



United States to recognize Cuba as an independent government, entitled to admission into the family of nations, or, without recognizing its independence, to find that an organized government, capable of carrying on war and to be held responsible to other nations for the manner in which it carries it on exists in that island, it will be the duty of that department to declare and act upon those facts; but before such a state of things is found to exist it is not, in my opinion, competent for a court to undertake to settle those questions.

The judicial tribunals must follow and conform to the political action of the government in regard to the existence of foreign states and our relations to them; and it would, in my opinion, be inconsistent with the honor and dignity of the United States to submit to a court, and allow to be declared and acted upon in such an indirect manner, rights and duties toward a foreign nation which the government is not prepared distinctly and upon its own responsibility to avow and maintain.

It has been brought to my notice, as to yours, by persons who profess to represent the Cuban insurgents, that libels have already been filed in the Courts of the United States, under the statute of 1818, to procure the condemnation of vessels, on the ground that they were being fitted out and armed with intent to be employed in the service of a "colony, district or people," namely, the "colony, district or people" of Cuba, with intent to cruise and commit hostilities against the subjects of Spain, a nation with whom we are at peace; and it is urged that this involves what is claimed to be the converse of the proposition that, as we assert in those libels that Cuba is a "colony, district or people" capable of committing hostilities against Spain, the law equally applies to an armament procured or fitted out by Spain for the purpose of hostilities against Cuba, and that the executive government, by filing those libels, has virtually recognized the "colony, district or people" of Cuba as belligerents.

This argument seems to me to involve an erroneous legal notion, and to be based upon the idea that the statute of 1818, being an act to protect and enforce the neutrality laws of the United States, cannot be applied except where there are independent parties to a contest entitled to equal rights. But this, I think, is an opinion wholly unsound. Undoubtedly the ordinary application of the statute is to cases where the United States intends to maintain its neutrality in wars between two other nations, or where both parties to a contest have been recognized as belligerents, that is, as having a sufficiently organized political existence to enable them to carry on war. But the statute is not confined in its terms, nor, as it seems to me, in its scope and proper effect, to such cases. Under it any persons who are insurgents, or engaged in what would be regarded under our law as levying war against the sovereign power of the nation, however few in number, and occupying however small a territory, might procure the fitting out and arming of vessels with intent to cruise or commit hostilities against a nation with which we were at peace, and with intent that they should be employed in the service of a "colony, district, or people" not waging a recognized war. The statute would apply to the case of an armament prepared in anticipation of an insurrection or revolt in some district or colony which it was intended to excite, and before any hostilities existed.

But, on the other hand, when a nation with which we are at peace, or the recognized government thereof, undertakes to procure armed vessels for the purpose of enforcing its own recognized authority within its own dominions, although there may be evidence satisfactory to show that they will aid the government in the suppression of insurrection or rebellion, in a legal view this does not involve a design to commit hostilities against anybody. If the illicit disturbers of any section of the United States combine together to resist by force the collection of the revenue, and arm themselves for this purpose, with the intent to set at defiance permanently and by force the laws of the United States they may be levying war against the government; but when the government sends its officers to disperse or arrest the offenders, although it may find it necessary to employ military force in aid of its authority, it certainly cannot be considered as committing hostilities against the territory over which such operations extend.

The question of belligerency between organized communities is a question of fact, and may be one of the gravest facts upon which a nation is called to decide and act. The concession of belligerent rights to a "colony, district or people" in a state of insurrection or revolution necessarily involves serious restrictions upon the ordinary rights of the people of this country to carry on branches of manufacture and trade which are unrestricted in time of peace. To prevent our mechanics and merchants from building ships of war and selling them in the markets of the world is an interference with their private rights which can only be justified on the ground of a paramount duty in our international relations; and however much we may sympathize with the efforts of any portion of the people of another country to resist what they consider oppression or to achieve independence, our duties are necessarily dependent upon the actual progress which they have made in reaching these objects.

This subject, as you are well aware, is one to which long and careful consideration has been applied, and the result which I have thus briefly stated, and which might receive much fuller statements and illustration, is that upon which the administration have acted. I trust that I have made my view of the law intelligible, and have the honor to be, very respectfully,

E. R. HOAR, Attorney General.

Hon. HAMILTON FISKE, Secretary of State.