

EDITORIAL COMMENT

THE LAW OF NEUTRALITY AND THE POLICY OF KEEPING OUT OF WAR

There is always a danger of confusing law and policy. Often earnest and sincere advocates of a policy, in itself worthy, are able to bring it about that their policy is adopted as national law. National law may and sometimes does, as in the case of the Act of Congress of June 8, 1794, following the proclamation by President Washington of April 22, 1792, appeal to the mentality of mankind and then become generally approved. This proclamation of Washington and the Act of 1794 led Canning to refer to it as "a guide in a system of neutrality." The British Foreign Enlistment Act of 1819 was a tribute by a great maritime Power to the merit of the legislation embodying this American "system of neutrality." The fundamental concept of neutrality clearly implies that the neutral be "of neither party," eliminating policy in real neutrality legislation.

On the other hand, legislation having as its object to keep a state out of war must tend to be opportunist and to vary with the fortunes of war or with the effectiveness of the threats and the propaganda put forth by the respective belligerents.

The right of any state to change its laws from time to time is, of course, admitted, but such a change of domestic law does not imply any change in international law. The change in domestic law may or may not relate to matters within the field of international law, and the international responsibility of the state legislating may be involved only when domestic law conflicts with international law. The domestic law of a neutral state might, for instance, prohibit the sailing of its vessels to a named area outside the limits of a blockade proclaimed by a belligerent. This law would be, however, an expression of domestic policy only and would have no effect upon the limits of a blockade established by a belligerent in accordance with international law.

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THE CITY OF FLINT

On or about October 9, 1939, the American steamship *City of Flint* was captured by a German cruiser at an estimated distance of some 1,250 miles from New York, with a mixed cargo destined for British ports. The vessel was taken into the harbor of Tromsø, Norway, on October 21, with a German crew and flying the German flag.¹ After there remaining for a few hours to

¹ Concerning the stay of the vessel at Tromsø, see statement by the Norwegian Government, Nov. 5, 1939, as set forth in Associated Press despatch of that date, published in New York Times, Nov. 6, 1939.

In the course of a statement broadcast by Captain Joseph A. Gainard, as printed in New York Times, Nov. 7, 1939, it was said: "When it was evident that we could take aboard