I. Visit and Search

1. A Belligerent Right.

The right of visit and search in time of war, recognized in practice and by treaties as early as the 15th century was firmly established in the 18th and 19th centuries. Visit and search, it was discovered, was essential for the exercise of the right of capture.

1. "The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."


2. "Belligerents have a full and perfect right to capture enemy goods and articles going to their enemy which are contraband of war. To the exercise of that right the right of search is essential. It is a means justified by the end. It has been truly denominated a right growing out of, and ancillary to the greater right of capture."


3. Article 27. "If the ships of the said subjects, people or inhabitants of either of the parties shall be met with, either sailing along the coasts or on the high seas, by any ship of war of the other, or by any privateers, the said ships of war or privateers, for the avoiding of any disorder, shall remain out of cannon-shot, and may send their boats aboard the merchant ship which they shall so meet with, and may enter her to number of two or three men only, to whom the master or commander of such ship or vessel shall exhibit his passport concerning the property of the ship, made out according to the form inserted in this present treaty, and the ship, when she shall have showed
such passport, shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or search her in any manner, or to give her chase or force her to quit her intended course."


Similar articles were inserted in many other treaties concluded by the United States in the 18th and 19th centuries. For example: Conventions, Treaty with Sweden, (1783), Art. 12, Malloy, Treaties II, 1729. Treaty with Columbia, (1824), Art. 18, Mallory, I, 297-8. Treaty with Bolivia, (1858), Art. 21, Malloy, I, 120.

4. "12. The belligerent right of search may be exercised without previous notice, upon all neutral vessels after the beginning of war, to determine their nationality, the character of their cargo, and the ports between which they are trading."


Cases and documents of the 20th century merely reaffirm this right of visit and search.

1. "* * * according to the principles universally acknowledged, a belligerent war-ship has, as a general rule and except under special circumstances, the right to stop a neutral commercial vessel in the open sea * * *"

The Carthage, Scott, Hague Court Reports, (1916), 330.

2. "(6) A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes."


3. "42. The belligerent right of visit and search, subject to exemptions mentioned in Section VII, may be exercised outside of neutral jurisdiction upon private vessels after the beginning of war in order to determine their national-
ity, the port of destination and departure, the character of their cargo, the nature of their employment, or other facts which bear on their relation to the war.”

*Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 21.*

4. “Commanders of all Naval vessels shall whenever possible take necessary steps to assure themselves of the character of all vessels sighted on the high seas in accordance with international law and usage.”


5. Article 1. “1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship.”


6. “Any seaplane met at sea by a vessel of war may be visited and searched to determine its relation to the hostilities and it may be treated according to the evidence formed.”

*United States Naval War College, International Law Situations, 1935, 89.*

7. “It is agreed in principle that belligerent airplanes have the right to visit and search not only neutral surface vessels but also neutral aircraft.”

*United States Naval War College, International Law Situations, 1938, 15–16.*

8. Article 49. “(1) A belligerent has the right of visit and search on and over the high seas and on and over territorial waters that are not neutral.”


2. *Purpose.*

Visit and search is necessary in order to determine whether or not a ship is liable to capture under international law.
1. "The belligerent right of search may be exercised without previous notice, upon all neutral vessels after the beginning of war, to determine their nationality, the character of their cargo, and the ports between which they are trading."


2. "A belligerent warship has incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes."


3. "to determine their nationality, the character of their cargo, the nature of their employment, or other facts which bear on their relation to the war."


4. "with the object of ascertaining its (the ship's) character and nationality and of verifying whether it conveys cargo prohibited by international law or has committed any violation of blockade."


Craft authorized to exercise the right of visit and search.

Before the first World War, only commissioned warships exercised the right of visit and search.


2. "The right of visiting and searching * * * is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."

3. Article 1. "Privateering is and remains abolished;"


Since the beginning of the first World War, the right of submarines and airplanes, as well as warships, to exercise the right of visit and search has been recognized.

1. "according to the principles universally acknowledged, a belligerent war-ship has * * * the right to stop a neutral commercial vessel in the open sea."

The Carthage. Scott, Hague Court Reports, (1916), 330.

2. "(6) A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas * * *


3. "Submarines have the right to order the ship's papers of any vessel held up to be brought alongside in a boat."


4. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after seizure.

A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

(2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated; and if a submarine cannot capture a merchant vessel in conformity with these rules the existing law of notions requires it to desist from attack and to permit the merchant vessel to proceed unmolested."
Article 3. "The Signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of those rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found.

Article 4. "The Signatory Powers recognize the practical impossibility of using submarines as commerce destroyers without violating, as they were violated in the recent war of 1914–1918, the requirements universally accepted by civilized nations for the protection of the lives of neutrals and non-combatants, and to the end that the prohibition of the use of submarines as commerce destroyers shall be universally accepted as a part of the law of nations they now accept that prohibition as henceforth binding as between themselves and they invite all other nations to adhere thereto."


5. Article 49. "Private aircraft are liable to visit and search and to capture by belligerent military aircraft."

Article 50. "Belligerent military aircraft have the right to order public non-military and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

"Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon."


6. Article 1. "The following rules shall govern commerce in time of war:

"1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not
neutral any merchant ship with the object of ascertaining its character and nationality and of verifying whether it conveys cargo prohibited by international law or has committed any violation of blockade. If the merchant ship does not heed the signal to stop, it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it.

"The ship shall not be rendered incapable of navigation before the crew and passengers have been placed in safety.

"2. Belligerent submarines are subject to the foregoing rules."


7. Article 22. "The following are accepted as established rules of International Law:

"(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject."


The rules stated in this Treaty of London (1930) and in the proces-verbal of 1936 were invoked by the International Agreement for Collective Measures against Piratical Attacks in the Mediterranean by Submarines signed at Nyon on Sept. 14, 1937. The same rules were applied to aircraft through Article II of the Supplementary Agreement to the Nyon Arrangement.

United States Naval War College, International Law Situations, 1938, 100-103.

8. Article 49. "(2) A belligerent may exercise the right of visit and search only by a commissioned warship or commissioned military aircraft. Belligerent armed merchant vessels or armed nonmilitary aircraft may not exercise the right of visit and search."
Article 54. "(2) A submarine or aircraft which does not carry a small boat may direct a visited vessel to send its boat to the submarine or aircraft with an officer carrying the ship's papers."

Article 109. "(2) If sea conditions permit the aircraft to alight, the aircraft shall alight and the procedure applicable to surface vessels shall be followed.

"(3) If the belligerent aircraft is unable to alight, it may require the vessel to proceed on its course under instructions as to speed until the sea moderates or until a naval vessel of the belligerent appears. If visit and search are not effected by either means within six hours, or if the aircraft does not remain within sight or hearing of the merchant vessel, the vessel may resume its course at normal speed."

Article 111. "(1) Uncertified neutral private aircraft are subject to visit and search by belligerent commissioned military aircraft.

"(2) Such belligerent aircraft may order such neutral aircraft to alight for visit and search in a locality reasonably safe and accessible.

"(3) Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination, exposes an aircraft to the risk of being fired upon."


4. Craft subject to visit and search.

Before the development of the airplane, visit and search could only be exercised upon enemy and neutral merchant ships.

1. "The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."


1. Enemy hospital ships may also be visited and searched.
Article 4. "The belligerents shall have the right to control and search them (hospital ships); they can refuse to help them, order them off, make them take a certain course, and put a Commissioner on board; they can even detain them, if important circumstances require it."

III Hague Convention, (1899). Malloy, II, 2038


2. "* * * according to the principles universally acknowledged, a belligerent warship has, as a general rule and except under special circumstances, the right to stop a neutral commercial vessel in the open sea * * * ."

The Carthage. Scott, Hague Court Reports, (1916), 330.

3. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized."


With the development of the airplane visit and search not only was exercised over enemy and neutral merchant ships but the right was extended also to enemy and neutral non-military airplanes.

1. Article 1. "A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized."


2. Article 49. "Private aircraft are liable to visit and search and to capture by belligerent military aircraft."


3. Article 1. "1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship * * * ."

4. Article 52. "Neutral non-military aircraft, while upon the surface of the water, shall, for purposes of visit and search, be treated as surface vessels."

Article 111. "(1) Uncertified neutral private aircraft are subject to visit and search by belligerent commissioned military aircraft."


5. "On October 9th, 1939, the American merchant steamer *City of Flint* was visited and searched by a German cruiser at an estimated distance of 1,250 miles from New York."

"The original visit and search and seizure of the *Flint* by the German warship, the placing of the prize crew on board, and the conduct of that crew were apparently all in accord with law."


Forcible measures may be taken to overcome resistance by armed merchant vessels to visit and search. Enemy armed merchant ships may be sunk on sight.

1. Article 63. "Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel."


2. "2. If an armed enemy merchant vessel offers armed resistance against measures taken under the law of prize, such resistance is to be overcome with all means available. The enemy government bears all responsibility for any damages to the vessel, cargo, and passengers."
Schedule to Prize Code (German), 1914. Huberich and King, The Prize Code of the German Empire, (New York, 1915), 75.

3. "45. If the summoned vessel resists or takes to flight she may be pursued and brought to, by forcible measures, if necessary."

Instructions for the Navy of the United States Governing Maritime Warfare, (June 1917), 21.

4. Article 1. "A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after seizure."


5. Article 22. "The following are accepted as established rules of International law:

(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.

(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board."


6. "The United States regarded resistance or flight as ground for using force sufficient to cause the merchant vessel to lie to ... but not a ground for sinking the vessel."
Of course the . . . vessel might be sunk in the exercise of the right, but the use of force was held to be restricted to that necessary to bring the vessel to, and forcible resistance by the merchant vessel was not in itself a ground for sinking (it) but a just ground for its condemnation."


7. Article 53. “(2) If the vessel when summoned does not stop, attempts to escape, or resists visit and search, it may be compelled to stop by force and the belligerent shall not be responsible for resulting injury to life or property.”

Article 54. “(3) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface or submarine, or a military aircraft, may not sink or render incapable of navigation an unarmed merchant vessel without having first placed passengers, crew and ship’s papers in a place of safety. For this purpose the ship’s boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or by the presence of another vessel which is in a position to take them on board.”

Article 55. “In their action with regard to enemy armed merchant vessels, belligerent warships, whether surface or submarine, and belligerent military aircraft are governed by the rules applicable to their action with regard to enemy warships.”

Article 109. “(1) A belligerent commissioned military aircraft may signal a vessel to stop as by radio, or by firing a machine gun burst across its bows.”

“(4) If the vessel when summoned does not stop, attempts to escape, resists visit and search, or does not proceed according to instruction, it may be compelled by force to stop and the belligerent shall not be responsible for resulting injury to life or property.”

Article III. “(1) Uncertified neutral private aircraft are subject to visit and search by belligerent commissioned military aircraft.”
“(2) Such belligerent aircraft may order such neutral aircraft to alight for visit and search in a locality reasonably safe and accessible.

“(3) Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination, exposes an aircraft to the risk of being fired upon.”


Neutral vessels under convoy of vessels of war of their own nationality cannot be visited and searched.

1. “Article 61. Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained and their cargoes, which could be obtained by search.”


2. “51. Neutral vessels under convoy of vessels of war of their own nationality are exempt from search. The commander of the convoy gives orally or in writing, at the request of the commander of a belligerent ship of war, all information regarding the vessels and their cargoes which could be obtained by visit and search.

“52. If the commander of the United States vessel has reason to suspect that the commander of the convoy has been deceived regarding the innocent character of any of the vessels (and their cargoes or voyages) under his convoy, the former officer shall impart his suspicions to the latter. In such a case it is to be expected that the commander of the convoy will undertake an examination to establish the facts. The commander of the convoy alone can conduct this investigation, the officers of the United States visiting vessel can take no part therein.”

_Instructions for the Navy of the United States Governing Maritime Warfare_, (June, 1917), 23.
3. Article 56. "A belligerent warship may not visit and search vessels under neutral convoy. The commander of a convoy shall, upon request of the commander of a belligerent warship, give, by radio or otherwise, all information as to the character of the vessels and their cargoes which could be obtained by visit and search."


4. Article 34. "(1) Neutral vessels under convoy of their own warships are not liable to visit and search.

"(2) The commander of the convoy may, however, be requested to give information and assurances regarding the character of the vessels in his charge and their cargoes."


5. Time.

Visit and search may be exercised only after the beginning of war.

1. "This right (of visit and search) is strictly a belligerent right allowed by the general consent of nations in time of war, and limited to those occasions."

*The Marianna Flora,* (1826), Wheat., 42.

2. "The belligerent right of search may be exercised without previous notice, upon all neutral vessels after the beginning of war * * *

*Instructions to U. S. Blockading Vessels and Cruisers,* General Orders, No. 492, (June 20, 1898).

*United States Foreign Relations,* 1898, 781.

3. "42. The belligerent right of visit and search * * * may be exercised * * * after the beginning of war * * *"


All unarmed neutral and enemy sea and air craft must first be called upon to stop and submit to
visit and search before force may be used for their capture or destruction.

1. In the cases of the destruction of the neutral American vessels, the Gulflight and the Nebraskan, by submarine and without warning, Germany admitted liability, claiming that the action was the result of a mistake.

_United States Foreign Relations_, 1915, 439, 468.

1. In the past, there has been a qualified right of visit and search in time of peace in the case of vessels suspected of offenses of piracy or violations of slave trade, prohibition, fisheries, or pelagic sealing treaties. With the exception of action taken under the provisions of special conventions in regard to fisheries, visit and search in modern times has not been customary in time of peace.

2. _The Antelope_, (1825), 10 Wheat. 66.

2. "45. If the summoned vessel resists or takes to flight she may be pursued and brought to, by forcible measures, if necessary."

"97. In no case after a vessel has been brought to may it be destroyed until after a visit and search has been made and all persons on board have been placed in safety, and also, if practicable, their personal effects."

_Instructions for the Navy of the United States Governing Maritime Warfare_, (June, 1917), 21, 35.

3. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

"A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after capture."

4. Article 1. "If the merchant ship does not heed the signal to stop it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it."


5. Article 109. "If the vessel when summoned does not stop, attempts to escape, resists visit and search, or does not proceed according to instructions, it may be compelled by force to stop and the belligerent shall not be responsible for resulting injury to life and property."


6. "I am under the necessity of bringing to the attention of Congress the ruthless sinking by a German submarine on May 21 of an American ship, the Robin Moor, in the south Atlantic Ocean * * * while the vessel was on the high seas en route to South Africa."

"According to the formal depositions of survivors the vessel was sunk within 30 minutes from the time of the first warning given by the commander of the submarine to an officer of the Robin Moor."

"It was sunk despite the fact that its American nationality was admittedly known to the Commander of the submarine and that its nationality was likewise clearly indicated by the flag and other markings."

Message from President Roosevelt to Congress, June 20, 1941.

United States Naval War College, International Law Documents, 1940, 237.

7. In 1941 a German submarine torpedoed and shelled without warning the S. S. Sessa, an American ship under Panamanian registry, and a German aircraft sank without
warning *The Steelfarer*, an American vessel. President Roosevelt denounced this German practice of sinking without warning as being in contravention to International Law.


6. **Place.**

Visit and search can be exercised only on waters and in air outside of neutral jurisdiction.

1. "The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."


2. Article 2. "Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden."


3. "* * * according to the principles universally acknowledged, a belligerent war-ship has, as a general rule and except under special circumstances, the right to stop a neutral commercial vessel in the open sea * * *.""


4. "(6) A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes."


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power, constitute a violation of neutrality and are strictly forbidden." 

Instructions for the Navy of the United States (June, 1917), 13.

6. "42. The belligerent right of visit and search may be exercised outside of neutral jurisdiction * * *.


7. "Commanders of all Naval vessels shall whenever possible take necessary steps to assure themselves of the character of all vessels sighted on the high seas in accordance with international law and usage."


8. Article 1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship * * *.


9. Article 49. "(1) A belligerent has the right of visit and search on and over the high seas and on and over territorial waters that are not neutral."


7. Diversion.

Prior to the World War, visit and search was exercised "sur place"; diversion for search or visit and search, although not expressly prohibited, was uncommon.

1. "Thirdly another right accrued, that of bringing in for a more deliberate inquiry than could possibly be conducted at sea upon such a number of vessels, even those which professed to carry cargoes with a neutral destination * * *.

The Maria, (1799), C. Rob., 340.

2. Article 196. "In exercising the right of visit, the Commander should be careful to occasion to the vessel no delay
or deviation from her course that can be avoided, and generally to conduct the visit in a manner as little vexatious as possible."


3. "81. In the case of the stoppage and search of a vessel under a neutral flag, the commander must endeavor to avoid bringing the vessel out of the course of her voyage."

"85. If by reason of the weather conditions it is not possible to send out a boat, the commander may, in case there is grave suspicion, order the vessel to follow a prescribed course, and follow with the war vessel, until it is possible to carry out the search."

"91. Where it appears that a search is necessary, but the same cannot be accomplished at the time, the vessel is to be searched at a subsequent time at a suitable place. If by reason of this fact the vessel is subjected to substantial losses, the commander shall proceed to a provisional capture."


4. "In regard to search at sea, an examination of the instructions issued to naval commanders of the United States, Great Britain, Russia, Japan, Spain, Germany, and France from 1888 to the beginning of the war shows that search in port was not contemplated by the Government of any of these countries. On the contrary, the context of the respective instructions shows that search at sea was the procedure expected to be followed by the commanders. All of these instructions impress upon the naval officers the necessity of acting with the utmost moderation—and in some cases commanders are specifically instructed—in exercising the right of visit and search, to avoid undue deviation of the vessel from her course."

In the World War, most of the belligerents practiced deviation for search, claiming that searching modern vessels under modern conditions of warfare was too difficult or dangerous to undertake upon the high seas.

1. "If vessels carrying such cargoes for Swedish ports will call at a British port, such as Falmouth, Lough Swilly, or Kirkwall, on their way, notice will be sent to the fleet which will prevent their being searched or stopped at sea, provided of course they do not commit any unneutral act. "In fact, if all vessels for Scandinavian ports will call at a British port on their way, it will avoid the delay and inconvenience of being stopped at sea."


2. "9. Suspect ships are to be searched, and, according to the result of the search, either released, brought into port, or captured. Since, however, for military reasons or because of the nature of the cargo, search can seldom be carried out at sea, it is advisable for suspect ships at once to be brought into a German port in order to undergo a more thorough search. In such cases a ship shall only be declared captured if during her voyage to a German port it is necessary to take her through neutral territorial waters."

Revised German Prize Ordnance (1916). United States Naval War College, International Law Documents, 1925, 32.

3. "It is reported that the Wolf, a German armed steamer operating in the Pacific in 1916–1917 as a commerce raider, had a plane attached to it, the Wolfchen, which located vessels and diverted them to the mother ship. Thus, on May 27, 1917, while the Wolf was making repairs near an uninhabited island, the Wolfchen was sent out to bring in a vessel which had been sighted, and dropped orders on the deck of the vessel, the Wairuna of New Zealand, which was brought to anchor near the Wolf."

4. "The French frequently practiced diversion for search. Thus, in The Federico, a Spanish vessel was met by a French destroyer, and since visit could not take place at once because of the condition of the sea, conducted to Toulon and there visited and searched."


5. "* * * it would be impossible under the conditions of modern warfare to confine the rights of visit and search to an examination of the ship at the place where she is encountered without surrendering a fundamental belligerent right."

Quoting Admiral Sir John Jellicoe's report,

"It is undoubtedly the case that the size of modern vessels is one of the factors which renders search at sea far more difficult than in the days of smaller vessels.

"There are other facts, however, which render it necessary to bring vessels into port for search. The most important is the manner in which those in command of German submarines, in entire disregard of international law and of their own prize regulations, attack and sink merchant vessels on the high seas, neutral as well as British, without visiting the ship and therefore without any examination of the cargo. This procedure renders it unsafe for a neutral vessel which is being examined by officers from a British ship to remain stopped on the high seas, and it is therefore in the interests of the neutrals themselves that the examination should be conducted in port."


6. "A vessel which is encountered at sea on her way to or from a port in any neutral country afforded means of access to the enemy territory without calling at a port in British or Allied territory shall until the contrary is estab-
lished be deemed to be carrying goods with an enemy destination or of enemy origin and shall be brought in for examination and if necessary for adjudication before the prize court.

"2. Any vessel carrying goods with an enemy destination or of enemy origin shall be liable to capture and condemnation in respect of the carriage of such goods provided that in the case of any vessel which calls at an appointed British or Allied port for the examination of her cargo no sentence of condemnation shall be pronounced in respect only of the carriage of goods of enemy origin or destination and no such presumption as is laid down in Article J shall arise.

"3. Goods which are found on the examination of any vessel to be goods of enemy origin or of enemy destination shall be liable to condemnation."


The United States, as well as other neutral countries, protested against this belligerent practice.

1. "The United States Government feels obliged to request that the method of detention followed in these instances for the purpose of procuring guaranties or further evidence should be discontinued, and that the visit and search of vessels be made at sea with the greatest expedition possible under the circumstances."


2. "The Government of the United States readily admits the full right to visit and search on the high seas the vessels of American citizens or other neutral vessels carrying American goods and to detain them when there is sufficient evidence to justify a belief that contraband articles are in their cargoes; but His Majesty's Government, judging by their own experience in the past, must realize that this Government cannot without protest permit American ships or American cargoes to be taken into British ports and their detained for the purpose of searching generally for evidence
of contraband, or upon presumption created by special municipal enactments which are clearly at variance with international law and practice."


3. "While admitting established right of visit and search and reasonable liberality in its exercise, the United States cannot yield to the seizure of American ships or American-owned cargo in neutral ships on the high seas to be taken to belligerent ships for examination in search of evidence of contraband, where the captor is not in possession of evidential facts creating a legal presumption or just suspicion that the ship is engaged in illegitimate trade, or that contrabrand cargo is aboard. If report of consular agent Swinemunde is correct you will make known these views to German Government and advise consuls and consular agents accordingly."


After the United States became a belligerent in the World War, American agreements like the British were made with the neutrals for "voluntary" calls at Allied ports by neutral vessels for search.

1. "Replying to your request for information as to the nature of the participation of American naval officers in the British practice with respect to the searching and routing of neutral vessels, I have to state that American naval forces in European waters have been engaged largely in anti-submarine operations and in escorting convoys. The belligerent right of visit and search has been exercised on the high seas everywhere in accordance with *Instructions for the Navy of the United States Governing Maritime Warfare, June, 1917*, except that boarding vessels are not required to make entries in ships' logs where such entries would give information facilitating unlawful attack by
enemy submarines. Mandatory routing of neutral merchant vessels has not been practiced by our Navy.”


2. “* * * there is no record in the Navy Department of any case of search and seizure by the vessels of the United States Navy of the kind contested in the American note of October 1, 1915, found in Foreign Relations, 1915, Supplement, 578-589 (in regard to diversion for search).”

Secretary of Navy to the Secretary of State. United States Foreign Relations, 1918, Supp. 1, vol. II, 934.

3. “V. No application for ‘bunkers’ (stores, supplies, and bunker fuel) by any neutral ship shall be approved unless the person or persons owning, managing, chartering, or controlling such vessel shall enter into an agreement in a form to be approved by the War Trade Board, agreeing to comply with and be bound by each and all of the following regulations. Failure to comply with any of these regulations in the case of any one vessel may involve the refusal of ‘bunkers’ to all of the vessels of the particular person, firm, or corporation managing, owning, chartering, or controlling the vessel in question.”

“(e) Every vessel which proceeds from or to the United States, to or from Norway, Sweden, Denmark (including Iceland and the Faroe Islands), Holland, Spain, or to or from any neutral port in the Mediterranean Sea, shall call for examination as may be directed by the War Trade Board.”


The instructions for the United States Navy in 1917 did not permit diversion.

4. “48. If the papers do not furnish conclusive evidence of the innocent character of the vessel, the cargo, and voyage, or probable cause for capture, the boarding officer shall continue the examination by questioning the personnel or by
searching the vessel or by examining the cargo. If such further examination furnishes satisfactory evidence of innocency, the vessel shall be released; otherwise she shall be seized and sent in for adjudication.”

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 22.

Documents and practice since the World War indicate that with the rapid development of the airplane and submarine maritime nations have come to accept diversion for search after visit and under certain conditions for visit and search.

1. Article 40. “Aircraft on board vessels of war, including aircraft-carriers, shall be regarded as part of such vessel.”


2. “A certain degree of deviation for visit and search has always been admitted as lawful. Such deviation has been common when, because the state of the sea made it impossible to visit and search when the summoned vessel has come to, the vessel is escorted to a safer place. This is not an arbitrary act of the visiting vessel. The ordering of a neutral vessel to go to port for examination as has been proposed at times in an exercise of authority which a belligerent craft does not possess.

“A surface or submarine vessel of war is not to be allowed to deviate a vessel from its course unless a prize crew is put on board or an escort is furnished. A mere order is of no effect, as the merchant vessel is not subject to the orders but may be under the physical control of a vessel of war so long as that is effective. Until other rules are accepted, this principle would apply to aircraft.”

United States Naval War College, International Law Situations, 1930, 112.

3. “Art. 107. If, without furnishing grounds for seizure or capture, the visit to a ship gives rise to, or does not remove, a reasonable ground for suspecting the ship to be liable to
nature of the vessel which is to perform the visit or of the vessel to be visited."

Article 62. "Instructions as to course for the purpose of search are admissible if:
1. There are still strong reasons for suspicion after the visit has been made and
2. The searching of the vessel on the spot is impossible or inexpedient."

Article 63. "(1) A vessel which does not obey the instructions as to course can be compelled to do so by force.
(2) It is liable to capture."


8. "It was explained at the Department of State that injury to American vessels destined to European ports has not resulted in the main from their diversion from the high seas to belligerent ports. As a general practice, for reasons of their own, the vessels which cleared from ports of the United States on or before November 4, the effective date of the Neutrality Act of 1939, ordinarily put into belligerent ports en route to their destinations, and the principal thus far has arisen in connection with delay involved on the examination of the vessels and their cargoes before being permitted to proceed on their voyages."


9. "It was suggested in that note that neutral vessels en route to certain countries should voluntarily call at one of the several 'contraband control' bases designated by your Government in order that the examination of their cargoes might be facilitated, by examination in port rather than on the high seas. Since, pursuant to the Act of Congress approved November 4, 1939, and the President's Proclamation of the same date, it becomes illegal for American vessels to enter the so-called combat zone about the British Isles and the Northern coast of Europe, they are thereby precluded from voluntarily entering the 'contraband control' bases within the combat zone, and Your Excellency's
note is understood as undertaking to reserve a right of your Government to divert American vessels to such bases, by force if necessary acting, in that respect, without regard to the municipal law of the United States or the rights, obligations, and liabilities of American vessels under that law."

"It is my belief that such a spirit of liberality on the part of American shipping interests should be met by a corresponding degree of accommodation and flexibility on the part of the British Government, and that such mutual deferences should avoid giving rise to any occasion for the forcible diversion of such American vessels to those belligerent ports which they are by the law of the United States prohibited from entering."


10. "This Government feels constrained to express its serious concern at the treatment by the British authorities of American shipping in the Mediterranean area, and particularly at Gibraltar. It has already made clear its position as regards the legality of interference by the British Government with cargoes moving from one neutral country to another, in its Ambassador's Note number 1569 of November 20, 1939. In addition, it now regrets the necessity of being forced to observe not only that British interference, carried out under the theory of contraband control, has worked a wholly unwarrantable delay on American shipping to and from the Mediterranean area; but also that the effect of such action appears to have been discriminatory."


A British royal proclamation on Sept. 8, 1939, established five control bases: Kirkwall, Weymouth, The Downs, Gibraltar, and Haifa. Vessels bound for enemy territory or ports in neutral
countries from which goods can conveniently be forwarded to enemy territory were "urgently advised to call voluntarily" at one of these bases. Vessels which do not call voluntarily are liable to be diverted to a base in cases where adequate search at sea is not practicable. The British Ministry of Information later added that the practice of the British navy would be to board the merchant ship for examination of its papers. When this is found impracticable because of the weather or other reasons, the neutral vessel might be taken into a harbor.

In the first ten weeks of World War II, 900 ships were examined at British control bases. Of these, forty-two were American ships. All American ships were eventually released.

1. "In a note of November 9, 1939 the British Ambassador recalled his Government's announced intention to use its belligerent rights to the full and referred to the 'liability' of merchant vessels to be diverted to a contraband-control base in the event that they did not call at such base voluntarily."


The current trend indicates that if for any reason search at sea is impracticable, the vessel may be escorted by the summoning vessel or another vessel to the nearest place where search may conveniently be made. The vessel must proceed according to the orders of the escorting vessel but should not be required to lower her flag.

Similarly, if circumstances make visit and search impracticable, a belligerent military aircraft may order a neutral civil craft, subsurface, surface or air, to proceed under escort as directed.