

any of these foreign areas may be prevented under the conditions stated in the statute; and political jurisdiction is not the controlling factor. Your Solicitor indicates that the practice of your Department in the administration of the statute has been to this effect; that is, to regard the term "foreign country" as used primarily in a geographical rather than a political sense, as evidenced by the list of such countries from which importations are now forbidden (5 Fed. Reg. 4260). Accordingly, the present question is not controlled by the fact that a part of Tierra del Fuego is politically a part of Argentina.

If, therefore, having in mind the purpose of the statute to avoid risk of introduction of the disease into this country, you find that the disease does not exist in Tierra del Fuego and that the geographical separation of it from continental Argentina and Chile is sufficient to avoid such risk, it is my opinion that it is within your discretion to treat Tierra del Fuego separately and that it need not necessarily be included in provisions which apply to continental Argentina and Chile.

Respectfully,

ROBERT H. JACKSON.

TRAINING OF BRITISH FLYING STUDENTS IN THE UNITED STATES

The training of British flying students in civilian institutions of the United States offends no law and requires no specific statutory authority.

It is within the power of the President as Commander in Chief to authorize the instruction of British flying students by members of the Army Air Corps at air corps training centers.

The furnishing of airplanes, fuel, spare parts, instruction books, and similar articles for the use of such students is authorized by the Lend-Lease Act:

MAY 23, 1941.¹

THE PRESIDENT.

MY DEAR MR. PRESIDENT: I have the honor to refer again to the memorandum of your Secretary, General Edwin M. Watson, dated May 12, 1941, and to my letter to you dated

¹ Released for publication October 16, 1942.

May 14, 1941, relating to a proposal of the Secretary of War to authorize the training in Air Corps and civilian aviation schools of a number of British flying students. In my letter of May 14 I stated that elementary training in civilian aviation schools could be legally provided for, but that certain legal questions arise in connection with the proposal to give basic and advanced training in schools maintained and operated by the Air Corps. Further consultation with the War Department has been had and I have informally advised that Department that the proposal may legally be put into operation upon your direction. In view of my letter of May 14 it seems advisable to outline the basis for my conclusion.

1. With regard to collaboration by the Secretary of War with representatives of the Government of the United Kingdom in arrangements necessary for the utilization of available civilian institutions for instruction in subjects incident to aviation, it seems clear that such collaboration with a friendly power, with respect to training to be given its nationals in schools which are open to them, offends no law. No specific statutory authority need be relied upon to support the right so to collaborate. The general administrative responsibility of the President and as well of the Secretary of War with respect to the potential air forces of the United States would seem clearly to make such collaboration permissible, and indeed desirable, so that the utilization of these schools by nationals of other nations may be worked out in relation to their use by our own nationals for whose benefit they were primarily instituted.

As to fiscal assistance for the training in these schools, I understand arrangements are under consideration; but since these have not been submitted for approval, I express no opinion now as to them, except as the subject is hereinafter dealt with in relation to other parts of the program.

2. It is also proposed that basic training and advanced training be given British flying students at one of the training centers now maintained by the Army Air Corps. This part of the program involves two different aspects: (a) the furnishing of airplanes, fuel, spare parts, instruction books and similar articles; and (b) the furnishing of instruction

by members of the Air Corps. I shall consider these two features of the proposal separately.

(a) As to the furnishing of the tangible articles just enumerated, it is clear that such action is authorized by the express terms of the act of March 11, 1941, popularly known as the Lend-Lease Act (c. 11, 55 Stat. 31). Section 3 (a) (2) of the Lend-Lease Act provides in part as follows:

“Notwithstanding the provisions of any other law, the President may, from time to time, when he deems it in the interest of national defense, authorize the Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government * * *

“(2) To sell, transfer title to, exchange, lease, lend, or otherwise dispose of, to any such government [i. e., to the government of any country whose defense the President deems vital to the defense of the United States] any defense article * * *.”

Section 2 (a) of the act defines the term “defense article” in part as:

“(1) Any weapon, munition, aircraft, vessel, or boat;

“(2) Any machinery, facility, tool, material, or supply necessary for the manufacture, production, processing, repair, servicing, or operation of any article described in this subsection;

“(3) Any component material or part of or equipment for any article described in this subsection;

“(4) Any agricultural, industrial or other commodity or article for defense.”

Section 3 (b) of the act provides in part:

“The terms and conditions upon which any such foreign government receives any aid authorized under subsection (a) shall be those which the President deems satisfactory * * *.”

Under these provisions the President may authorize the Secretary of War to dispose of airplanes, fuel, spare parts, instruction books and like articles to the British Government for use by British students at an Air Corps training center upon such terms as he deems satisfactory.

(b) With respect to the other feature of the proposal—the furnishing of instruction by members of the Air

Corps—I am inclined to the opinion that such action is likewise authorized by the Lend-Lease Act, but defer consideration of that act as it bears on the subject because it seems to me that there is ample authority resting on broader grounds.

Article II, section 2, of the Constitution provides that the President “shall be Commander in Chief of the Army and Navy of the United States.” By virtue of this constitutional office he has supreme command over the land and naval forces of the country and may order them to perform such military duties as, in his opinion, are necessary or appropriate for the defense of the United States. These powers exist in time of peace as well as in time of war.

In Black, *Handbook of American Constitutional Law* (3d ed., 1910), it is stated with respect to the authority of the President as Commander in Chief:

“* * * in virtue of his rank as head of the forces, he has certain powers and duties with which Congress cannot interfere. For instance, he may regulate the movements of the army and the stationing of them at various posts. So also he may direct the movements of the vessels of the navy, sending them wherever in his judgment it is expedient.” (p. 115.)

Likewise in Willoughby, *The Constitutional Law of the United States* (2d ed., 1929), it is said:

“The constitutional commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the service of the United States, is the President. Through, or under, his orders, therefore, all military operations in time of peace, as well as of war, are conducted. He has within his control the disposition of troops, the direction of vessels of war and the planning and execution of campaigns” (pp. 1565-6).

See also Corwin, *The President: Office and Powers* (1940) pp. 194-7.

Thus the President’s responsibility as Commander in Chief embraces the authority to command and direct the armed forces in their immediate movements and operations designed to protect the security and effectuate the defense

of the United States. As pointed out by the texts just cited, this authority undoubtedly includes the power to dispose of troops and equipment in such manner and on such duties as best to promote the safety of the country. Likewise of course the President may order the carrying out of maneuvers or training, or the preparation of fortifications, or the instruction of others in matters of defense, to accomplish the same objective of safety of the country. Indeed the President's authority has long been recognized as extending to the dispatch of armed forces outside of the United States, either on missions of good will or rescue, or for the purpose of protecting American lives or property or American interests. See Willoughby, *The Constitutional Law of the United States* (2d ed., 1929) pp. 1567-8; Corwin, *The President: Office and Powers* (1940) pp. 240-250; Department of State Publication No. 538 (1934), *The Right to Protect Citizens in Foreign Countries by Landing Troops*.

Under the circumstances now existing the authority of the President to direct members of the Air Corps to instruct British students in the art of aviation would seem to fall directly within the President's power of Commander in Chief as traditionally exercised. Through the enactment of the Lend-Lease Act the Congress has explicitly enunciated the policy that the defense of certain countries now at war, including Great Britain, is vital to our own defense and that the furnishing of aid to such countries is essential to the security of the United States. As the report of the House Committee on Foreign Affairs states, "our national policy is and should be * * * for our own national security, to aid Britain and those other nations whose defense is vital to the defense of the United States by supplying them as quickly and as efficiently as possible with defense articles in a manner consistent with our democratic procedures" (H. Rept. No. 18, 77th Cong., 1st sess., p. 2; see also S. Rept. No. 45, 77th Cong., 1st sess., p. 2). The Congress having authorized, under the policy above stated, certain definite forms of very substantial aid to Britain, it would be anomalous indeed were the President, as Commander in Chief of the Army and Navy, without authority to direct certain of the forces under his command to aid in

instructing those whose defense of their own country is deemed vital to the defense of the United States under present world conditions. I have no doubt of the President's lawful authority to utilize forces under his command to instruct others in matters of defense which are vital to the security of the United States. The broad power to utilize such forces for even more active national defense includes the less power here involved.

I am aware of no statute which seeks to negative this authority in the President. On the contrary, there are provisions of the Lend-Lease Act which support the proposal under consideration. See section 3 (a) (4), in relation to the definition of "defense information" contained in section 2 (b); the report of the Senate Committee on Foreign Relations explaining said provisions (S. Rept. No. 45, *supra*, p. 3); the report of the House Committee on Foreign Affairs (H. Rept. No. 18, *supra*, p. 3), and section 10 of the act, which contemplates the "use of the land and naval forces of the United States" in the "communication of information." See, also, the broad provisions of section 5 of the act of July 2, 1940, c. 508, 54 Stat. 712, 714, reading in part:

"The President is authorized * * * through the appropriate agencies of the Government (1) to provide for emergencies affecting the national security and defense and for each and every purpose connected therewith * * *."

3. I have not discussed the matter of admission of the students to this country under existing statutes applicable to that subject, because this is not within the purview of the memorandum to me; nor whether there is involved any question of international law. As to the latter, the question has been resolved for present purposes, by the settled national policy of aid to other countries whose defense is vital to our own, and is not deemed to be opened for further consideration by the memorandum of reference to me.

Respectfully,

ROBERT H. JACKSON.