International Law Studies—Volume 56

MODERN ECONOMIC WARFARE

(LAW AND THE NAVAL PARTICIPANT)

Neill H. Alford, Jr. (Author)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government, the U.S. Department of the Navy or the Naval War College.
CHAPTER V

ECONOMIC WARFARE AS A SECONDARY POLICY DEVICE

INTRODUCTION

When economic warfare is waged as a secondary policy device in support of military operations, military requirements dictate the choice of economic warfare forms and techniques. Protracted harassment was emphasized in World Wars I and II because required by the military situation.

The web of naval-administrative control devices characterizing Allied economic warfare in both world wars is described in this book as NAVAD blockade. NAVAD blockade is an extension and refinement of contraband controls and controls over enemy property supplemented by various techniques to prevent land shipments by neutrals to the adversary. Features of NAVAD blockade are considered distributively in the materials in this Chapter.

Naval officers figured prominently in NAVAD blockades, although mainly in the interception and diversion of suspected vessels rather than in contributions to economic warfare policy or to the law governing it. Their opportunities to make or influence basic economic warfare decisions were limited when compared to opportunities provided them when economic warfare is waged as a primary policy device. Their “policy voices” were muted and in some phases of economic warfare, silenced, by belligerent practices to centralize the administration of economic warfare and to control potentially hostile shipments at source.¹

But the economic warfare practices of World Wars I and II may not be repeated in their same form. In general wars involving employment or threat of employment of ultradecisive weapons, the techniques of NAVAD blockade familiar in the two global conflicts may be substantially altered. In these, or in “limited” wars, economic warfare by “economic sortie” rather than by “protracted harassment” may be dominant. The military aspects and requirements of wars differ so radically that general assumptions and certainly precise

predictions about the form of economic warfare as a secondary policy device tend to be quite idle.

The Discussions in this Chapter are based upon General Situation 7 and four Special Situations. The economic warfare operations are first conducted unilaterally by the United States (a Naval Blockade, considered in Special Situation 7A) and are then extended as the conflict increases in intensity through enforcement action undertaken by the Organization of American States in which the United States participates. Contraband (Special Situation 7B); Ultimate Destination and related problems (Special Situation 7C); and Maritime Enemy Property Control (Special Situation 7D); are considered in this context of multilateral-regional security action. The entire action occurs with a backdrop of pending major conflict involving NATO. This impending conflict requires the United States to husband its naval resources.

General Situation 7 is followed by a summary of major sources of legal doctrine pertinent principally to economic warfare supporting military operations and an introductory analysis of "neutrality." The reader will find it helpful to examine these before considering the Special Situations.

A. SOURCES OF LEGAL DOCTRINE IN ECONOMIC WARFARE AND THE PROBLEM OF NEUTRALITY

General Situation 7

The Zone of Surveillance proclaimed by the President in Situation 6 was established and the naval action within it executed as directed. Two trawlers, equipped with aerosolizing devices, and having aboard aerosols tentatively identified as containing Melioidosis-B bacteria, have been intercepted and diverted to Key West. Disposition of the vessels, both formerly Scythian trawlers, now of Nuevan registry, is undecided.

During operations in the Zone of Surveillance, a revolt occurs in The Peoples Republic of Carthage, a Scythian ally. Scythia intervenes to suppress this revolt by military force, contending the revolt was organized by the unconventional warfare service of a NATO member. The threats against this member by Scythia are considered so serious that most units of United States STRIKE Command are committed to Europe in support of NATO. Numerous naval units are withdrawn from the Zone of Surveillance and transferred to the United States Sixth Fleet.

Salvaje takes advantage of this reduction of United States strength immediately available for commitment against him to
land troops in Antioka. Assisted by a local revolutionary, Hernando, Salvaje overthrows the Gondomar government. Marshal Gondomar, with his principal officers, are flown to the United States from Coloso. They are recognized by the United States as the Antiokan government-in-exile.

Attacks then occur against United States merchantmen along the Louisiana and Texas coasts by motor torpedo boats. Four tankers are sunk with forty-two crewmen lost.

One motor torpedo boat is destroyed and its crew captured by U.S.S. Buchanan. The crewmen are identified as Nuevan naval personnel. They have been ordered to make selective attacks upon United States shipping in reprisal for interception and diversion of the two Nuevan trawlers now held at Key West.

To forestall further attacks from Nueva or Antioka without committing air or ground forces until the degree of support required for NATO is determined, the President determines to place Nueva and Antioka under naval blockade. Congress has approved the President’s decision by Joint Resolution. The case of the United States has been placed before the Security Council with a draft resolution for action against Nueva and Antioka under Article 42 of the Charter. The Organ of Consultation of the Organization of American States has before it a proposal for action against Nueva and Antioka under Articles 3 and 8 of the Rio Pact.

Admiral Brown, Commander Second Fleet, issues the following declaration of blockade pursuant to orders of the President:

DECLARATION OF BLOCKADE

At 2400 hours, Greenwich time, 3 June 19__, the coasts and ports of the islands of Antioka and Nueva will be placed by order of the President of the United States under blockade by United States naval forces under my command. Neutral vessels or aircraft seeking ingress will be permitted to pass if carrying cargoes of medical supplies or food only. Such vessels having obtained ingress will be permitted egress if in ballast or without cargo. Vessels, surface or subsurface, or aircraft, seeking ingress will transit waters or superjacent airspace in the area delimited by * * * [description by longitude and latitude] * * * on routes indicated upon the attached chart. [Chart omitted.]

Neutral vessels and aircraft which are in the blockaded region at the time of this Declaration are given a period of grace expiring at 2400 hours, 6 June 19__, in which to depart the area blockaded. This period of grace is granted upon the express condition that neutral vessels and aircraft departing the area blockaded do not violate the law of nations.
All means authorized by international law and by treaties with neutral powers to which the United States is a party will be enforced by the United States against surface or subsurface vessels or aircraft attempting to breach this blockade.

A surface or subsurface vessel approaching the blockaded area will be warned by the commander of the intercepting United States naval vessel. This warning will be indorsed on the register of the vessel.

Aircraft will be instructed by radio to proceed to the nearest appropriate landing area under United States control where an appropriate entry of the warning will be made upon the log of the aircraft.

If such vessel or aircraft again attempts to enter or leave the blockaded area, with the exceptions hitherto noted in this Declaration, the vessel or aircraft will be seized and sent to the nearest convenient port of the United States for such proceedings against the vessel or aircraft and its cargo as may be deemed advisable.

Vessels which cannot be searched conveniently at sea and all aircraft will be diverted for search to ports to be designated by the blockade commander. Subsurface vessels encountered in the blockaded area will be warned to surface by exploding four harmless underwater charges, accompanied by the sonar signal IDKCA. Submarines so warned will surface on an easterly course.

Given on board the U.S.S. Columbia at long. _____, lat. _____ at 0900 2 June 19__.

The Secretary of State has notified diplomatic representatives of the President’s order and the Declaration of Blockade. Consuls in Antiokan and Nuevan ports have been similarly notified. Information concerning the Declaration has been broadcast by the Navy at intervals to vessels and aircraft.

Having examined the Declaration, you are now considering the sources of law likely to bear upon the conduct of United States and other naval units and are trying to determine the status to be accorded naval units other than those of Antioka and Nueva. What are the major sources of doctrine? Should vessels other than Antiokan or Nuevan be considered “neutral”?

**Discussion: General Situation 7**

1. **Sources of Doctrine: Economic Warfare at Sea as Secondary Policy Device**

Many of the legal doctrines, or past community policy expressions, applicable to economic warfare at sea, are derived from custom. This custom developed sporadically—principally in the Napoleonic Wars, the American Civil War and World Wars I and II. Much of the
custom is found described in the decisions of prize courts and in national prize legislation.

Several multilateral international transactions are also sources of legal doctrine applicable to sea economic warfare. The most important of these are the Declaration of Paris, 1856, and the “unratified” Declaration of London, 1909. Several conventions formulated at the Hague in 1907 bear in part upon economic warfare at sea. The 1949 Geneva Convention relating to Civilian Persons in Time of War and several other of the 1949 Conventions bear to a limited extent upon maritime economic warfare practices.

---

2 See Naval War College, International Topics and Discussions, 1905, 109 for preamble and full text.
3 See Naval War College, International Law Topics, 1909, for general report and text.
4 IV Convention Respecting the Laws and Customs of War on Land and
5 6 UST 3516, TIAS 3365, 75 UNTS 287.
6 For texts of The Conventions see Naval War College, International Law Documents, 1950–51.

Annex (containing several provisions relevant to blockade, particularly NAVAD blockades) 36 Stat. 2277, TS 539, II Malloy, 2269; V Convention Respecting the Rights and Duties of Neutral Powers and Persons in War on Land (containing provisions relevant to NAVAD blockades) 36 Stat. 2310, TS 540, II Malloy, 2290; VI Status of Enemy Merchant Ships at the Outbreak of Hostilities. (Not signed by United States delegates or ratified. Denounced by Great Britain in 1925.)


III Convention Relative to the Opening of Hostilities, 36 Stat. 2259, TS 538, II Malloy, 2259 is of diminished importance under the aegis of the United Nations and in the light of contemporary power practices. XII Convention Relative to the Creation of an International Prize Court was signed by the United States delegates but not ratified.

No international prize court was established and the modern blockade and other economic warfare techniques render the prospect for such a court remote. All of the Hague Conventions of 1907 may be found conveniently set forth in Naval War College, International Law Situations, 1908, 117–248.
Special conventions, such as those applicable to the Suez\(^7\) and Panama\(^8\) Canals, deny a belligerent right of blockade of the canals at least as to parties to the conventions. The Pan American Maritime Neutrality Convention,\(^9\) signed at Havana in 1928, and ratified by the United States with reservations, establishes as between the American signatories a comprehensive neutrality code bearing directly upon blockade practices. Part IV of the London Naval Treaty of 1930\(^10\) states “established rules of International Law” applicable to submarine attacks on merchant shipping. Numerous conventions of limited scope and bilateral treaties indirectly bear upon blockade practices.

The Declaration of Paris of 1856\(^11\) stemmed from a *modus vivendi* developed between Britain and France as part of their Crimean War alliance.\(^12\) Four points are set forth in the Declaration. As a concession to the British, privateering was abolished. A neutral flag was stated to protect noncontraband enemy goods, and neutral goods not contraband were stated to be immune from capture although under an enemy flag. Directly applicable to blockades of the nineteenth-century type was the statement: “Blockades, in order to be binding, must be effective, that is to say, maintained by force sufficient really to prevent access to the coast of the enemy.”\(^*\)\(^*\)\(^*\)\(^13\)

---


Article III(2) states: “The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.”

Stipulations of the Hay-Pauncefote Treaty were applied to the Panama Canal in Convention for the Construction of a Ship Canal (Hay-Bunau Varilla Treaty) (1903), Art. XVIII. For the difficulties arising in the passage of ships in time of war through these international waterways among others, see Baxter, *The Law of International Waterways*, 187-244 (1964).


\(^10\) 46 Stat. 2858, TS 830, 112 LNTS 65. The text of this treaty will be found in *Naval War College, International Law Situations, 1930*, 139, (Part IV at 159).

\(^11\) See Fn. 2, *supra*.


\(^13\) The French rendition of this provision is: “Les blocus, pour être obliga-
The four parts of the Declaration were stated by the declarants to be inseparable. Other states were invited to accede to the Declaration; and all significant maritime states have done so except the United States.

When President Pierce expressed his objections to the British and French proposal in 1854, the United States did not contemplate the creation of a large navy yet cherished a long-standing grievance against both France and England for seizures of private property at sea during warfare. Consequently, President Pierce was prepared to renounce privateering only if all noncontraband private property, including that owned by citizens of belligerents, whether or not under an enemy flag, should be exempt from seizure.14

With the development of a large navy by the United States and the gradual extension of the scope of contraband lists by belligerents in World Wars I and II, the objections voiced by President Pierce are no longer viable. The United States applies the provisions of the Declaration without accession.

The London Declaration, 1909,15 unlike the Declaration of Paris, 1856, contained a provision for ratification as well as for adherence by powers not represented by the London Conference.16 Article 68 of the Declaration provided for effectiveness only upon ratification.

The British House of Lords failed to approve the declaration and Great Britain failed to ratify. Since Great Britain was then the major naval power, and had called the Conference, the other declarants refused to ratify also.

The Declaration was accepted by the belligerents in the Turco-Italian War of 1911 and the Balkan Wars of 1912–13 and was applied by the British and French with certain additions and modifications at the beginning of World War I.17 After three further modifications,18 the decision to apply the Declaration directly was

14 See Naval War College, International Law Topics and Discussions, 1905, 111-112.
15 See Fn. 3, supra.
16 Germany, United States, Austria-Hungary, Spain, France, Great Britain, Italy, Japan, Netherlands and Russia were represented at the Conference.
18 Order-in-Council (Declaration of London No. 2) 29 Oct. 1914, 108 Brit. and
withdrawn with a decision announced to exercise belligerent rights "in strict accordance with the law of nations." 19

Provisions were inserted in the Order concerning facts to raise a presumption of hostile destination required for condemnation of contraband articles; expressly extending the doctrine of continuous voyage to blockades; clarifying the unneutral service doctrine to be applied to a neutral vessel carrying contraband which proceeds to an enemy port despite the destination shown on her papers; and providing for capture and condemnation of a vessel carrying contraband if—by value, weight, volume or freight—the contraband forms more than half the cargo.

Despite failure of the Declaration of London of 1909 to develop as the basis of a formal legal regime for naval war, the rules represent a consensus concerning blockade, contraband, unneutral service and enemy character among major sea powers in the early twentieth century. Had the House of Lords approved the Declaration and Great Britain ratified, it seems generally agreed that other participants in the London Conference would have followed suit.

Some provisions of the Declaration, particularly those relating to contraband, contained a built-in obsolescence element rendering them useless in World Wars I and II. The theme emphasized in the Declaration, the importance of safeguards for private property at sea, may render the Declaration principles entirely inapposite in any future naval contest with Communist powers or in contests in which the navies of merchant shipping of these countries become significantly involved.

The Hague Conventions of 1907, because of their general participation clause, were not technically in force in World Wars I and II. But prize courts of several countries and international tribunals have pointed out that the Hague provisions may reflect accurately an existing and binding custom.

One cannot assume, of course, that the discovery and application of legal doctrine from either custom or treaty will provide a certain standard by which contemporary community characterizations of economic warfare at sea will be guided. One obvious difficulty is presented by the breakthroughs in physical sciences leading to improvements in naval hardware.

F. St. P. (Pt. II), 156; Order-in-Council (Declaration of London No. 3) 20 Oct. 1951 (Abrogating Art. 57 of Declaration of London which states that neutrality of a vessel is determined by flag she is entitled to fly) 109 Brit. and F. St. P., 344 (1915); Order-in-Council (Declaration of London No. 4) 30 March 1916, 110 Brit. and F. St. P., 173 (1916).

Some important developments since the Declaration of London are in subsurface vessels and aircraft and in electronic scanning devices and nuclear power. These improvements are conducive both to the effective establishment and breaking of blockades and to the efficient carriage and efficient interception of contraband. Controls by governments over their internal economies have vastly expanded. State trading and interlocking private business arrangements present special problems in determining enemy character.

These and other difficulties will be considered distributively in discussions of the various Special Situations. However, embedded in all doctrinal sources from which viable policy standards might be developed is an analysis of belligerent “rights” in terms of “neutral rights and obligations.”

The concept of neutrality has at all times been shifting and elusive. This might be expected when one attempts to deal with a physiological process of withdrawal from conflict by applying legal norms developed to regulate participation. Yet it is important to understand how neutrality is used in economic warfare at sea. Thus the subject of neutrality will now be examined prior to a detailed treatment of specific economic warfare problems.

2. Neutrality and Economic Warfare at Sea

Several preliminary and provisional generalizations may be based upon the troubled history of neutrality in sea warfare.

(a) “Neutrality,” while used to describe a complex of claims stemming from military conflict, typically characterizes a limited withdrawal from conflict by an avowed nonparticipant. Seldom is the withdrawal complete. Some contact is maintained by the nonparticipants (neutral) with one or more of the participants (belligerents).

(b) Nonparticipants (neutrals) tend to assert a legal status quo.

20The general thrust of legal development has been the creation of legal institutions to maintain a dynamic balance in the flow of values within a community. To maintain this balance, most legal techniques have been directed to moderating the pace of change within the community by orderly methods for resolving conflict and controls over the results of conflicts.

In primitive communities, there is little concern with the withdrawer from conflict—he takes his chances without the protection of kindred or tribe. In more highly organized communities, all withdrawal phases become of increased importance—being enforced (as in imprisonment or exile) stabilized (as in quarantine for disease) or prevented (as in penalties for desertion from the military services or sleeping on guard duty). It has proved much simpler to deal with the basic problems which legal institutions were first developed to solve—cases of physical injury or business disagreement—than to use these institutions to maintain or break the cords of community contact.
The tendency is to rely almost exclusively upon past expressions of legal doctrine for guidance. The strategic position of the neutral (in a legal sense) essentially is defensive. The initiative and factual perspective of the nonparticipant tend to be sharply limited.

(c) Participants tend to hold the legal initiative in dealing with conflict withdrawals. Participants, however, labor under the disadvantage of ambivalence in applying legal institutions. To accomplish their economic warfare objectives, participants incline towards an aggressive formulation of novel neutrality doctrines. At the same time, participants seek stability in much neutrality doctrine with a view to their future nonparticipation in conflict.

The neutrality policy of the United States has changed directions in the past like a weather vane in an uneasy wind. As a participant in conflict, the United States has been a leader in formulating new restrictions upon neutrals. As a nonparticipant the United States insists with equal vehemence upon the vitality of neutrality doctrine of the past.

Operation of the factors briefly outlined in (a) through (c) has invited chaos in international law concerning withdrawals from conflict. Part of this impending chaos stems from basic limitations upon the use of legal institutions for policy guidance. The chronic obsolescence of legal doctrine has been mentioned repeatedly in earlier discussions in this book. Obsolescence is accentuated in withdrawal problems by the strikingly sporadic formulation of neutrality law.

From the perspective of the participant, three immediate objects tend to be involved in applications of neutrality law. The withdrawal must be (1) forced; (2) stabilized; or (3) prevented.

In past naval warfare at sea emphasis has rested upon forcing complete withdrawals through the interception of commerce of nonparticipants and by other pressures. Emphasis may well rest in the future upon stabilizing or preventing withdrawals. In nuclear warfare, for example, nonparticipants may be carefully cultivated by the participants in a manner which will expand the participation of a neutral state rather than the contrary.

Each claim to nonparticipation or limited participation in conflict, whether or not couched in neutrality terms, tends to be sui generis. A premium for each decision maker lies in the development of a maximum span of multidimensional factual perspective relevant to opposed participation and nonparticipation claims in each confrontation.

Basic to an analysis of claims to participation and nonparticipation in armed conflict is discrimination between the pattern of factual interaction, the claims asserted by the participants and nonpar-
participants and the flow of authoritative decisions which bear upon these claims. This discrimination is especially useful when dealing with economic warfare used as a secondary policy device. In these cases, facts relevant to opposed economic claims are often obscured by glaring military requirements.

**Pattern of Interaction Between Participants And Nonparticipants: General Conditions for Action**

The pattern of interaction among participants and nonparticipants in the economic sphere reveals much stability in practice since World War I. There is a prospect of future major evolution in practice due to the rapidly changing general conditions by which all international processes for coercion are affected. These general conditions furnish a background for all decisions in current conflict contexts and thus will be considered briefly.

The current power environment is characterized by rapid erosion of the post-World War II bipolar power structure. The pattern is one of withdrawal from the shelter afforded by the superpowers—the United States and the Soviet Union. Such a withdrawal is permitted by the military stalemate produced by a temporary balance in nuclear armament.

This process is demonstrated by the growing spirit of independence among Soviet satellites, the breakdown of European colonial structures, and frequent challenges to the influence of the United States in Latin America. Pronounced strains have been experienced in NATO. “Neutralist” countries seek competing economic assistance from the United States and the Soviet Union. Red China has made a bid for leadership within the Communist and uncommitted worlds. There is no likelihood that this trend of withdrawal from the central arena of struggle between the United States and the Soviet Union will be reversed.

These withdrawals from the central arena of conflict have not been accompanied by withdrawals from conflict generally. To the contrary, the withdrawing nations have exhibited a belligerent spirit. In any future major war, these aggressive postures may be expected to offset a trend towards withdrawal from military violence. Extensive economic contacts may be claimed with belligerents. Many of the states in the process of withdrawal currently are nonviable economically. The continued economic contact with sources of materials and technology will be critical. The probability is that these nations will appear as active proponents of neutral rights while being peculiarly susceptible to economic coercion.

Contraposed to this general pattern of withdrawal is the orga-
nization in the United Nations of a world community structure. This structure rejects as a premise the prerogative right of a sovereign state to engage in warfare and postulates a viable administrative structure by which recourse to force will be held at a minimum and persuasive practices in interstate relations encouraged. A principle of minimum order is established which members of the organization and less comprehensive organizations are committed to support.

When, by the processes for authoritative decision within comprehensive organizations of this nature, a state is deemed to resort to coercion "illegally," member states no longer are entitled to treat participants in the conflict impartially. They must discriminate and award differential treatment to the combatants.

A possible escape for the withdrawer lies in incompleteness of the pattern of commitments. The involvement of nonmembers in armed conflict is a typical example. The commitment may be argued as inoperative in a case in which both the Security Council and the General Assembly fail to act to preserve peace.

These routes for evasion, coupled with the trend toward withdrawal or noncommitment, have contributed to expectations that differences between states will be solved by violence and intervention by comprehensive security organizations will prove ineffective. A condition tending to weaken these expectations is the preparedness of the United States, and other states with an interest in international order, to act to preserve peace until comprehensive security organizations can shoulder this burden.

The expectation that interstate differences will be solved by violent methods nevertheless remains pervasive. The tendency in a power context is to think in terms of balance, with the chance of effective withdrawal by a nonparticipant in conflict, armed or otherwise, depending upon the common interest of major powers to prevent interferences with or incorporation of the smaller withdrawing members of the community. As stated by McDougal and Feliciano: 21

* * * /T/he probabilities of noninvolvement in a given conflict appear to be a function of, among other factors, the general configuration of the arena and of the maintenance of a relative equilibrium of power between the belligerents inter se, as well as between the belligerents and nonparticipants.

The expectation as to effectiveness of a balance of power to safeguard the withdrawer is a pessimistic one. The range of raw ma-

21 McDougal and Feliciano, Law and Minimum World Public Order, 392 (1961). The analysis of neutrality here suggested follows substantially the outline propounded by these authors.
terials necessary to sustain a contemporary military effort upon a broad scale may induce a participant in military conflict to subject a withdrawing state to its direct governmental control.

The destruction of industry by nuclear weapons may attenuate wars to such a degree that participants will have no opportunity to press their claims to control raw material sources upon nonparticipants. It is equally possible that the trend under such circumstances will be toward "open" or "effectively neutral" states sustained by the common interest of participants. This common interest may be founded either upon the preservation of neutrals as havens or places of refuge for civilian populations or upon the use of the neutral as a figure in nuclear strategy. These developments are conjectural. However, the use of nuclear armaments in warfare promises profound shifts in neutrality doctrine.

Conflict Situations

Turning from the conditions to which any current naval decision made during conflict will be subject and concentrating upon particular conflict situations, it is desirable to identify carefully both participants and affected nonparticipants in the conflict and to appraise their policy processes. The participants should be identified, both on a formal and on an effective level.

In General Situation 7, the United States, Nueva and Antioka are participants. Neither the United Nations nor the Organization of American States are yet participants in the sense either has characterized the action of Nueva or the action of the United States as "permissible" or "impermissible." Scythia is a nonparticipant, but can shift quickly in either direction.

In some cases, participants or nonparticipants on an informal level will be involved. Merchants, for example, had much influence upon British policy as a nonparticipant during the American Civil War; and similar influence has been exerted by American merchants upon United States policies in our periodic phases of neutrality.

Participants and nonparticipants are characterized by the comprehensiveness of their organizations and the locations of decision makers involved in the particular confrontation within the policy structures of their organizations. Concomitant consideration of these features is useful in predicting the primacy of objectives which will be sought in the contest and the latitude for concession which the immediate decision makers will enjoy.

With an international security organization as a participant, such as the United Nations, the primary objective will be reestablishing order with minimum destruction of values. Decision makers of such an organization, concerned with the blockade and the under-
lying conflict between the United States, Nueva and Scythia, usually will have an extensive latitude for concession.

The bases of power of the participants and nonparticipants should be assessed on the basis of: (1) diversity; (2) dispersion; and (3) magnitude. Upon what values does a participant base its power? The usual territorially based community, excluding minor principalities, will enjoy a multivalued power base. These values may be concentrated or dispersed. Stockpiling practices of the United States, pursued intensively after World War II, have placed the United States in a secure resource position. This secure position may be relied upon defensively to support a claim of neutrality if the United States chooses nonparticipation in a conflict between major powers. The position may be relied upon offensively when economic warfare is used as a primary policy device. It may also be used as a bargaining element when the United States is a participant, uses economic warfare as a secondary policy device, and deals with a nonparticipating state possessing a strategic resource.

The failure by a participant to develop such a resource base for the production of values in sufficient diversity and magnitude will limit its warmaking potential. The failure also will bear significantly upon its relations with nonparticipants which possess an adequate resource base. Nazi Germany, for example, failed to stockpile strategic materials for a war of the duration which World War II proved to be. During the Russian campaign, an invasion of Sweden, a nonparticipant, might have been to the military advantage of Germany but could not be considered seriously because of the dependence of Germany upon Swedish iron, steel and precision parts, resources which might have been lost in an invasion by application of a Swedish "scorched earth" policy.

Writers have emphasized relative magnitudes of power in determining lines of compromise between participants and nonparticipants in conflict. The diversity and dispersion of bases of power are also

---

22 General Thomas, director of the Rustungs- und Wirtschaftsamt, OKW, defined Hitler's instructions for war mobilization as a choice of armament in width instead of armament in depth. Apart from the miscalculation of a short war, German accumulation of stockpiles of critical materials was hampered by a shortage of foreign exchange.

23 E.g., McDougal and Feliciano, Law and Minimum World Public Order, 388 (1961); Orvik, The Decline of Neutrality 1914–1941, 13 (1953). Other writers place emphasis upon "sanctions" supporting neutrality, describing the institutional structure by which neutral claims are asserted, and appear to place value upon the routine functioning of these institutions as sanctions supporting neutral positions. Professor Stone, for example, while apparently considering the relative power of participants and nonparticipants highly significant refers
significant. These, coupled with the determination of the competing parties, are of the greatest relevance in establishing their bargaining power and the outcome of a neutrality contest as well as the types of neutral claims asserted.

The objectives of participants and nonparticipants can be anticipated by an appraisal of the comprehensiveness of their organization. In addition their objectives can be characterized in terms of exclusiveness or inclusiveness. The objectives of the withdrawer (nonparticipant or neutral) tend to be exclusive in the sense that the values sought to be protected are not to be widely shared. The objectives of the participant tend towards inclusiveness, not for philanthropic reasons, but simply because the participant tends to seek allies and thus projects its policies as those in which values are intended to be shared—at least by the potential allies whose favor is courted.

The objectives of both participants and nonparticipants in a situation of intense conflict tend towards exclusiveness when compared to the objectives of the United States when taking action in a low intensity conflict such as that described in *General Situation 7*. The objectives of a state taking interim sustaining action to preserve the peace, pending action by the United Nations or a regional security organization, and thus tending to support the general security and well-being of states other than those against which the action is taken, have dominantly “inclusive” characteristics. The inclusiveness or exclusiveness of the objectives sought by participants and nonparticipants will bear importantly upon the persuasiveness of their arguments to support belligerent and neutral claims to rights and obligations.

While in part a matter to be considered as part of the general conditions under which conflict currently occurs, but useful to consider as an element of a special conflict situation, the orientation of the participant or nonparticipant concerning government ownership or control of trading activities is an important feature in an analysis of objectives. The overall volume of trade now handled by private entrepreneurs in sea commerce has been drastically reduced. States tend towards public ownership of trading facilities. Democratic states are asserting extensive administrative controls over shipping policy, maritime construction, labor conditions and over the volume and character of imports and exports. To the extent that

a nonparticipant owns its shipping facilities or asserts controls which are tantamount to ownership, to this extent the traditional legal dichotomy between state and private trading in a neutrality context is eroded.

Moving from an orientation in terms of participant and nonparticipant characteristics to an analysis of the nature of the conflict between participants and the degree of involvement of “nonparticipants,” three features should be considered: (1) The dimensions of the conflict—both institutionally and geographically; (2) Intensities—including strategies and techniques employed by participants and nonparticipants; and (3) Specific claims to participation and nonparticipation asserted. These features are interrelated. The tendency, for example, is for a current contest between states evenly matched in an intermediate power range to become complex institutionally or “vertically.” Each state seeks assistance and allies. The threat of acceleration of violence is such that international security organizations, developed to prevent or confine extensions of violence, are involved immediately. The recurrent contests between Israel and its Arab neighbors are excellent examples.

Powerful nonparticipants furnish assistance to their favorites in the struggle with their degree of participation conditioned or at least complicated by their commitments to the international security organizations which also are involved. Claims of neutral rights by these nonparticipants, which they can support by force, are nevertheless curtailed by their obligations to international organizations which seek to confine the conflict and resolve it.

The contest between the United States, Nueva and Antioka, while between participants unevenly matched and currently confined geographically, is subject to geographical extension by fusion with the concomitant contest between Scythia and NATO. Without this extension geographically, the contest promises to become complex only institutionally—by participation of the United Nations, the Organization of American States and perhaps other international organizations.

Conditioned claims of neutrality may be asserted if this institutional complexity develops with neutrality claims of a “traditional” nature asserted if institutional complexity does not develop. If the conflict is extended geographically to one of general dimensions, an unlikely event if the United States and Scythia are both armed with ultradecisive weapons, the institutional (vertical) dimension will recede in importance but traditional neutrality claims will be curtailed both in assertion and in respect by the overwhelming power of the participants.
The neutrality claim is thus likely to have its maximum effective scope when the conflict is limited geographically; but the claim in this situation will tend to be conditioned by the institutional complexity or institutional (vertical) dimensions of the conflict.

The intensity of the conflict will also have a bearing upon the claims asserted by nonparticipants which are recognized by participants. In high intensity conflict, strategies involving the use of ultradecisive weapons, such as nuclear, chemical and biological weapons systems, as well as ideological and economic warfare, will figure prominently.

Not only will the character of neutrality be greatly modified by the socialization of risk in the potentialities of ultradecisive weapons and the general effects resulting from their use, but supporting ideological and economic warfare will be directed to a major extent against nonparticipants with a view to indirect effects upon the opposing belligerents. In conflicts of less than maximum intensity, such as the conflict in General Situation 7 in which economic warfare is being employed to maintain an area status quo to support a military commitment to NATO, claims of nonparticipants are likely to be extensive and their recognition by participants probable.

**Claims to Participation and Nonparticipation**

What claims have been asserted to participation and nonparticipation in past conflicts and what has been the structure and process of decision making with respect to them? What claims to participation and nonparticipation are asserted in current General Situation 7 and what will the structure and process of decision making with respect to these likely be? The pattern of claim and counterclaim to participation and nonparticipation in past conflicts may be described briefly in three categories.

(1) First are claims to participation or nonparticipation based upon self-preservation or self-defense. These claims and the structure and process of decision making with respect to them have been discussed in Chapter IV, Situation 6, in the context of economic warfare as a primary policy device. These claims also have a bearing upon belligerency-neutrality contentions in military conflict when economic warfare is used as a secondary policy device. The claims, however, will probably be asserted by participants and nonparticipants with maximum force in conflict in which ultradecisive weapons with generalized physical effects are employed; and in such a conflict the maintenance of a community structure for authoritative decisions bearing upon such opposed contentions will be difficult. The problem thus assumes the shape of one not amenable to the
influence of legal norms and is not discussed in further detail here.

(2) Second are claims by an original or nominal nonparticipant either to intervene or withdraw from military conflict between other states. The claim of intervention is based upon an authorization or requirement, the latter imposed by a collective security arrangement, to maintain the peace. The measures undertaken might range from "policing" military measures to various forms of ideological or economic assistance to a state characterized by the intervenor or a collective security arrangement as the victim of an aggressor. The action might be volitional or nonvolitional. An offended belligerent will counterclaim that the intervenor, because not a subject of attack, has a duty of abstention or impartial treatment. The opposed contentions normally will be discussed in the context of the commitments of the intervening "nonparticipant" as a member of a collective security arrangement.

The same context will be relevant if the nonparticipant insists upon withdrawal from the conflict rather than upon intervention. An offended victim of aggression will insist upon the obligations of the withdrawer based upon its treaty commitments or upon a characterization of illegality by organs of the United Nations or a regional security organization.

(3) Third are claims made in a context of "permissible nonparticipation" (that is, when participation is not required by a collective security arrangement) concerning specific belligerent-neutral (participant-nonparticipant) relationships. The most important group of specific claims in this category for the development of a decision in General Situation 7 are claims by a belligerent to interdict economic intercourse between a nonparticipant and the opposing belligerent. Of less immediate relevance to a consideration of problems of economic warfare at sea are participant claims against nonparticipants to abstain from direct military aid to opposing belligerents; and claims by nonparticipants against participants to abstain from direct military intervention in the territory of the nonparticipant.

Community decisions concerning claims in these three categories may be rendered at levels of authority ranging from representatives and officials of international organizations functioning during the conflict to prize courts and administrative officials at ports of diversion of the belligerents.24 Decisions may also be rendered by

24 A convenient description of prize courts and their jurisdiction may be found in Colombos, The Law of Prize (2d Ed., 1940). To administrative officials at ports to which vessels might be diverted, can be added the host of navicerting officials and economic warfare officials functioning during modern military
international courts and claims commissions when the conflict has terminated.  

The objectives of international organizations as participants in conflict have been considered heretofore in this analysis. National prize courts and administrative officials of a belligerent predictably will share the objectives of the belligerent. Prize courts, however, tend to build up a body of prize doctrine conforming quite closely to norms established by world community decisions. While belligerents can and have changed their national prize law by legislation to accomplish wartime objectives, these changes are made infrequently and tend to encounter judicial resistance.

With respect to the two general categories of claims principally relevant to economic warfare at sea: (1) The claim by an original nonparticipant either to intervene in conflict to preserve order or withdraw from it; and (2) Claims in a context of “permissible nonparticipation” concerning specific participant-nonparticipant (belligerent-neutral) relationships; basic policies of community decision makers have been established by agreement—by multilateral conventions.

Policies concerning claims of the first category currently are expressed in the United Nations Charter and constitutive and other instruments of regional security organizations or arrangements established under Charter provisions. These agreements express generally the revived policy of minimum order.

Agreements concerning claims in the second category, such as the Declaration of Paris, 1856, the London Declaration, 1909 (unratified), relevant Hague Conventions of 1907 and the Pan American Neutrality Convention of 1928, heretofore described, basically are codifications of custom developed over several centuries. These older conventions do express a policy for minimum value destruction. Such values include the well-being and respect of the individual as well as his wealth.

The policy of minimum value destruction remains viable. But detailed prescriptions in the older conventions must be reconciled in community decisions with the minimum order policy expressed in the later United Nations Charter and related agreements.

The postconflict claims decisions, by and large, tend to involve rough and ready compromises in which the principles of decision remain obscure. To a degree the Alabama Arbitration shared this defect, although the Commission induced the parties to agree to the Treaty of Washington establishing three rules for determination of the various cases. A full account of the Alabama proceedings may be found in I Moore, *History and Digest of the Arbitrations to which the United States has been a Party*, 496-665 (1898).
The community methods for characterizing particular resorts to coercion as permissible or impermissible in the light of these principles, and the community methods for identifying a transgressor, have tended, during the twentieth century, to become centralized in formal decision-making structures. The formal pattern of state commitments to support of these decisions has become more comprehensive. But commitment practices have been eroded effectively by systemic conflict since the end of World War II and the pattern of withdrawals from this conflict previously described.

The Covenant of the League was the first significant formal departure from the traditional international legal position that a state had a sovereign right to resort to war. It was thus also the first significant assault upon the traditional doctrine of neutrality.

The Covenant, conservatively, stated four cases in which resorts to war were impermissible. These prohibitions were not, however, supported by a decision-making structure which definitely could: (1) characterize a breach; (2) label a wrongdoer; or (3) direct consequent action by members.

The authority of the League Council was limited to recommendations to its members; and an undertaking in the Covenant for economic action and severance of communications with a transgressor was construed to be operative only if the member whose response was solicited determined that the transgressor had breached the Covenant. In a practical sense, this left the imposition of economic sanctions to the volition of individual members, many of whom failed to act in patently appropriate cases. By the outbreak of World War II most of the League members viewed economic sanctions as nonobligatory.

In this decentralized system for developing the relevant decisions,

---

26 The four prohibited cases were: (1) No resort to war without submission of dispute to arbitration, judicial settlement of inquiry by council (Art. 12); (2) No resort to war within three months after award, decision or report by arbitral tribunal, court or council (Art. 12); No resort to war against member complying with award, decision or report (Art. 13(4), Art. 15(6)—if report of council unanimously agreed to by other than parties to dispute); (4) Nonmember cannot resort to war against member without meeting certain conditions of inquiry by council (Art. 17).

27 Art. 16(1): "Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not."
nonparticipations were endemic; 28 and, in the festering chaos which immediately preceded World War II, claims to avoid participation in the impending debacle were “asserted with a vigor begotten of desperation.” 29 This hopeless flight from an engulfing conflict was not stemmed by the Pact of Paris of 1928 (Kellogg-Briand Pact) in which war was renounced by the signatories as an instrument of national policy.

The Kellogg-Briand Pact did provide a basis for permissive participation by a signatory in maintaining order, whether a Member of the League or not. It also provided a ground for discrimination by a military nonparticipant against a violator of the Pact in a manner which would conflict with the traditional neutral duties as formulated in custom and as embraced in earlier conventions. The early World War II exchange of destroyers for bases by the United States and the Lend-Lease Act of 1941, both before the formal entry of the United States into the War, could be reconciled with the neutral “obligations” of the United States by a “right” to discriminate against Nazi Germany as a violator of the Kellogg-Briand Pact.

In the United Nations system for collective security, the weaknesses of the League were partially repaired by centralizing in the Organization power to characterize as impermissible exercises of coercion in a broader spectrum than the limited “resorts to war” mentioned in the Covenant. The Security Council could identify the transgressor. In addition to recommending action to settle a dispute, or to maintain or restore international peace or security, the Council could decide what measures not involving the use of armed force should be employed and call upon the members to apply them. 30 It could also act by the use of armed force. 31

28 Declarations of neutrality were made by nonparticipants in the Turkish-Greek War of 1921 and in The Chaco War. Upon the outbreak of hostilities in 1939 there were numerous declarations. Furthermore, the Pan American Neutrality Convention of 1928 was ratified by some League Members and the Nine Power Treaty of 1922, signed by nine League Members, contained provisions respecting the neutrality of China in time of war to which she was not a party. There were also a number of bilateral treaties concerning neutrality.


30 Article 41: “The Security Council may decide that measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

31 Article 42: “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may employ, blockade, and other operations by air, sea or land forces of Members of
By Article 25 the members agreed to accept and carry out the decisions of the Security Council in accordance with the Charter; and in Article 2(5) to give the United Nations every assistance in any action it takes in accordance with the Charter and refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

A significant gap in the pattern of commitments to support Council action was the keying in Article 43 of the obligation to furnish armed forces, assistance and facilities to special agreements between the Security Council and members or groups of members. These agreements have not been made and the provision of the forces contemplated in Article 42 hinge upon the recommendation of the Security Council and the goodwill of the members.

There was, however, a block to any Security Council action, whether recommendatory or not, in the veto. While the issues might then be discussed by the General Assembly or its Interim Committee under the Uniting for Peace Resolution, a decision rendered would be recommendatory and impose no obligation to act upon the Members. However, consideration of the issues by the General Assembly would permit characterizing the coercion as "permissible" or "impermissible" with identification of any transgressor.

Although the level of commitment as a result of the veto was only slightly higher than under the League, the traditional neutrality pattern was substantially changed by other features. These were centralization of the characterization process; an obligation under Article 2(5) to abstain from aid to any state against which the United Nations was taking preventive or enforcement action; and commitment under regional security arrangements or agencies contemplated under Article 52.

In the Rio Pact (Inter-American Treaty of Reciprocal Assistance) of 1947, the Organ of Consultation can agree upon and direct ruptures of diplomatic relations and interruptions of economic relations, transit and communications with a transgressor. It can only recommend uses of armed force. 32 The Organ of Consultation takes its decisions by a vote of two thirds of the member states. 33

Under the United Nations aegis, if coercion is characterized as "impermissible" by the Security Council or the General Assembly, and a transgressor is identified, the maximum degree of "permissible

33 Ibid., Art. 17.
nonparticipation" is enjoyed only by nonmembers. A nonmember might nevertheless be committed to participate pursuant to a regional security arrangement.

Members of the United Nations are bound to no participation simply upon recommendation of the Security Council or General Assembly. "Permissible" participation is possible. If action is directed by the Security Council, for example under Article 41, members are committed to comply.

When coercion is not characterized as impermissible by appropriate organs of the United Nations or regional security arrangements, community decisions concerning specific participant-nonparticipant relationships will be formulated in the traditional manner. The degree of "permissible" participation under these circumstances is limited. A "nonparticipant" may accord differential treatment to participants based upon conventions such as the Kellogg-Briand Pact. Self-defense or interim sustaining action are viable bases for limited participation.34

McDougal and Feliciano recommend states under these circumstances should characterize "impermissible" coercions and discriminate among participants in appropriate gradations by decisions of a provisional nature.35 If goals are shared by the characterizing states, diverging characterizations with resulting chaos might be avoided. There is a common interest in preserving minimum order which might militate against these divergences.

In General Situation 7, no characterizations of the coercive exchanges have been made by community institutions. This may soon occur. May Scythia, under these circumstances, characterize the conflict and discriminate against the United States?

Nonparticipation seems the proper course unless a different posture can be taken by treaty or on defensive grounds.36 Although the United States has not declared war against Nueva and Antioka, blockade is a belligerent act: in this case responding coercion—defensive in nature. Correspondingly the United States must treat Scythia as a nonparticipant or as a "neutral" until its policy of participation or nonparticipation is expressed.

It is unlikely, however, that Scythian withdrawal from this conflict will be complete until the coercive exchanges are characterized.

34 See Chapter IV(B) (Situation 6).
36 Judge Jessup and Dr. Bowett, for example, recommend nonparticipation absent a community characterization of the coercion. Jessup, A Modern Law of Nations, 205 (1948); Bowett, Self-Defense in International Law, 180 (1958).
The most apt description of its position in such a case, assuming no military involvement, is that of "military nonparticipant."

The Security Council or the General Assembly (or its Interim Committee) may or may not characterize the initiating coercion by Nueva and the responding coercion by the United States as "permissible" or "impermissible." Whether or not a characterization will occur can usually be ascertained within about forty-eight hours after the appropriate organ is notified.

If no characterization occurs, the Security Council or the General Assembly will probably attempt peaceful settlement of the dispute. Members of the United Nations are committed to support these efforts towards a peaceful solution.

During the initial forty-eight hours, or longer or shorter time period, while the policy of the appropriate organ is in doubt, the actions of members may range from active military intervention, perhaps on a theory of self-defense or "interim sustaining action" to preserve the peace, to military nonparticipation with economic contact only with participants, to substantially complete withdrawal both in a military and economic sense.

Discrimination against participants may be anticipated until community policy is clarified. When community policy is clarified, discrimination may be anticipated against the identified transgressor. In the unlikely event the community policy is one of detachment and noninvolvement, pressures by participants will tend to reinforce the traditional neutrality norms of nondiscrimination by nonparticipants.

B. NAVAL BLOCKADE

Special Situation 7 A

You are Captain of U.S.S. Buchanan, a destroyer, now on blockade. You have received a copy of the Declaration of Blockade stated in General Situation 7 with supplementary operational instructions. You have reviewed the Instructions to United States Naval Forces Employed in Blockade Operations.

A Scythian merchantman, Electra, is approaching your position. The vessel is not proceeding on the course on the chart attached to the Declaration of Blockade. You have radio contact with the master of Electra. He states he is bound for Rivadavia, Nueva; that his cargo is none of your business; that he knows of no blockade; that Electra is a public vessel of Scythia, and an attempt by you to seize her will be an act of war.
Anticipating difficulty with the master when you halt Electra for a visit and search or diversion, you are reviewing the principles of naval blockade before you issue final instructions to your boarding officer. What are the principles of naval blockade and how will these principles bear upon your handling of Electra and her master?

**Discussion: Special Situation 7 A**

The blockade declared by Admiral Brown will be conducted as a blockade in depth. The blockade may be described today as a “Naval Blockade”—but should not be understood as a “close” blockade of the 19th-century type.

The Federal blockade of the port of Wilmington, North Carolina, is a good example of a 19th-century “close” blockade. The entrance to the Cape Fear River, the sea approach to Wilmington, is divided by Smith’s Island into two channels—Smith’s Inlet and New Inlet.

Because of poor communications and the distance between the channels, the inner Federal blockading force was divided into two squadrons—one squadron being stationed at each entrance. Each squadron operated independently.

During daylight the ships were at anchor at close intervals. The squadron at New Inlet was anchored just beyond the range of the Confederate guns at Fort Fisher. During darkness, the blockaders raised anchor and patrolled, using pyrotechnics to maintain contact with the anchored flagship.

Beyond the inner force was a second division of cruisers. These usually were under way. Beyond these was a third cordon of blockaders stationed at a variable distance. This distance was estimated by the travel time of a blockade runner crossing the Wilmington bar at high water at night. In theory, the blockade runner, if sufficiently fortunate to escape the first two forces during egress at night, was supposed to be snapped up by the third cordon at daybreak.

While this scheme appeared better designed to capture cotton leaving Wilmington than guns and ammunition going in, it seems at first glance sufficiently tight to deter the most ambitious blockade runner.

However, more tonnage entered and departed the Cape Fear River during the war years preceding the fall of Fort Fisher than in double the equivalent time before or since. So refined had techniques become for running “close” blockades that a British naval maxim declared the best blockader an ex-blockade runner. Hobart Pasha,
a British naval officer on half pay, who ran the Wilmington blockade with regularity, conducted a highly effective blockade for the Sultan of Turkey against the Greeks after the Civil War.

Blockade runners of shallow draft had an advantage of freedom of maneuver against a "close" blockade. Slipping in to a point on the coast, north or south of Wilmington, the runner could skirt the breakers until she reached the protection of the Confederate coast artillery. These guns, upon signal, kept the blockaders at bay until the runner could work her way into the Cape Fear River.

During egress at night, the runner departed before high water, avoided the inner force by passing so close to the flagship that patrols could not fire effectively even if the runner was discovered, and by daylight was beyond the third division on her way to Bermuda or Nassau.

Experiencing similar frustration at most of the major blockaded ports, the Federals came to rely to a great extent upon supplementary long-distance interceptions. These were founded upon the doctrine of contraband and upon the doctrine of continuous voyage.

The effectiveness of these more distant operations was demonstrated by the significant constriction of Confederate commerce evident from 1863 until the end of the war. In 1863, operations of this extended type were the minimum factually effective blockading efforts. The "close" blockades practiced at Wilmington and other Confederate ports, regarded as "effective" legally by many international lawyers, were of doubtful efficiency in snaring blockade runners powered by steam.

"Close" blockades of the 19th-century type were designed to interdict sailing vessels—and sailing vessels often fell prey to the blockaders of Confederate ports. Such a "close" blockade might be useful again in areas in which sailing vessels or vessels of low power are used extensively in trade.37 Had the Federal blockaders at Wilmington been provided with efficient searchlights, other than the crude calcium lights used experimentally at the time, the number of successful runnings of the blockade by fast steam vessels would have been much reduced.38 The use of radio and radar, had these devices been available, would have made the Wilmington blockade "ship tight."

Developments in long-range coast artillery; ballistic and guided

---

37 See Cagle and Manson, The Sea War in Korea, 337-343 (1957) where the use of armed whaleboats vectored through mined areas during darkness to cut out small enemy craft is described.

38 See Schley, Forty-Five Years Under the Flag, 247-250 (1904) for the "practice" blockade off Charleston in 1897 using modern searchlights.
missiles; efficient mines and mining techniques; carrier and shore-based aircraft; and submarines; are often cited as precluding "close" blockades. This depends, of course, upon availability of these weapons to the adversary's forces in the blockaded area; and, if the weapons are available, whether they have the skill and inclination to use them.

The Spanish coast defense artillery at Santiago in 1898 was comparable to the coast artillery used extensively in the United States until World War II. But the Spanish gunners were no marksmen; and United States naval units maintained a closer blockade of Santiago in 1898 than of any of the Confederate ports during the American Civil War.39

During World War I, eleven blockades were maintained by naval action alone. A Soviet blockade of Finland was apparently maintained primarily by naval action although it is not clear this blockade was maintained effectively.40 The blockade of the East and West coasts of North Korea had analogies to older "close" blockades,41 as have arms control and counterinsurgency measures taken in waters adjacent to South and North Vietnam.

Many of the devices thought to preclude "close" blockades are themselves aids in maintaining an effective blockade. This certainly is true of mines, submarines and aircraft. Developments in communications and electronic scanning devices probably contribute more to effective techniques for maintaining blockades than to techniques for breaking them.

There are no doubt ports in weak states which can be blockaded efficiently today by vessels anchored at the entrance in the 19th-century tradition. It is equally certain this is seldom a prudent use of naval resources. Administrative trade controls, such as those available to the United States on a current or standby basis, can be used to interdict most commerce to these points. Naval action simply accomplishes the task more rapidly.

On the other hand, comprehensive trade control structures such as those familiar in World Wars I and II are emergency developments. With the exception of vestigial remnants, such as the familiar export controls in the United States today, these comprehensive structures tend to be abandoned when hostilities cease. For trade

39 Ibid., 288–289.
40 Castren, The Present Law of War and Neutrality, 292 (1954). This blockade was imposed in the so-called "Winter War." It was not reimposed after the German attack on the Soviet Union.
interruption beyond the capability of limited "peacetime" administrative trade control structures, or when speed is necessary, there is no substitute for naval blockade.

A modern blockade will apply the weight of the blockading force at a great distance from the area blockaded. Although not a blockade, the Cuban Quarantine of 1962 illustrates the broad zone of operations required against a convoluted and indented shoreline open to many approaches from the sea.

The less blockade running, the closer operations may be to the blockaded area. In the blockade of North Korea, the blockading force was employed principally for coastal bombardment and for destruction of small coasting vessels. Although Red China and the Soviet Union protested the blockade, published reports indicate no major efforts to run it. Land transit routes, determined by the military situation of the North Korean Army, seemed preferred by Red China and the Soviets.

Although the weight of the blockading force may be applied at a distance, small naval units probably will operate in the immediate vicinity of the ports or shoreline. Aircraft and hovercraft are desirable for this purpose. Small conventional surface units might also be used. Aircraft, particularly helicopters, and submarines will be used for reconnaissance, for visits to vessels approaching the blockade, and perhaps for seizures of blockade runners.

A blockade in depth may be used as in General Situation 7 to isolate an area until the intentions of a more formidable adversary can be determined. Such a blockade also might be imposed quickly and as quickly lifted in the execution of economic sorties.

The role of such blockades will be limited in general wars. There will be other demands upon naval forces. NAVAD blockades will be characteristic of these general wars, with naval blockades, such as that described, reserved to accomplish limited and specific objects.

Major Legal Features of Naval Blockade

The major legal features of naval blockade have remained almost static since the Declaration of Paris, 1856. However, there have been changes in blockading techniques and international organizations may now be blockaders.

The Security Council may declare a blockade under Article 42 of the Charter. Blockades may be recommended by the General Assembly or appropriate policy organs of several regional security organizations including the Organ of Consultation of the Organization of American States.

When international organizations participate in a blockade, the
legal requirements for blockade may change. The general community is likely to recognize fewer "nonparticipation" or "neutrality" contents by member states previously committed to support policies of the blockading organizations.

**Blockade Must be Declared and Established by Competent Authority**

To be binding legally upon nonparticipants, a blockade must be declared and established by competent authority. The criteria used to determine "competence" of the authority have received scant attention by publicists.

Infrequently, "competence" is determined by prior agreement among states possibly to be affected by a blockade. The salient current example is the competence to blockade conferred upon the Security Council by Article 42 of the United Nations Charter.

Absent a treaty, the criteria usually invoked are the ability and apparent intention of the blockading authority to discharge its international legal responsibilities. Relevant to these findings of ability and intention are adequate instructions to the blockading force and control by the authority over activities of the force. Judicial processes to pass upon the claims of nonparticipants, such as prize court procedures, must also be provided by the blockading authority.

Invocation of the criteria described has tended to confine competence to blockade to recognized governments of recognized states. Competence to blockade has been denied insurgents, although state determinations in these cases have been influenced by the stability, size and success of the insurgent group.42

---

42 The first naval blockade was imposed in 1584 by Dutch insurgents against ports of Flanders in the hands of Spain. Under the Nyon Agreement of 1937, major European powers refused to concede belligerent rights to the de jure government of Spain or to the insurgents. The British, for example, refused to recognize a naval blockade proclaimed by the Spanish insurgents.

Professor Hyde states: "It is improbable that the United States would at the present time be disposed to pay deference to a blockade instituted by unrecognized insurgents, although it might under some conditions respect their effort, if effectual, to close ports under their actual control by measures that were not sought to be enforced on the high seas." III Hyde, *International Law*, 2186 (2d Ed., 1947).

State Department papers of the late 19th and early 20th centuries reveal respect for insurgent blockades, although some of these "blockades" may have been regarded as "port closures" by action within territorial waters. See *Foreign Relations of the United States, 1893*, 98-99. *Foreign Relations of the United States, 1909*, 454-455. *Foreign Relations of the United States, 1910*, 756-757.

See *Naval War College, International Law Situations, 1901*, 110-137. (Discus-
When insurgents are denied competence to blockade, they may act within the territorial waters of the state within which the insurgency occurs to deny delivery of property of a military nature to the opposing government. Recognition of this claim to deny military goods to the opposing government, does not include recognition of an insurgent right to seize a ship of a nonparticipant for breach of blockade. It is probable requisitions of ships and cargoes within territorial waters will have the same limited legal effect of requisitions of goods on land.

A feature of increasing importance in characterizations of competence to blockade is compatibility of the intensity of coercion by the blockading authority with commitments made by the authority under the United Nations Charter. A spectrum in degrees of coercive acts will be involved in a particular blockade; and overall intensities of coercion among different blockades may vary. Typically, coercive intensities in blockades have been so high that publicists have described blockades in the past as belligerent acts. The stage is set for declarations of neutrality by nonparticipants.43

With the sovereign right to resort to war eliminated in the United Nations Charter, blockades will come under close scrutiny as possibly illegal applications of coercion. However, the sophisticated abandonment of a war-peace dichotomy in legal thinking may lead to exact discriminations concerning the reasons for blockade and the degree of coercion actually involved. Automatic characterizations of blockades as "acts of war" may be avoided.

A naval commander acting for a competent authority may declare a blockade.44 A blockade is not established by United States naval forces unless directed by the President.

43 A blockade does not spring into existence upon a declaration of war. It must be declared and notified by the blockading power.
Character of the Declaration:
Notification to Nonparticipants

Breach of blockade or attempted breach is treated as an offense against the law of the blockading state. Vessels of nonparticipants are subject to seizure. The vessel and its cargo may then be condemned in prize proceedings.

Because of the property loss facing owners of vessels and cargoes through seizures, detentions and possible condemnations for breach or attempted breaches of blockade, a rudimentary form of procedural due process must be followed by the blockader. There seems general agreement that a vessel of a nonparticipant should not be seized until it has actual or constructive notice of the blockade or unless notice is actually given by the blockading force before the alleged breach or attempted breach. There has been diversity in practice as to the method and time of delivery of the notice.

The Declaration of London, 1909, is a guide to declaration and notice requirements upon which delegates of major naval powers could agree in the early 20th century. By Article 8, a Declaration of Blockade and notice of the declaration were required for the blockade "to be binding." Subsequent articles of the Declaration make it clear that "binding" means a vessel of a nonparticipant should not be seized without actual or constructive notification. The Declaration of Blockade is required by Article 9 to state the date the blockade begins, geographical limits of the coast blockaded and the delay allowed neutral vessels for departure.

Current practice requires the time as well as the date of the blockade be stated. If the blockade is to extend to air traffic, this should be stated in the Declaration of Blockade as part of the requirement of geographic limits. Action contemplated by the blockading power with respect to submarine traffic should be declared.

Delegates to the 1908 London Conference understood a reasonable time should be granted for departure of neutral vessels. Times usually have been established for departures by neutral vessels, ranging from 2 to 30 or more days. A failure to state a time for

45 See Naval War College, International Law Topics, 1909, 37.
46 The United States Blockade Proclamations applying to Northern Cuba, to Southern Cuba and San Juan, Puerto Rico, allowed 30 days for departure of neutral vessels. Foreign Relations of the United States, 1898, 769 (Northern Cuba), 773 (Southern Cuba and San Juan).

This time exceeds that likely to be allowed today. Colombos, commenting upon Hall's statement that 15 days is the time usually allowed, declares this excessive under modern conditions. Colombos, International Law of the Sea, 585 (3d Ed., 1954), Fn. 3. Professor Hyde doubts any minimum number of days of grace are required. III Hyde, International Law, 2216 (1947).
departure in the Declaration of Blockade does not, as Article 9 suggests, preclude seizure of a neutral vessel for breach or attempted breach of blockade. However, neutral vessels which depart promptly after notification should be permitted to pass.47

This limited privilege accorded neutral vessels extends only to neutral vessels entitled to fly a neutral flag at the time of notification. A vessel transferred from enemy ownership after notification can be seized. The privilege of withdrawal does not extend to cargo. However, blockading powers have frequently permitted cargo sent in on the neutral vessel before notice of the declaration, retained in neutral ownership and then withdrawn in good faith, to pass the blockade. These withdrawals of neutral cargo present special problems which may require diversion of the departing vessel for search. In most instances under current conditions of sea warfare it is in the interest of both blockader and nonparticipant for the vessel to depart in ballast.

The Declaration of Blockade must be notified by the terms of Article 11 of the London Declaration to governments of neutral powers or to their “representatives accredited to it” and also to local

47 Hague Convention No. 6 of 1907 stated it was desirable to allow the vessel of a belligerent in an enemy port to depart immediately or after a period of grace (Article 1). The British representative at the Hague Conference stated his government did not regard as obligatory the granting of any period of grace to an enemy vessel. See Hall, The Law of Naval Warfare, 29 (1921). Neutral merchantmen, by contrast, are entitled by custom to leave a blockaded area without seizure if they depart within a reasonable time.

No period of grace is required to be stated in the Declaration of Blockade or notices of it. Colombos, International Law of the Sea, 586 (3d Ed., 1954). Writers appearing to take the position that a period of grace must be granted expressly, probably simply restate the provisions in Article 9 of the Declaration of London of 1909. E.g., Smith, The Law and Custom of the Sea, 139 (3d Ed., 1959).

Article 16 of the Declaration of London, when read with Article 9, suggests the blockade is effective legally although the period of grace has not been stated. As a penalty upon the blockading force, neutral vessels in port at the time of the notification must be allowed to pass free. See Naval War College, International Law Topics, 1909, 47–49.

Lord Stowell, dealing with a notice delivered during the blockade of Montevideo, but failing to state neutral vessels could bring out cargo loaded before notification, declared in The Rolla /1807/ 6 C. Rob. 365, 371: “But the blockade is good, pro tanto; and the court will not vitiate the effect of it, merely on account of the omission of one of the conditions under which vessels might be permitted to go out. * * * Here it was a restriction imposed by the commander himself / * * * / distinguishing the case from one in which the area of blockade was stated defectively * * * / who might possibly find himself under circumstances that would make such a restrain perfectly justifiable, though no such circumstances are stated. * * * ”
authorities in the blockaded area. The local authorities are to inform foreign consuls in the blockaded area as soon as possible.

The doctrine of constructive notice, derived from the British, United States and Japanese practice, is adopted in part in Articles 14, 15 and 16 of the London Declaration.

The vessel of a nonparticipant or neutral within the blockaded area is presumed to know of the blockade when notice has been given by the commander of the blockading force to appropriate local authorities. This presumption is absolute (or irrebuttable).

If the vessel departs a neutral port after notification made in sufficient time to the state to which the port belongs, Article 15 of the London Declaration raises a rebuttable presumption of knowledge of the vessel. If, on the other hand, the vessel of a nonparticipant approaches the blockaded area in ingress, and does not know or cannot be presumed to know of the blockade, special notice to the vessel is required by Article 16. This special notice must be given by an officer of one of the ships of the blockading force. The notice is entered in the vessel's logbook, with entry of the day, hour and geographical position of the vessel.

Contemporary writers agree that no special form of notice is required. The special notice stipulated in Article 16 of the Declaration of London is conveyed as effectively by a visual signal, or by direct voice or radio contact as by boarding the vessel.48

If boarding is feasible with reasonable safety to the blockading vessel, it is desirable to enter the relevant facts of notice in the logbook of the vessel or upon the papers establishing the nationality of a diverted aircraft. A printed copy of the Declaration of Blockade should be delivered to the officer in charge of the intercepted unit.

When the blockade is common knowledge in the port of departure, this knowledge is imputed to a departing vessel even though notice has not been given to the government of the port.49 A neutral vessel in egress from a blockaded port may also observe sufficient signs of naval and air activity to put her on notice that a blockade has been


49 In The Tutela (1805/ 6 C. Rob. 177, the vessel sailed from Bordeaux with a cargo of wheat owned by the Spanish government. The vessel was seized by the British fleet blockading St. Lucar.

There had been no formal notification of this blockade to French authorities but the existence of the blockade was common knowledge in Bordeaux. The master heard of the blockade before he sailed from Bordeaux and remonstrated with the shipper. He had been obliged to proceed as he had signed the charter party before notice of the blockade. Lord Stowell condemned the cargo and vessel.
established.\textsuperscript{50} Any presumption of knowledge of the blockade under these circumstances should rest lightly when the blockade is in depth. Many of the vessels approaching a blockaded area will have been warned by radio that a blockade is established. Publicists have emphasized the improved intelligence net as a reason for deviation from formal notice provisions, such as those in Article 11 of the Declaration of London.\textsuperscript{51}

Under special circumstances, a blockade may be so notorious that within a reasonable time after the blockade is announced notice may be imputed to all vessels and aircraft. An example is a blockade declared or recommended by the Security Council of the United Nations.

But when a naval blockade is established, such as the blockade established in General Situation 7, special notices to all vessels and aircraft approaching the blockaded area are advantageous both to the blockader and to the nonparticipant. The blockade is intended to deny supplies to an adversary and to prevent his export of materials. This denial must be accomplished with economy of force and with minimum disruption of public order.

It is in the interest of the blockader to hold diversions of vessels or their seizure to a minimum. Notice carefully delivered to vessels and aircraft of nonparticipants may cause voluntary withdrawals of units unprepared to test the effectiveness of the blockade.

The element of administrative convenience inherent in special notices is demonstrated in the confrontation of Electra by Buchanan in Special Situation 7A. The blockade has been established rapidly as a device to preserve the military status quo pending action by the United Nations or the Organization of American States.

\textsuperscript{50} The de facto blockade, distinguished in British, American and Japanese practice from a notified blockade, is based upon patent naval activity which the master of a vessel in ingress or egress should be able to observe. Neutral vessels, leaving a blockaded port after the blockade has existed de facto, are subject to seizure without special notice. The Vrouw Judith /1799/ 1 C. Rob. 150; The Hare /1810/ 1 Acton 252 (blockade established by notification, driven off and reestablished without notification).

For a neutral vessel in egress, readily observable naval activity has been given weight when also coupled with other sources of knowledge by the master. E.g., The Herald, 70 U.S. (3 Wall.), 768 (1865).

A vessel in ingress through the blockaded area when the blockade is de facto is entitled to special notice before seizure if knowledge of the blockade is lacking. This knowledge may be gained from general notoriety in the port of departure but will not be imputed when there is confusion in the port of departure concerning the area blockaded. The Franciska /1855/ 10 Moore P.C. 37 (where it was also held a blockade of Riga was not applied impartially).

\textsuperscript{51} E.g., III Hyde, International Law, 2206–2209 (1947).
While Electra’s master may have received notice of the blockade by radio, there is a chance he has not received this notice and will change his course if notice is given. The most effective notice of the blockade can be given by visiting Electra, delivering a printed copy of the Declaration of Blockade to the master, and making appropriate entries of this fact in Electra’s log. Probably under the circumstances this can be done with safety to Buchanan.

If the master resists a visit, or if a visit appears unduly hazardous, special notice should be given by visible or audible signals. If the master ignores these signals and Electra continues on her course, she should be seized. There is a strong case for seizure because the United States has conformed to the requirements stated in Article 11 of the Declaration of London. These reflect international custom on the point.

Blockade Must be Effective to be Binding

The Declaration of Paris, 1856, states in part: “Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.” The Declaration of London, 1909, reaffirmed this point in Article 2, adding in Article 3 that “effectiveness” of a blockade is a question of fact.

Although a literal reading of the English translation of the Declaration of Paris might suggest a blockade was “effective” only if it precluded blockade running, by the interpretation generally accepted a blockade is effective if maintained by instrumentalities sufficient to render dangerous ingress to or egress from the blockaded area.52 Intermittent penetrations by blockade runners do not impair the effectiveness of the blockade if the breaching unit risks probable seizure or destruction.

52 This, essentially, is the statement of effectiveness by Dr. Lushington in The Franciska /1855/ II Spinks, 113, 120, 130 (reversed on other grounds in /1855/ 10 Moore, P.C. 37). The blockade is effective even though some blockade runners pass it during darkness or during fog or during the period in which a blockading vessel has left her station in pursuit of another blockade runner.

In The Olinde Rodrigues, 174 U.S. 510 (1899), a French vessel entered San Juan, Puerto Rico, after the United States proclamation of blockade of that port and upon egress was warned of the blockade by the auxiliary Yosemite, the only blockading vessel. Returning to San Juan at a later date, Olinde Rodrigues was seized by U.S.S. New Orleans which had replaced Yosemite.

Accepting Dr. Lushington’s statement of “effectiveness” in The Franciska, the Supreme Court stated a blockade could be maintained by one cruiser if in fact ingress and egress through the blockade were rendered dangerous.

The Court declared: “* * * Clearly, however, it is not practicable to define what degree of danger shall constitute a test of the efficiency and validity of a
Blockading operations must be continuous. If blockading operations are interrupted, the blockade becomes ineffective. A new declaration and notifications are required if the blockade is re-established.\textsuperscript{53}

blockade. It is enough if the danger is real and apparent. * * *" 174 U.S. 515. Relevant to the issues of danger are the nature and extent of the coast blockaded; the character, disposition and degree of efficiency of the blockading force; and the number of vessels entering and departing a blockaded port without examination and seizure compared with the records of vessels examined or seized.

Statements by the commander and officers of a blockading force relative to its efficiency and effectiveness have been given weight in prize proceedings. Dr. Lushington in \textit{The Franciska}, commenting upon depositions by Sir Charles Napier, commanding the force blockading Riga, states: "If Sir Charles Napier, with this evidence before him, with his means of forming a correct judgment, has come to the conclusion that the blockade was duly maintained, I think that a Judge sitting in this chair would, in the absence of conflicting testimony upon such evidence, feel himself compelled to come to a similar conclusion; and I think so also, more especially because if Sir W. Grant deemed the opinion of a commander-in-chief adequate evidence of the competency of a squadron to execute a blockade, \textit{a fortiori, multum a fortiori}, such opinion would be of force when the question was of its actual maintenance, and when the evidence from which the conclusion was to be drawn consisted of logs and other statements, upon which none but a nautical person can form a very satisfactory judgment. * * *" II Spinks at 126.

\textsuperscript{53} Art. 12, Declaration of London, 1909. See \textit{Naval War College, International Law Topics}, 1909, 41. In \textit{The Hoffnung}/1805/ 6 C. Rob. 112, a British squadron under Sir John Ord, blockading Cadiz and St. Lucar, was driven off by force on 10 April. While no blockade was maintained, the British government on 25 April declared and notified a blockade of the two ports. Lord Collingwood reestablished the blockade on 8 June, or at least appeared before the ports on that date.

The court received in evidence a letter of 23 July to neutral consuls in Cadiz which might be construed as notification of the reestablished blockade. \textit{Hoffnung}, however, sailed from Nantes on 17 July and was seized at "a considerable distance" from the coast of Spain.

Lord Stowell refused to condemn either the Swedish vessel or the Spanish cargo, holding the notice of 25 April insufficient to cover the reestablished blockade and the evidence of a \textit{de facto} blockade insufficient to charge the vessel or the shippers with knowledge of it. He cited \textit{The Christina Margaretha}/1805/ 6 C.. Rob. 63, in which a ship on egress from Cadiz on 4 April passed the \textit{de facto} Ord blockade without hindrance but was seized in the Channel off Orfordness by a British cruiser after the declaration and notification of 25 April. Lord Stowell refused to allow expenses to the captors.

Referring to this case in \textit{The Hoffnung}, Lord Stowell commented: (6 C. Rob. 117) "* * * It was argued on that occasion, that neutrals were bound to act upon such presumptions * * */that the blockade continued or would be resumed/* * * and on the same principle on which it has been held that when a blockading squadron is driven off by adverse winds they are bound to presume that it will return, and that there is no discontinuance of the blockade."

"But certainly the two cases are very different. When a squadron is driven
Continuity is unbroken if units of the blockading force are driven away by stress of weather or depart for a purpose connected with the blockade, such as pursuit of a blockade runner, and immediately return to their stations. There is no requirement that the same units or number of units constitute the blockading force for continuity; off by accidents of weather, which must have entered into the contemplation of the belligerent imposing the blockade, there is no reason to suppose that such a circumstance would create a change of system, since it could not be expected that any blockade would continue many months without being liable to such temporary interruptions. But when a squadron is driven off by a superior force, a new course of events arises, which may tend to a very different disposition of the blockading force, and which introduces, therefore, a very different train of presumptions in favor of the ordinary freedom of commercial speculations. In such a case, the neutral merchant is not bound to foresee or to conjecture that the blockade will be resumed, and, therefore, if it is to be renewed, it must proceed de novo, by the usual course, and without reference to the former state of facts, which has been so effectually interrupted.

"On this principle it was that the court held the former blockade to have become extinct, and intimated an opinion that there should be a repetition of the same measures, on its recommencement, to bring it to the knowledge of neutral states, either by public declaration, or by the notoriety of the fact."

In The Hare /1810/ 1 Acton, 252, the reestablished blockade by Lord Collingwood was held a blockade de facto, binding without special notice upon an American vessel in egress from Cadiz. By the time of this seizure, the reestablished blockade had become notorious and vessels were charged with knowledge of it when leaving the blockaded port.

Article 13, Declaration of London, 1909, requires notification if the blockade is raised voluntarily or if any limitation to it is introduced. See Naval War College, International Law Topics, 1909, 41. A blockade de facto expires de facto. See The Neptunus /1799/ 1 C. Rob. 170, 171.

In The Columbia /1798/ 1 C. Rob. 154, Lord Stowell had "no hesitation in saying that the blockade * * * of Amsterdam * * * was broken" when the master of an American vessel sailed for that port with the intention of entering "if the wind should continue unsteady and keep the English cruisers off the Dutch coast." See to the same effect The Frederick Molke /1798/ 1 C. Rob. 86.

See VII Moore, Digest of International Law, 844 (1906) (quoting Instructions to U.S. Blockading Vessels and Cruisers, 1898. The same point was restated in the Instructions of 1917). Professor Stone declares: "* * * It is doubtful whether any circumstances other than stress of weather will permit withdrawal without interruption of blockade * * * though on principle a brief interruption to allow pursuit of a refractory blockade-runner should be on the same basis. * * *" Stone, Legal Controls of International Conflict, 496 (1954) Fn. 33.

During the Federal blockade of Charleston, S.C., which was maintained in 1861 by U.S.S. Niagara, this vessel was ordered replaced by U.S.S. Harriet Lane. Harriet Lane was "a day or two" late in arriving and Niagara nevertheless left her station. Secretary Seward maintained the blockade had not been raised in a manner which required notice of its reestablishment. See VII Moore, Digest of International Law, 843 (1906).
nor is there a requirement that units of the blockading power maintain the blockade. Ships of allies may be used. 56

Exceptions for passage of the blockade may be allowed by the blockading power without rendering the blockade ineffective. Warships and military aircraft of nonparticipants may be allowed ingress and egress, as may other vessels and aircraft of a nonparticipant when either under urgent distress or engaged in _bona fide_ humanitarian missions. 57

56 During the Italian Adriatic blockade in 1915, a number of ships were seized by French vessels acting under Italian orders. Some of the claimants contended the Italian blockade was not effective because maintained in part by French warships. The Italian Prize Commission rejected these arguments. E.g., _The Aghios Spiridon _/1916/ Gazette Ufficiale, 10 Feb. 1916, No. 33; Fauchille et Basdevant, _Jurisprudence Italienne en Matiere de Prises Marines_, 5 (1918).

The blockade should be effective even if cooperation by vessels of the non-declaring power is voluntary. But a claim of ineffectiveness should be avoided in these cases by joint declarations and joint notifications.

57 The exceptions mentioned are relevant principally to the effectiveness of the blockade. If the exceptions are granted frequently, the effectiveness of the blockade may be brought into question.

Apart from the issue of effectiveness, there seems no limit to exceptions, other than in the three categories mentioned, provided neutrals are treated impartially. Blockade operations by the United States during the Spanish-American War were noted for the numerous exceptions made for passage. See Naval War College, _International Law Situations, 1901_, 166–175.


There is no mention in the Declaration of London, 1909, of an exception to pass the blockade for vessels upon humanitarian missions. _Hague Convention XI_ (1907) Article 4, exempts from capture vessels charged with religious, scientific or philanthropic missions. An exemption from capture does not mean that a vessel or aircraft will be granted an exception to pass a blockade.

Thus, both public and private hospital ships are exempt from capture or attack by Article 22, 24 and 25 of _Geneva Convention, Armed Forces at Sea_ (1949). Yet in Art. 31 is made clear that these vessels and their communications can be controlled. They can be searched, directed upon a certain course and detained for a period of seven days from the time of the interception.

Substantially the same _formulae_ applied to hospital ships are stated in
Small unarmed fishing vessels and small boats used in local trade on the coast of the blockaded state may be permitted to engage in their usual activities without placing the effectiveness of the blockade in jeopardy.\(^{58}\) This does not apply to deep sea fishing vessels, 

*Hague Convention X* (1907) which the Geneva Convention will replace. The control of a belligerent over these vessels is so extensive that without an attack or capture a blockade clearly can be enforced against them. The relevant cases are few.

Whether the object of the voyage is humanitarian or philanthropic is determined by the blockader. See *The Adula*, 176 U.S. 361, 379 (1900) (vessel entering port to remove refugees said one employed for the personal profit of the charterer “and only secondarily, if at all, for the purpose of humanity”); *The Haelen* /1918/ Grotius Annuaire International, 254 (chartered vessel carrying wheat for children to Belgium not entitled to exemption because not engaged in humanitarian work prior to war).

When the vessel passes the blockade, the voyage must be limited to the humanitarian object. *The Rose in Bloom* /1811/ 1 Dodson, 57 (American vessel removing distressed seamen from blockaded port of Bayonne but also carrying cargo unrelated to this mission condemned with all cargo except stores carried for humanitarian mission); *The Aghios Nicolaos* (No. 2) Journal Officiel (1918), 8944 (vessel departed from assigned route and loaded cargo).

Although the Geneva Conventions of 1949 do not mention blockades, exceptions for humanitarian reasons may be based upon a number of their provisions. Ships chartered to transport medical equipment and supplies exclusively intended for the treatment of wounded and sick members of the armed forces or the prevention of disease are to pass. “The particulars regarding their voyage must be notified to the adverse Power and approved by the latter.” *Geneva Convention, Armed Forces at Sea* (1949), Article 38.

Medical and religious personnel and equipment to remove wounded and sick from a besieged area may be allowed to pass. *Geneva Convention, Armed Forces at Sea* (1949), Art. 18; *Geneva Convention, Civilian Persons*, Art. 17.

Neutral craft responding to an appeal by parties to the conflict or those which of their own accord collect wounded, sick or shipwrecked persons “shall enjoy special protection and facilities to carry out such assistance.” *Geneva Convention, Armed Forces at Sea* (1949), Article 21.

Consignments of medical and hospital stores; objects necessary for religious worship; and essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases are allowed to pass if the belligerent is satisfied there are “no serious reason for fearing” diversions of the products for military use or an accrual of a definite advantage to the war effort or economy of the enemy and other specified consequences, *Geneva Convention, Protection of Civilian Persons* (1949), Article 23. The Conventions state certain exceptions apparently mandatory for the blockader. These are mentioned in Fn. 59, infra.

\(^{58}\) See *The Paquete Habana*, 175 U.S. 677 (1900). *Hague Convention XI* (1907), Art. 3 exempts fishing boats used for fishing along the coast or small boats employed in local trade from capture. The British position has been that the exemption is a matter of comity only. E.g., *The Young Jacob and Johanna* /1798/ 1 C. Rob. 20; Colombos, *International Law of the Sea*, 474–475 (3d Ed., 1954). See *The S. S. Doron*, 28 Int. L. Rep. 61, (U.A.R. Prize Ct. 1959) (where
spotter aircraft for fishing vessels or large vessels trading between coastal ports.

The exceptions mentioned are in the discretion of the blockade commander upon the conditions prescribed by him. During the blockade of North Korea by United States and other naval units, no exception was made for small fishing boats and small coastal craft. These were seized or destroyed. The purpose was to cut off a major source of food supply for the North Korean Army and to stimulate anticomunist sentiment among the fishermen.59

fishing vessel was seized having on board a powerful radio transmitter and receiver, a bathometer and cases containing luminous signals; The Gouljar II, Ann. Dig. (1943–45), 469, Case No. 169 (Prize Court of Hamburg); The Fred Neumann, Ann. Dig. (1946), 405, Case No. 175, Conseil des Prises.

59 See Cagle and Manson, The Sea War in Korea, 296 (1957). In 1938 the Korean fishing industry had ranked third in the world and the Koreans had consumed about 300,000 tons of fish annually. Hague Convention XI (1907) because of the general participation clause, did not apply to the Korean conflict. The use of these vessels to mine Korean waters would provide a legal basis for attacks upon them.

Although under ordinary circumstances, the destruction of fishing vessels and small coastal shipping would be highly questionable in view of The Paquete Habana, Fn. 58, supra, there was a close link between fishing activities and supply of the North Korean and Chinese Volunteer Armies, both of which tended to live off the land (or sea—as the case might be).

Disturbance of the fishing fleet had an immediate military bearing upon land operations. This will be characteristic of economic warfare under modern conditions although the relationship between denials of food and the movement and tactics of armies unquestionably was accentuated in the Korean conflict.

Naval practices during World Wars I and II, in which coastal fishing vessels and shipping frequently were attacked, have eroded the position taken in continental cases and in The Paquete Habana concerning immunity of these vessels. The matter is believed usually in the discretion of the blockade commander, although this discretion should be exercised to avoid unnecessary destruction.

This does not mean that destruction of fishing vessels will be discretionary under all circumstances. Hague Convention XI (1907), Art. 4 may apply. Also under Article 59 of Geneva Convention, Civilian Persons (1949), a contracting party is obligated to permit free passage of consignments of foodstuffs, medical supplies and clothing to the inadequately supplied population of an occupied territory as part of a relief scheme. If an impartial humanitarian organization, such as the International Committee of the Red Cross, sought cessation of interference with the fishing fleet of the occupied territory, and coupled this with assurances that the fish caught would be used for the relief of the needy population, it is believed the interferences could not continue consistently with the treaty obligation.

This is one of the few nondiscretionary features related to blockades found in the Geneva Conventions of 1949. Others are the obligation to allow a hospital ship egress from a port which has fallen into the hands of the enemy, Geneva Convention, Armed Forces at Sea (1949), Art. 29; and to allow the passage of mail and relief supplies for prisoners of war and interned civilians, Geneva
A blockade may be limited to ocean surface traffic. The blockade need not extend to submarine or air traffic and will be effective also despite the exclusion from interception of certain cargo, such as the food and medical supplies mentioned in the Declaration of Blockade stated in General Situation 7.\(^{60}\)

Large cargo submarines may require future "effective" blockade to be extended to subsurface as well as surface traffic. Currently there is no requirement that a blockade extend to subsurface vessels or to aircraft. Depending upon the size and location of the blockaded area, the blockader may reasonably require submarines and aircraft to travel upon stipulated routes through designated zones or may prescribe routes for free travel.

Probably the most perplexing current issue relating to the effectiveness of a blockade results from development and use of submarines, aircraft, mines and electronic scanning devices in naval combat. In view of these new developments in hardware and techniques for its use, how large a force is required for an effective blockade and what must be its composition? There are no pat answers.\(^{61}\)

\(^{60}\) Convention, Prisoners of War (1949), Arts. 70–75; 77; Geneva Convention, Civilian Persons (1949), Arts. 100–110.

\(^{61}\) An interesting consideration of new weapons, detection methods, and transportation systems available for application to blockade may be found in

\(^{61}\) An interesting consideration of new weapons, detection methods, and transportation systems available for application to blockade may be found in
Most commentators upon the issue of "effectiveness" have insisted the blockading force contain some surface units. It has been stated, for example, that at least one surface unit must be present in the blockaded area.62

A surface vessel clearly has advantages as a blockading unit if the blockading power has air superiority, superiority in surface sea power, and antisubmarine warfare capability. Often a surface vessel will have adequate personnel to serve as prize crews of seized vessels. It has the capacity to rescue survivors of vessels sunk for resisting seizure. While the matter is speculative, the examination by a surface unit of papers of a vessel approaching the blockaded area may be facilitated. There is perhaps less of a chance that a vessel will attempt to resist a surface unit approaching it to examine its papers than it will attempt to resist a helicopter or submarine approaching for the same object.

If the blockader lacks surface capability, then, as did Germany in two wars, the tendency will be to resort to air or submarine interdiction. There is no doubt these units can render dangerous ingress to and from a blockaded area. The question seems to be whether a blockader using only these units can properly discharge the responsibilities of a blockading power. One of these responsibilities is to maintain minimum order—to enforce the blockade without unnecessary destruction. Whether this responsibility can be discharged using only air and submarine units or using only one or the other should depend upon the facts of the particular conflict.63

A situation can be imagined in which a blockade is maintained by land-based aircraft supported by submarines. Vessels approaching

---


63 See McDougal and Feliciano, *Law and Minimum World Public Order*, 493–497 (1961). These authors state at 494:

> The lawfulness of the objective of embargoving, more or less comprehensively, commerce with the enemy being thus established, the lawfulness of any particular modality of achieving this objective in possible future contexts rationally depends upon the appraisal of the relative destructiveness of such modality as compared to any other available alternative modality, rather than upon conformity to practices technologically obsolete. Such an appraisal, essentially an appraisal of reasonableness in detailed context, entails the careful relation of specific components of contexts to the relevant competing policies of military effectiveness and minimum destruction of values.
the blockaded area could be notified if necessary and visited by helicopters or other suitable aircraft. Necessary seizures could be accomplished by submarines; and vessels resisting seizure could be destroyed either by submarine or aircraft and survivors perhaps rescued by them.

A blockade of this nature should be distinguished from a war zone established as a reprisal in which neutral commerce is indiscriminately destroyed without warning, such as the German war zones in World Wars I and II, and from attacks upon enemy shipping as in American operations in the Pacific during World War II.

If a blockade is frequently challenged (that is, if merchantmen of nonparticipants frequently attempt to run it), the presence of some surface units probably should be required. If challenges are few, submarine and air activity can be combined for the requisite effectiveness and at the same time discharge the blockader’s responsibility to maintain minimum order. In special situations, perhaps submarine activity alone or air activity alone would be adequate—although a blockade directed against air as well as surface transit would certainly require air support.

**The Blockade Must be Applied Impartially to All Vessels and Aircraft**

The vessels of nonparticipants and those of the blockading authority must receive equal treatment. If the blockade is extended to aircraft, the rule of impartiality applies to aircraft as well.

---

64 *Hague Convention VIII* (1907), Article 2 prohibits laying automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping. This Convention may not be applicable in a particular conflict because of its general participation clause.

Mining operations may be conducted as reprisals. Mined zones were used extensively in World Wars I and II to block or channel commercial traffic.

This technique may be anticipated in future wars, perhaps with permanent blocking of certain channels. Channels may be blocked by nuclear devices, unsweepable without substantial loss of life and property damage.


65 Declaration of London, 1909, Art. 5. See *Naval War College, International Law Topics, 1909*, 31; *The Success /1812/*, 1 Dodson, 131, 134 ("The measure which has been resorted to, being in the nature of a blockade, must operate to the entire exclusion of British as well as of neutral ships; for it would be a gross violation of neutral rights, to prohibit their trade, and to permit subjects of this country to carry on an unrestricted commerce at the very same ports from which neutrals are excluded"); *The Franciska /1855/*, Spinks, 287, 292.
A blockading state cannot, for example, exclude merchant vessels of nonparticipants and allow ingress and egress to its own merchantmen. The impartiality doctrine does not apply to exceptions made for passage of the blockade, such as the privilege accorded warships to enter and depart blockaded ports.\textsuperscript{66}

The decision to grant an exception is made by the blockade commander in each case presented. Some warships can be granted ingress and egress and others excluded.

Except, however, in the recognized categories in which exceptions are permitted, impartiality is the rule. Merchantmen, when neither in urgent distress nor engaged in humanitarian missions, are not within the categories which a blockade commander can allow to pass in his discretion without raising the blockade. If \textit{Electra} is allowed to pass the blockade, not only will an argument be available to nonparticipants that the blockade is raised, but if the blockade is re-


The three exceptions—warships, vessels in distress and vessels upon humanitarian missions—do not appear subject to the rule of impartiality. If an exception is recognized for fishing vessels and other small vessels in coastal trade, although usually enemy vessels will be involved rather than vessels of neutrals, probably permission must be granted or withheld impartially. The practice is insufficient to evidence clear community policy on the point.

In transactions other than the “exceptions,” the impartiality rule applies although the problem is usually presented as one of “effectiveness” of the blockade.

In \textit{The Juffrow Maria Schroeder /1800/} 3 C. Rob. 148, Lord Stowell dealt with a vessel allowed to enter Le Havre in a lax blockade of that port and seized upon coming out. The vessel was restored under the rule of \textit{The Neptunus /1799/} 2 C. Rob. 110, where the vessel had been misled in entering Le Havre by an unintentionally false statement of the captain of a British frigate.

Lord Stowell commented (at 3 C. Rob. 158): “It is impossible for me to say this, without observing at the same time, on the great mischief that ensues from this sort of inattention practised by our cruisers. It is in vain for governments to impose blockades, if those employed on that service will not enforce them. The inconvenience is very great and extends far beyond the individual case; reports are eagerly circulated, that the blockade is raised; foreigners take advantage of the information; the property of innocent persons is ensnared, and the honor of our own country is involved in the mistake.”

And see \textit{The Rolla /1807/} 6 C. Rob. 365 where Sir Home Popham had allowed a group of slave ships to enter Montevideo, apparently upon humanitarian grounds. Lord Stowell stated: “It would have been better, undoubtedly, and more regular, that this intention should have been notified to the governor in the same manner as the blockade itself. It would then have been a clear and distinct limitation, and the exception would have been understood according to its proper limits, because slave ships are in no manner privileged by law, or put upon a different footing from other ships.” (6 C. Rob. at 373.)
imposed nonparticipants can complain of discriminatory action in the earlier blockading operation.

The Blockade Must Not Bar Access to Neutral Ports or Air Termini

A naval blockade must not bar ingress to or egress from sea or air termini of nonparticipating states. The naval blockade of Nueva and Antioka bars no access to ports of nonparticipants unless it may be argued that the sea and air activity incident to the blockade is so extensive that shipping to ports of nonparticipants is being harassed or interdicted. Whether this harassment or interdiction occurs is a question of fact in each blockade.

Objections by nonparticipants based upon such alleged interference may be obviated if the blockading authority is prepared to assume the administrative burden required to permit free traffic through the blockaded area between ports of nonparticipants. Flexible navicerting, clearcerting or similar "pass" procedures will expedite this movement. If the continuous voyage doctrine is enforced, and enforcement of this doctrine may be unnecessary when the naval blockade is quickly imposed and is of short duration, an effective intelligence service in ports of origin and call may avoid useless interceptions.

Under special circumstances, not present in General Situation 7, the administrative burden upon the blockading authority may be exceptionally heavy. Examples are when sea traffic is interdicted: (a) into rivers when some riparian states are nonparticipants; (b) into canals used as routes between nonparticipating states; and (c) when a strait between a participant and nonparticipant is blockaded.

Unless measures can be taken to permit free movement of traffic to and from the ports of nonparticipants under these circumstances, the blockading authority assumes the risk of legitimate retaliatory action by the nonparticipant as well as claims for losses resulting from the interference. Distinguished authorities have suggested in some of these situations a blockade valid under international law cannot be established.

Professor Smith, for example, appears to take the position that an effective blockade of Copenhagen would not be viable legally because it would interfere with access to the opposite coast of Sweden. Professor Smith is also of the opinion that "long-distance"


blockades (described in this text as NAVAD blockades) imposed against Germany in World Wars I and II are not likely to be repeated in any future war in which neutral powers desire and are able to insist upon their neutral rights.\textsuperscript{69} Judge Lauterpacht states that a river cannot lawfully be blockaded except when all the riparian states are cobelligerents against the blockading state, or when they are all belligerents and the cobelligerents of the blockading state assent to the blockade.\textsuperscript{70}

Precedents cited to support these positions tend to antedate development of modern communications facilities and means for the quick identification of vessels. These new techniques can be employed to facilitate free passage of vessels to and from the ports of non-participants. A mere apprehension of possible interference by naval units of the blockader under such circumstances does not constitute interference as a fact. It appears possible to blockade legally any area when the appropriate steps are taken to insure free transit between ports of non-participants.

The appearance of an international organ, such as the Security Council of the United Nations as a blockading authority; or the imposition of a blockade upon the recommendation of the Security Council or the General Assembly; should alter radically the limitation that a naval blockade must not bar ingress to or egress from the sea and air termini of nonparticipating states. Only states not members of the United Nations would appear to be able to assert the claim to noninterference to its full extent. Members of the Organization have impliedly waived such objections in Article 2(2) and (5) of the Charter.

In the naval blockade of Korea this issue was not forced. The area of blockade operations was limited to avoid interference with Soviet ports and also the Soviet-leased North Korean port of Rashin.\textsuperscript{71} How much commerce moved in and out of Rashin has not been disclosed. But with these significant limitations upon the area blockaded and the deference shown for Red Chinese and Soviet freedom of transit between their respective ports, there was no legal basis for Red Chinese and Soviet objections to the blockade.

\textbf{Suggested Solution: Special Situation 7 A}

\textit{Electra}, as a vessel of a nonparticipant in the conflict between the United States, Nueva and Antioka, or at least as a nonparticipant in the particular confrontation, should be treated as a neutral in

\textsuperscript{69} Ibid., 141.
\textsuperscript{71} See Cagle and Manson, \textit{The Sea War in Korea}, 281 (1957), Fn.
maritime blockade. It is important to recognize Scythia's neutral status—and consequently the status of Electra—to maintain the blockade as an interim measure with maximum economy in the expenditure of values both by the United States and by other states affected by our naval action. Little could be gained by treating Electra as an enemy vessel and much could be lost by accelerating the dispute between Scythia and NATO to which United States is a party.

The Captain of Buchanan should repeat his special notice of the blockade to Electra allowing the maximum time possible for the master to consult his superiors by radio before bringing Electra to. If Electra then continues upon her course, she must be brought to by force if force is necessary. Electra must then be visited and searched. If a search at sea proves impractical, she must be diverted to a port where a thorough search can be accomplished. A diversion or seizure of Electra should be avoided if this can be accomplished and the blockade still be enforced.

The Captain of Buchanan may be able to persuade the master to change course when it becomes evident Electra will be seized if she attempts to run the blockade. A failure to seize Electra under such circumstances would provide an argument for all nonparticipants that the blockade has been raised.

Although Electra probably is owned by Scythia, she is not a warship to be granted a privilege to pass in the discretion of the blockade commander. There is no indication the vessel is in distress or engaged in a humanitarian mission. If Scythia desires to claim immunity of Electra from condemnation as a state-owned vessel, this point can be raised and tested if she is seized and the United States institutes condemnation proceedings.

The Captain of Buchanan has orders that no cargo will pass in ingress except food and medical supplies. No cargo will be permitted to pass in egress. He is expected by his superiors to execute his orders with deference to the maintenance of minimum public order and with a minimum destruction of values consistent with accomplishment of his mission.

C. CONTRABAND

Special Situation 7 B

The Organ of Consultation of the Organization of American States, considering the case of the United States placed before it as described in General Situation 7, determines Nueva has made an unprovoked attack upon the United States. This attack the Organ characterizes as “aggression” under Article 9(a) of the Rio Pact.
It agrees upon the use of armed force against Nueva and against Nuevan forces in Antioka. The use of armed force is to include participation by members of the Organization in the naval blockade established by the United States. Contraband regulations are to be enforced upon the high seas by naval units of the Organization.

You have been assigned to assist the Advisory Defense Committee in developing contraband instructions to be issued to naval forces of participating states. These instructions are to secure uniform enforcement of contraband regulations and to relate effectively contraband enforcement measures to the blockade.

The Advisory Defense Committee has received a letter from the Secretary of Defense of the Antiokan government in exile recommending food and medical supplies be placed upon the contraband list. Review the principles of contraband and formulate your recommendation to the Advisory Defense Committee whether a contraband list is necessary and, if so, whether food and medical supplies should be listed as contraband.

Discussion: Special Situation 7 B

The history of contraband reveals a constant increase in the economic requirements for war and a consistent readiness of belligerents to interdict transport of all resources useful to their adversaries in warfare. Items listed as contraband and the techniques developed for enforcing contraband regulations have been products of rough and ready compromises between belligerents and neutrals. Belligerents, usually, have enjoyed both the initiative and bargaining power as these compromises were achieved. Although the initiative will remain with the belligerent, the bargaining power of the belligerent may vary with the conflict situation.

Contraband Principles in Declaration of London

A "peacetime" consensus among major maritime nations concerning contraband was developed at the London Naval Conference of 1908 and expressed in the Declaration of London, 1909. This unratified Declaration has been described previously in this Chapter. Many of the basic contraband principles expressed in the Declaration were heavily eroded by the pressures of two global conflicts. However, some may still be applicable in limited wars.

The Declaration continued a distinction between "absolute contraband" and "conditional contraband," a distinction rooted in the writing of Hugo Grotius and the Treaty of Whitehall (1661)
between England and Sweden.\textsuperscript{72} The Declaration also introduced a list of “Free” goods.

Both categories of contraband were limited to goods destined for the enemy. The potential \textit{use} of the goods defined the category. Absolute contraband included items exclusively for war use.\textsuperscript{73} Conditional contraband included items susceptible to use in warfare but not exclusively for war use.\textsuperscript{74} Food, money and fuel, for example, were listed as conditional contraband.

A belligerent was permitted additions to either the absolute or conditional contraband lists by notification to neutrals. However, a belligerent was limited by the use classification—that is, only items by nature exclusively for war use could be added to the absolute contraband list.\textsuperscript{75} A list of free goods further reduced the scope of belligerent action.

The “Free List” was stated in two Articles of the Declaration. Article 28 listed principally raw materials and machinery used at the time for civilian end-products. Article 29 covered medical and hospital supplies for the care of the sick and wounded and articles and materials used on board the vessel. A belligerent could not place items from the free list on either the absolute or conditional contraband lists. Hospital ships and supplies aboard them were not mentioned in the Declaration because covered by Hague Convention VIII (1907).

The distinction maintained in the Declaration between absolute and conditional contraband was the basis for differing treatments of the categories in applying the “ultimate destination” doctrine. The burden of proof resting upon the belligerent also differed.

If goods on an intercepted vessel were absolute contraband, the goods could be “captured” (seized) \textsuperscript{76} if destined for territory belonging to or occupied by the enemy or if destined for enemy forces.\textsuperscript{77} The goods could be seized although transshipment was to be through neutral territory.


\textsuperscript{73} See Naval War College, \textit{International Law Topics}, 1909, 50 (Art. 22).

\textsuperscript{74} Ibid., 63 (Art. 24).

\textsuperscript{75} Ibid., 61 (Art. 23) ; 67 (Art. 25).

\textsuperscript{76} The French version of the Declaration uses “saisissables.” As pointed out by Smith, “capture” is inaccurate in this context because title does not pass until condemnation. See Smith, \textit{The Law and Custom of The Sea}, 126 (3d Ed., 1959).

\textsuperscript{77} Naval War College, \textit{International Law Topics}, 1909, 75, Fn. 2, (Art. 30).
The ultimate destination doctrine was rejected for conditional contraband unless goods were shipped to a landlocked enemy.\textsuperscript{78} Unless for a landlocked enemy, the goods could not be seized if to be discharged at a neutral port. The requirement of enemy destination as a basis for seizure was retained.

Conditional contraband, not to be discharged at a neutral port, could be seized if for the use of the enemy armed forces. If not to be discharged at a neutral port, the goods could be seized if for the use of an enemy government department and also for war use, except for bullion, gold and silver coin and paper money for which no special use had to be shown.\textsuperscript{79}

As to both absolute and conditional contraband, the ship’s papers were conclusive proof of her voyage, absent an unexplained deviation from her route.\textsuperscript{80} Since the burden of proof of ultimate destination (for absolute contraband) or the specific enemy destination (for conditional contraband) rested upon the belligerent, the evidential weight ascribed by the Declaration to ship’s papers created a substantial obstacle to seizures and condemnations.

For absolute contraband, the belligerent had the benefit of a conclusive presumption of ultimate hostile destination if the goods were documented to be discharged at an enemy port, if the vessel was to call at enemy ports only, or if the vessel was to touch at an enemy port or join enemy forces before touching a neutral port.\textsuperscript{81} Although the belligerent might prove hostile destination without the benefit of these presumptions, this would be difficult without a highly effective system of economic intelligence producing information of a nature which could be disclosed in judicial proceedings.

For conditional contraband, a rebuttable presumption could be raised in two situations that the goods were destined for the enemy armed forces or an enemy governmental department.\textsuperscript{82} If the consignment was addressed to enemy authorities or to a merchant established in an enemy country and known to supply the enemy, a presumption of the specific hostile destination was raised—probably that the use was either for the armed forces or an enemy governmental department. If the consignment was addressed to an enemy fortified place or some other base for his armed forces, the presumption apparently was that the goods were for use of the armed forces.

Unless these presumptions were raised the destination was pre-

\textsuperscript{78} Ibid., 85 (Art. 35). Specific use of the armed forces or a governmental department of the landlocked enemy was necessary for seizure.

\textsuperscript{79} Ibid., 79 (Art. 33); 65 (Art. 24(4)).

\textsuperscript{80} Ibid., 77 (Art. 32); 85 (Art. 35).

\textsuperscript{81} Ibid., 75 (Art. 31).

\textsuperscript{82} Ibid., 83 (Art. 34).
sumed innocent. As with absolute contraband, the belligerent might produce other evidence to rebut the presumption of innocence.

Except for conditional contraband documented to be unladen at a neutral port when not for the use of the armed forces or a governmental department of a landlocked enemy, either conditional or absolute contraband could be seized on the high seas or in the territorial waters of belligerents at any point in the voyage of the transporting vessel. The vessel might or might not be seized.

If the contraband cargo, by value, weight, volume and freight, was half or less of the cargo, the vessel might not be seized if the master was ready to deliver the contraband to the belligerent ship. Circumstances might preclude this delivery. If the contraband could not be destroyed under the supervision of the belligerent, the vessel would be seized but not ultimately condemned.

Apart from the rule based upon the proportion of contraband to the whole cargo, whether a seized vessel was condemned depended upon her knowledge of the state of hostilities and the contraband declaration. A vessel was deemed aware of hostilities if she left an enemy port after hostilities opened. She was also deemed aware of a state of war or a contraband declaration if she left a neutral port a sufficient time after notification of hostilities or of a contraband declaration to the port power.

If the vessel was ignorant of hostilities and the contraband declaration, the contraband could be preempted but not confiscated. The vessel and noncontraband cargo were not condemned. The rule permitting delivery of small amounts of cargo without seizure of the vessel applied to these vessels as well as to vessels knowing of hostilities.

There was no permanent "contamination" of a vessel due to previous carriages of contraband. Such a vessel could not be seized after its contraband had been discharged. However, contraband carried on a vessel infected noncontraband under the same ownership, rendering the noncontraband subject to condemnation.

Prior to the Declaration of London, major disputes between belligerents and neutrals tended to focus upon two issues. The first concerned items which should be listed as contraband and items which should not be listed. The second concerned treatment of goods

83 Ibid., 89 (Art. 37).
84 Ibid., 89 (Art. 40).
85 Ibid., 93 (Art. 43).
86 Ibid., The Declaration states "not * * * condemned except with indemnity."
87 Ibid., 89 (Art. 38).
88 Ibid., 93 (Art. 42).
and transporting vessels in which the goods were shipped to neutral
territory. On some points belligerents and neutrals agreed.

Contraband enforcement was understood as a belligerent act, an
act of war in the sense of warfare in its 19th and early 20th century
forms. Without belligerency there was no contraband.\textsuperscript{89}

There was agreement that contraband related to property owned
by neutrals. A different regime applied to enemy property at sea.\textsuperscript{90}

How ownership should be determined was disputed.

All agreed weapons and military equipment should be contraband.
Beyond this there was dissent. As stated by Wheaton in 1815:\textsuperscript{91}

The almost unanimous authority of elementary writers, of
the ordinances of belligerent powers, and of treaties, agrees to
enumerate among these * * * /contraband of war/ * * * all
warlike instruments, or materials by their own nature fit to be
used in war. But beyond this enumeration, there is some difficulty
in reconciling the different authorities, which are extremely
discordant and at variance with reason and justice. * * *

All agreed that in proper cases contraband could be intercepted
on the high seas and both contraband and the vessel carrying it
could be seized. The belligerent was conceded to have the initiative
in this matter since the belligerent could establish contraband lists.

The two World Wars reinforced basic understandings antedating
the Declaration of London. But these wars also indicated the contraband
listings in the Declaration could not remain firm nor could a
distinction in practice be made between absolute and conditional
contraband in modern general military conflict.

\textit{World Wars I and II and the Declaration of London:}
\textit{Contraband Features}

As previously described in this Chapter,\textsuperscript{92} contraband principles
and procedures of the Declaration of London were applied in limited
conflicts prior to World War I. But World Wars I and II revealed
the irrelevance to modern general military conflict of some of the
postulates of the Declaration and the inadequacy of the contraband
procedures deemed appropriate by the 1908 Conference.

The two global conflicts demonstrated unequivocally the range of
resources and diversity of goods required to support modern general

\begin{footnotesize}
\begin{itemize}
    \item \textsuperscript{89} See \textit{Le Conte de Thomar}, I Pistooy and Duverdy, \textit{Traite des Prises Maritimes}, 390 (1855). Discussed in Chapter IV, B., \textit{Situation 6}.
    \item \textsuperscript{90} Contraband can relate to enemy property. For example, under Art. 2 of the Declaration of Paris the neutral flag covers enemy goods except contraband of war.
    \item \textsuperscript{91} Wheaton, \textit{The Law of Maritime Captures and Prizes}, 175 (1815).
    \item \textsuperscript{92} See subdivision A (1), \textit{supra.}, 653–662.
\end{itemize}
\end{footnotesize}
military operations. Demonstrated also was the high degree of governmental control required over the internal economy of a combatant state to permit its resources to be fully mobilized. New resources required for war rendered the contraband lists of the Declaration useless. New controls by combatant governments over private resources needed for war revealed as totally anachronistic the features of proof thought important by the London Conference for the hostile destination of conditional contraband.

The institutions for modern contraband control were developed by the Allies in World War I. The same institutions were used in World War II, although in this second global conflict, contraband control measures were refined and more comprehensively and ruthlessly applied than in the first.

In 1916, the Allies abandoned the Declaration of London as a legal guideline in economic warfare. Article 40 concerning the proportion contraband must bear to the total cargo to permit condemnation of the vessel was expressly retained. With the relics of the Declaration thus put to rest, and their memory scarcely honored by mention during World War II, the Allies turned to economic warfare as a secondary policy device in its modern form in general war.

In both wars, suspected vessels were diverted to contraband control stations for examination. Their papers and cargo were there carefully examined, use being made of the extensive intelligence often available. In England, these examiners were under close administrative control. A Contraband Committee in London, during World War II an interdepartmental committee of the Ministry of Economic Warfare, determined which cargoes and vessels should be released and which should be placed in custody of the Marshal of the Prize Court.

Developments in sea warfare—surface, subsurface and air—discouraged traditional visit and searches at sea except in areas remote from intensive combat operations. Unacceptable hazards were posed by exposure of the belligerent vessel and the vessel visited to submarine or air attack.

Naval forces were required to protect commerce, support troop movements and cover landing operations. Strict economy had to be practiced in deploying Allied naval units for control of possibly hostile sea traffic. German naval strength was devoted to interdicting sea commerce by destruction. This, coupled with destruction
of commerce in Allied operational zones in European waters and the Mediterranean, eliminated much commerce which Allied naval units might otherwise have been called upon to divert.95

The amount and diversity of cargo on an average freighter, many times the tonnage of small craft involved in the Napoleonic war cases of Lord Stowell, rendered sea examinations of cargo perfunctorily and useless in any event. Documentation of the cargo could be misleading. Business subterfuges for carrying contraband were familiar in World War I and increased in sophistication and generality of use in World War II. The papers of a ship could not be relied upon to indicate her destination.

Information needed to determine the necessity for seizure of ships and cargoes was obtained from sources other than the ships themselves. This information could not be communicated in meaningful form to naval officers enforcing contraband regulations at sea.

Land transportation improvements in neutral territory adjacent to that of the adversary significantly complicated interrupting the flow of the adversary’s supplies. The problem was complicated enough during World War I due to the improved rail transportation in Europe. After the fall of France in 1940 and Italy’s entrance into the war as an Axis partner, German hegemony on the continent reduced the effectiveness of naval operations as the primary instrument to interrupt commerce. At the same time elimination of many “adjacent” neutrals somewhat simplified and encouraged centralization of nonnaval administrative controls over contraband.

The reach of these highly centralized administrative institutions was extended to the source from which contraband was derived. Naval units were relegated to the mundane tasks of enforcing diversions of ships to contraband control points.

During World War II, aircraft were brought within the British Prize Act and could be diverted.96 Aircraft as well as surface craft could be used to force diversions. But even this form of naval activity in economic warfare gradually diminished as the war progressed.97

**Navicerting**

The inconvenience to neutrals of diversions during both wars was reduced by navicerting. Navicerting began in 1916, but was not used

---

96 2 & 3 Geo. 6, c. 65 (1939).
97 Diversions upon reasonable suspicion were sustained by the Prize Courts. E.g., *The Mim* (1947), 115. And see Discussion: Special Situation 7 C, infra., 788–824.
extensively in World War I.\textsuperscript{98} During World War II, until the fall of France in 1940, the Allies used a "voluntary" form of navicerting.

In order to avoid extended detentions of vessels diverted to contraband control ports or voluntarily entering, the British first experimented with "holdback" guarantees. The ship was allowed to proceed to a neutral port after giving a guarantee not to deliver goods being considered by the Contraband Committee to the consignee and to return these goods to an Allied port if the Contraband Committee decided on seizure.

There were complications to this arrangement. If the Committee directed return of the goods, they might subsequently be released by the Prize Court after having been exposed unnecessarily to wartime sea transit. An even greater difficulty was the unwillingness of neutral port authorities to release the goods for return. The local export licensing system or other devices might be used to block the goods. The holdback guarantee system was a concession to neutral shippers which tended to weaken contraband control.

By the navicert system commenced in December 1939 (the "voluntary" system) two basic navicert forms were issued, Ship Navicerts and Cargo Navicerts. The master of the ship or his agent could obtain a ship navicert if the entire cargo was navicerted. There were variations in cargo navicerts.

A "Z" navicert, used only under the voluntary system, was issued by the British or French representative in the country in which the application was sought on his own responsibility. Referred List Navicerts could be issued only after instructions from the Ministry of Economic Warfare. The Referred List covered major items of contraband normally exported by the neutral country concerned.\textsuperscript{99}

If a ship sailed with a ship navicert, she usually would be cleared at sea by British or French patrols by identification and without diversion. If a ship sailed without a ship navicert, but with fully navicerted cargo, she might be cleared at sea only if circumstances permitted a visit and she had no mail or passengers. Otherwise, she would be diverted to a contraband control base. Seldom would she

\textsuperscript{98} See Ritchie, \textit{The Navicert System During the World War} (1938). Navicerting is a refinement of the older technique of "ship's passes" mentioned in the Reprisals Order-in-Council, 1915, to be received by vessels diverted from German to neutral ports. A good brief description of World War I contraband control methods can be found in Ritchie, 1–4 and in Salter, \textit{Allied Shipping Controls}, 98–116 (1921).

\textsuperscript{99} "Mewcerts" were briefly issued for cargo coming from Egypt without references to the Ministry of Economic Warfare. These were discontinued in January 1940.
be detained at the base for a long period unless some of her cargo navicerts had been revoked or destination of the cargo was suspect.

Neither the ship navicert nor the cargo navicerts were guarantees against interception or seizure. Spot interceptions and diversions were required to check clandestine carriage of contraband in navicerted ships. A neutral destination might become hostile. A delay might occur between the time the navicert issued and the shipment, additional facts coming to the attention of the belligerent in the meantime.

But possession of ship and cargo navicerts was a great convenience to merchants. Shipowners, desiring ship navicerts, refused to carry unnavicerted cargo. Owners of navicerted cargo would not employ a ship which could not obtain a ship navicert.

The voluntary system was first used between the United States and certain neutral European countries and thereafter extended to other neutrals. In the summer of 1940, it was used by practically all shippers not engaged in carrying contraband.

While the voluntary system had been supplemented by over sixty agreements with neutral companies—shipping companies, importers and exporters—in which these companies agreed to use the navicert system when available, to refrain from buying from or selling to the enemy, to obtain guarantees of neutral consumption from purchasers, and to undertake similar projects supporting the economic warfare program, it was decided by the British in 1940 to extend the navicert system and place it on a semicompulsory basis.

This was done by a “Reprisals” Order-in-Council on 31 July 1940. Both Ship and Cargo Navicerts were issued. By the terms of the Order an unnavicerted ship or cargo was subject to seizure. A rebuttable presumption was raised that the ship or cargo, as the case might be, had a hostile destination.

Although vessels and cargoes were seized for the absence of navicerts, in no case was a vessel or cargo condemned solely on the strength of the rebuttable presumption of enemy destination. If the Court condemned the vessel or cargo, other factors creating suspicion were always present.

---

100 S. R. & O., 1940, No. 1436.
Coupled with the semicompulsory navicert system was a system of “Ship Warrants” supplying a sanction for navicerting. A ship warrant, issued to the owner of a neutral ship, guaranteed the ship access to British controlled shipping facilities. These included bunkers, stores, dry docking, insurance and credit.

In return, the owner agreed to comply with economic warfare regulations, including a commitment not to sail to or from navicert areas without a ship navicert. Effectiveness of the ship warrant as a sanction was diminished by British inability to control resort by shipowners to other sources for services as for example bunkering facilities and credit controlled by the United States and other neutrals. The sanction was strengthened when the United States entered the war.

The ship warrant system functioned properly only when combined with navicerting. For this reason it was not particularly effective in the Pacific before Japanese entry into the war, there being no adequate administrative machinery in the Pacific area for navicerting ships and cargoes.

After United States entry into World War II, the British continued control of the navicert system. The United States, in lieu of navicerts, licensed its own exports. Imperial Export Licensing


Legal problems in “unneutral service” tend to be peripheral to the conduct of economic warfare, yet are sometimes involved directly, as in Captain Wilke's interception of Trent, discussed in Chapter I. Personnel instructed to engage in economic warfare were removed from Trent.

A vessel or aircraft may “assume enemy character,” that is, operate under de facto enemy control. Assumption of enemy character is considered in Special Situation 7 D, infra. A vessel or aircraft may also give “unneutral assistance” to the enemy. This may become a significant economic warfare problem in large-scale carriages of contraband or enemy property. The unneutral activity may be a minor feature in the entire voyage or flight. The latter is often described as “unneutral service.”

The consequences of “unneutral service” may vary from a warning to seizure of the vessel or aircraft and confiscation to the cargo. Factors considered in evaluation “unneutral service” are: (1) The degree to which the unneutral conduct is likely to enhance the military capabilities of the enemy. (2) The nature of the contraband goods, the character and status of prohibited passengers, and the nature and volume of prohibited information collected and transmitted. (3) The degree to which the vessel or aircraft apparently is subject to enemy control. (4) The proportion which the unneutral activity bears to the total activity on the voyage or flight of the unit. (5) The extent to which the unneutral conduct apparently is known to the owners and operators of the unit.
in Commonwealth countries was accepted as equivalent to cargo navicerting for the issue of ship navicerts.\textsuperscript{102}

Although British semicompulsory navicerting was initiated by a Reprisals Order-in-Council, its basic feature was nothing more than a play on the older technique of ship’s passes. If the belligerent could seize contraband, certainly the belligerent could waive this right in its discretion by issuing navicerts. The burden of proof feature, as one writer aptly commented,\textsuperscript{103} is simply a matter of municipal prize court procedure. So long as neutrals have adequate notice of the change, and a hearing is afforded, the burden of proof should be in the discretion of local authorities. Placing the burden on the claimant, during periods when many seizures are made, is simple administrative common sense.

The navicert order of 1940 may have been framed as a reprisal to apply it to goods not subject to seizure as contraband or enemy property. The expansion of contraband lists, however, had left little property in either category.

An extension of contraband controls to property not subject to seizure may have an inherent virtue of administrative convenience. Nevertheless, a Board of Economic Warfare should not dissipate its energies by denying navicerts to innocent trade when time could be expended with greater advantage in interdicting trade of interest to the enemy. The injured owner of an innocent cargo or ship during World War II had little redress in any event other than recovery of his property seized under the Reprisals order. There were no damages for wrongful seizure or diversion.\textsuperscript{104}

\textit{Expansion of Contraband Lists}

Practice in the two world wars preserved in all essentials the basic features of contraband. Contraband goods must be of a nature which will in some way further the enemy war efforts. The goods must also have a hostile destination.

However, the Declaration of London contraband lists were quickly abandoned by the Allies and Central Powers in World War I. New lists ultimately included virtually all goods of possible use in war


except medical and hospital supplies, luxury items in a limited category and supplies used on board ship.\textsuperscript{105}

England and France commenced World War II with a short contraband list, issued in 1939 and based on the United States 1917 Naval Instructions for Maritime Warfare. This list contained four categories of absolute contraband: (1) arms, ammunition, explosives and chemicals; (2) fuel and means of transportation; (3) means of communication; and (4) coin, bullion, currency and evidences of debt. Food, foodstuffs and clothing were conditional contraband.\textsuperscript{106}

Some of the combatants in World War II continued detailed lists—but all ultimately had lists as broad or broader in coverage than those in World War I. This expansion of contraband was a highly conventional and legally unassailable reaction to the all embracing economic demands of modern war.

As the contraband lists were expanded, certain earlier problems which vexed merchants and publicists began to disappear. One was the doctrine of infection, covered by Article 42 of the Declaration of London and much discussed by prize courts and writers in the 18th and 19th centuries. All of the cargo of the owner on board ship was likely to be contraband. Thus there was nothing to infect—all of it suffering the same malady.

The second and third provisions of the Declaration of Paris, 1856, became obsolete. Contraband goods were excepted from the immunity granted enemy goods under a neutral flag and neutral goods under an enemy flag—yet most goods were contraband under modern lists.

The special enemy destination, expressed in Article 25 of the Declaration of London as a condition for seizure and condemnation of conditional contraband, was eliminated as a contraband feature by judicial recognition of governmental economic controls. With elimination of special enemy destination for seizure and condemnation of conditional contraband; and extension also of the ultimate destination principle to conditional contraband—discussed in Special Situation 7 C; the importance of distinguishing between contraband categories diminished.

During World War I, Sir Samuel Evans, in The Kim,\textsuperscript{107} recognized a presumption that all conditional contraband with a hostile destination was either for enemy military forces or for the government of the adversary for war use. This presumption was based

\textsuperscript{105}See Naval War College, International Law Documents, 1944-45, 34-42.
\textsuperscript{106}VII Hackworth, Digest, 24-26 (1943).
\textsuperscript{107}/1915/, 215, 280-282.
upon the control exercised by combatants over private property for war ends by requisitioning and other devices.

The feature of increasing governmental control over its internal economy for war purposes and the relation of this feature to contraband control had been observed during the Napoleonic wars. These facts of wartime governmental control were regularly relied upon by the German Prize Courts. The presumption was continued in prize proceedings in World War II; and has been stressed in recent prize cases.

Despite changes in presumptions concerning the special enemy destination of conditional contraband, thereby shifting to the claimant the burden of showing an inoffensive destination, there still may be reason for a tenuous distinction between the categories. There is a suggestion, for example, in British prize practice during World War II, that a distinction may be made if property is shipped before hostilities commence. If the contraband is conditional, a mere diversion of the goods before seizure may save them from condemnation. But if the contraband is absolute, not only a diversion of the cargo but abandonment of the original intention of hostile destination by objective acts is required.

There is also propaganda value in a conditional contraband list when items other than those solely of military application are to be

---

108 E.g., VII Moore, Digest, 676-677 (1906) (Hammond, British Minister to Jefferson, Secretary of State, 1793).
109 E.g., The Maria, 10 A.J.I.L., 927 (Imperial Supreme Prize Court, 1915); See Richards, “Contraband,” 3 Brit. Y.B. Int. L., 1, 9-10, (1922-23).
111 See The Fedala, Int. L. Rep. (1957), 992; and in Annual Digest (1949) The Klipfontein (Case 210); The Bataan (Case 211); The Frankisky (No. 1) (Case 212); The Triport (Case 214) (all by Prize Court of Alexandria, Egypt).
112 The Glenroy (Cargo ex.) (No. 2), /1943/ L1.P.C. (2d) 153. However, the goods were condemned on appeal as tainted with enemy ownership under the principle of The Anglo-Mexican, /1918/ A.C. 422. See Part Cargo ex.M.V. Glenroy, /1945/ A.C. 124.
interdicted. Intercepting shipments of food and clothing has stimulated much antagonism among neutrals in the past. The food or clothing supply of a neutral may be constricted; producers or vendors of food in neutral food exporting states may be injured; the civilian population of the enemy may be starved or frozen to the dismay of neutral beholders. Placing food and clothing on a conditional contraband list suggests the belligerent is sensitive to humanitarian dictates even though in practice food is treated as absolute contraband.

Food as Contraband

The general population growth, coupled in many areas with natural limits upon agricultural production by current methods, will make belligerent operations against an adversary's food supply probable features of future general and limited wars.

These operations may involve the use of chemical or biological weapons against plants or domestic animals. The use of rice blast against the Japanese crop was considered in World War II but rejected. Chemical agents have been used against insurgent food crops in South Vietnam.

Operations can also be expected against the food supply of an adversary by interdicting its transportation, although the circumstances of a particular conflict, such as that described in General Situation 7 may make interdiction of food transport undesirable.

The British philosophy during World War II was summed up by Sir Winston Churchill:

* * * Let Hitler bear his responsibilities to the full, and let the people of Europe who groan beneath his yoke aid in every way the coming of the day when that yoke will be broken. Meanwhile, we can, and we will, arrange in advance for the speedy entry of food into any part of the enslaved area when this part has been wholly cleared of German forces and has genuinely regained its freedom. We shall do our best to encourage the building up of reserves of food all over the world so that there will always be held up before the eyes of the peoples of Europe—including—I say it deliberately—the German and Austrian peoples, the certainty that the shattering of


the Nazi power will bring to them all immediate food, freedom and peace.

Interdicting the enemy food supply will weaken his labor force. Automation may offset this to a degree but is unlikely to develop as effective defense. Hardships suffered on the home front directly affect the morale of troops. This can be reduced to a degree but not precluded by censorship.

Denials of food can influence the deployment of enemy troops. This was clearly demonstrated during World War I. During World War I, the German government abysmally mismanaged its food resources. It failed to prevent "holdbacks" by local producers, withdrew excessive agricultural labor for the armed forces, failed to build up a sufficient stockpile of chemical fertilizers, and diverted an exorbitant amount of food into military supply channels.

By 1915, Germany had been brought internally to the brink of chaos by Allied contraband controls. When Romania entered the war in 1916, Germany was thus forced to invade that country promptly to secure the Romanian wheat supply. Even so, she almost collapsed during the winter of 1916–17.

Sir Arthur Salter states: 117

* * * In what precise proportions privations at home and defeat in the field contributed to the acceptance of the Armistice cannot be stated. But the blockade may justly claim to have shortened if not to have won the war. It succeeded at the moment when the counterblockade by submarine had just definitely failed. * * *

Nazi Germany profited by the earlier experience. Although in 1938 she was estimated to have food stocks on hand for only a few months of hostilities, by April 1939 she had stockpiled approximately a year of her "peacetime" needs.

Germany was then importing about 11% of her annual calory requirements. It was possible she could overrun other sources of supply, as in fact she did. This would reduce the additional imports of food required to sustain the country on a war level.

During the early months of World War II, adjacent neutrals, even major food producers, such as Holland, Denmark and Belgium, were importing food much in excess of their probable consumption. While contraband controls upon food and other supplies were enforced by the Allies, the problem was also attacked by War Trade Agreements with the Northern Neutrals, Belgium, Holland and Switzerland. These countries could be persuaded to control their exports to Germany to some extent in return for British and

117 Salter, Allied Shipping Control, 102 (1921).
French liberalization of contraband controls and their export control policies. These agreements were compromises and the flow of foodstuffs and other commodities to the enemy did not stop.

After the fall of France, and elimination of many of the neutrals, agitation increased for liberalization of the contraband policy to permit food and clothing to reach these "captured" populations. President Hoover has stated the cause for relief of the victims of Nazi aggression quite ably.\textsuperscript{118} The reasons for opposition to relief of those engaged in economic warfare have been expressed with equal force.\textsuperscript{119}

A Commission for Polish Relief had been organized in the United States in September 1939 and permits were obtained from the Chamberlain government for relief shipments of food. Relief was also sent to Finland during the Russo-Finnish War. But when Churchill became Prime Minister, exceptions for food shipments ceased.

In November 1940, the National Committee on Food for the Small Democracies was created with Hoover as Honorary Chairman. Around this Committee developed much of the pressure for relaxation of contraband regulations to permit aid to the occupied countries and also to unoccupied Vichy France.

This pressure, although ineffectual in achieving its aim, embarrassed British blockading efforts at a critical war period. The Ministry of Economic Warfare was placed on the defensive.

The British position was that of the "man under the gun" who resists any aid to his immediate adversary—direct or indirect. The position of American relief agencies stemmed from genuine humanitarian impulse, although there were no doubt some minor political ramifications and perhaps an element of profit motive as Professor Medlicott discreetly suggests.\textsuperscript{120}

The important point which the British difficulty demonstrated is that the state interdicting food as contraband must anticipate emotional reactions among neutrals. These reactions can jeopardize the belligerent's entire system of contraband control. This hazard should be balanced against the advantages to the belligerent derived from interdicting food.

That food currently can be declared contraband of war is no


\textsuperscript{120} I Medlicott, \textit{The Economic Blockade}, 553, 554, 555 (1952).
longer seriously contested.\textsuperscript{121} So far as its interdiction is concerned, whether food is conditional or absolute contraband today makes no practical difference. Prize courts have regularly condemned food supplies even though listed as conditional contraband in view of the requisitioning and other control practices of combatant governments.\textsuperscript{122}

It is speculative whether Article 23 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War\textsuperscript{123} will affect significantly belligerent contraband food operations. Contracting parties are to allow free passage of all essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

This obligation, however, is conditioned, fatally it appears, upon satisfaction of the party there is no serious ground for fearing: (a) the consignments may be diverted from their destination; or (b) the control may not be effective; or (c) a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

Furthermore, the Power allowing passage may make distribution conditional upon supervision of the Protecting Power. It can also prescribe the technical arrangements under which such passage is allowed.

\textit{Medical and Hospital Supplies}

Apart from Article 29 of the Declaration of London, 1909, and Article 23 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War,\textsuperscript{124} there is little guidance concerning the status of medical and hospital supplies as contraband. These have not appeared on absolute or conditional contraband lists and a practice is believed to exist to exclude them on humanitarian grounds.

Article 29 of the Declaration of London permitted, if the military

\textsuperscript{121} Oppenheim states it is generally agreed that foodstuffs should not under ordinary circumstances be declared contraband. He does not state what extraordinary circumstances are unless he has in mind food destined for the use of the enemy army or navy. II Oppenheim, \textit{International Law}, 805 (7th Ed. Lauterpacht, 1952). See III Hyde, \textit{International Law}, 2108–2123 (1947).
\textsuperscript{122} E.g., \textit{The Sidi Ifni}, /1945/ L.I.P.C. (2d) 200, \textit{Ann. Dig.} (1944–45), 549, Case No. 197.
\textsuperscript{124} \textit{Ibid.}
situation was urgent, requisition of these supplies if destined to territory belonging to or occupied by the enemy or to the armed forces of the enemy. This is currently the international custom.

Provisions of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 1949, applicable to hospital ships, in relation to blockades as previously discussed, should also apply to the enforcement of contraband regulations. Individual shipments of medical supplies to prisoners of war probably should be passed without seizure.

Article 23 of the Geneva Convention Relative to the Protection of Civilian Persons provides for the free passage of medical and hospital stores intended for the civilians of another high contracting party, including civilians of the adversary. But this passage is subjected to the identical conditions imposed upon the passage of essential foodstuffs.

The Need for a Contraband List

The trend to shorten contraband lists in World War II, stating general contraband categories rather than attempting encyclopedic listings of specific items, worked adequately when coupled with an efficient navicert system. The items considered contraband by the belligerents seldom were placed in transit because no carrier could be obtained for unnavicerted cargo.

The major function performed by the short list was guidance to administrators issuing navicerts. The function of notice to shippers who might unsuspectingly send their property to sea, and there have it seized, was of secondary importance.

It was, of course, important to shippers to know that a program of contraband control was in force. If a shipper applied for a navicert and could not obtain it, he was on notice that his shipment at least was suspect, although as noted previously, absence of a navicert was never the sole ground of condemnation in a prize case.

126 Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Art. 72. (The provision is directed specifically to the Detaining Power but might be applied to a third power enforcing contraband regulations against the Detaining Power.) See Naval War College, International Law Documents, 1950–51, 140.
127 See Fn. 100, supra. In The Mount Taurus, Ann. Dig. (1946), 427, Case No. 183, the French Conseil des Prises indicated previous British denials of navicerts to companies did not make all cargo shipped by those companies suspect. (See In the Matter of Ten Registered Letters ex Eastbound Aircraft,
Sir Daniel Somervell, Attorney General, is said to have suggested during his argument in The Jurko Topic\textsuperscript{128} that it was unnecessary as a matter of law to publish contraband lists. He was taken to task for this by Mr. Rowson because the consequences of carriage of contraband might differ depending upon knowledge by the shipper of the proclamation of contraband and the contents of the proclamation.\textsuperscript{129}

During the American Civil War, the Union had no general contraband list other than the list issued by the Secretary of the Treasury to the Collectors of Customs and by the Secretary of State to Consular Representatives covering trade with southern ports (Beaufort, Port Royal and New Orleans) permitted by Proclamation in 1862.\textsuperscript{130} All trade was to be interdicted with other southern ports by the blockade, although contraband controls were applied to shipments through Mexico.

A proclamation that contraband goods will be interdicted seems necessary, just as there must be notice of a blockade. Whether a statement of the goods to be interdicted also is required should depend upon several factors. If the goods interdicted are to be those traditionally treated as absolute contraband, i.e., goods suitable only for war use, there seems no purpose today in setting forth a list other than to coordinate the activities of administrative and naval personnel enforcing contraband regulations.

The more general the conflict, the greater the need there would seem for a list because of the increasing range of contraband control activity. If navicerting is used generally, this should reduce the need for a contraband list published generally for the benefit of neutrals, although guidelines must be established for the administrative officers issuing navicerts.

**Suggested Solution: Special Situation 7 B**

The Advisory Defense Committee should prepare a contraband list both for guidance of nonparticipants in the enforcement action and for guidance of the nationally diverse American naval units which will participate in enforcing the contraband regulations. No navicerting scheme seems justified unless the action promises to be

---

\textsuperscript{128} Ann. Dig. (1949), 583, 585 (Bermuda, Supreme Court in Prize) where the court discussed notice implied from the mere setting up of censorship of postal correspondence.)


\textsuperscript{130} See Savage, Policy of the United States Towards Maritime Commerce in War 1776–1914, 446–449 (1934).
of extended duration. Thus, a list seems vital for the guidance of shippers and to reduce the burden upon intercepting naval units.

The items listed as contraband should be limited to those: (1) immediately enhancing Nuevan and Antiokan military power; and (2) reasonably discoverable by a search at sea. Diversions of vessels for close examination should be minimized.

The industrial resources of Nueva and Antioka seem sparse. The emphasis in contraband control should thus be upon manufactured items such as weapons, uniforms, ammunition, communication equipment, and transportation which cannot be produced locally. In view of the past history of conflict between the United States and Nueva, biological and chemical munitions and means for their delivery should be listed.

The suggestion of the Antiokan Minister of Defense-in-Exile to include food, medical and hospital supplies on the contraband list should be rejected. The list should be coordinated with the restrictions of the blockade which now excludes these items from coverage.

Placing food on the contraband list risks mobilizing opinion against the Organization of American States. This might embarrass further action by the Organization as well as any similar action the Security Council might decide to take.

Denials of food will also injure the innocent populations of Nueva and Antioka against whom the action of the Organization is not aimed. These people, now possibly uncommitted, may be prejudiced in favor of the Salvaje regime by unduly harsh economic measures. If denials of food later become necessary, both the contraband program and the blockade can be expanded.

Medical and hospital supplies, in addition to their exclusion because of the exception permitting them to pass the blockade, should not be placed on the contraband list because customarily excluded for humanitarian reasons.

D. ULTIMATE DESTINATION (CONTINUOUS VOYAGE) — BLOCKADE AND CONTRABAND APPLICATIONS: CONSEQUENCES OF CARRIAGE OF CONTRABAND AND BREACH OF BLOCKADE

Special Situation 7 C

The Advisory Defense Committee of the Organization of American States accepted your suggestions tendered as a result of your study in Special Situation 7 B. This contraband list was prepared and approved by the Organ of Consultation:

1. Arms of all kinds; ballistic and guided missiles and launching equipment; ammunition, explosives, igniting devices; chemical, biological and nuclear munitions and devices for their use.
2. Electrical and electronic equipment.
3. Transportation, armored and unarmored, sea, land and air.
4. Lubricants. Fuels adaptable for military purposes without further processing.
5. Military clothing and equipment.
6. All manufactured components of and machinery for the manufacture or processing of articles on this list.

Naval units of the Organization are to limit contraband enforcement to waters of the Western Hemisphere. A further extension of enforcement activity may be made if required.

Surface sea traffic only will be intercepted. Submarines and aircraft will be intercepted by the blockading force.

Vessels seized are to be diverted to the nearest convenient port of a member of the Organization of American States at which a court having jurisdiction in prize is sitting.

In the opinion of the Advisory Defense Committee, strict enforcement of contraband regulations will minimize blockade running and will permit the blockade to be maintained by a few surface units with air support.

An OAS Economic Measures Command with United States naval personnel attached, is established at Miami. Admiral Albuquerque of Rio Oro, a member of the Organization of American States, is in command. You are on his staff.

The Captain of U.S.S. Tattnall has intercepted a Corinthian freighter, M.S. Truant, on the high seas within the Western Hemisphere bound for Georgetown, Guyana. Her papers appear in order. About 1/8 of her total cargo consists of 20,000 waterproof ponchos made of tan material; 400 pounds of assorted red, brown, green and yellow oil paints suitable for camouflaging waterproof cloth; and 2,000 16mm paint brushes suitable for applying oil paint.

The ponchos, paint and brushes are consigned to Rochambeau et fils of Georgetown by Vulcan Metals Company of Parnassus, Carinthia. On an intelligence summary received by the Captain yesterday, he noted Rochambeau et fils sold eight tons of canned rations and 6,000 jungle boots to Salvaje approximately two weeks before the blockade mentioned in General Situation 7 was established.

The Captain requests instructions whether he should divert Truant or permit her to continue to Georgetown. Instruct him.

Discussion: Special Situation 7 C

Ultimate Destination (Continuous Voyage):

Background

The foundation cases for modern applications of “ultimate destina-
tion” to carriages of contraband and breaches of blockade are The Peterhoff and The Springbok, both arising from Union economic warfare at sea during the American Civil War, and both handed down by the United States Supreme Court on the same day. The Bermuda, another case in which continuous voyage principles were discussed by the United States Supreme Court, also has been frequently cited in later prize decisions.

As mentioned in the Discussion of Special Situation 7 A, the Federal close blockade of Confederate ports was breached successfully by blockade runners. The Federals thus reinforced their close blockade by seizures of neutral vessels during their voyages between ports in Europe and neutral ports in the American area. It was not always clear whether these seizures were for carrying contraband, carrying enemy property, or for intended breach of blockade.

The Federal navy used a rudimentary blacklist of vessels engaged in transporting goods intended for the Confederacy. The names of firms and persons engaged in this trade also were generally known.

A ship carrying goods for the Confederacy might stop at a port in neutral territory convenient to a Confederate destination, bunker and refit if necessary, and then run the blockade. More often, the cargo was transshipped and either run by another vessel through the blockade or carried by land through Mexico to Confederate territory.

Peterhoff was seized near St. Thomas in the West Indies on a voyage from London to the mouth of the Rio Grande. Her cargo, part of which seemed principally for military use, was documented for Matamoras, Mexico. The cargo was to be lightered from the mouth of the Rio Grande to Matamoras.

The Supreme Court held the mouth of the Rio Grande not blockaded and Peterhoff not guilty of an attempted breach of blockade. The cargo, however, was condemned on evidence that part of it was to be transshipped from Matamoras to Brownsville, Texas, for Confederate use. While part of the route was by land, the contraband part of the cargo had a hostile destination. The remainder of the cargo was condemned on a theory of infection since owned by the owners of the contraband.

The same line of reasoning was applied to an attempted breach of blockade in The Springbok. Springbok was seized en route from

131 72 U.S. (5 Wall.) 28 (1866).
132 72 U.S. (5 Wall.) 1 (1866).
133 70 U.S. (3 Wall.) 514 (1865).
134 Frau Houwina, II Slrey 795 (1855) (French Imperial Prize Court) was not cited. The ultimate destination rule was there applied to saltpeter seized on a neutral Hanoverian vessel bound from Lisbon to Hamburg, a notorious point of transshipment to Russia.
London to Nassau. Her papers were in order. Her cargo was packaged. Bills of lading were "to order or assigns" and disclosed the contents of approximately one third of the packages on board. Apart from eight swords and eleven bayonets, probably intended for use in Nassau, contraband items were blankets, buttons, boots and shoes.

Both Springbok and her cargo were condemned in the District Court. Rather than taking evidence to acquit or condemn in the first instance from the ship (her papers and testimony by her officers), as was then customary in prize procedure, the United States introduced evidence from The Gertrude and The Stephen Hart. Gertrude, seized while running the blockade, has been condemned about a month previously. Stephen Hart was then before the District Court.

On appeal, the Supreme Court restored Springbok under the rule of The Bermuda because there was no evidence Springbok intended to breach blockade or that her owners had an interest in the cargo or knew its destination. But the entire cargo was condemned as shipped by its owners with an intent to breach the blockade.

The Supreme Court gave weight to the fact the bills of lading were silent both as to the owners and consignees of the property and the contents of many of the packages. This silence was considered suspicious since the cargo was shipped to a notorious resort for blockade runners.

A letter of instructions to the master, found on board, directed him to report to an agent of the charterers in Nassau "who will give you orders as to the delivery of your cargo." The property interest of the owners in the cargo apparently was to remain unchanged in Nassau. The contraband nature of part of the cargo was also thought to indicate a probable hostile destination.

Then using evidence developed in Gertrude and Stephen Hart, the Supreme Court confirmed its suspicions raised by evidence from Springbok. Packaging and markings on cargo found on Gertrude were similar to packaging and markings on cargo on Springbok. A charterer of Springbok, and part owner of her cargo, also owned Gertrude. Gertrude had been in Nassau at about the time Springbok was due to arrive. Claimants to the cargo of Stephen Hart (arms and ammunition) were also part owners of Springbok's cargo.

135 VII Moore, Digest, 707n. (1906).
137 Peterhoff, Springbok, Gertrude and Stephen Hart were all before Judge Betts of the Southern District of New York.
138 70 U.S. (3 Wall.) 514 (1865).
Brokers for the cargo on *Stephen Hart* were also brokers and shippers of the cargo on *Springbok*.

*Peterhoff* and *Springbok* brought clearly into focus for the first time that the continuous voyage of the vessel was not necessarily the major offensive element in this phase of economic warfare. Instead, the ultimate destination of the cargo was the matter of principal concern. For enforcing contraband and blockade regulations, the cargo should be condemned even though it was transshipped.

Although the British government accepted ultimate destination as applied in both *Peterhoff* and *Springbok*, there was much criticism of *Springbok* by English and continental publicists. These critics objected to the concept of a blockade being breached other than by the ship herself. They also object to condemnation of the cargo without some substantial suspicion first being raised by evidence from the vessel. Nevertheless, the use in *Springbok* of evidence from other ships provided an opening wedge for later general uses of intelligence obtained from any sources. This intelligence was used both for the initial seizure and for condemnation even though the ship’s papers and other evidence aboard suggested no enemy destination.

Ultimate destination had been used in various naval contexts long before *Peterhoff*, *Springbok* and related American Civil War cases. Also, the basic technique had long been familiar in commercial and fiduciary law as tracing.

The term “continuous voyage” was used by Lord Stowell in 1805. He then recognized the principle as long established.

Continuous voyage was applied by English courts to seizures under the “Rule of 1756.” The doctrine was also applied to carriage of contraband in the 18th century and to blockade in 1806. Features of the principle can be traced to the early 17th century.

---

139 *The Maria*, 6 C. Rob. 201 (1805).

140 England prohibited trade by neutrals between her adversaries (France and Spain) and their colonies under special licenses during war when France and Spain did not permit this trade in peace. Direct trade between the neutral and France or Spain was not prohibited. Neutrals sought to take advantage of this exception by circumnavigation—touching an intermediate neutral or British port. They were foiled by being seized on the last leg of this journey, between the intermediate port and France or Spain, under the “continuous voyage” doctrine.


and Springbok were only specializations of this settled principle to cargo, a development predictable when a shift from sail to speedier steam power rendered older forms of commercial interdiction of decreasing value to belligerents.

Between the American Civil War and World War I there were no major developments in application of the ultimate destination principle. The Peterhoff rule was applied by the Italian Prize Court to arms and ammunition carried by a Dutch vessel from Rotterdam to Djibouti, a French port, from which arms were regularly sent to Abyssinia, with which Italy was then at war.\(^{143}\) An abortive attempt was made to apply the rule to Bundesrath, Herzog and General,\(^{144}\) German mail ships seized by the British while bound for Lourenco Marques, a Portuguese port. The ships were suspected of carrying contraband for the Transvaal and Orange Free State but no contraband was found aboard.\(^{145}\)

As discussed in *Special Situation 7 B*, the distinctions attempted in the Declaration of London, 1909, between absolute and conditional contraband failed to survive World War I. One of the earliest casualties was exemption of conditional contraband from application of the ultimate destination principle unless the shipment of conditional contraband was to a landlocked enemy.

**Modern Applications:**

*Ultimate Destination-Continuous Voyage*

During World War I, the basic pattern of ultimate destination as outlined by the United States Supreme Court in Peterhoff and Springbok was reshaped to the conditions of modern general war. Under the London Declaration, ultimate destination could be applied to absolute contraband and this was done by all participants from the beginning of hostilities.

There was also heavy erosion of the Declaration limitation of ultimate voyage as applied to conditional contraband by a series

---

\(^{143}\) *The Doelwijk*, 24 Clunet 850 (1896).
\(^{144}\) VII Moore, *Digest*, 739 (1906) ("Delagoa Bay Cases").
of British and parallel Allied administrative provisions. Application of ultimate destination to conditional contraband by the British Prize Court in 1915; and administrative orders in 1916 placing conditional and absolute contraband upon the same footing for applying the ultimate destination principle; simply applied the coup de grace to an already dying distinction.

When ultimate destination was clearly established as applicable to conditional contraband, the Allies shifted their major weight in maritime economic warfare from the equivocal blockade thought by some to have been established by the Reprisals Order-in-Council of 11 March 1915, to contraband controls. The main developments thereafter were the clear shift of the ultimate burden of proof to the claimant in prize proceedings and the increasing range of evidence considered by the prize courts in determining whether a vessel or cargo should be seized or condemned.

**Burden of Proof**

The absence of a navicert under the “Reprisals” Order-in-Council of 31 July 1940 raised a rebuttable presumption that the ship or cargo had a hostile destination. Although, as previously indicated, no ships or cargoes were condemned during World War II simply because unnavicerted, the burden of proof of innocence of destination was shifted to the claimant to ship or cargo as the case might be. Presumably this practice will continue in any future war in which navicerts are used; although the “clearcerts,” issued during the Cuban Quarantine of 1962, the closest approach since World War II to a navicert, were for shipping convenience and had no relation to a burden of proof concerning destination of ship or cargo.

But when navicerts are not used, as in future “limited wars,” the issue of burden of proof again can be troublesome. Prior to World War I, the burden of proof of hostile destination rested on the captor.

In Declaration of London, Order-in-Council, No. 1, 20 August 1914, the presumptions of Article 34 of the Declaration of London were continued. However, enemy destination was to be presumed, and thus the burden of proof shifted to the claimant if the goods were consigned to or for an agent of the enemy state, or to or for a

---

146 These included the two British Declaration of London Orders-in-Council (1 & 2) (20 August and 29 October 1915) and the “Reprisals” Order-In-Council, 11 March 1915. Brit. & F. St. P. (II) 100, 156, 109, 217 (1915).

147 The Kim, /1915/. 215.


149 S. R. & O., 1940, No. 1436.
merchant or other person under control of the authorities of an enemy state.\textsuperscript{150}

This statement of the burden of proof was simplified in Declaration of London Order-in-Council (No. 2) 29 October 1914\textsuperscript{151} to a presumption of hostile destination if the goods are “consigned to or for an agent of the enemy state.” But further presumptions of enemy destination were added if the goods were consigned “to order,” if the ship’s papers failed to show the consignee, or if the papers showed a consignee in territory belonging to or occupied by the enemy.

When the ultimate destination principle was extended fully in 1916 to conditional contraband, the burden of proof of innocence also was shifted to the claimant. The presumptions of Declaration of London Order-in-Council (No. 2) were continued with the addition of a presumption of enemy destination if the goods were consigned to or for a person who had forwarded during the war imported contraband goods to territory belonging to or occupied by the enemy.

English prize courts recognized these changes in the burden of proof as administratively necessary in general contraband control. Their position was summed up by Lord Parker in \textit{The Louisiana}:\textsuperscript{152}

\textit{* * * /I/t} is well to bear in mind that, according to international law, neutrals may during a war trade freely as well with belligerents as with other neutrals. If, however, the goods in which they trade are in their nature contraband, the traffic involves certain risks. For a belligerent State is entitled to seize the goods in transit on reasonable suspicion that, being in their nature absolute contraband, they are destined for the enemy country, or, being in their nature conditional contraband, they are destined for the enemy government or the enemy naval or military forces.

The goods when seized must of course be brought into the Prize Court for adjudication, but in the Prize Court the neutral trader is not in the position of a person charged with a criminal offense and presumed to be innocent unless his guilt is established beyond reasonable doubt. He comes before the Prize Court to show that there was no reasonable suspicion justifying the seizure or to displace such reasonable suspicion as in fact exists.

The State of the captors is necessarily unable to investigate the relations between the neutral trader and his correspondents

\textsuperscript{150} 108 \textit{Brit. \\& F. St. P. (II)} 100, Art. 3 (1914).

\textsuperscript{151} \textit{Ibid.}, 156.

\textsuperscript{152} 1918/ \textit{A. C.} 461, 464.
in enemy or neutral countries, but the neutral trader is or ought to be in a position to explain doubtful points. If his goods had no such destination as would subject them to condemnation by the Prize Court, it is his interest to make full disclosure of all the details of the transaction.

Only if his goods had such destination can it be his interest to conceal anything or leave anything unexplained. If he does conceal matters which it is material for the Court to know, or if he neglects to explain matters which he is or ought to be in a position to explain, or if he puts forward unsatisfactory or contradictory evidence in matters the details of which must be within his knowledge, he cannot complains if the Court draws inferences adverse to his claim and condemns the goods in question.\(^{153}\)

Earlier, in The Kim, Sir Samuel Evans conceded: \(^{154}\)

\[* * * It is, no doubt, incumbent upon the captors in the first instance to prove facts from which a reasonable inference of hostile destination can be drawn, subject to rebuttal by the claimants. * * *\]

From the claimant's point of view, however, the difficulty was that it was not enough for the owner to show the cargo had been shipped innocently, if its ultimate destination in fact was hostile. Also, the facts proved in the first instance by the captor, as described by Sir Samuel, no longer had to be derived from the ship herself.

"Intention" in Enemy Destination

In The Bermuda, the United States Supreme Court, citing Sir William Grant in The William,\(^{155}\) declared: \(^{156}\)

\[* * * If there be an intention, either formed at the time of the original shipment, or afterwards, to send the goods forward to an unlawful destination, the continuity of the voyage will not be broken, as to the cargo, by any transactions at the intermediate port.\]

During World War I this point was expanded to exclude the intent of the consignor of the goods as necessarily the decisive

\(^{153}\) See The Antares, /1915/ II L.I.P.C. 219, 251-2; The Kronprinsessan Margareta, /1921/ 1 A.C. 486; The Nornre, /1921/ 1 A.C. 765; The Falk, /1921/ 6 L.L.R. 503; The Monte Contes, /1944/ A.C. 8; The Arsia, Ann. Dig. (1949), 577, Case No. 206 (Enemy Property); In The Matter of Ten Registered Letters ex Eastbound Aircraft, Ann. Dig. (1949), 583, Case No. 208.

\(^{154}\) /1915/, 215, 283.

\(^{155}\) 5 C. Rob. 385 (1806).

\(^{156}\) 70 U.S. (3 Wall.) 514, 554 (1865).
factor. In *The Pacific*,\(^{157}\) for example, coffee was consigned from Salvador to an agent in Sweden to dispose of it for the best possible price. Although the consignor had no special intent that the coffee go to Germany, the coffee supply in Sweden was such that Germany was its likely destination. The agent, furthermore, had previously engaged in contraband trade and had acted as intermediary for sending other goods to Hamburg.

In *The Noordam*,\(^{158}\) cotton goods were shipped from New York to Amsterdam consigned to the Netherlands Oversea Trust Co., for the firm of S. I. De Vries of Amsterdam. The Netherlands Oversea Trust Company was a body of Dutch traders who had agreed with the British Government to act as intermediaries to obtain goods from abroad.

Cotton piece goods were absolute contraband since usable in the manufacture of explosives. It was known De Vries sold large quantities of cotton goods to Germany. While the shipper was innocent and it was known that Netherlands Oversea Trust Co. would have exacted guarantees of neutral consumption from De Vries, it was nevertheless possible that De Vries might evade the vigilance of the Company and ship the goods to Germany. Lord Sterndale stated: \(^{159}\)

\[* * * The question is, what is the ultimate destination, what is the destination intended by the person who will have control of the goods when they arrive? If they had arrived at the neutral port De Vries would have had the control, subject to this, that they would have had to give undertakings to the Netherlands Oversea Trust Co. that they would not send the goods into an enemy country. But De Vries were the purchasers; they would have become the owners of the goods, and their intention, I have no doubt, was to send them into enemy countries. If that be so, in my opinion it cannot be said that there is not an enemy destination simply because some association, such as the Netherlands Oversea Trust Co., would do all they could to frustrate it. * * *\]

The goods were condemned as contraband.\(^{160}\)

The German Prize Court applied "ultimate destination" when the

\(^{157}\)\hspace{1em}1920/ L1.L.L.R. 105.
\(^{158}\)\hspace{1em}1919/ 57.
\(^{159}\)\hspace{1em}Ibid., 64.
shipper and consignee were innocent of intent of hostile destination but the charterer took the cargo to an enemy port.\textsuperscript{161}

In future applications of The Springbok rule to attempted breaches of blockade, it may well be that the intention of the owners or shippers of the property to breach blockade will be the material issue upon which condemnation of the property will depend. But while doubt has been shed in The Monte Contes\textsuperscript{162} upon British practice in World War I relating to the material intent in ultimate destination contraband cases in which condemnation is based on contraband theories rather than breach of blockade, the position taken in The Noordam will probably be resumed in any future conflict.\textsuperscript{163}

The Noordam position, for example, seems to lie at the heart of contraband cases in which the property is to be reprocessed or manufactured and then pass to the enemy. The problem arose in World War I in The Balto.\textsuperscript{164}

Leather had been shipped in Balto consigned to the manager of a Swedish shoe factory. The manager, claimant in the case, declared the leather was intended solely for consumption in the Swedish factory, the evidence being clear nevertheless that it was to be manufactured into boots for the German and Austrian armies. The cargo accordingly was condemned. The consignor was innocent. But the intent of the consignee of the goods (the owner, since title had passed) seemed amply clear to send the manufactured product to the enemy.

In The Behar,\textsuperscript{165} however, a Swiss consignee, who was shown simply to have had business relations with Germany, lost a cargo of gallnuts by condemnation which were to be manufactured into tannin at its factory. The Franco-Swiss War Trade Agreement was construed not to prohibit the possible export to Germany of tannin extracted from the nuts.

\textit{Evidence on the Issue of Enemy Destination}

The efficiency of operation of Allied contraband controls in both world wars hinged upon effective gathering of economic intelligence.

\begin{flushright}

\textsuperscript{162} /1944/ A.C. 6, 10.

\textsuperscript{163} And see cases on innocent shipment before hostilities, Fns. 112-113, supra, this Chapter.

\textsuperscript{164} /1917/, 79.

\textsuperscript{165} Ann. Dig. (1946), 430 (Conseil des Prises, 1946) Case No. 185.
\end{flushright}
This intelligence was gathered by censoring the mails, monitoring cable transmission and radio messages and by other covert and overt devices at the disposal of the respective governments.

By the Prize Court Rules of 1914, the customary rule that the ship had "to be condemned out of her own mouth," ignored in The Springbok, was also abandoned in British prize procedure. In addition to evidence from the usual sources, such further evidence could be received "as may be admitted by the Judge." 166

Sir Samuel Evans, in The Kim167 remarked in response to objections by counsel to the use of intercepted letters against parties to whom they did not refer:

* * * The letters show an intimate knowledge of what was being done by the various shippers in reference to consignments of foodstuffs to Copenhagen; of the difficulty of exportation from Denmark to Germany; and of the probable fate of some of the cargoes now before the court.

It was objected that they could not be evidence against any persons other than Ascher & Co. and Cudahy & Co., and that they ought not to read in any of the other cases. If they stood alone, I should not act upon them as affecting those cases. But it must be remembered that Prize Courts are not governed or limited by the strict rules of evidence which bind, and sometimes unduly fetter, our municipal courts. Such strict evidence would often be very difficult to obtain, and to require it in many cases would be to defeat the legitimate rights of belligerents.

Prize Courts have always deemed it right to recognize well-known facts which have come to light in other cases, or as matters of public reputation. (Citing Lord Stowell and The Stephen Hart) * * *

In discussing the evidence required for seizure of cargo, Lord Parker stated:168

* * * It is clear that the ultimate as opposed to the ostensible destination of goods would seldom, if ever, appear on the ship's papers or be within the knowledge of the master or crew. It would have to be proved or inferred from other sources, and it could hardly be contended that if the Crown were in possession of evidence obtained from such other sources from

---

167 /1915/, 215, 250.
168 The Baron Stjernblad, /1918/ A.C. 173, 176.
which an ultimate destination in an enemy country could be inferred as reasonably probable, the seizure of the goods would not be justified. * * *

In *The Consul Coritzon*¹⁶⁹ where the Privy Council held the President of the Prize Court could make an order for discovery of certain business records of the claimant to cargo, Lord Parker said:

In the present case one of the matters in question is how the appellant intended to dispose of the goods to which these proceedings relate after their delivery at Karlskrona. Were they intended by him for consumption in Sweden, or had they a further destination, and if so in what country?

It appears to their Lordships to be beyond dispute that inferences on this question might properly be drawn from the course and nature of the appellant’s business in goods of a similar nature both before and after the outbreak of the present war, and in particular from the volume of his trade with Germany before and since such outbreak. All documents which throw light on these matters must therefore fall within the principle laid down in the case above referred to. * * * /Compagnie Financiere de Pacifique v. Peruvian Guano Co. 11 Q.B.D. 55/ * * * The order for discovery being limited to documents which may throw light on the nature and course of the appellant’s business and the volume of his trade with Germany for some months before the war and since the outbreak of the war, it is in their Lordship’s opinion impossible to hold the order was wrong in law. * * *

The evidence considered by the Prize Courts in determining ultimate destination was varied. As in *The Springbok*, consignments “to order” were thought to raise suspicion,¹⁷⁰ as were failures by ships’ papers to name the consignee of cargo.¹⁷¹ Shipments to black-listed firms¹⁷² and to points of active trade in contraband seemed persuasive.¹⁷³ The most interesting group of cases on evidential


¹⁷⁰ In *The Kim*, /1915/, 215, 276, Sir Samuel Evans accepted the position of the United States Supreme Court in *Springbok* on this point although he emphasized suspicion might be dispelled by evidence produced by the shippers. See *The Nieuw-Amsterdam*, /1915/, Fauchille, Jurisprudence Francaise, 14; *The Insuitnde*, Ibid., 102; *The Gorontalo*, Ibid., 72. As to the use of evidence in World War I see Garner, *Prize Law During the World War*, 535-574 (1927).


¹⁷³ The presumption of hostile destination was especially strong when the
points developing from World War I were those in which statistical evidence, derived usually from administrative economic warfare efforts to ration neutrals, was offered to indicate the hostile destination of contraband.

An administrative rationing system was used in both world wars. Rationing in this context means limiting shipments to neutrals based upon statistics concerning their need for local consumption.

During World War I, rationing was commenced in 1915 and became the mainstay of Allied economic warfare. Rationing of neutrals during World War II was re instituted on 30 July 1940. Navicerts were to be issued sufficient only for their domestic needs.

Thus, while War-Trade Agreements might have limited effect in reducing exports from neutrals to the enemy, constricting their imports by navicerting would limit the ability of the neutral to export everything not produced in quantity locally. Operations against this surplus local production took the form of preemption (buying up the surplus) and barter for goods in local short supply.174

As statistical evidence developed incidental to administrative rationing, it was logical to use this evidence to determine whether cargoes should be seized as contraband and to condemn cargoes in prize proceedings. During World War II, statistical evidence was used in determining seizures but was not relied upon extensively for condemnations, other evidence usually being adequate for this purpose. In World War I, a number of important statistical evidence cases were decided, although in none were a cargo or vessel condemned on statistical evidence alone.

In The Kim,175 a leading case on many points relating to contraband control in modern war, Sir Samuel Evans dealt with extensive statistical evidence relating to the destination of cargoes on four neutral vessels bound for Denmark. Thus, in considering the ultimate destination of lard, which formed part of the cargoes, Sir Samuel noted: 176

* * * Some illustrative statistics were given by the Crown, with regard to lard of various qualities, which are not without significance, and which form a fair criterion of the imports of consignees had prior contacts with the enemy. E.g., The Tysla, /1916/ 5 L.I.P.C. 433. The Egyptian Prize Court has placed much stress on shipments to Genoa, Italy, as a notorious point for transshipment to Israel. E.g., Ann. Dig. (1949) The Good Hope Castle, 574, Case No. 204; The Carbonello, 581, Case No. 207.

175 /1915/, 215.
176 Ibid., 222–223.
these and like substances into Denmark before the war; and they give a measure for comparison with the imports of lard consigned to Copenhagen after the outbreak of the war upon the four vessels now before the Court.

The average annual quantity of lard imported into Denmark during the three years 1911–1913 from all sources was 1,459,000 lbs. The quantity of lard consigned to Copenhagen on these four ships alone was 19,252,000 lbs. Comparing these quantities, the result is that these vessels were carrying towards Copenhagen within less than a month more than thirteen times the quantity of lard which had been imported annually to Denmark for each of the three years before the war. * * *

Although Sir Samuel observed Denmark as a small country, then with a population less than three million, a food exporting rather than importing country and convenient to many German points for transshipment, he considered these features with the statistical evidence merely “important to bear in mind in their appropriate place” and “not in any sense conclusive upon the serious questions of consecutive voyages of hostile quality, and of hostile destination, which are involved before it can be determined whether the goods seized are confiscable as prize.” 177

But as the statistics became both ample and accurate, judges of the Prize Courts became more readily persuaded by them. In The Pacific, 178 for example, dealing with coffee shipped to Sweden, Sir Henry Duke declared: 179

* * * Where would these goods have gone? That is the question I have to answer, and I answer it by having regard first to the state of the market. Sweden had been glutted with coffee which had poured into Sweden during the latter months of 1914 and 1915. What was the multiple of the imported quantity to the total consumption, I do not at the moment bear in mind, but it makes a ridiculous sum in arithmetic. The Swedish population could not consume the coffee which was notoriously coming into Sweden, if they had devoted themselves to nothing else but the consumption of coffee. * * *

In The Urna 180 dried prunes shipped to Denmark were condemned because of the claimant’s failure to carry his burden of proof of innocent destination shifted to him by a statistical table introduced

---

177 Ibid., 223–224.
178 /1920/, 5 L.L.L.R. 105.
179 Ibid., 106.
in evidence. This table showed imports of dried fruits into Denmark of 18,651 tons in 1915, whereas the annual average of imports before the war during the years 1911–13 was 6,300 tons. In The Baron Stjernblad\(^{181}\) statistical evidence concerning importations of cocoa beans into Sweden was held a sufficient basis for seizure, although the beans were not condemned as contraband.

There seemed general agreement on the issue of condemnation of the cargo as prize that if the goods were simply imported into the common stock of the neutral no hostile destination should be implied. This point had been stated by Sir William Grant in The William\(^{182}\) and was adopted by the United States Supreme Court in The Bermuda.\(^{183}\) Showing that the goods imported, although actually for domestic consumption, released other goods for export, was insufficient to condemn them for hostile destination.\(^{184}\) Of course, the releases for export would be material to an administrative officer establishing a rationing policy for the neutral.

Exercises of export controls by the neutrals, many of these controls having been established or strengthened pursuant to War-Trade Agreements, were considered by the British Prize Courts as insufficient to rebut presumptions of hostile destination. Although these controls might be applied efficiently and in good faith, it was easy for an enemy’s commercial agents to evade them.\(^{185}\) The French took a more liberal position in World War I but examined neutral export control policy with greater care in World War II.\(^{186}\) Consignments to semiofficial bodies, usually established under War-Trade Agreements, were held not to preclude hostile destination of the goods consigned.\(^{187}\)

**Differences in Weight of Evidence Required for Seizure and Condemnation: The Economic Warfare Importance of Delay**

Prior to a possible prize adjudication, with evidence then taken for a decision to condemn or restore the vessel or cargo, the vessel might

---

\(^{181}\) 5 C. Rob. 385 (1806).

\(^{182}\) The Bonna, /1918/, 123. (Coconut oil to be manufactured into margarine possibly releasing butter for export from Sweden to Germany.)

\(^{183}\) 70 U.S. (3 Wall.) 514 (1865).

\(^{184}\) E.g., The Orion, /1921/ 6 L1.L.R. 207.

\(^{185}\) The Louisiana, /1918/ A.C. 461.

\(^{186}\) Cf. Ann. Dig. (1946); The Naiisea Court, 425, Case No. 182; The Mount Taurus, 427, Case No. 183; The Nyhorn, 429, Case No. 184; The Behar, 430, Case No. 185.

\(^{187}\) /1918/ A.C. 173.
be visited and searched at sea or diverted for a thorough search in a contraband control port. If contraband is found, the vessel or contraband or both may then be seized and in British practice placed in custody of the Marshal of the Prize Court.

Emerging as of great importance in both World Wars I and II was the economic warfare function of diversion and seizure. Although the vessel and cargo might later be condemned, with the evidence previously discussed relevant to the condemnation issue, from the perspective of the officer engaging in economic warfare the delay in transit and possible detention of the property was important.

In both world wars Germany possessed inadequate stockpiles of many materials and seriously underestimated her armaments requirements. Merely disturbing the regularity of flow of critical war materials to a manufacturing establishment suffering shortages will seriously disrupt its manufacturing processes. Indeed, when cargo is condemned, unless it is destroyed or kept within the detaining state by export controls, it may still find its way into the hands of the enemy.

By the English practice, if the goods are seized and then released to the owners, the effect of the release order gives the owner possession of the goods within the realm and thus places them under the aegis of British export controls. Shipping space from England might also be denied the successful claimant. There is no judicial remedy in the Prize Court or in most cases in the ordinary courts for denial of an export license or a denial of shipping space.

After property has been seized and is in the custody of the Marshal of the Prize Court, it may also be requisitioned. In The Zamora, the conditions for requisition set were: (1) a real question to be tried so an immediate release would not be proper; (2) the vessel or goods must be urgently required for the defense of the realm, the prosecution of the war, or other motives involving national security; and (3) the right must be enforced by application to the Prize Court which determines judicially whether under the particular circumstances the right is exercisable. American and continental practice permits requisitions without these stringent limitations in cases of national urgency.

---

188 See The Falk, 1921/1 A.C. 787.
190 /1916/2 A.C. 77.
191 As to American decisions and practice, Ibid., 103–105. For the handling of requisition during World War II, see The Selandia, Ann. Dig. (1938–40), 571, Case No. 218 (South Africa, Supreme Court, In Prize); The Pomona, 1930/ L1.P.C. (2d) 1; Glen Line Ltd. v. Minister of Transport, Ann. Dig. (1949), 569,
In *The Fall*, the Privy Council stated there must be such suspicion to justify seizure as warrants inquiry into the facts and adjudication of them by a properly constituted court. Suspicion is sufficiently raised by the contraband nature of the goods (quebrachos and chestnut extracts). Officers seizing the goods are entitled to the benefit of information then possessed by other officers of the Crown or acquired thereafter and are not limited to information from the ship's papers. Statistical evidence was held sufficient as a basis for seizure in *The Baron Stjernblad*.

Even less evidence is required to support the officer directing diversion of the vessel. In *The Bernisse* neutral vessels were diverted for lack of a “green clearance.” A green clearance was issued to vessels cleared at a British port of departure or a British port of call.

An Order-in-Council of 16 February 1917 required a vessel be brought in for examination if encountered at sea on her way to or from a port in any neutral country without calling at a port in British or allied territory (emphasis added). The boarding officer found nothing suspicious except lack of a green clearance. The ships did have an *acquit de caution* indicating they had touched at an Allied colonial port.

The boarding officer sought instructions from the Commander of his cruiser. The Commander, in turn, communicated with the Admiral and was ordered by him to take the ships to Kirkwall. This was due to misconstruction of the Order-in-Council, there being no basis for suspicion that the ships were carrying contraband. The court gave restitution with costs. (One vessel had been sunk by a submarine while being diverted and the other heavily damaged.)

*The Bernisse* was distinguished in *The Mim*. The diversion was there held proper when the vessel was off course and carried a cargo of wheat which was conditional contraband. There was no irregularity in the ship's papers. Sir Francis Hodson stated:

\[\text{***/In the absence of reasonable suspicion the ship must be allowed to proceed. If she is detained, for example, by mistake, as in *The Bernisse*, or if she is detained for some ulterior reason}^{196}\]

Case No. 201. For the reverse situation, release of vessel from requisition for the purpose of seizing in prize, see *The Ingenir N. Vlassopol*, *Int. L. Rep.* (1951), 725, Case No. 223.

192 /1921/ 1 A.C. 787.
193 /1918/ A.C. 173.
194 /1920/, 1.
195 /1947/, 115.
connected with search, the Crown cannot rely on the belligerent right of visit and search as an answer to the plaintiff's claim. No question of mistake arises. It cannot be said that there was any ulterior object in sending her to Kirkwall, the purpose can, on the evidence, only have been that she might be examined. * * * 197

Once the vessel is diverted a reasonable time is allowed to determine whether the vessel or cargo should be seized. In *The Patrai* 198 a Greek ship was detained for twenty-three days at Weymouth with a part cargo of emery stone. She had come in to Weymouth voluntarily. Her cargo plan, manifests and bills of lading were sent in advance to the Ministry of Economic Warfare in London. Further documents were supplied at the request of the Ministry. The requirements of the Ministry were met on 6 November 1939 but the vessel was not released until 23 November. The claim was for damages for unreasonable detention.

Lord Merriman dismissed the claim, pointing out the complexity of the evidence which must be examined before a seizure could be determined. He stated: 199

* * * /I/t is well settled that where there is probable cause for seizure, the Procurator-General is not to be held liable for bringing the case to adjudication, though unsuccessfully. * * * Moreover, the test of 'probable cause' or reasonable grounds of suspicion is not confined to what was known at the time of the detention, still less to what was then actually known to the individual officers concerned, but what is known by the officers of the Crown generally. * * * But though after-acquired knowledge is available to justify seizure in Prize, arbitrary or capricious arrest, ventured on the hazard that a case for conviction may turn up, may involve liability for damages. * * * But if it is blameworthy to venture on a capricious arrest on the chance that something may turn up, it follows that those with whom rests the decision, on behalf of the Crown, whether to seize or not, must be allowed reasonable time to consider the information on which this decision is to be based. * * *

Emery stone was absolute contraband. It was urgently needed in 1939 by Germany for war purposes. The emery stone on *Patrai*, together with that on another vessel arriving in the Channel at about the same time, was more than one-half of the total emery imports.

198 *Int. L. Rep.* (1952), 634, Case No. 148.
199 Ibid., 635–636.
into Holland in 1938 and three-quarters of the normal imports into Holland from Greece.

Claims were allowed for delay in The Remonstrant and The Jurko Topic. In The Remonstrant, there was an undue delay (about three months) in discharging cargo which was seized even though the master was willing to discharge it. In The Jurko Topic a delay in discharge of a contraband cargo of bauxite was due to the difficulty of the Admiralty Marshal in finding a suitable buyer and other administrative complications. The vessel was detained originally at Gibraltar on 16 September 1939 and her cargo was not unloaded until 10 December 1939.

Delays in prize proceedings have given rise to no liability on the part of the Crown or Crown officers when the ship or cargo is reasonably suspect. The reasonable time for delay has been extended by the mass of evidence to be considered. However, detention appears to be emerging as an economic warfare weapon, and any incidental governmental expense involved may be fully justified in appropriate cases by the impact upon the industry of an adversary.

**Consequences of Carriage of Contraband and Breach of Blockade**

The consequences to the owner of contraband cargo were the same in both world wars. The cargo was condemned. It was understood this condemnation was not for violation of international law but was instead simply a sanction open to the belligerent to support his military operations. A shipowner acting in good faith might be allowed compensation in lieu of freight for the condemned cargo.

The effect of carriage of contraband upon the ship depended, according to the older English position formulated by Lord Stowell,

---

203 See The Falk, /1921/ 1 A.C. 787, 794 where Lord Sumner comments upon the change in evidential practice in prize cases as affecting "reasonableness" of the delay. The quebracho and chestnut extracts were detained in April and May 1915. The products were then caught under export licensing and were finally purchased by the War Office in 1917 with the prize proceedings discontinued in 1919.
204 See The Kronprinsessan Margareta, /1921/ 1 A.C. 486, 494-498; The Prins der Nederlanden, /1921/ 1 A.C. 754, 760.
upon knowledge by the shipowner of the contraband being carried.\textsuperscript{206} In \textit{The Hakan},\textsuperscript{207} Sir Samuel Evans, dealing with a full cargo of conditional contraband, condemned the vessel, inferring knowledge of the shipowners from the amount of the cargo, although other facts, such as the high rate of hire, also suggested guilty knowledge. Although Article 40 of the Declaration of London was expressly retained when England abandoned the Declaration in 1916, the Privy Council on appeal in \textit{The Hakan} did not stress this Article but stressed the substantial nature of the contraband and special facts from which the owner's knowledge might be inferred.\textsuperscript{208}

In \textit{The Sidi Ifni}\textsuperscript{209} it was stated the shipowner's knowledge of enemy destination could be inferred if he knew facts which would cause a reasonable person to suspect the destination and yet refrains from making inquiries. The quantitative test set forth in Article 40 of the Declaration of London has virtues as one avoiding inquiries into subjective elements. The Declaration of London principle appears to have been applied by the German Prize Court of Hamburg during World War II\textsuperscript{210} and the French Conseil des Prises in World War I.\textsuperscript{211} The Egyptian Prize Court by contrast has applied the knowledge test to condemn a ship carrying about one-tenth contraband in its total cargo.\textsuperscript{212}

Breach or attempted breach of blockade depends on knowledge express or implied of the ship. As pointed out in \textit{Special Situation 7 A}, this knowledge can be inferred by notice to the port from which the ship departs.\textsuperscript{213} The ship is condemned for breach or attempt to breach blockade. The vessel may be seized at any time before the completion of her voyage.\textsuperscript{214} The cargo on board also is condemned unless it is shown the owners could not have known of the blockade when they placed their goods on board. \textit{The Springbok}\textsuperscript{215} is authority for condemning the goods while releasing an innocent ship.

\textsuperscript{206} \textit{The Ringende Jacob}, /1798/ 1 C. Rob. 89; \textit{The Neutralitet}, /1801/ 3 C. Rob. 295.
\textsuperscript{207} /1916/, 266.
\textsuperscript{208} /1918/ A.C. 148, 156.
\textsuperscript{209} /1945/ L1.P.D. (2d) 200, \textit{Ann. Dig.} (1943–45), 549, Case No. 197.
\textsuperscript{210} \textit{Ann. Dig.} (1943–45), 573, Case No. 206.
\textsuperscript{211} \textit{The Zoodochos-Pighi}, /1916/ Fauchille, \textit{Jurisprudence Francaise}, 313.
\textsuperscript{212} \textit{The Frankisky (No. 1)}, \textit{Ann. Dig.} (1949), 591, Case No. 212.
\textsuperscript{213} \textit{E.g., The Columbia}, /1799/ 1 C. Rob. 154.
\textsuperscript{214} \textit{E.g., The Welvaart van Pillaw}, /1799/ 2 C. Rob. 128.
\textsuperscript{215} 72 U.S. (5 Wall.), 1 (1866).
**Suggested Solution: Special Situation 7 C**

There is reasonable suspicion that the ponchos, paint and paint brushes consigned to *Rochambeau et fils* will pass through the hands of this firm to Nuevan or Antiokan forces. This suspicion is grounded upon the nature of the goods (their quantity and susceptibility to military use) and the past relations of *Rochambeau et fils* with Salvaje. Even though the materials are to be completed for military purposes in Guyana or elsewhere, the ultimate destination rule should apply. The rule has now been so well settled that it is no longer open to question whether the ponchos, paint and brushes are regarded as absolute or conditional contraband.

It is doubtful, on the other hand, that there is any reasonable suspicion that the owners of the vessel know the contraband nature of part of the cargo. Nor is there any reason to suspect the vessel intends to breach blockade.

Thus, the Captain of *Tattnall* should not seize the ship but should divert it to the port nearest his current position at which the suspected cargo can be discharged and examined more closely. The cargo may be condemned either as contraband or, under *The Springbok* rule, as cargo shipped with an intent to breach blockade.

A route should be prescribed for *Truant* and periodic checks made on her progress to her port of diversion by naval air. If the Captain of *Tattnall* desires suggestions of ports for diversion, these will be furnished at his request. If necessary, personnel will be flown from OAS Economic Measures Command to inspect the cargo and to determine whether or not it will be seized at the port to which diversion is ordered. The cargo is considered too large for transshipment at sea.

**E. MARITIME ENEMY PROPERTY CONTROL**

**Special Situation 7 D**

You are Captain of U.S.S. *Tattnall*. Radio reports received by *Tattnall* this morning indicate Scythia has launched ground and air attacks on the NATO member described in *General Situation 7*. Twenty-five Scythian divisions have been identified in the ground action. No United States ground or air units have been committed. There have been no attacks upon United States ground or air units or upon the United States Sixth Fleet. The Security Council of the United Nations is in emergency session as is the National Security Council of the United States.

This morning you intercepted the Scythian freighter, *Frolic.*
Your boarding officer found 200 tons of tin ingot aboard as her only cargo. The tin was shipped by Rochambeau et fils of Georgetown, Guyana. A Nuevan supercargo on board has told your boarding officer that the tin is shipped under a c.i.f. contract made by Rochambeau et fils as agent for the Nuevan Ministry of Resources, a Department of the Nuevan Government, with Vulcan Metals Company of Parnassus, Corinthis. The tin was shipped from Nueva to Guyana prior to establishment of the blockade. A copy of the bill of lading indicates the shipment is “to order” of Rochambeau et fils. Consideration for the sale includes the 20,000 ponchos, paint and paint brushes shipped on M.S. Truant, a Corinthian freighter, diverted by you yesterday as described in Special Situation 7 C and $20,000 (U.S.). Frolic is bound from Georgetown, Guyana, to Parnassus, Corinthis.

You have attempted to contact OAS Economic Measures Command without success. You believe it unlikely radio contact will be made in the next six hours. Will you capture Frolic, divert her, or permit her to pass?

Discussion: Special Situation 7 D

By the Declaration of Paris, 1856, a neutral flag covers enemy's goods with the exception of contraband of war; and neutral goods with the exception of contraband of war are not liable to capture under the enemy flag. Tin is not on the contraband list proclaimed by the Organization of American States as described in Special Situation 7 C. There is no evidence that either the ship or the goods have broken blockade. The basis for capture, diversion or such other action the Captain may deem necessary must turn: (1) upon the character of the Scythian ship—whether it is to be treated as neutral or enemy; and, (2) upon the ownership of the cargo, i.e., whether the tin is either still owned by the Nuevan government or whether it is so closely associated with it that the tin must be treated as if it were owned by the enemy.

Character of the Ship

Under Articles 5 and 6 of the NATO Treaty, an attack by Scythia upon a NATO member is deemed an attack upon the United States. Consequently, without a formal declaration of war the United States is entitled to regard Scythia as an enemy even

---

though attacks have not yet been directed against United States units.

An enemy vessel on the high seas is subject to capture without notice of hostilities. The United States is not a party to Hague Convention VI (Relative to the Status of Enemy Merchant Ships at the Outbreak of Hostilities). Article 3 of this Convention provides the vessel can be detained but not confiscated. It is also uncertain that Scythia is a party to this Convention and doubtful that it will be applied by any combatants in the hostilities beginning.

Had Frolic been in the harbor of an adversary at the commencement of hostilities, days of grace might have been granted for departure. The United States gave days of grace in the Spanish-American War but not in World Wars I and II.\footnote{218} State practice varies in the matter.\footnote{219}

Frolic does not fall into any of the categories of vessels exempt from capture by custom or convention. The major exempted categories are hospital and cartel ships.\footnote{220} The treatment meted out to fishing boats and small boats engaged in local trade has been discussed previously in this chapter.\footnote{221}

The character of Frolic as neutral or enemy is determined primarily by the flag she is entitled to fly.\footnote{222} Prize Courts will go beyond the flag and inquire into the real character of the vessel when there is suspicion that the flag is spurious, where the papers are irregular, or where the registered owner is only nominal. The vessel may be found controlled by the enemy rather than by

\footnote{218}{For the Spanish-American War position, see \textit{The Buena Ventura}, 175 U.S. 384 (1899).} \\
\footnote{219}{The British regard the matter was one of grace and not of right. \textit{The Marie Leonhardt}, /1921/, I. In \textit{The Blonde}, /1922/ 1 A.C. 313 the Privy Council took the position that the vessels could be allowed to leave but if detained could not be confiscated under Hague Convention VI. The vessels could be detained with a duty to restore or requisitioned with a duty to compensate. However, in 1925 England denounced Convention VI. See \textit{The Pomona}, /1948/, 24.} \\
\footnote{220}{See \textit{Geneva Convention, Wounded and Sick in Armed Forces in the Field} (1949), Arts. 36–37 (medical aircraft); \textit{Geneva Convention, Wounded and Shipwrecked Members of the Armed Forces at Sea} (1949), Art. 21 (private vessels used for transport of wounded), Arts. 22–28 (hospital ships and medical transports). A cartel ship sails under safe conduct or pass. See \textit{The Daifjie}, /1800/ 3 C. Rob. 139.} \\
\footnote{221}{See Fns. 58–59 and cases there cited where the matter is discussed as exceptions to blockade.} \\
\footnote{222}{The principle is stated in Art. 57 of the London Declaration, 1909. See \textit{The Unitas}, /1950/ A.C. 536. If the ship flies an enemy flag there must be exceptional circumstances to avoid condemning the vessel.}
the nominal owners. Article 5 of the Geneva Convention on the High Seas is likely to have little effect upon determinations of enemy or neutral character. The Prize Courts seek not only a "genuine link" between the ship and its flag state but actual control of the ship by states other than the flag state. It is the actual control, not the flag that ultimately determines enemy character for prize purposes.

Frolic apparently is a state-owned vessel. Ownership at the time of seizure is critical. The rule is the same for ships and cargoes. The status of lienholders is immaterial.

Although no transfers of title to Frolic seem in issue, transfers during wartime are examined closely and if merely colorable, rather than bona fide, divesting the enemy of all interest, the transfer will be declared invalid. An attempt was made in the London Declaration, 1909, to establish an absolute presumption, subject to certain conditions stipulated, of validity of the sale if made more than thirty days prior to commencement of hostilities. The Declaration also set forth a presumption that a transfer was void if made during a voyage or in a blockaded port, if a right to redemption or reversion was retained, and if the requirements of the new flag state have not been observed. Otherwise the presumption could be rebutted by proof that the transfer was not to avoid the consequences of enemy character.

The London Declaration formula was rejected by the British in World War I in The Tommi; and although applied by France in The Dacia, France later returned to its position that a transfer after war began was void.

223 E.g., The St. Tudno, /1916/, 271; The Michigan, /1916/ 5 L.I.P.C. 421; The Hamborn, /1918/, 19 Cf. The Nordmeer, Ann. Dig. (1946), 401, Case No. 172 (no papers on vessel). The United States has emphasized the flag as determining nationality, but has not dealt with prize cases involving this problem since the Spanish-American War. See The Pedro, 175 U.S. 354 (1899).

224 TIAS 5200.

225 E.g., The Rijn, /1917/, 145 (Cargo); The Tommi, (1914), 215 (Ship).


227 The Sechs Geschwistern, /1801/ 4 C. Rob. 100; The Kankakee, /1918/ 8 L.I.P.C. 74; The Benito Estenger, 176 U.S. 568 (1900). By the French practice, any transfer prior to war was recognized and any transfer after war began was not. The Victoire (ex Virginia) /1920/ Journal Officiel (16 January 1921), 651.

228 See Naval War College, International Law Topics, 1909, 123, Art. 55.

229 Ibid., 125, Art. 56.

230 /1914/, 215.

231 /1915/ Journal Officiel (28 September 1915), 6912.
Since *Frolic* flies a Scythian flag, and there is no apparent problem concerning transfer of title to her, she is subject to capture as an enemy vessel. If the Captain of *Tattnall* captures *Frolic* and places a prize crew aboard her, this answers his problem of diversion and he has then no concern about the cargo. The cargo will be restored or condemned by the Prize Court.

There are reasons why he might prefer some other basis for diversion of *Frolic*. To capture *Frolic*, he should place a prize crew on board to prevent her rescue by another Scythian vessel. This may unnecessarily reduce the strength of his vessel at a time when he may be directed upon more active naval warfare missions due to the impending military operations against Scythia.

He is also enforcing contraband regulations for the Organization of American States. Capture of the Scythian vessel as an enemy vessel may unnecessarily involve the Organization in United States action as a NATO member.

The United States position *vis-à-vis* Scythia and NATO has not been delineated by the President; and until the President acts, the Captain of *Tattnall* should not create a situation which will limit the President’s freedom of maneuver. The factual matrix is within the control of the Captain of *Tattnall*.

**Character of the Cargo**

There is a strong presumption that if the ship is an enemy it also carries enemy cargo. According to Article 59 of the London Declaration, 1909, this presumption can be rebutted by proof of neutral character of the goods. Permitting the presumption to be rebutted is consistent with Article 3 of the Declaration of Paris, 1856, which states neutral goods with the exception of contraband of war are not liable to capture under the enemy flag. The rebuttal presumption of enemy character of goods has been applied consistently by the Prize Courts.

The presumption is useful, however, to the Prize Court which

---

232 However, the ship may be captured without putting a prize crew on board. *The Hercules*, /1819/ 2 Dods., 353 (taken by *ruse de guerre*); *La Esperanza*, /1822/ Hagg., 85.

233 E.g., *The Roland*, /1915/ 1 B. & C.P.C., 188.

234 See *Naval War College, International Law Topics, 1909*, 135.


ultimately passes upon the disposition of the cargo, and not to
the officer capturing the vessel initially based upon its enemy
character. Since it may be desirable for the Captain of Tattnall
to avoid a position that Frolic presently is an enemy vessel, al-
though she certainly has that status, at the same time he should
not permit such a vessel to pass but should insure that her enemy
status and character of her cargo are subject to adjudication and
especially that a metal of such strategic importance as tin will
not pass into Scythian hands. Consequently, a possibly useful
approach in solving his problem is to consider the character of the
cargo and use the cargo as a basis for diversion of the ship.

Enemy character of the cargo is determined by the enemy
character of its owner.237 How the enemy character of the owner
is determined is a complex matter to which various tests have
been applied by belligerents. The only exception to determining
the enemy character of the cargo by the enemy character of the
owner is made for the produce of enemy soil. The produce of the
enemy soil remains enemy even if the owner is neutral.238

The various tests for enemy character of a natural person who
owns the cargo in question turn either upon domicile or nationality.
The preferred continental test has been nationality.239 The preferred
British and American test has been domicile.240

Domicile is a question of fact depending upon residence of the
person and his concomitant intent at the time of taking up
residence to make the place his permanent home. A national thus
permanently resident in an enemy country is presumed an enemy
for treatment of cargo owned by him.241 He may unequivocally
abandon his enemy domicile and be treated as a neutral. The
same general test applies to changes of registration of a ship and

237 This basic point was made in the Declaration of London, 1909, Art. 58,
but no tests for enemy character of the owner were attempted. See Naval War
College, International Law Topics, 1909, 133.
238 E.g., The Marine Cap, Ann. Dig. (1949), 570, Case No. 202 (Prize Court of
Alexandria) (Lemons); The Asturian, /1916/, 150 (sultanas); The Amy
Warwick (The Prize Cases), 67 U.S. (2 Black), 635 (1862) (tobacco). It may
be possible to extend this theory to minerals although the cases reported in-
volve agricultural products.
239 E.g., Le Hardy, /1801/ I Pistoye et Duverdy, Traits des Prises Maritimes,
321 (1855); The Martha-Bockhahn, /1919/ Journal Officiel (2 March 1919),
2348; The Ambra (No. 2) /1916/ Gazetta Ufficiale (12 July 1916) No. 163;
Wall.) 377 (1866).
241 See The Anglo-Mexican, /1918/ A.C. 422.
domicile of its owner. Territory in enemy occupation is treated as enemy territory for the domicile test.

In addition to the civil domicile of the natural person, there also is commercial domicile relevant both to the character of his cargo and to the character of his ship. There is likewise a possibility that a neutral domiciliary may be associated with an enemy house of trade.

A natural person acquires commercial domicile by residence, even for a short period, plus trade with an enemy country making this trade a part of its resources. No fixed establishment in the enemy country is necessary.

If the owner does not reside in the enemy country, he may nevertheless be affiliated with an enemy house of trade. For a reasonable period after the war commences the owner is given an opportunity to disassociate from his house. He must bear the burden of proof of disassociation. If he fails to disassociate, his interest in cargo transported on behalf of the house of trade is subject to condemnation. The house of trade rule has been extended to the corporate enemy subsidiary of a neutral parent corporation.

The domicile of corporations owning cargo or ships has caused much confusion. The basic difficulty lies in the fact that in economic warfare it is not the place of incorporation or the place of doing business but the control over the corporation that is significant. There have been no United States prize cases in which the domicile of a corporation as owner of ship or cargo subject to condemnation has been in issue. However, in other questions in which possible enemy control might exist over the corporation, the United States has treated a corporation as an American national although the Alien Property Custodian will vest shares owned by alien enemies. There has been a tendency in freezing and

---

244 The Kara Deniz, /1922/ 3 B. & C.P.C., 1070; The Frances, 12 U.S. (8 Cranch.) 335 (1814).
245 The Vigilantia, /1798/ 1 C. Rob. 1.
246 The Manningtry, /1916/, 329.
247 If the owner has interests in two or more houses of trade, one being an enemy and the affairs are confused, all of the property may be condemned unless the claimant can bear the burden of distinguishing neutral from enemy property. The Posteiro, /1917/ 3 B. & C.P.C., 275.
blacklisting procedures to consider the actual control over the domestic corporation.\footnote{See Domke, \textit{Trading With the Enemy in World War II}, 120–144, (1943).} It is possible that in a prize case involving a question of enemy character of a domestic corporation, the Prize Court might inquire into actual control of the corporation by the enemy.

In \textit{Daimler Co., Ltd. v. Continental Tyre and Rubber Co., Ltd.},\footnote{1916/2 A.C. 307.} the House of Lords held a company \textit{prima facie} a friend when registered in England. The company could assume enemy character if persons in \textit{de facto} control of its affairs were either residents in enemy territory or controlled by the enemy. \textit{Daimler} was applied by the Prize Court in the \textit{St. Tudno},\footnote{1916/291.} in which the directors of a domestic company were under enemy control, and \textit{The Hamborn},\footnote{1918/19.} in which the domestic company was a subsidiary of a German-controlled corporation. In \textit{The Michigan}\footnote{1916/5 L.I.P.C., 421 (distribution of the shares is described in \textit{The Poona}, 1915/2 L.I.P.C., 291.} all of the shareholders of the corporation were enemy persons except the holder of one share who was a French former German resident. The corporation was held to have enemy character.

The enemy character of the owner of the tin on \textit{Frolic} is simplified because the Nuevan Ministry of Resources is an administrative department of the Nuevan Government. Nueva is now under blockade and contraband regulations are being enforced against her. Although no war has been declared formally, military enforcement measures are being taken against her. She should be regarded as an enemy until these are discontinued. The question remains whether the Nuevan Ministry now owns the tin or whether Vulcan Metals Company owns it.

A c.i.f. contract is one in which the amount to be paid by the buyer covers the invoice figure of the goods and insurance and freight to a designated terminus. An f.o.b. contract may be to the place of shipment, to carrier or to destination, the seller bearing the expense of shipment and insurance to the point indicated. When title to property (the \textit{jus disponendi}) passes under these contracts depends upon the terms of the particular agreement.

Under the Uniform Commercial Code, now widely adopted in the United States, title (risk of loss) under a c.i.f. contract passes to the buyer upon shipment if the seller has properly performed all of his obligations with respect to the goods.\footnote{UCC—Section 2–230.} Under the British
Sale of Goods Act, 1893, the intention of the parties to the contract concerning passage of the property is emphasized; but under c.i.f. contracts the position preferred seems to be the *jus disponendi* remains in the seller until actual release of the documents to the buyer and his acceptance of them. In continental practice much emphasis has been placed upon the bills of lading as indicating the passage of title.

United States Courts have had no occasion to construe a c.i.f. contract in a prize case. By the British practice a distinction is made depending upon whether all the material parts of the business transaction (apparently both the contract and shipment) take place during war or in anticipation of war or whether, on the other hand, the material parts of the business transaction occur during peace and unanticipated war intervenes.

For transactions prior to war and not in anticipation of it, the British have applied their municipal law, although it has been indicated that if the contracting parties intend some other law to govern their transaction, the law intended will be applied. The intention of the parties as to whether the buyer or seller has the *jus disponendi* at the time of seizure will be the material factor under British law.

In *The Miramachi* wheat was shipped from Galveston to Germany before outbreak of war under a c.i.f. contract. A bill of exchange was drawn by the sellers upon the buyers accompanied by an unendorsed bill of lading and certificates of insurance to be delivered to the buyers upon payment. The buyers did not accept the bill of exchange. Sir Samuel Evans held there was no intention to transfer the property (the *jus disponendi*) until the bill of exchange was accepted. The property was restored as neutral property.

When the sale transaction is entered into in contemplation of war or during hostilities, title passes only upon actual delivery of the goods to the buyer. A mere transfer of documents is insufficient to bind the captor, the property being subject to capture as enemy property so long as it remains in transit.* If the consignor is neutral, property consigned to the enemy is presumed delivered to

---

256 56 & 57 Vict., c. 71 Sections 17, 18.
him upon capture. The intents of the parties under the contract do not control.\textsuperscript{262}

When these rules are applied to goods allegedly shipped in contemplation of hostilities, the burden lies on the claimant to prove the transaction was \textit{bona fide}. The claimant might be able to show, for example, that the contract was made when no hostilities were foreseen;\textsuperscript{263} or that the hostilities apprehended were between states other than those of the contracting parties.\textsuperscript{264}

The war-peace dichotomy in British practice apparently has had no influence in continental prize jurisprudence, the question in continental Prize Courts turning upon the intention of the parties no matter when the transaction occurred. The bills of lading, as pointed out, carry great weight on the issue of intention.\textsuperscript{265} Neither the British nor the continental courts recognize transfers after the property is seized or captured.\textsuperscript{266}

While the actual ownership of the tin on \textit{Frolic} cannot be determined without prize proceedings, the c.i.f. contract, coupled with the fact that the bill of lading is to order, and that payment for the cargo has probably not been received by the Nuevan agent, indicate the \textit{jus disponendi} to the property has not passed to Vulcan Metals Company. The cargo thus remains enemy property. The contract and shipment were also made after enforcement action by the Organization of American States commenced. Thus the transfer might be brought under the British rule treating transfers of title ineffective while the property is \textit{in transit}.

The problem remains that if \textit{Frolic} is regarded as a neutral ship, the enemy property aboard her falls under Article 2 of the Declaration of London, 1856. The tin is not on the contraband list, and the Declaration states a neutral flag covers enemy goods except contraband of war.

The problem is to detain \textit{Frolic} without detaining her as an enemy. A Prize Court may treat her as an enemy vessel when our national policy concerning Scythia is fully clarified. Two approaches may be taken upon which a diversion of \textit{Frolic}, other than as an enemy vessel, can be based.

It may be reasoned, first, that Article 2 of the Declaration of

\textsuperscript{262} \textit{The Sally}, /1795/ 3 C. Rob. 300n.–302; \textit{The Louisiana}, /1916/ 5 L1.P.C., 230, /1918/ A.C. 461.

\textsuperscript{263} \textit{The Southfield}, /1915/ 1 B. & C.P.C., 332.

\textsuperscript{264} \textit{The Daksa}, /1917/ A.C. 386.

\textsuperscript{265} See Colombos, \textit{Law of Prize}, 92–94 (1940) and cases there cited.

\textsuperscript{266} E.g., \textit{The Palm Branch}, /1916/, 230; \textit{The Mercia}, /1939/ Ann. Dig. (1943–45), 564, Case No. 203 (Germany, Prize Court of Hamburg); \textit{The Good Hope Castle}, /1949/ Ann. Dig. (1949), 574, Case No. 204.
Paris was intended to protect goods in the ordinary course of commerce and not goods shipped on a neutral ship expressly to obtain protection of the neutral flag. Such an argument was successful in *The Barvean* 267 in which tea had been transshipped from a German to a Dutch vessel during hostilities for carriage between Padang to London to be sold through a firm of brokers.

Unneutral service of the vessel also may be a basis for diversion. Although *Frolic* has not been supplying enemy warships or land forces directly, the tin is carried as exchange for ponchos, paint and brushes believed destined for Salvaje's forces.268 Also *Frolic* carries a Nuevan supercargo who might be regarded as a Nuevan governmental official.269 Both are rather weak grounds for unneutral service as a basis for condemnation of the vessel but are sufficient bases for suspicion justifying a diversion.

No diversion can be founded simply upon the enemy "origin" of the tin. Allied controls of enemy exports during World Wars I and II were based on reprisal orders. The reprisal Order-in-Council, 11 March 1915,270 provided for interdiction of all property "laden" at a German port and for goods "which are of enemy origin or are enemy property." Goods laden in a German port if not requisitioned were to be detained or sold; although proceeds of sale were not to be paid until the conclusion of peace except upon application of a proper officer of the Crown. Upon application of this officer, neutral property could be recovered. A similar scheme was applied to property of enemy origin laden at a port other than a German port. A reprisal Order-in-Council in 1939271 reinstituted similar controls. The order was subsequently extended to other belligerents.

These orders were framed as reprisals largely because of the limitations placed by Article 2 of the Declaration of Paris, 1856, upon noncontraband enemy goods carried under neutral flags. "Certificates of Origin and Interests," certifying goods as free from enemy taint could be obtained from consuls in various ports. In 1940, certificates of origin and interest were made semicompulsory. Goods shipped from a port giving access to the enemy were presumed to be of enemy origin or ownership absent the certificate. During World

---

267 /1918/, 58.
268 There are no cases on indirect service to the enemy. However, the tin is a full cargo and in exchange for property which is for the use of enemy forces and absolute contraband. The law of unneutral service is in flux and such an argument might be received favorably by a Prize Court.
269 See *The Orozembo* /1807/, 6 C. Rob. 430.
271 S. R. & O., 1939, No. 1709.
War II, the export control program was administered by an Enemy Export Committee in the Ministry of Economic Warfare.272

**Suggested Solution: Special Situation 7 D**

*Frolic* should be diverted to a United States port on the ground she carries as her total cargo enemy goods shipped during hostilities with the special intent to use the cover of a neutral flag. The master should also be informed that he is suspected of unneutral service in transporting a Nuevan supercargo. No prize crew should be placed aboard *Frolic*. However, a route should be assigned her and periodic reports made on her progress by naval air. If *Frolic* deviates from her route, she may be seized. She could be captured at any time as an enemy vessel; but her enemy character is preferably left in suspense until United States policy concerning the Scythian attack upon our NATO ally is determined.

---