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XXIV. Memorandum on "Lease-Lend" Bill by the Secretary of State

(New York Times, January 16, 1941)

The State Department made public a memorandum concerning Secretary Hull's advising the House Foreign Affairs Committee that the "All Out" Aid-to-Britain Bill would not conflict with existing domestic and international law:

The Secretary of State, the Hon. Cordell Hull, testifying before the Committee on Foreign Affairs of the House of Representatives today, was asked about the extent and manner in which the proposed measure, Bill H. R. 1776, affects existing law, both domestic and international. The Secretary of State answered as follows:

Having in mind the provisions of section 3 (a) it follows that:

(1) The Johnson Act

This act would not appear to be involved for the reason that it does not apply to this government, or to a public corporation created by or in pursuance of special authorization of Congress, or to a corporation in which the government has or exercises a controlling interest, as for example the Export-Import Bank.

(2) The Neutrality Act of 1939

Section 7 of this act, which prohibits the extension of loans or credits to a belligerent government, is not by its terms made applicable to this government but it does apply to a corporation such as the Export-Import Bank. In any event the prohibition would be superseded by the new act in so far as transactions by this government are concerned.

(3) United States Code, Title 18

Section 23 makes it unlawful to fit out or arm in the United States a vessel with intent that it shall be employed in the service of a foreign belligerent against a power or people with which the United States are at peace.

Section 24 makes it unlawful to increase or augment in our ports the force of a ship of war or other armed vessel belonging to a belligerent power.

Section 33 makes it unlawful during a war in which the United States is neutral to send out of our jurisdiction any vessel built, armed or equipped as a vessel of war for delivery to a belligerent nation.

These provisions would be superseded by the new act.

(4) The Hague Convention of 1907

Hague convention XIII of 1907 states in Article VI that the supply, in any manner, directly or indirectly, by a neutral power to a belligerent power, or warships, ammunition, or war material of any kind whatever, is forbidden.

Article XVII states that in neutral ports belligerent warships "may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force."

Article XVIII states that belligerent warships may not make use of neutral ports for "replenishing or increasing their supplies of war material or their armament."

The convention is not applicable to the present European war for the reason that it provides in Article XXVIII that it shall not apply unless "all the belligerents are parties to the convention." Great Britain and Italy are not parties to the convention.

It may be urged that the provisions of the United States Code and the quoted provisions of the Hague Convention are declaratory of international law on the subjects mentioned and that to do the things contemplated by the proposed act would render us unneutral. This would be largely true under ordinary circumstances, but we are not here dealing with an ordinary war situation. Rather we are confronted with a situation that is extraordinary in character.

The rules relating to the rights and duties of neutrals and those relating to the rights and duties of belligerents complement each other; that is to say, belligerents are forbidden to do certain things which infringe the rights of neutrals and neutrals are forbidden to do certain things which prejudice the rights of belligerents.

For example, The Hague Convention just referred to states in Article I that belligerents are bound to respect "the sovereign rights of neutral powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any power, constitute a violation of neutrality." Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries. (Article V.)

(5) Reich, Italy "Paid No Attention"

Germany and Italy have paid no attention to such provisions, which are representative of international law on the subject, but have at will and without notice occupied by force the territory of neutral countries, and, having subjugated those countries, are using their territories against their adversaries.

One of these countries, namely Denmark, had a formal treaty, signed May 31, 1939, with Germany by which it was agreed that in no case would force be resorted to; another, namely Norway, had a formal assurance, on September 4, 1939, from the German Government that under no circumstances would Germany interfere with Norway's inviolability and integrity and that Norwegian territory would be respected.

Neither agreement nor the law of neutrality served as any protection to these and other countries when it suited the convenience of the belligerents to occupy their territories. Nothing but force has prevented these belligerents from carrying out their preconceived determination to conquer and subjugate other peaceful countries and peoples.

Their purpose of world-wide conquest has been boldly proclaimed. They readily admit that their philosophy is inconsistent with and directly opposed to that of the democracies and insist that the latter is outmoded and must give

way to their own notions regarding the conduct of international relations.

Having in mind what has taken place and is taking place under our very eyes, it is idle for us to rely on the rules of neutrality or to feel that they afford us the slightest degree of security or protection. Nothing but a realistic view of current developments can be regarded as a sane view.

Aside from the question of neutrality, which, as I have stated, has proved to be illusory when it has stood in the way of these ambitious aggressors, it is a recognized principle, older than any rule of neutrality, that a state is entitled to defend itself against menaces from without as well as from within. This is the essence of sovereignty. It was definitely recognized by all the signers of the Kellogg-Briand Pact.

We may be told that the invading powers have no designs on this hemisphere, but the countries which are now occupied by their military forces had similar assurances. Such assurances are mere words. We cannot, as prudent people, afford to rely upon such assurances and delay implementing our defense until we ascertain what in practice those aggressors have in mind.

Some of the conquered countries, and others unconquered, have possessions near this continent. Are we to suppose that, if circumstances should permit, these possessions would not be occupied by the conquering nations and that they would not be used as bases from which to continue their quest for world domination—political and economic?

Our interest, it seems to me, lies in taking nothing for granted. We are amply warranted, as a measure of self-defense and in the protection of our security, to allow supplies to go to the countries who are directly defending themselves and indirectly defending us against the onrush of this unholy determination to conquer and dominate by force of arms. We are merely trying to protect ourselves against a situation which is not of our making and for the prevention of which we exerted our every energy.