

AMENDE HONORABLE

It is natural that the people of the United States should have been aroused by the inhumane treatment which the German Reich under Chancellor Hitler has meted out to the Jews and others, so that the official emblem of the Reich, the swastika, has become anathema to the vast majority of our loyal citizens. The conduct of the German Government in its unprovoked attack upon its innocent neutral neighbors might and would justify a break with the guilty government, but as long as we are formally neutral and even technically upon a peace-time basis with Germany, we must not permit within our jurisdiction any disregard to be shown to the representatives or insignia of the Reich.

When on July 26, 1935, it will be remembered, the German flag flying from the bow of the *S.S. Bremen* in New York harbor was violently torn off, the Acting Secretary of State, Mr. William Phillips, after he had received a report from the New York authorities, replied to the protest of the German *Chargé d'affaires ad interim*: "It is unfortunate that, in spite of the sincere efforts of the police to prevent any disorder whatever, the German national emblem should, during the disturbance which took place, not have received that respect to which it is entitled."¹

When those guilty of the outrage were brought before the magistrate upon the charge of unlawful assembly, he dismissed the complaint and discharged the defendants.

Secretary Hull, in response to the protest of the German Ambassador regarding what occurred in the decision of the case, made the following oral statement to the representative of the German Government:

The Department is constrained to feel that the magistrate, in restating contentions of the defendants in the case and in commenting upon the incident, unfortunately so worded his opinion as to give the reasonable and definite impression that he was going out of his way adversely to criticise the German Government, which criticism was not a relevant or legitimate part of his judicial decision.²

This was an apology appropriate to meet the exigencies of the very delicate and difficult position in which Secretary Hull was placed, in that he was called upon to criticize the conduct of a local official.

Unfortunately another incident arose on January 18 of this year at San Francisco, where several persons, supported by a mob, tore down the swastika displayed at the consulate general in accordance with the instructions of the German Government in celebration of the anniversary of the founding of the German Reich. The perpetrators, according to the statement of the German *Chargé d'affaires ad interim*, appear to have climbed by the fire escape up to the ninth floor of the office building housing the consulate

¹ State Department Press Release of Aug. 1, 1935. See also this JOURNAL, Vol. 29 (1935), pp. 662-663, for editorial comment by Professor George Grafton Wilson.

² State Department Press Release, Sept. 14, 1935.

general, without being prevented from doing so by the police. The *Chargé* concluded:

In the name of the German Reich Government I make the most emphatic protest against this act which represents a serious violation of the right, prescribed by treaty and recognized in international law, of the German Consul General in San Francisco to raise the German Reich flag over his office. I am permitted to express the expectation that the Government of the United States will adopt all appropriate measures to bring the perpetrators to responsibility and to submit them to merited punishment and that the Government of the United States will also take all appropriate steps in order to prevent a repetition of occurrences of this nature.

I request your Excellency to make it possible for me immediately to furnish my Government with a report in this regard.³

It should be noted that consuls are generally recognized to have the right to display the flag of their country upon national holidays, and in the case of the German Reich this right has been expressly recognized by treaty.⁴

Secretary Hull made reply:

I have received your note of January 18, 1941, regarding a report reaching you from the German Consul General in San Francisco that the German Reich flag was forcibly taken down by unknown persons from the ninth floor of the office building housing the consulate general.

I hasten to express the regret of the Government of the United States at such an incident and have requested that the appropriate agencies of this Government should make an immediate investigation, after which I shall communicate with you again.⁵

Acting upon another protest of the German Embassy, Secretary Hull, according to an Associated Press Dispatch of February 11, from Los Angeles, requested Governor Olson to investigate the burning of a Nazi flag by Municipal Judge Ida May Adams. To quote the dispatch:

The flag burning came at the preliminary hearing January 8 in San Pedro for Pedro Rodriguez, a seaman accused of stabbing Mrs. Eva Sandstrom because she refused to remove a Nazi flag on display in her home.

Commenting that "it is a very bad thing for the community to have the flag of a foreign unfriendly nation exhibited by any American citizen," Judge Adams touched a match to the small flag and dropped it into a waste basket.

She bound Rodriguez over for Superior Court trial on an assault charge.⁶

Although Judge Adams is a minor judge of a component state of the American Union, she is an official within the sovereign jurisdiction of the United

³ State Department Press Release, No. 29, Jan. 21, 1941.

⁴ See Art. 20 of the treaty signed Dec. 8, 1923 (U. S. Stat., Vol. 44, Pt. 3, p. 2150; this JOURNAL, Supplement, Vol. 20 (1926), p. 14).

⁵ *Ibid.*

⁶ Evening Star, Washington, D. C., Feb. 11, 1941.

States, and as such required by the law of nations to respect the flag of every nation with whom we are at peace. When passion runs high some outrages and disregard of law are inevitable, but our citizens are generally respectful of law. The fact is that they do not fully understand the serious nature of such violations and the injury which they thereby do to the reputation of their country. It is time that the principles of international law were taught to all of our citizens and especially to all officials, federal, state, and municipal, in order that the law which is supreme over all nations, and which has been held by our Supreme Court to be a part of our law, may be respected throughout the land.

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A BRITISH-FRENCH ARBITRATION OF 1918

RUNCIMAN-CLÉMENTEL AGREEMENT

Though several useful lists of international arbitrations have been published in the course of recent years,¹ none of them has included reference to a British-French arbitration of 1918 relating to the Runciman-Clémentel Agreement of December 3, 1916. The award in that case was not published at the time, and information concerning the arbitration was not available until recently when the whole record was placed in the Harvard Law Library. The case might well be included in future lists of arbitrations, both for the sake of their completeness and for its intrinsic interest.²

The Runciman-Clémentel Agreement was designed to effect a coordination of the use of vessels by Great Britain and France. Clause 5 of the agreement which gave rise to the dispute provided for the British Government's granting (paragraph A) the transfer to the French flag of steamers ordered by and constructed for French firms, these steamers being specified on an attached list; and (paragraph B) certificates of priority for the construction of cargo steamers ordered by French firms before the date of the agreement on condition that they were employed by the French Government, these steamers also being specified on an attached list. The actual list or lists seem to have been prepared at a later date. In the early months of 1918, application was made for an export license for two steamships, the *Ville de Reims* and the *Ville d'Arras*, to enable these ships to be transferred to the French flag. This application was denied by the Board of Trade on the ground that as these two vessels had not been completed on December 3, 1916, the only obligation assumed by the British Government under the Runciman-Clémentel Agreement was to give priority with reference to them, and this had in fact been given. The French Government insisted, on the other hand, that the British Government's obligation extended to permitting the export of the two steamships for transfer to the French flag. After considerable correspondence, the two governments agreed to refer the

¹ The latest is Stuyt's *Survey of International Arbitrations, 1794-1938* (1939).

² The award is published in this JOURNAL, *post*, p. 379.