the lawful government of Spain and, until the belligerency of the rebels is recognized, as the only government entitled to receive the assistance of the United States in suppressing armed opposition. The 1912 and 1922 Congressional Resolutions had provided that whenever the President of the United States considered that arms from this country would help to promote domestic violence in Latin America or China he was privileged to order an embargo. While these embargoes had not always worked effectively, and particularly in Mexico had enabled the President to act unneutrally by laying and lifting embargoes against factions, as his policy dictated, the fact is that in most instances the embargo had been imposed on rebels.[2] This was the point of President Wilson's Mobile speech of 1913.[3] In his speech before the Second Pan American Scientific Congress of January 6, 1916, President Wilson had advocated an agreement that the states of the Americas "will prohibit the exportation of the munitions of war for the purpose of supplying revolutionists against neighboring governments."[4] At the Sixth Pan American Conference at Havana in 1928 a Convention on the Rights and Duties of States in Event of Civil Strife, to which the United States is a party, was signed. It forbids "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."[5]

[1] S. J. Res. No. 3, which was approved Jan. 8, 1937, and became Public Res. No. 1, 75th Cong., 1st Sess. Text in this JOURNAL, Supp., p. 102.

[2] The application of the embargo "under such limitations and exceptions as the President prescribes" afforded much opportunity for discrimination and evoked criticism. The embargo was not happily applied to the Vargas insurgents in Brazil in 1930, two days before they took over the government.

[3] President Wilson's Foreign Policy, p. 19. [4] *Ibid.*, 161.

[5] Treaty Series No. 814, ratified by the United States, May 21, 1930, Art. 1, para. 3; this JOURNAL, Supp., Vol. 22 (1928), p. 160.

International law also requires that revolutionists receive no aid or comfort from the United States. During the ten years of the Cuban insurrection, from 1868 to 1878, and during the three years from 1895 to 1898, the United States strictly observed its obligations to Spain and treated the rebels in such a manner as to avoid giving offense to the Spanish Government. At the beginning of the American Civil War, several of the important arsenals were located in the South. Had England or any other foreign country undertaken to embargo arms to both the North and the South, the North might easily have lost the Civil War.

The Pittman Spanish Civil War Resolution reversed this legal order by placing unrecognized rebels and the constituent government in Spain on the same footing. The Pittman and McReynolds Neutrality Resolutions of 1937, designed as more permanent legislation, while automatically imposing an arms embargo when the President finds and proclaims the fact that an international war exists, authorizes the President to impose such an embargo in civil wars, only when he considers that they have reached "a magnitude or [are] being conducted under such conditions" that the export of arms, ammunition and implements of war would, in his opinion, "threaten or endanger the peace of the United States." [6] This is a curious provision. Apparently arms and ammunition may be freely exported to a country in civil war until, perhaps by the use of arms shipped from the United States, the faction beaten at the polls will have given the insurrection a "magnitude" or "conditions" which might "threaten . . . the peace of the United States." Thereupon, the further export of arms is prohibited. The insurrectionists then receive the assurance that the President will treat both constituent government and rebels on an equal footing. This is an encouragement to violence. Thus, the executive discretion involved in determining when the embargo—mandatory on arms but discretionary as to commodities permitted to be carried in American vessels—shall be imposed, gives the President the opportunity, possibly neither sought nor intended, to determine the outcome of foreign civil wars and to impair the independence of weak states. It is understood that in January, 1937, the belligerency of the Franco faction in Spain had not been recognized by the United States, and recognition of belligerency appears not to be the test for the application of embargoes. That, at least, would help to regularize the policy. EDWIN BORCHARD

NEUTRALITY LEGISLATION—1937

The neutrality laws of 1935 and 1936 have already been discussed in this JOURNAL.[1] Since the latter act will expire by its own terms on May 1, 1937, the Congress has necessarily considered its reënactment and its modification.

As this comment is written, a bill has passed the Senate and another bill

[6] S. J. Res. No. 51, Sec. 1-a, 75th Cong., 1st Sess. (Jan. 22, 1937), passed the Senate March 3, 1937; H. J. Res. 242, *ibid.*, H. Rep. 320, passed the House March 18, 1937.

[1] Vol. 29 (October, 1935), p. 665; Vol. 30 (April, 1936), p. 262. See also Dumbauld, "The Neutrality Laws of the United States," *supra*, p. 258.