

**THE NEUTRALITY  
LAWS OF THE  
UNITED STATES**

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The neutrality laws of the United States by Charles G. Fenwick

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# Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

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## THE NEUTRALITY LAWS OF THE UNITED STATES

BY

CHARLES G. FENWICK, Ph.D.

Of the Division of International Law

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**INTRODUCTORY NOTE.**

The following report on the neutrality laws of the United States was prepared by Dr. Charles G. Fenwick, pursuant to a resolution of the Board of Trustees of the Carnegie Endowment for International Peace "that the Division of International Law, be, and it is hereby, directed to examine and report to the Board upon the neutrality laws of the United States, and to suggest in their report improvements tending to make them more efficient."

The report thus prepared was submitted to and approved by the Board of Trustees at its meeting in 1913, and it was directed that the report be "published and sent to such persons and authorities as may seem appropriate or desirable, and that their suggestions and criticism be invited."

It will be observed that the report does not attempt to outline and define the rights and duties in general of neutral nations as they exist in international law, but rather to show, by a detailed and careful examination of the statutes of the United States and of their official interpretation, the compliance of this country with its conception of neutral rights and duties, as defined by the law of nations. An introductory chapter explains the character and scope of neutrality laws in general; a second chapter sketches the history and development of the neutrality laws of the United States; a third chapter sets forth the authoritative interpretation of the present neutrality laws as determined by judicial construction; a fourth chapter deals with the limitations of the neutrality laws of the United States; and the report ends with an appendix containing the statutes, resolutions, and proclamations necessary to an understanding of the text.

Particular attention is called to the amendments suggested by Dr. Fenwick as calculated to make the neutrality laws more efficient, and to the draft of a statute to effect this purpose.

As the neutrality laws of the United States cannot well be understood without a knowledge of the circumstances which suggested their enactment, this report is commended not merely to all those interested in the rights and duties of neutral nations, but especially to those who desire in the future, as in the past, that the policy of the United

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States in regard to neutral rights and duties, adopted after great thought and deliberation, may continue to serve as a model to the nations.

JAMES BROWN SCOTT,

*Director of the Division of International Law and Secretary  
of the Carnegie Endowment for International Peace.*

WASHINGTON, D. C., December 11, 1913.

### NOTE

THE reader will note that in Chapters III and IV the discussion of the interpretation and the deficiencies of the neutrality laws of the United States is based upon their provisions as quoted from the *Revised Statutes* of 1878, although many of the adjudged cases were anterior to that date, and although Congress reenacted the neutrality laws in Secs. 9-18 of the *Act to codify, revise and amend the penal laws of the United States*, approved March 4, 1909 (*U. S. Statutes at Large*, vol. 35, p. 1088). The differences between the wording of the *Revised Statutes* on the one hand and the Act of 1818 and the Code of 1909 on the other being very slight, this method of treatment has seemed both the most lucid and convenient.

Attention is called to the legislation enacted by Congress on this subject since the publication of this volume, viz., the Act of May 7, 1917, and Title V of the Act of June 15, 1917 (*U. S. Statutes at Large*, vol. 40, pp. 39 and 221).

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## PREFACE.

The present study of the neutrality laws of the United States has a threefold object in view: to show the traditional policy of the United States with respect to neutrality laws, to state the precise scope of those laws, and to criticise them according to the standard of international law. As an introduction to the study it was thought advisable to show the position which neutrality laws hold in the general field of international law. It is not an uncommon error to confuse municipal neutrality laws with the international law of neutrality, to mistake the legislation by which a state gives effect to its international obligations for the obligations themselves. This error has been particularly noticeable in the recent discussion concerning a resolution of Congress empowering the President to prevent the export of arms and ammunition from the United States to Mexico. The historical sketch of the several neutrality acts passed by Congress, and of the neutrality proclamations issued in accordance with them, is presented with the object of showing at once the traditional policy of the United States in framing legislation to meet its international obligations, and the changes in the law which have been brought about by the necessity of adapting it to existing conditions. The succeeding chapter states the authoritative interpretation of the present neutrality laws as determined mainly by judicial, and in part by executive, construction. In consideration of the special object in view in the preparation of this study, it was thought advisable to separate the statement of the actual restrictions imposed by the present laws from the criticism of the deficiencies of those laws, in spite of the fact that this has necessitated repetition to some slight extent. Following the criticism of the present neutrality laws is a draft of a new neutrality code embodying the results of the investigation, and introducing amendments intended to meet the deficiencies of the existing law and to bring it more in accord with the recognized obligations of the United States.

While the study is therefore, by its purpose, largely technical in character, the subject with which it deals is one of such great interest and importance as to commend itself to the attention of the general public. The neutrality laws of the United States hold a significant place in the legal and political history of the country; controversies

have ranged around them, and they have more than once been the subject of sharp diplomatic discussions, while not a few of the important decisions of the Supreme Court of the United States have been based upon violations of the several neutrality acts.

Moreover, with the exception of Great Britain, no other country has enacted similar municipal legislation of so comprehensive a character, in the interest of enforcing upon its citizens and others within its jurisdiction, the observance of the duties of neutrality. Most of the continental countries have adopted certain general provisions against foreign enlistment and against acts which may compromise the neutrality of the state; but they have not thus far seen the need of enacting penal legislation of the definite and precise character of that adopted by the United States and Great Britain. It is true that in the case of the latter countries special circumstances formed the proximate occasion for the adoption of their neutrality acts; but, on the other hand, it can hardly be denied that municipal neutrality legislation, as a means of giving effect to international obligations, has been greatly neglected. In consequence of the rules relating to the rights and duties of neutral powers in land and maritime war, adopted at the Second Hague Conference of 1907 (Conventions V and XIII), it is all the more imperative that the states of the world should amend their neutrality legislation so as to enable them to meet the obligations which they have thus defined for themselves. In view of this fact, the experience of the United States may not only be of interest, but of service as well, to states contemplating the adoption of new or the amendment of existing neutrality laws.

C. G. F.

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