EFFORTS TO SECURE FROM CONGRESS AUTHORITY FOR THE PRESIDENT TO PROHIBIT THE EXPORT OF ARMS AND MUNITIONS FROM THE UNITED STATES UNDER CERTAIN CONDITIONS

500.A16/174a : Telegram

The Acting Secretary of State to the American Delegate to the Bureau of the Disarmament Conference (Wilson)

WASHINGTON, December 29, 1932—5 p. m.

274. Department's 257, December 3, 1 p. m.[1] In view of problems arising from the recent sale of arms and munitions of war by American manufacturers to certain Latin American Governments the Secretary has decided to urge Senator Borah to press for immediate favorable action on the Arms Traffic Convention of 1925.[2]

It would not appear that the ratification of that Convention by the United States would interfere with the plans recently under discussion at Geneva to provide for more effective supervision and control of the international traffic in arms. Such ratification would be without prejudice to eventual agreement by the United States to similar or more far-reaching provisions to be embodied in the Disarmament Convention.[3]

CASTLE

811.113/202

Memorandum by the Under Secretary of State (Castle)

[WASHINGTON,] January 3, 1933.

The British Ambassador[4] called to read me a memorandum from his Government, which said that it had come to the notice of the British Government that the President was considering asking Congress to give the Executive authority to prevent the sale of arms to countries which were at war or in danger of war. The British

[1] Not printed.
[2] *Foreign Relations*, 1925, vol. I, p. 61.
[3] For correspondence concerning the Conference for the Reduction and Limitation of Armaments, see pp. 1 ff.
[4] Sir Ronald Lindsay.

Government feels that this move is for the purpose of dealing with the trouble in the Chaco;[5] it has also learned that this country has been selling large quantities of arms and also aeroplanes to Bolivia. The British Government, if the President makes this proposal to Congress, would be very glad to cooperate with us in preventing the sale of arms to either Bolivia or Paraguay, not only by refusing licenses for such sale from Great Britain, but also by approaching the Italian and French Governments to get them to agree also not to sell.

I told the Ambassador that this was an exceedingly interesting suggestion, that I did not know whether the President had decided to make the suggestion to Congress, inasmuch as it would be taken by many people to be a mere prohibition of sale on the part of this country which would not help the situation since sales could be made from other countries. I said that, of course, the proposition now made by the British Government removed that particular angle to the matter. I told the Ambassador that I would be very glad to take it up with the President, through the Secretary, immediately and that it seemed to me that, under these circumstances, it might be possible to get promptly some kind of legislation which would help the situation although it was clear that, in asking for such legislation, the President could hardly say what the British Government had offered to do. The Ambassador said that this was the case, since if this announcement were made the French and Italians would look on the matter as another Anglo-Saxon common front.

The Ambassador asked whether Brazil, the Argentine and Chile were interested in the whole matter and I said they were, that it seemed possible that they might take a more vigorous interest and that there might be some method whereby they could be persuaded to restrict shipments of arms across their territory. I pointed out that this would be a very important part of any such plan since Japan might well be very glad to sell arms no matter what the other nations decided.

The Ambassador said that it would be difficult to do anything so far as Germany is concerned since Germany is supposed not to export arms in any case.

Sir Ronald Lindsay said that he would not send any telegram in the matter to his Government until he had heard further from me.

W. R. C[ASTLE,] Jr.

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[5] For correspondence concerning the Chaco dispute, see vol. IV, pp. 241 ff.

500.A16/175 : Telegram

The Acting Secretary of State to the American Delegate (Wilson)

WASHINGTON, January 11, 1933—5 p. m.

276. Your 501, December 30, noon.[6] The President sent a message to Congress yesterday[7] urging the ratification of the traffic in arms convention and also proposing that the President be authorized, in his discretion, to limit or forbid, in cooperation with other producing nations, the shipment of arms and munitions of war to any foreign state when, in his judgment, such shipment might promote or encourage the employment of force in the course of a dispute or conflict between nations.

Full text going forward by open mail.

CASTLE

811.113/221

Memorandum by the Under Secretary of State (Castle) of a Conversation With the Chairman of the House Committee on Foreign Affairs (McReynolds)

[WASHINGTON,] January 27, 1933.

I went to see Mr. McReynolds in connection with the bill authorizing the President under certain conditions to put an embargo on the export of arms. I went over the ground very thoroughly with him explaining that this measure did not give the President any more authority, or as much, as the Joint Resolution of 1922,[8] which covered the export of arms to certain countries which were having internal trouble. I explained to him that if this bill could be made promptly effective, it might be of the greatest assistance in putting a stop to the war and threat of war in South America, especially as it appeared that we would have the cordial cooperation of other arms producing nations in putting on this embargo of sale. Mr. McReynolds said that when the bill was first talked about simply giving the President authority without reference to cooperation with other nations he had been inclined to be opposed to it inasmuch as he felt that it would accomplish

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[6] Not printed.

[7] *Congressional Record*, vol. 76, pt. 2, p. 1448.

On January 18, 1933, the American delegate was informed that "there seems to be no likelihood that the Arms Traffic Convention will be considered by the Senate during the present session." He was instructed to "make every effort to have provisions of the general nature of those contained in chapters I and II of that Convention incorporated in the General Disarmament Convention, or should more far reaching provisions be proposed, we are prepared to give them sympathetic consideration." (Telegram No. 279, January 18, 2 p. m., to the American delegate, p. 4.)

[8] 42 Stat. 361.

no valuable purpose and that it would merely penalize our own manufacturers without stopping the flow of arms. He said that, however, in its present form he was thoroughly in favor of the bill. He said that he had asked two or three days ago why the bill had not been sent over from the Senate, as he was prepared to bring it out immediately. He was then told of Senator Bingham's objection which might cause a long delay. He said, however, that if we would like him to do so, he could introduce the bill independently in the House. He explained at some length the difficulties in this, because it would under certain circumstances need unanimous consent, which probably would not be obtained and could not normally be introduced until the general consent calendar next Wednesday.[9] He said, however, that he fully appreciated the urgency of the matter and that he would take it up this afternoon with Mr. Garner [10] to see if Mr. Garner would assist him in every way in getting proper consideration of the bill. Mr. McReynolds said that he had talked it over on the train the other day with Mr. Norman Davis,[11] who is a great friend of his, and that Mr. Davis assured him that the bill had the sympathy of Mr. Roosevelt. He said that we could depend upon him to do everything in his power to put it through, although he expected to have trouble in his own Committee with Mr. Fish.[12]

W[ILLIAM] R. C[ASTLE], JR.

811.113/220

Memorandum by the Under Secretary of State (Castle)

[WASHINGTON,] February 2, 1933.

I reminded the French Ambassador [13] that he had spoken to the Secretary the other day about the proposed law giving the President authority, in cooperation with other nations, to put an embargo on arms going to countries where there was war or a threat of war and that he had expressed sympathy. He said this was quite true, that he had no definite instructions from his Government, but that he felt this law was exactly in line with what the French Government had long urged. He said, of course, there would be opposition from the same people (the *Comité des Forges*) whom I had attacked in my speech about press relations [14] because of their ownership of certain

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[9] February 1.

[10] John N. Garner, Speaker of the House of Representatives; Vice-President-elect.

[11] Chairman of the American delegation to the Disarmament Conference.

[12] Hamilton Fish, Congressman from New York.

[13] Paul Claudel.

[14] Delivered at Philadelphia, January 23, 1933; see Department of State, *Press Releases*, January 28, 1933, pp. 47, 49.

metropolitan papers. He said that probably I might be criticized in France, but that made no difference as I had merely stated a fact which was known to everybody. The Ambassador said that France, in this question of control of traffic in arms, was working with the League of Nations, but that he felt sure it would be only too glad to take independent action in a case such as the Chaco dispute, where such independent action would obviously be useful. I told him that I had brought the matter up because a Senator had told me last night that if he could say on the floor of the Senate that France and Great Britain were willing to cooperate with the United States in cases of this kind, the resolution would go through without any question, that unless the Senate could be assured that this would not be merely an idle gesture the law might perish through lack of reality.

The Ambassador said that he would immediately communicate with his Government and get an answer from them as to whether he might assure me, for transmission to the Senate, that France would play the game. He said he ought to have an answer very shortly except for the fact, possibly, with a change of Government the Quai d'Orsay was not functioning efficiently.

W. R. CASTLE, JR.

811.113/222 : Telegram

The American Delegate (Wilson) to the Secretary of State

GENEVA, February 13, 1933—4 p. m.
[Received February 13—11:30 a. m.]

104. *New York Herald* and *Chicago Tribune* Paris Sunday [15] editions under Washington date line carry statement that Department published Saturday the full text of the Secretary's *aide-mémoire* in support of arms embargo resolution.

The newspaper articles are in part as follows:

"Referring apparently to the conflicts which have arisen over the questions of Manchuria [16] and Leticia [17] Mr. Stimson said:

'It may happen that a general investigation conducted by all the powers may designate clearly who is the aggressor. It is evident that such designation has become much easier owing to the great publicity given since the war to international incidents and international inquiries. The verdict of the League of Nations concerning recent events is a procedure which is perfectly feasible'."

Please telegraph *aide-mémoire* if not too long, otherwise pertinent excerpts especially with reference to confirmation of above quotation and any statements about neutral rights.

WILSON

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[15] February 12.
[16] For correspondence concerning the Far Eastern situation, see vol. III, pp. 1 ff.
[17] For correspondence concerning the Leticia dispute, see vol. IV, pp. 384 ff.

811.113/222 : Telegram

The Acting Secretary of State to the American Delegate (Wilson)

WASHINGTON, February 13, 1933—6 p. m.

67. Your 104, February 13, 4 p. m. The Secretary's statement was not intended for publication. It was part of the notes taken with him to an executive session of the Foreign Affairs Committee of the House on February 9 and was intended only as a reminder of the points to be covered in his testimony before that Committee in support of the Joint Resolution quoted in the second paragraph of Department's 276, January 11, 5 p. m.[18] At the request of the Chairman he left a copy with the Committee. It leaked to certain newspapers in which it was published on the following day. Therefore access to it was given to the press on the 11th.

The full text of the memorandum follows:

"The resolution authorizes the President to join other countries in a refusal to ship arms whenever the shipment would promote war. The argument is made that action taken under this would sacrifice American neutrality and so involve us. The fact is that the developments of the past few years show that there is little or no practical danger involved and that the discussion is based on almost medieval conditions which modern experience and realities have almost wholly replaced.

"The following points should be noted:

(1) The Joint Resolution of 1922 providing for an embargo in cases of domestic violence in this hemisphere and in China has been employed with great effect and negligible friction. Nearly all the opportunities for antagonistic sentiment for charges of non-neutrality and for the expression of that resentment against our commerce or other agencies of the American people occur as much in the field of civil strife within a country as they do in foreign wars. Our experience has shown that the refusal of the United States to allow munitions to revolutionists has never provoked serious resentment among the adherents of the revolutionaries and has substantially stabilized conditions in the smaller countries and prevented a number of incipient revolts. The moral approval of a policy against the shipment of munitions has been so marked that even where there has been sympathy with the revolting elements, the friction has been negligible.

(2) In the case of a war between two foreign countries the embargo would not, of course, be employed unless there was general cooperation and united opinion among the principal world powers who could supply munitions. If there was no developed public opinion or international attitude it is obvious that the employment of the measure by this country would be fruitless and improper. If there was public opinion and general world concern leading to cooperation one of two conditions would exist—(*a*) The world would cooperate in refusing

[18] The second paragraph of Department's 276 referred to the President's message to Congress, January 10, 1933; for text of message, see *Congressional Record*, vol. 76, pt. 2, p. 1448.

supplies to both nations; this would certainly involve no breach of neutrality by the United States as the movement would be general and the nations united in a common front; (*b*) There might be a situation in which as a result of investigation and consultation on a large scale there was a clear definition agreed upon by all the co-operating powers that one side or the other was the aggressor.

"It is becoming evident in recent years that this condition is much easier to realize than used to be believed. The world-wide publicity afforded since the great war on every international incident and army movement, and the means of investigation by international commissions which is rapidly gaining ground, all show that there are situations today in which there can be a general verdict far beyond previous anticipation. The verdict of the League of Nations on this subject, for example, as shown by recent events, is a perfectly practicable procedure. If the League or any other comprehensive group of important states had mutually arrived at such a verdict, the participation of the United States in a general arms embargo would be not merely practical and sound, but practically necessary to preserve our national dignity and standing as a peaceful nation.

(3) Much of the old conception that neutrality as a possibility is gone in the modern world if large nations are involved in war. We were unable, in spite of the most earnest efforts, to maintain neutrality in the World War. Today nearly all of the world except the United States and Russia are members of the League of Nations and so closely bound by agreements in the Covenant and other treaties that real neutrality in a large-scale war is almost impossible. War today involves blockade and the commerce of the neutral is as much under fire as are the participants.

(4) The view that a neutral is obligated to sell arms to a belligerent is generally criticized by modern writers. Access is always unequal (as in the case of the Allies and Germany to the United States in the World War), and impartiality never really results. Disarmament agreements have already complicated the problem.

"There is a general feeling among writers on international law that the rule of impartiality in supplying arms, if it ever was generally accepted, is subject to criticism. There never was a right in the belligerent to buy arms.

"Hyde criticizes this view in *International Law*, page 868, and Oppenheim in his *International Law* says the sale of arms to a belligerent is dictated by greed and will disappear with better standards of public morality, page 350."

CASTLE

811.113/255

The Swedish Minister (Boström) to the Under Secretary of State (Castle)

WASHINGTON, February 28, 1933.

MY DEAR MR. CASTLE: Referring to our conversation on February 9th about the Swedish Government's willingness to cooperate with the United States Government with a view to a concerted action between the arms-producing countries in a certain situation, I beg to

inform you that I have now received a telegram from my Government to the effect that my assumption was correct that it would be willing to cooperate with your and other interested Governments in the direction outlined in the resolution now before Congress.

Believe me [etc.] W. BOSTRÖM

793.94 Commission/876 : Telegram

The American Delegate (Wilson) to the Secretary of State

GENEVA, March 9, 1933—6 p. m.
[Received March 9—3:50 p. m.]

143. Supplementing my 142, March 8, 9 p. m.[19] Ruspoli of the Italian delegation informs me that the Italian Government have instructed Rosso[20] to get in touch with the Department to ascertain if possible our attitude on embargo on arms. At the same time he was instructed to get in touch with me on the subject. Ruspoli said that they had made careful study by their jurists of the legal aspect of this question relating to Paraguay and Bolivia (see my 137, March 2, midnight[21]) and that their jurists were convinced that action upon an embargo taken under article 11 even behind the facade of individual action by the separate states and not as the Council would be a violation of the Covenant.[22]

From a practical standpoint the Italian Government is of opinion that an embargo on two parties to the dispute is almost certain to hurt the innocent party more than the guilty one since the aggressor will have taken the precaution to store up stocks of war material. The British and French are pushing hard for the establishment of an embargo against Bolivia and Paraguay but the Italian Government will not agree unless the United States also agrees.

According to Ruspoli the same unfairness results in an embargo on Japan and China. The whole action is in favor of the state which the League has just condemned.

The question of Peru and Colombia has not yet been raised in the matter of embargo since the machinery of conciliation under article 15 has not yet been exhausted and will not be exhausted until the adoption of the report provided for under paragraph 4. In any case Ruspoli points out that having attended the meetings of the Council and

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[19] This telegram read as follows: "British delegation had just made an appointment with me to see Sir John Simon on Saturday morning. Simon telegraphed that he desired to talk about embargo on arms to the Far East." (793.94 Commission/869)

[20] Augusto Rosso, Italian Ambassador in the United States.

[21] Not printed.

[22] The Covenant of the League of Nations, *Treaties, Conventions, etc., Between the United States of America and Other Powers*, 1910–1923 (Washington, Government Printing Office, 1923), vol. III, p. 3336.

the informal meetings of the members of the Council he finds Great Britain certainly and France apparently much more interested in applying embargoes on arms against the two parties to a dispute than against the one obviously guilty party, namely, Peru.

Ruspoli said that his Government would be grateful for any views which I could express. I said that I did not know my Government's views on the subject but would advise him when I learned them.

WILSON

811.113/265a

The Under Secretary of State (Phillips) to the Italian Ambassador (Rosso)

WASHINGTON, March 15, 1933.

MY DEAR MR. AMBASSADOR: When you came to see me on March 10, I promised to let you know the nature of our reply to the British Ambassador on the question of the arms embargo legislation, which was recommended by President Hoover, but which failed of enactment before the adjournment of the 72nd Congress.

We gave the British Ambassador an account of the efforts of the last administration to empower the Executive, in his discretion, after securing the cooperation of the governments of such other nations as he may deem necessary, to impose embargoes on the export of arms and munitions of war to any nation or nations which he may designate. We told him further that unless and until such legislation is passed by Congress, the Executive has no authority to impose embargoes on the export of arms and munitions of war which might be used in international conflict, and added that it was the purpose of this administration to press for the passage of such legislation. We told him also that it would be premature for this Government to decide upon the policy which it might eventually adopt in case the Executive were given the appropriate authority, but that if such authority is conferred upon the Executive, this Government will be glad to exchange views with other interested governments in regard to this question.

I am [etc.] WILLIAM PHILLIPS

811.113/280a

The Secretary of State to the Chairman of the House Committee on Foreign Affairs (McReynolds)

WASHINGTON, April 5, 1933.

MY DEAR MR. MCREYNOLDS: I have given careful consideration to H. J. Res. 93 [23] and I am strongly of the opinion that this legis-

[23] *Post*, p. 367.

lation should be enacted. I should greatly appreciate it, therefore, if you could find it possible to urge favorable action on this resolution. I hope that you will be able to succeed in having it passed in the form in which it was reported out of the Committee on Foreign Affairs and without the amendment which was introduced in the House when this legislation was being considered on the recommendation of the last administration—an amendment which would weaken its force and narrow its applicability.

The authority, which the passage of this resolution would confer upon the Executive, would be exercised by any Chief Magistrate of the United States to the sole end of maintaining the peace of the world and with a due and prudent regard for our national policies and national interests. The special circumstances of each particular case which may arise would dictate what action, if any, would be taken in that case, but the authority to act on terms of equality in cooperation with other governments when the occasion arises, should be left to the discretion of the Executive Branch of the Government which is charged, under the Constitution, with the conduct of our foreign relations. In justice to the firm convictions of the American people and to its own dignity, this Government should no longer be left in the position of being unable to join the other governments of the world in preventing the supply of arms and munitions for use in an international conflict when it is exercising its diplomacy and the whole weight of our national influence and prestige to prevent or put an end to that conflict. The enactment of this legislation would strengthen the position of this Government in its international relations and would enable us to cooperate more efficiently in efforts to maintain the peace of the world.

I am writing to Senator Pittman asking him to support this legislation in the Senate.

Sincerely yours, CORDELL HULL

811.113/297

The Chairman of the Senate Committee on Foreign Relations (Pittman) to the Secretary of State

WASHINGTON, May 10, 1933.

MY DEAR MR. SECRETARY: We had up in the Committee this morning for discussion H. J. Res. 93, to prohibit the exportation of arms or munitions of war from the United States under certain conditions.

I attach a copy of the resolution to this letter.

The chief objections to the resolution urged at the meeting were:

First. That it is indefinite as to what governments the President shall cooperate with. Would he have power, for instance, to place an embargo in cooperation with Nicaragua, or is it the intention that such cooperation shall be with powerful nations only?

Second. What good will be accomplished, it is urged, if the United States manufacturers refrain from shipping arms to a country or countries in question if ample munitions of war are supplied from some other country? In such a case would not our manufacturers and our producers of raw material that enter into the manufacture of munitions needlessly suffer?

Third. Under the construction of the resolution it is clear that the President will be granted the power to place an embargo upon the exportation of munitions of war to one of the warring powers or groups of warring powers. It is contended, therefore, that the exercise of such authority would have a strong tendency to involve the United States to such an extent that a condition of war might arise.

Fourth. It is urged that the passage of this resolution at this time might be accepted by Japan as aimed at her, as the Commission of the League of Nations, on which we had a member, found facts from which there is a logical conclusion that Japan has been and is the aggressor in the Sino-Japanese conflict. It is contended that the governments, parties to the finding of fact with regard to the Sino-Japanese conflict, might request the President to join them in executing the power conferred under the resolution, and that such request might develop into an embarrassing situation.

Certain amendments have been suggested to eliminate opposition to the resolution on the grounds herein stated.

It was called to the attention of the Committee that full hearings were had before the House Committee, and that a representative of your Department appeared and testified before that Committee. It seemed to be the opinion of several members of the Committee that the questions raised by the resolution are of such vital and far-reaching effect that it would be very helpful to the Committee if you could possibly find time to give the matter your personal attention, and appear before the Committee, even were it but for a few minutes. The Committee fully realizes that your time is almost continuously occupied by your extraordinary duties, and therefore I hope that you might use your own discretion as to fixing the time when you may appear before the Committee, if you find it possible at all.

While the Committee will be greatly aided by your personal advice, they desire you to express to them in writing your views with regard to the suggested questions if you find it impossible to fix an hour at which you could appear before the Committee.

With expressions [etc.] KEY PITTMAN

[Enclosure]

House Joint Resolution 93, April 17, 1933, 73d Congress, 1st Session

JOINT RESOLUTION To prohibit the exportation of arms or munitions of war from the United States under certain conditions.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President finds that in any part of the world conditions exist such that the shipment of arms or munitions of war from countries which produce these commodities may promote or encourage the employment of force in the course of a dispute or conflict between nations, and, after securing the cooperation of such governments as the President deems necessary, he makes proclamation thereof, it shall be unlawful to export, or sell for export, except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country or countries as he may designate, until otherwise ordered by the President or by Congress.

SEC. 2. Whoever exports any arms or munitions of war in violation of section 1 shall, on conviction, be punished by a fine not exceeding $10,000 or by imprisonment not exceeding two years, or both.

Passed the House of Representatives April 17, 1933.

Attest: SOUTH TRIMBLE
Clerk

810.113/22

The Secretary of State to Diplomatic and Consular Officers in the Latin American Republics

WASHINGTON, May 13, 1933.

SIRS: In order that there may be no misunderstanding concerning the policy of this Government, in regard to the export of arms and munitions of war and in regard to the duties of American diplomatic and consular officers in relation thereto, it is deemed advisable to set forth for their information and future guidance, the following statement of the position of this Government with special reference to the export of arms and munitions to Latin America.

It is not the policy of this Government to encourage the export trade of arms and munitions of war. American diplomatic and consular officers should not, therefore, proceed on their own initiative to promote American trade in arms or munitions of war, and should not endeavor to create trade opportunities for American exporters of such articles. They should, however, in countries where normal

conditions exist, when requested to do so by American exporters or their agents, or by prospective purchasers, follow the same procedure in giving information and advice as they would follow in respect to the trade in any other commodity, but unless these inquiries or offers are in regard to such material as blasting powder, dynamite and other explosives when it is definitely known that these articles are intended by reputable concerns for industrial uses, they should decline to use official channels for the communication of such inquiries or offers.

When virtual warfare is being carried on between two countries, as is now the case between Bolivia and Paraguay [24] and between Colombia and Peru,[25] it is the policy of this Government not to further the sale of arms and munitions of war by placing its facilities at the disposal of either party to the conflict. When conflicts, such as those referred to, are in progress, American diplomatic and consular officers should bear this principle in mind, and should exercise unusual discretion in their relations with American exporters of arms or munitions of war or their agents and with prospective purchasers.

It is the policy of this Government to refrain from disposing of arms and munitions of war in its possession or under the control of the War Department or of the Navy Department to foreign governments or to persons who might be presumed to be about to transfer them to foreign governments. There are, however, certain exceptions to this general principle. In view of the special relations existing between this Government and the Cuban Government, the Secretaries of War and of the Navy, under the Act of August 29, 1916,[26] supply the Cuban Government, upon its request, with arms and munitions when such sales can be made from surplus stocks in the possession of their respective Departments. Moreover, special circumstances, such as at times have existed in Central America, have occasionally made it appear advisable to comply with the request of Central American Governments that they be permitted to purchase arms and munitions from this Government. However, this Government is reluctant to comply with such requests and desires that they be discouraged.

In virtue of the authority conferred upon the Executive by the Joint Resolution of January 31, 1922,[27] the President, when he finds that in any American country conditions of domestic violence exist which are or may be promoted by the use of arms or munitions of war procured from the United States, may proclaim it unlawful to export such articles to the countries which he may designate except under such limitations and exceptions as he may prescribe. Proclamations prescribing limitations upon the export of arms and ammunition are

[24] For correspondence concerning the Chaco dispute, see vol. IV,, pp. 241 ff.
[25] For correspondence concerning the Leticia dispute, see vol. IV, pp. 384 ff.
[26] 39 Stat. 643.
[27] 42 Stat. 361.

now in effect in respect to Honduras [28] and Nicaragua.[29] Such exports intended for either of these countries are subject to special export license for each shipment. Futhermore, the United States Government as a party to the Convention relating to the Rights and Duties of States in the Event of Civil Strife, signed at Habana on February 20, 1928,[30] is obligated to prevent the export of arms intended for the use of rebels against the authorities of such Governments as have ratified that Convention.

Very truly yours, For the Secretary of State:
FRANCIS WHITE

811.113/297

The Secretary of State to the Senate Committee on Foreign Relations [31]

MEMORANDUM, H. J. RES. 93—TO PROHIBIT THE EXPORTATION OF ARMS OR MUNITIONS OF WAR FROM THE UNITED STATES UNDER CERTAIN CONDITIONS

I

This legislation was originally recommended to Congress by President Hoover in a special message of January 10, 1933.[32] As S. J. Res. 229, It was favorably and unanimously reported out of the Senate Committee on Foreign Relations and unanimously passed by the Senate during the last weeks of the 72nd Congress. Its passage was blocked, however, by a motion to reconsider in the Senate and it did not come to a vote in the House. President Hoover again urged the enactment of this legislation in a special message of February 20, 1933, in the following words:

"Peace would be promoted and the killing of men checked in various parts of the world today, if the Executive had the authority to join with other nations in preventing the shipment of arms to such localities. I earnestly recommend that the legislation proposed for this purpose be enacted." [33]

The 72nd Congress adjourned, however, without acting upon this resolution.

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[28] Proclaimed March 22, 1924; *Foreign Relations*, 1924, vol. II, p. 322.
[29] Proclaimed September 15, 1926; 44 Stat. 2625.
[30] *Foreign Relations*, 1928, vol. I, p. 612.
[31] Department notation of May 18, 1933: "The attached memorandum was, at the direction of the Secretary, read by Mr. [Joseph C.] Green of the Division of Western European Affairs at a meeting in executive session of the Senate Committee on Foreign Relations on May 17, 1933. A copy of Parts I and II was left with the Committee."
[32] *Congressional Record*, vol. 76, pt. 2, p. 1448.
[33] *Ibid.*, pt. 4, p. 4553.

The present administration after a careful consideration of all the objections which had been brought against the resolution during January and February and after a careful study of all the questions of law and policy involved in this proposed legislation has continued to urge its enactment.

The Resolution was reported out favorably by the House Committee on Foreign Affairs after a series of hearings at which the views of the Department of State were made clear by a representative of the Department, and at which representatives of interests opposed to this legislation were given a full opportunity to voice their objections. It was passed by the House of Representatives on April 17.

This legislation would complete a structure which has been being gradually built up over a long period of years. The Joint Resolution of Congress of April 22, 1898, (30 Stat. 739) conferred upon the Executive the power to prohibit the export of war materials "in his discretion, and with such limitations and exceptions as would seem to him expedient." Although this resolution was a war measure passed in connection with the war with Spain, it remained on the statute books for 14 years and the power conferred by it was used on October 14, 1905, when President Roosevelt issued a proclamation (34 Stat. 3183) in which "for good and sufficient reasons unto me appearing" he forbade the export of arms to any port in the Dominican Republic. This resolution was amended by the passage of the Joint Resolution of March 14, 1912 (37 Stat. 630) as follows:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States, approved April twenty-second, eighteen hundred and ninety-eight, be, and hereby is, amended to read as follows:

"That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.

"SEC. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both".

By the Joint Resolution of January 31, 1922, (42 Stat. 361) this authority was extended to include any country in which the United States exercises extraterritorial jurisdiction. These countries are, at present, China, Morocco, Egypt, Ethiopia, and some of the lesser

states of Arabia. Pursuant to the authority conferred by these two resolutions, this Government has been enabled to act in the interests of peace by preventing shipments of arms on many occasions, as the following table of embargoes proclaimed by the President will indicate:

Brazil: Proclaimed October 22, 1930. 46 Stat. 3036. Revoked March 2, 1931. 46 Stat. 3050.
China: Proclaimed March 4, 1922. 42 Stat. 2264. Still in effect.
Cuba: Proclaimed May 2, 1924. 43 Stat. 1946. Revoked August 29, 1924.
Honduras: Proclaimed March 22, 1924. 43 Stat. 1924. Still in effect.
Mexico: Proclaimed March 14, 1912. 37 Stat. 1733. Revoked February 3, 1914. 38 Stat. 1992. Proclaimed October 19, 1915. 39 Stat. 1752. Revoked January 31, 1922. 42 Stat. 361. Proclaimed January 7, 1924. 43 Stat. 1934. Revoked July 18, 1929. 46 Stat. 3001.
Nicaragua: Proclaimed September 15, 1926. 44 Stat. 2625. Still in effect.

The principle underlying these resolutions was confirmed by the Convention relating to the Rights and Duties of States in the Event of Civil Strife, signed at Habana on February 20, 1928, under which the United States, as a party to the Convention, is obligated to prevent the export of arms intended for the use of rebels against the authorities of such Governments as have ratified that Convention.

The authority of the Executive over the export of arms and munitions of war was, under the Joint Resolution of April 22, 1898, practically unlimited. Under the Joint Resolutions of March 14, 1912, and January 31, 1922, it was limited to exports destined to certain prescribed parts of the world and to cases of civil strife. Under the proposed legislation, the President would have authority to proclaim an embargo on the export of arms and munitions of war not only to American countries and to those countries in which we exercise extraterritorial jurisdiction but to any part of the world, and not only in cases of civil strife, but in cases of threatened or actual international conflict. However, the authority conferred upon the President by this resolution would differ from that conferred by the three former resolutions in that it could be exercised only after he has secured the cooperation of other governments, whereas his authority under the three former resolutions is unlimited by any such restriction.

Authority similar to that which this resolution would confer upon the American Executive is already possessed by the Executive Departments of most of the important Governments of the world, including: Belgium, Canada, Denmark, France, Germany, Great Britain, Italy, Spain, Sweden, the Netherlands, the U. S. S. R. The

authority of the Government of Sweden in this respect is even more far reaching, in that exports of arms are prohibited by law except when the Executive issues a license covering any individual shipment. The Spanish Government, without awaiting the cooperation of other Governments, has already put into effect an embargo on the shipment of arms to Bolivia, Colombia, Paraguay and Peru—the four South American countries at present engaged in international conflict.

II

The authority which the passage of this resolution would confer upon the Executive would be exercised by any Chief Magistrate of the United States to the sole end of maintaining the peace of the world and with a due and prudent regard for our national policies and national interests. The special circumstances of each particular case which may arise would dictate what action, if any, would be taken in that case, but the authority to act on terms of equality in cooperation with other governments when the occasion arises, should be left to the discretion of the Executive Branch of the Government which is charged, under the Constitution, with the conduct of our foreign relations. In justice to the firm convictions of the American people and to its own dignity, this Government should no longer be left in the position of being unable to join the other governments of the world in preventing the supply of arms and munitions for use in an international conflict when it is exercising its diplomacy and the whole weight of our national influence and prestige to prevent or put an end to that conflict. The enactment of this legislation would strengthen the position of this Government in its international relations and would enable us to cooperate more efficiently in efforts to maintain the peace of the world.

The phrase "after securing the cooperation of such governments as the President deems necessary" is unnecessary from the standpoint of the eventual exercise of the authority granted by this resolution as it would be obviously absurd for this Government to attempt to prevent or put an end to an international conflict by any act which would serve merely to divert the trade in arms and munitions from this country to other countries, but it serves a useful purpose in emphasizing the necessity for international cooperation in this matter and in making clear to the people of this country that there is no intention of sacrificing the interests of American manufacturers to those of foreign manufacturers. The late Senator Walsh of Montana proposed the insertion of this phrase in the resolution when it was under consideration in the Committee on Foreign Relations during the last session of Congress. It is a happy phraseology in that it makes no attempt

to hedge the authority to be conferred with specific restrictions which might prove to be entirely inapplicable in some particular case. In a matter of this kind, wide discretion must necessarily be left to the Executive and any attempt to specify particularly the governments whose cooperation it would be necessary to secure in order to exercise this authority would be certain to result in defeating the very purpose of the Resolution. In any particular case, the Executive would secure the cooperation of those Governments whose cooperation was necessary to ensure the cessation of the supply of arms and munitions from abroad to some particular country or countries. Which governments those would be would depend upon the geographical location of the country or countries in question, the supplies of arms and munitions on hand in certain countries, the contracts which had already been entered into, the international situation existing at this time and other unforeseeable factors. In some cases, the cooperation of all the principal producing countries might be necessary to attain the desired end. In other cases this end might be attained by securing the cooperation of only a few of the principal producing countries. In still other cases the cooperation of the contiguous countries through which arms or ammunition would have to be shipped to reach their intended destination might be sufficient. In other conceivable cases, the cooperation of both producing and transshipping countries might be necessary. Conditions might vary to such an extent that the cooperation of certain governments which was not necessary when an embargo was placed would become necessary during the period in which the embargo was in effect.

The securing of the cooperation of other governments in a matter of this kind would not take the form of treaties between this Government and other governments and probably not even that of the less formal Executive Agreements. What the Resolution proposes is not that the President should enter into engagements with other governments, but that he should enter into negotiations with them with a view to the adoption of a common policy in the particular circumstances then existing. These negotiations would ensure the effectiveness of the action of this Government through parallel action by other governments. The understandings resulting from these negotiations would, under the terms of the Resolution, be terminable at any moment by action of Congress or of the President.

In defining the commodities of which the exportation would be prohibited under a Proclamation issued in pursuance of this Resolution, the Department of State which would be charged, in cooperation with the Department of the Treasury, with the administration of the embargo, would follow its unvarying practice in interpreting the identical phraseology which appears in the Joint Resolutions of March

14, 1912 and January 31, 1922. This practice is based upon an opinion communicated to the then Secretary of State by the Attorney General Mr. Wickersham on March 25, 1912, which reads as follows:

"The President has requested me to send to you and to the other Departments concerned in the enforcement of the proclamation issued by the President March 14th, 1912, pursuant to the joint resolution of Congress approved on that day, respecting the exportation of arms and munitions of war into Mexico, a definition for practical use in the carrying out of such proclamation.

"In my opinion the phrase 'arms and munitions of war', as used in the said Joint Resolution and the President's proclamation should be interpreted as referring to those articles which are primarily and ordinarily used for military purposes in time of war, such as weapons of every species used for the destruction of life, and projectiles, cartridges, ammunition of all sorts, and other supplies used or useful in connection therewith, including parts used for the repair or manufacture of such arms, and raw material employed in the manufacture of such ammunition; also dynamite, nitroglycerine or other explosive substances; also gun mountings, limber boxes, limbers, military wagons, field forges and their component parts, comprising equipment of a distinctly military character, articles of camp equipment and their distinctive parts, and implements manufactured exclusively for the manufacture of implements of war, or for the manufacture or repair of arms or war material.

"Foodstuffs, ordinary clothing and ordinary articles of peaceful commerce are not included in the prohibition." [34]

In enforcing the embargoes proclaimed under the Joint Resolutions of March 14, 1912, and January 31, 1922, the Department of State has at various times drawn up lists of commodities included within the Attorney General's definition of arms and munitions of war. These lists have varied in minor respects, but the following list of articles for which an export license is required under the President's Proclamation of March 4, 1922, placing an embargo on the shipment of arms and munitions to China will serve as an example:

1. Aircraft when fitted with armor, guns, machine guns, bomb-dropping or other military devices, or mountings for such guns or devices.
2. Apparatus which can be used for the storage or projection of gases, flame acids, or other destructive agents capable of use in war-like operations.
3. Arms, small arms of all kinds other than those classed as toys, together with spare parts of such arms.
4. Equipment for military purposes exclusively.
5. Explosives as follows: Gun powder, powders used for blasting, all forms of high explosives such as dynamite, nitroglycerine and TNT, blasting materials, fuses, detonators and other detonating agents, and smokeless powders.

[34] Opinions of Attorneys General, vol. 29, pp. 375–379.

6. Guns, machine guns, and spare parts thereof, and gun grease.
7. Gun mountings and limbers; tanks, armored motor cars, armored trucks, and armor-plate.
8. Machinery—such as cartridge-making machines, specially manufactured for use in making arms and ammunition.
9. Mines (submarine) and their component parts.
10. Projectiles, charges, cartridges, and hand grenades of all kinds with their component parts.
11. Range finders and their component parts.
12. Shot, shells and cartridges for small arms, both loaded and empty, and their component parts.
13. Warships, including boats and their component parts of such a nature that they can be used on war vessels.
14. Radio apparatus designed expressly for military use.

It is impossible to foresee all the circumstances under which the President might exercise the authority granted by this Resolution. In many cases of threatened or actual international conflict an embargo on the export of arms placed by other nations not involved in the conflict would be of little or no avail in preventing or putting an end to that conflict. In such cases, the President would obviously take no action. In other cases, an international embargo on the shipment of arms and munitions to both parties to the conflict might be an effective means of preserving or restoring peace. It is conceivable that in certain cases the matured opinion of this Government might accord with the opinion of the rest of the world in fixing the responsibility for a conflict upon an aggressor nation. In such cases, an international embargo on the shipment of arms and munitions to one party to the conflict might be deemed an equitable and effective method of restoring peace. This method nevertheless would certainly not be adopted by this Government without such effective guarantees of international cooperation as would safeguard us against the danger of this country's being involved in the conflict as a result of such action. In a case of this kind, this Government would naturally take into careful consideration the international law of neutrality taking into account the definite, although perhaps as yet undefined, effect of the Kellogg-Briand Pact [35] and other treaties designed to prevent war upon the concept of neutrality.

It has been urged by some that action by the President pursuant to this Resolution might result in involving this country in war. If a President were disposed to stir up conflicts with other countries, he would have, under the authority already conferred upon him many simpler and more expeditious means of doing so than by the use of an arms embargo. This is a peace measure and it would be used to promote peace.

[35] *Foreign Relations*, 1928, vol. I, p. 153.

III

It is natural that this Resolution, although it was originally proposed in pursuance of the development of the peace policy of this Government and without reference to specific cases, should be considered with reference to the cases of actual international conflict existing at the present time.

If this legislation were enacted, this Government would be disposed, in cooperation with other governments, to place immediately an embargo on the shipment of arms to Paraguay and Bolivia. The information in our possession leads us to believe that a request from other powers for our cooperation would be forthcoming and that international cooperation could be obtained to a degree sufficient to ensure the complete stoppage of shipments of arms to those countries. As neither country is a producer of arms or munitions of war, such action would tend to bring about a cessation of the hostilities now being carried on between them.

Efforts are now in progress to put an end to the conflict between Colombia and Peru. Both Governments are members of the League of Nations. The Council of the League has submitted to these Governments a proposal for the settlement of the differences between them. The Government of Colombia has accepted this proposal. The Government of Peru still has this proposal under consideration. The question of an arms embargo in this case does not, therefore, arise at this time. The action if any which this Government might be disposed to take in this case pursuant to the proposed legislation would depend upon the unpredictable conditions which may exist in the future.

It has never been the intention and is not now the intention of this Government to use the authority which would be conferred upon the Executive by this Resolution as a means of restoring peace between China and Japan. An embargo on arms and munitions of war would not be an effective means of restoring peace in this case. Japan is an important producer of arms and munitions of war. Her industry is sufficiently developed to supply her present and probable future needs. China is dependent upon her importation of these commodities. An embargo on the exportation of arms and munitions to both China and Japan would, therefore, militate against China and in favor of Japan. An embargo directed against Japan alone would probably result in a Japanese blockade of Chinese ports, in the seizure by the Japanese of arms and munitions intended for China, and thus its ultimate effects would probably be to decrease China's supply of arms and increase, by virtue of seizures, Japan's supply. As this Government concurs in

general in the findings of the Lytton Commission [36] which place the major responsibility upon Japan for the international conflict now proceeding in China, this Government would not be disposed to take any action which would favor the military operations of the Japanese. From the information in our possession, it would appear that this view of the situation is shared by the principal powers members of the League of Nations. We do not, therefore, envisage the probability of proposals by the League or by its principal members to this Government to cooperate with them in an embargo on the shipment of arms and munitions to Japan. Should such proposals be made, we would not be disposed to give them favorable consideration, and we would not under any circumstances agree to participate in an international embargo of this kind unless we had secured substantial guarantees from the governments of all of the great powers which would ensure us against the effects of any retaliatory measures which the Japanese might undertake. In brief, this Government does not expect to take any action of this nature in connection with this case; if any action is taken it will certainly be taken with a due and prudent regard for American interests and in particular for our paramount interest of remaining free from any entanglements which would involve this country in a foreign war. One of the most important reasons for the passage of this Resolution at this time is, however, connected with the present situation in the Far East. There is danger that if this legislation is not enacted, certain European governments may find it to their interest to make it appear that this Government is responsible, by virtue of its not being in a position to cooperate, for a failure on their part to proceed with the imposition of sanctions to which they are committed by reason of their membership in the League of Nations. Thus they would make this country appear in the eyes of many of their nationals and of a large section of public opinion in this country to bear the onus of their failure to make effective the peace machinery which they have built up. If the Resolution is passed, it would no longer be possible for them to make the excuse that their failure to come to an agreement among themselves in regard to a course of action was due to the fact that we were not in a position to cooperate with them if requested to do so. Under these circumstances, failure on their part to take action would manifestly be due solely to their own inability to reach an agreement on the basis of which to request our cooperation, and the facts of the situation would

[36] League of Nations, *Appeal by the Chinese Government, Report of the Commission of Enquiry* (Geneva, October 1, 1932). Reprinted by Department of State in Far Eastern Series No. 2: *Manchuria, Report of Commission of Enquiry Appointed by the League of Nations* (1932).

be obvious to all the world; they could attribute no responsibility or blame to us.

It is not our policy to have this Government posing before the world as a leader in all the efforts to prevent or put an end to wars but on the other hand it is not our policy to lag behind the other nations of the world in their efforts to promote peace. The passage of this Resolution is necessary in order that this Government may keep pace with other Governments of the world in this movement.

811.113/306a : Telegram

The Acting Secretary of State to the American Delegate (Wilson)

WASHINGTON, June 1, 1933—2 p. m.

347. Department's 85, March 11, 7 p. m.[37] First paragraph. The Arms Embargo Resolution was passed by the House of Representatives on April 17. The Senate Committee on Foreign Relations on May 30 reported it out with an amendment as follows:

"Provided, however, that any prohibition of export, or of sale for export under this resolution shall apply impartially to all the parties in the dispute or conflict to which it refers."

The Secretary at the press conference on May 29 stated that the proposed amendment did not conform to the views of the President or of himself.

In order to avoid a controversy at this time in regard to American conceptions of neutrality, the majority leaders in the Senate will probably not bring up the embargo resolution for a vote during this session of Congress. It is the intention of the administration to urge the enactment of the resolution in its original form at the next session.

PHILLIPS

811.113/345

The Secretary of State to the Secretary of Commerce (Roper)[38]

WASHINGTON, November 7, 1933.

SIR: In order that no misunderstanding may arise concerning the policy of this Government in regard to the export of arms and munitions of war, and in regard to the duties of its representatives abroad in relation thereto, I have recently addressed a series of instructions to

[37] Vol. III, p. 233.

[38] The same, *mutatis mutandis*, to the Secretaries of War and Navy.

American diplomatic and consular officers,[39] setting forth the position of this Government concerning this matter. These instructions have differed in detail in order that they might be applicable to particular conditions existing in particular countries, and in order to ensure due regard for pertinent statutes and treaties of limited application. In general, however, they have set forth that it is not the policy of this Government to encourage the export trade in arms and munitions of war and that consequently its representatives abroad should not proceed on their own initiative to promote American trade in arms or munitions of war and should not endeavor to create trade opportunities for American exporters of such articles. They should, however, when requested to do so by American exporters or their agents or by prospective purchasers, follow the same procedure in giving information and advice as they would follow in respect to the trade in any other commodity. They are instructed further that in order to disassociate the American Government from the promotion of the export trade in arms and munitions of war, they should decline to use official channels for the communication of inquiries or offers between prospective purchasers and sellers unless, in some particular case, a refusal of such assistance would be manifestly inappropriate, or unless these inquiries or offers are in regard to such materials as blasting powder, dynamite and other explosives when it is definitely known that these articles are intended by reputable concerns for industrial uses. When virtual warfare is being carried on between two countries, representatives of this Government should exercise unusual discretion in their relations with American exporters of arms or munitions of war or with their agents and with prospective purchasers.

I should greatly appreciate it if you would bring this communication to the attention of those officers of your Department whose duties may involve the handling of business connected with the sale of arms and munitions of war to foreign countries.

Very truly yours, CORDELL HULL

[39] See circular instruction of May 13, p. 367. A similar instruction was transmitted to American representatives in the Danzig Free State, Estonia, Finland, Latvia, Lithuania, and Poland on November 7. On November 10 the Department of Commerce and the Navy Department separately advised the Department of State that their representatives abroad would be "advised accordingly".