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STRICTLY CONFIDENTIAL

October 28, 1938.

PROPOSED CHANGES IN NEUTRALITY ACT OF MAY 1, 1937

For the purpose of discussing neutrality legislation, a conference was held in Mr. Moore's office on October 18, 1938, attended by Messrs. Moore, Sayre, Messersmith, Hackworth, Dunn, Hornbeck, Hamilton, Moffat, Green, Briggs and Savage, all of whom participated in the discussion. Before the conference adjourned, it designated Messrs. Hackworth, Green and Savage to study the subject further in the light of the views that had been submitted, and tentatively to report what Congress could or might do in the way of improving the neutrality legislation. It was understood that such report would be brought to the attention of a further meeting of the conferees for consideration before a report is handed to the Secretary.

During the conference in Mr. Moore's office, various suggestions were made, some of which were: (1) that the act of May 1, 1937 be repealed without substitute legislation; (2) that the act be repealed and replaced by a much simpler statute conferring upon the Executive authority during war to make and enforce any orders

considered

considered proper to protect the interests of the United States; (3) that the President be given authority to apply the provisions of the act to one side only during international conflict; (4) that section 1 of the act, providing for an arms embargo, be repealed; (5) that the President be given discretionary authority to proclaim an arms embargo when he finds that a state of war exists and that an arms embargo is necessary to promote the security or preserve the peace of the United States.

These five suggestions have been carefully examined. The first three do not appear to be feasible, even if they were desirable. The fourth and fifth suggestions, together with others, are discussed in this memorandum.

#### Section 1

##### Export of Arms, Ammunition, and Implements of War

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Paragraph (a) of this section provides that when the President finds that there exists a state of war between two or more foreign states he "shall proclaim such fact" and it shall thereafter be unlawful to export arms to any belligerent state named in the proclamation or to any neutral state for transshipment to any such belligerent state.

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The difficulties inherent in the application of this section in some situations have been demonstrated by the existing Sino-Japanese conflict. The unpredictable situations that may arise in the future may present even more perplexing problems in connection with the application or non-application of the provisions. An embargo might clearly be detrimental to our interests, yet with the law as it now stands it might be difficult for the President to decline to issue a proclamation.

Arms, ammunition, and implements of war when destined directly or indirectly to a belligerent country are absolute contraband and under international law may be seized by the opposing belligerent without giving a neutral shipper or his government any right to complain. Therefore, such shipments should not lead to controversies between the United States and belligerent countries. From this point of view there is at least less necessity for placing an embargo on arms than might otherwise be the case. In these circumstances and in view of the other considerations stated above, the Committee is of the opinion that section 1 should either be repealed or broader discretion vested in the President with respect to bringing it into operation.

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In view of the feeling of many people that it is undesirable for this country to supply arms to belligerent countries there might be serious objection to a repeal of the section. With this in mind and also having in mind the unforeseeable contingencies that may develop in connection with future conflicts, it is felt that if the section is retained an effort should be made to give the President broader discretion than he now has under the section.

It is therefore recommended that, instead of requiring a proclamation whenever the President shall find that there exists "a state of war", such proclamation should be premised on that finding plus a finding that an embargo "is necessary to promote the security or preserve the peace of the United States".

Under such a provision the President might in one situation impose an embargo because, in his judgment, the interests of the country require it, and in another situation decline to impose it because our interests would not be promoted thereby.

The section uses the term "state of war". Having in mind the difficulties involved in connection with proclaiming a "state of war" when the belligerents and other

countries



countries have not seen fit to so label the conflict, consideration should be given to the desirability of substituting for "state of war" the words "armed conflict".

Section 1(c) gives the President authority to impose an embargo in case of civil strife if he finds that it is of such magnitude or is being conducted under such conditions that the export of arms, etc. would threaten or endanger the peace of the United States. Such an embargo would apply to shipments, directly or indirectly, to the state as such. Conditions might be such as to make it desirable to allow shipments to go to the recognized government, under certain restrictions. It is therefore suggested that the President should be given authority to make the embargo subject to "such limitations and exceptions as he may prescribe". A provision of this character is now embodied in the resolution of 1922 with respect to the shipment of arms to certain countries (American countries and countries in which we exercise extraterritorial rights) in which domestic violence exists. Under that provision the President has usually allowed shipments to go only to the recognized government. If belligerency on the part of the insurgents should be recognized by the United States we might desire to adopt an entirely neutral attitude and either permit shipments to go to both

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sides or to neither side. If we are to follow the customary rule of neutrality we would be under the necessity of treating both sides alike.

## Section 2

### Export of Other Articles and Materials

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Section 2(a) authorizes the President, after issuing an embargo proclamation under section 1, to proclaim a list of articles which American ships shall not carry to a belligerent country or to a country in which civil strife exists. His authority is discretionary, that is to say, he acts only in the event that he considers that such action would promote the security or preserve the peace of the United States, etc. It is believed that this paragraph of section 2 should not be made to depend upon the issuance of a proclamation under section 1.

This same paragraph provides that the President may prescribe "limitations and exceptions . . . as to lakes, rivers and inland waters bordering on the United States, and as to transportation on or over lands bordering on the United States". Consideration may be given to the question whether it would be desirable to remove this restriction on the "limitations and exceptions" to be prescribed by the President, and to allow him to make such

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exceptions as he may deem wise, bearing in mind the public interest.

This section as it now appears in the act refers to the carriage of articles other than arms, ammunition and implements of war. If the section is made independent of section 1 or if section 1 is eliminated, the qualification with respect to arms, ammunition and implements of war should be eliminated.

Consideration might also be given to the possibility of incorporating in this section a new sub-section authorizing the President in his discretion to issue a proclamation prohibiting American vessels from entering areas deemed by him to be dangerous. Consideration has been given by the Committee to the question of authorizing the President to prescribe areas of danger into which it would be unlawful for American citizens to enter, but it is offering no recommendation on the subject.

Section 2(b) gives the President authority to prohibit the shipment of all articles from the United States to belligerent countries or to a country engaged in civil strife - unless the title shall have first passed to the foreign consignee. This is to be done only after the proclamation has been issued under section 1 of the act.

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Here again it is believed that the paragraph should not be made dependent upon a proclamation under section 1 of the act. The Committee believes that the President should be given broader authority to prescribe limitations and exceptions without the restriction now contained in the paragraph as to bordering countries. For example, as the act is now drafted if Great Britain were at war and section 2(b) were brought into operation it might be held to prevent the shipment from the United States to Bermuda of the household effects of a person desiring to take up his residence in Bermuda since he would not be able to show that title to the property was vested in a foreign consignee. It would prevent an American Consul from taking his personal effects from here to Sydney, Australia. With broader discretion vested in the President he could make appropriate exceptions where, in his judgment, no danger of becoming involved in war would ensue.

This section unless extended will expire on May 1, 1939.

Section 3

Section 3

Financial Transactions

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This section provides that whenever the President has issued a proclamation under section 1 of the act it shall thereafter be unlawful to purchase, sell or exchange the bonds, securities or other obligations of a belligerent state or a state engaged in civil strife, mentioned in the proclamation, issued after the date of the proclamation, or to make any loan or to extend any credit to any such government. The President is authorized to except from the operation of the section ordinary commercial credits and short-time obligations in the aid of legal transactions which are of the character customarily used in normal peacetime commercial transactions.

If section 1 should be eliminated or modified as suggested above, it would seem desirable to amend section 3 so as to bring it into operation independently of section 1, probably at any time that the President may consider that the public interests so require. If the President should be given discretion as to section 1 he might desire to invoke this section even before issuing a proclamation under section 1.

At meetings held in the Department a short time ago

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between Mr. Lockhead of the Treasury Department, Mr. Goldenweiser of the Federal Reserve System, Mr. Feis and Mr. Hackworth, section 3 was discussed in considerable detail with a view to determining how it would operate should a war eventuate as a result of the then acute situation in Europe. The general conclusions were:

(1) That the purposes of the act were to prevent large-scale sale to the American public of securities of belligerent governments, as was done during the World War, and that the section as at present drawn is sufficient for that purpose.

(2) That the language of the section leaves open various possibilities for the development of credit arrangements of other types where the credit of the borrower is sufficiently good and the American lender is disposed to lend, i.e. (a) through the flotation of securities or the obtaining of credit in some other form by foreign enterprises acting independently of their governments; (b) loans or security purchases from funds of American origin extended outside the United States in various forms that might be devised without violating the law; and (c) the utilization in various ways of securities issued by the belligerent government before the date of the President's proclamation.

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These possibilities would be increased if the President should, in the exercise of his discretion, exempt from the operation of the section ordinary commercial credits and short-time obligations. It was recognized that there are considerable possibilities of evasion as well as broad discretion in the President with respect to exceptions, but it was felt that there would be a disposition on the part of the general public, banks, manufacturers and exporters to avoid possible violation of the section in view, among other things, of the fact that it carries a penalty of \$50,000 or imprisonment for five years, or both.

In view of all these considerations it was thought that there was something to be said in favor of an amendment looking to (a) greater comprehensiveness, (b) greater definiteness, and (c) greater certainty. On the other hand it was thought probable that Congress did not desire to create a more comprehensive plan and that there might be advantages in the field of policy in leaving a substantial measure of discretion to the Executive; that proposed amendments would require prolonged discussions of technical questions of a varied character; and that all-in-all it would probably be unwise to undertake amendments.

\* The present Committee, however, considers that it  
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might be desirable from an administrative point of view, and in the interest of clarity, to have the provision relating to the solicitation and collection of funds disentangled from the other provisions and placed in a separate sub-section.

#### Section 4

#### Exceptions -- American Republics

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Section 4 provides that the act shall not apply to an American republic or republics engaged in war against a non-American state or states, "provided the American republic is not cooperating with a non-American state or states in such war."

In 1937 the Department recommended to Senator Pittman and Representative McReynolds that Section 4 be amended to read as follows:

"SEC. 4. The provisions of sections 1(a), 1(b), 2, 3, 6, and 10 of this Act shall not apply to American republics engaged in war unless the President shall find, after consultation with the Governments of other American republics and

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after consideration of all the circumstances, that application of the provisions of these sections, or any one or more of them, would tend toward the reestablishment of peace or the protection of the commercial or other interests of the United States and its nationals and shall so proclaim, whereupon the provisions of the section or sections invoked by the President's proclamation shall apply to the country or countries named therein subject to such limitations and exceptions as he may prescribe."

The purpose of this proposed amendment was to give the President greater freedom of action in cooperating with other American Republics under the various peace treaties to which we are a party, particularly those concluded at Buenos Aires in 1936. The amendment was introduced as S.J.Res. 175, July 6, 1937, and H.J.Res. 439, July 8, 1937, but neither resolution passed.

It may be desirable to revive this suggestion.

#### Section 5

#### National Munitions Control Board

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This section may be retained in the same form in which it now appears in the act with the following exceptions:

Paragraph (c)

Paragraph (c) provides for a registration fee of \$500 for people who manufacture, export or import arms, etc., in excess of \$50,000, and a fee of \$100 for those who manufacture, export or import these articles to a total value of less than \$50,000. These registrations are to be renewed every five years with the payment of the same fees. This provision was introduced into the Neutrality Act as a transitional provision and it is recommended that the act should be amended to stipulate a uniform fee of \$100.

If section 1 of the act should be eliminated paragraph (g) of section 5, which has to do with the automatic cancellation of export licenses issued prior to the President's proclamation under section 1 should also be eliminated.

#### Section 6

##### American Vessels Prohibited from Carrying Arms to Belligerent States

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This section provides in effect that whenever the President shall have issued a proclamation under section 1 of the act it shall thereafter be unlawful for American vessels to carry arms, ammunition or implements of war to any belligerent state, etc.

If section 1 is eliminated and section 2(a) is made applicable to any article or commodity, this section should

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be eliminated. If section 1 is retained this section may be retained in its present form.

Section 7

Use of American Ports as Base of Supply

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No change recommended.

Section 8

Submarines and Armed Merchant vessels

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No change recommended.

Section 9

Travel on Vessels of Belligerent States

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This section provides that whenever the President shall have issued a proclamation under section 1 of the act it shall thereafter be unlawful for American citizens to travel on belligerent vessels except in accordance with such rules and regulations as the President may prescribe. There are two provisos in this section - one to the effect that the section shall not apply to a citizen of the United States traveling on a vessel whose voyage was begun prior to the date of the President's proclamation, and the other  
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stating that it shall not apply under ninety days following the date of the President's proclamation to a citizen returning from a foreign state to the United States.

It is recommended that this section be made independent of the operation of section 1. The language of section 9 could be simplified by striking out the two provisos in view of the fact that it is already provided that such travel shall be in accordance with regulations prescribed by the President. The provisos are restrictions upon the discretion of the President which might in certain situations be objectionable. For example the period of ninety days during which the section is not applicable might conceivably be found to be too liberal in that it might permit citizens to travel on belligerent vessels at a time when they would be subjected to extreme danger. In view of the impossibility of foreseeing the circumstances which might be presented, it would seem desirable to leave the whole matter in the hands of the President.

Section 10



Section 10

Arming of American Merchant Vessels Prohibited

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This section provides that when the President shall have issued a proclamation under section 1 it shall thereafter be unlawful for American vessels engaged in commerce with a belligerent state or a state wherein civil strife exists, to be armed or to carry any armament, arms, ammunition or implements of war, except small arms which the President may deem necessary for the preservation of discipline aboard the vessel.

This section was designed to prevent the arming of vessels but as worded it would also prevent the carrying of arms as cargoes. It is not believed that the latter was the intention of the drafters since the transportation of arms as cargo is taken care of in section 6 of the act. The Committee, while not suggesting that this should be changed, invites attention to the duplication of a prohibition.

Other Sections

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Section 11 authorizes the President to issue regulations to carry out the provisions of the act; section 12 contains general penalty provisions; section 13 contains definitions; section 14 provides that if parts of the act are held to be invalid other parts shall not be affected thereby;

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thereby; and section 15 authorizes appropriations. The Committee does not recommend any changes in any of these sections.

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