States A and B are at war. Other States are neutral. State C has an island colony, Camla, where there are oil wells operated by the Seeoil Co., a privately incorporated concern in which the C government owns 55 percent of the stock and selects one-half of the directors.

(a) State A sends a mission to Camla to purchase the entire output of the wells for the use of its navy. As the Seeoil Co. is about to make the arrangement, State B protests to State C that such a transaction would be a violation of C’s neutrality obligations.

(b) The Seeoil Co. sends oil to State D, adjacent to State A, to be refined. The Cora, a tanker owned by the Seeoil Co. and carrying a cargo of crude oil, is encountered en route from Camla to State D by the Byron, a cruiser of State B. The Byron seizes the Cora on grounds of carrying contraband. The Cora though not resisting visit and search, informed the Byron, when first summoned to lie to, that the Cora was a public vessel of State C.

(c) A tanker of State E, the Elrod, carrying a cargo of gasoline which the owners of the vessel have purchased from the Seeoil Co. and are transporting to an island airplane base of State A, is visited, searched, and finally seized on grounds of unneutral service by the Bax, a cruiser of State B.
Instead of placing a prize crew on board, the Bax directs the Elrod to proceed to a designated port of State B and sends out an airplane periodically to make certain that the Elrod is not deviating.

What are the legal rights in each case?

SOLUTION

(a) State C should cancel or refuse to have the agreement made, though it should have the opportunity to prove that the transaction was purely commercial and nonpolitical in character. The evidence in this case, however, does not seem to support any such contention on the part of State C.

(b) Visit and search of the Cora by the Byron was legal.

(c) The Elrod is not guilty of unneutral service. It is not impossible that the Elrod was legally under the control of the Bax. The question hinges upon this point: Was the airplane sufficiently in evidence to convince the captain of the Elrod that he was watched and under control?

NOTES

THE GROWTH OF STATE CONTROL OVER THE INDIVIDUAL

That governmental controls over business and enterprise, formerly in private hands, are increasing is an obvious fact today. The era of laissez faire is gone. Governments are in business and are regulating business on an ever augmenting scale. The types of ownership and control are exceedingly diverse and vary from the direct State ownership of practically everything in Soviet Russia to State licenses and trade subsidies found in
so-called capitalist countries. In the United States, the Government owns and operates, for example, the Panama Railroad. The Federal Government also exercises control through the form of corporations such as the Tennessee Valley Authority. It establishes banks, like the Export-Import Bank, or supports semipublic financial institutions like the Federal Reserve banks. The French Government has taken over the arms industry and owns stock in great corporations like the Potash concern. The boundary line between what is governmental and what is private can no longer be drawn with any degree of accuracy. Governments may own concerns outright, as previously suggested, they may appoint some of the directors and own a large share of the stock, as in the Anglo-Iranian Oil Co., or they may regulate enterprise through commissions and other types of administrative offices. Any number of examples of State intervention through corporations, export and import regulations, trade monopolies, cartels, and subsidies may be cited, but enough has been said to indicate the fact that more and more human activities are coming to be regarded as lying within the sphere of government.

The effect upon international law of these changes within states has been and must be tremendous. As one writer recently has said:

International society is in process of a transformation which international law can no longer afford to ignore. . . . It is submitted that all the customary rules touching international state responsibility are, in fact, based upon a particular division of the spheres of state and individual. These rules presuppose that the state has traditionally certain functions, broadly speaking, the conduct of foreign
policy, the control of the armed forces, and certain functions of executive government.

Apart from the duties corresponding to these state functions, the citizens were free to do and move as they liked. In particular, trade and industry was their concern and responsibility. Mercantilism did not influence these international principles, partly because its reign was too brief and not sufficiently universal, but mainly because the principles of international state responsibility were developed during the 19th century, the century of laissez-faire. (W. Friedmann, British Year Book of International Law, 1938, pp. 118-119.)

EFFECT OF STATE CONTROLS UPON INTERNATIONAL LAW

The law between States cannot help being affected by changes in the law within States. International rules are not made in a vacuum, and are necessarily the product of the way of life of the international community. The increasing domestic collectivism has affected both State immunity and State responsibility. States have been prone to extend the historic sovereign immunities, granted to governmental agencies in days when governmental business was small, to the new forms of State activity. At the same time, the more a State has become involved in new enterprises, the more responsibility it has had to assume. The problems of immunity were encountered first, and became acute in connexion with the shipping business. When public vessels were granted immunity from local jurisdiction in the case of the Schooner Exchange vs. McFadden (7 Cranch 116) no great inconvenience in maritime affairs could arise, because the bulk of the world's shipping was in private hands. Later on, toward the end of the nineteenth century, however, when public ships of a
commercial character began to appear, the difficulties of the immunity doctrine became more apparent. If immunity was to be granted solely on the basis of ownership, then all governmentally owned vessels would be free from suits and local controls, a most intolerable situation. The British and American courts, however, have continued to grant immunity to public vessels whether warships or freighters, though in practice the administrations in these countries have recognized a distinction on the basis of the use to which Government ships are put.

The tendency, therefore, is to separate acts of State from acts of a commercial sort and not to claim immunity for the latter. Belgian, Italian, and Egyptian courts have taken the lead in assuming jurisdiction over ships which, though owned by governments, are operating in what seems to be a nonpolitical or business capacity. The Soviet Union has not claimed immunity for its commercial agencies, and the Brussels Convention for the Unification of Certain Rules Concerning the Immunities of Governments Vessels, which went into effect in 1937, stated in article I that "seagoing vessels owned or operated by States * * * are subject in respect to claims relating to the operation of such vessels * * * to the same rules of liability and to the same obligations as those applicable to private vessels * * *"). (Hudson International Legislation, III, 1837). Also article 26 of the Harvard Draft Code (American Journal of International Law 1932, pp. 716) states that:

A state need not accord the privileges and immunities to such juristic persons as corporations or associations for
profit separately organized by or under the authority of another state, regardless of the nature and extent of governmental interest therein or control thereof.

In connection with legal immunities therefore, a line has been drawn between the actions of a government in its public capacity and those in a private capacity. In regard to the responsibility of States, the issues have arisen later than they did with immunities, and as yet the same distinction between the types of government operations has not been so clearly apparent.

NEUTRALITY AND STATE RESPONSIBILITY

In connection with neutrality, questions of responsibility are grave indeed. According to the principles of traditional neutrality, every extension of government into the realm of finance, trade, and business should mean a duty not to permit the sale or transfer of the articles or commodities under such public control to a belligerent power. Logically, under such a doctrine, a completely socialist State like Soviet Russia today could sell nothing and could permit the export of no products to States engaged in a war in which Russia was neutral. The law on this subject, however, has not clearly crystallized to date. Precedents are relatively few and no dogmatic answer to the problem involving the Seecoil Co. can be rendered.

Certain fundamental distinctions basic to the law of neutrality need to be examined. First of all, there is the distinction between the use of neutral territory as a base and its employment as a source of commercial supply. Armies and expeditions may not go out from neutral territory but belligerent governments may obtain supplies com-
mercially. Though goods obtained commercially may be far more valuable to a belligerent than the assistance obtained from an expedition, the distinction probably will continue to be recognized because of its advantages to belligerents and neutrals alike. As long as States wish to buy and sell from and to each other they doubtless will cling to this convenient though not always strictly logical line of demarcation between the commercial and the military.

Another underlying distinction has been that between what a government may do and what a private citizen may do. The law of neutrality forbids neutral governments to give aid to a warring power, but permits private citizens to carry on trade relations. In regard to the latter, neutral governments have no responsibility except to apply impartially any regulations or restrictions which they may impose. These stipulations have been incorporated into the following conventions:

Hague Convention V of 1907, Article 9. Every measure of restriction or prohibition taken by a neutral power . . . must be impartially applied by it to both belligerents.

Hague Convention XIII, Article 9. A neutral power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, road-steads, or territorial waters, of belligerent warships or of their prizes.

Article 6. The supply, in any manner, directly or indirectly, by a neutral power, of warships, ammunition, or war material of any kind, is forbidden.

The question inevitably arises as to whether the expansion of government controls obliterates this distinction between governments and private citizens. Are governments going to be permitted to assume a commercial character and so be free to
sell to belligerents, or must the sale by any governmentally owned or controlled agency be completely prohibited? If the basic aim of the long-standing law is to thwart governmental contacts with a belligerent, then logically if the same rules are to persist, governmental instrumentalities must be prohibited from making deals with warring powers. If the aim, however, was merely to prevent political partiality, and if governments in business can really act nonpolitically, should not State-owned or operated concerns be allowed to function as do private persons or concerns?

The answers to these questions by various authorities have differed. Prof. Lawrence Preuss, of the University of Michigan (Some Effects of Governmental Controls on Neutral Duties, Proceedings, American Society of International Law, 1937, pp. 108-119), tends to take the rather strict line that State concerns must abstain entirely from belligerent contacts, and the Harvard Draft Code (American Journal of International Law, Supplement, July 1939, p. 239) also states "The rule of international law should be and probably is that a state when neutral is forbidden to do certain things, no matter in what capacity or through what agency it does them." The drafters of this code, however, went on to say by way of modification, that "It might be argued that since a neutral state is not under a duty to prevent its nationals from doing certain things which it should refrain from doing itself, so it is not under a duty to refrain from doing those acts in its private capacity, provided that it accepts the consequence of submitting its property to the belligerent rights of capture and condemnation."
A different line is taken by Friedmann (op. cit.) who argues that abstention would be impractical, that it would penalize States unduly for engaging in socialistic experiments and would deprive other powers of needed supplies. It does seem as though common sense and the actual behavior of States dictate the drawing of some kind of a line between a State's sovereign and private capacities. Socialist-minded nations will not feel bound to abstain from business contacts. The solution of the problem in hand, therefore, will be sought upon the basis of what appear to be the actual needs and the legitimate aims of States today.

**THE CRITERION OF PRIVATE CAPACITY**

The endeavor to discover whether a State is operating in its sovereign or personal character is immensely difficult, but the elusive nature of the problem should not be allowed to halt the search. One must commence by enquiring as to the fundamental reason for the origin of the rule barring governmental aid or sales to a State at war, and one discovers that it was designed to prevent political manipulation in favor of one of the parties to a conflict. At the core of neutrality lies impartiality, and governmental assistance, even though extended with an effort at helping both sides in like fashion, seemed incompatible with the requirements of genuine impartiality. Abstention (for governments) became the rule. Political favoritism was to be avoided, and with governments out of the picture, and with most of the commercial area under private control, the State was not politically enmeshed in the conflict. A barrier against political
favors was the object, with the prohibition on gov-
ernment aid serving merely as a means, not as an
end in itself.

If, as suggested, the nature of the deal, whether
political or commercial, and not the fact of gov-
ernment ownership or control, is to be the test for
determining legal responsibility, and if it is politi-
cal favoritism and political assistance rather than
governmental supervision as such which gives taint
to the transaction, then what is to be looked for
in this quest for a criterion as to private capacity
is the amount or extent of political bias or influ-
ence manifest in any given arrangement between
a belligerent government and a corporation or
agency owned or controlled by a neutral State.
The sending of armies, warships, and military sup-
plies by one government to another is clearly politi-
cal; likewise the granting of loans by a govern-
ment bank would be political, prima facie. All
such acts could properly be regarded as illegal
because they could only be made with a definite
political end in view. In an earlier age when the
functions of government were fewer and when they
were confined mainly to matters of police and de-
fense, the legal ban on governmental assistance
affected only this relatively narrow range of politi-
cal activity. Now that governments are engaged
in all sorts of enterprise taken over from the
private domain, they are increasingly involved in
matters more commercial than political. The pro-
hibition against governmental transactions with a
belligerent, designed to prevent assistance for po-
litical purposes, is no longer so essential where
business and trading interests are concerned.
To determine private capacity by means of hard and fast formulae seems unsatisfactory. Percentages of stock, numbers of directors, or forms of control do not in themselves furnish an adequate index of the amount of political direction involved. Where a government owns and operates a railway in very businesslike style, transportation of belligerent goods over such a line would not appear to affect the State's neutrality. On the other hand, industries mainly under private ownership may be guided or controlled indirectly by a government, in a very partial manner. The question to be asked, therefore, is whether the government in any given situation is active for political reasons. At issue are affirmative, political acts. If the neutral government merely allows its railways or shipping lines to operate without overt interference on its part or if it follows a policy of laissez faire, passively leaving matters to geography and the course of events, neutrality duties would not be infringed. It is admitted that the abandonment of a definite criterion such as government ownership or a specified amount of control involves great difficulties. It means a search into the motives and into the details of each particular act, and it would be far easier to apply some mechanically rigid rule by which one might know immediately whether a certain act were illegal or not, but in the light of governments' obvious desire and need to continue trading, it is essential to seek a criterion of private capacity which fits the practical needs of the world today.
APPLICATION OF PRIVATE CAPACITY CRITERION TO THE PRESENT CASE

The transaction between State A and the Seeoil Co. is of doubtful legality, and in the circumstances State C should prevent it. This contract seems no ordinary one of a commercial nature. The political influence of State C in its official capacity seems to show through the entire set of negotiations. The fact that State A sent a mission to Camla brings in an element of diplomatic relations between States which evidently goes beyond a purely business deal. Also the fact that State C is to purchase the entire output of the wells for the use of its navy makes the contract seem decidedly political. In a situation of this sort, State C should be extremely careful and should not allow any agreements to be made which have definitely unneutral implications. The law on this subject is admittedly fluid, but after more experience and with more precedents, a private capacity criterion should emerge as clearly as it already has in connection with immunity from jurisdiction.

State C should be given the opportunity to demonstrate that the contract was commercial. The deal seems suspiciously political, and the burden of proof is upon State C, but the latter can cite precedents from the war of 1914–18 to show that neutral governments may agree to sell to as well as to buy from belligerent powers. Government-sponsored organizations like the N. O. T. in the Netherlands and the S. S. S. in Switzerland negotiated directly with States at war, and on August 5, 1916, in an agreement between Great Britain and Norway, the latter promised to supply Britain with 85 percent

VISIT AND SEARCH OF PUBLIC VESSELS

In the light of the evidence previously cited to the effect that State-owned vessels engaged in commercial enterprise are not to be regarded as immune from jurisdiction, it is apparent that a tanker like the Cora, though owned by a company in which the State owns a majority of the shares, cannot claim immunity from visit and search. It is to be treated as a private vessel. In the early spring of 1940 warships of Great Britain intercepted Soviet vessels in the Pacific Ocean, visited and searched them, and ordered them into port for prize-court adjudication. The Government of the Soviet Union allegedly protested that these ships were immune from visit and search because of their State ownership. Such a claim was inconsistent with previous Soviet policy in regard to its merchant marine, and evidently was not taken seriously by any of the parties concerned at the time. Exemption from the exercise of belligerent rights of war for State-owned merchant craft is unnec-
cessary and would be asking an unwarranted sacrifice from a belligerent naval power.

That State craft are not all entitled to the immunities accorded warships has been recognized in international conventions:

Convention on Commercial Aviation, Havana 1928, Article III (b): All state aircraft other than military, naval, customs and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present convention.

Hague Convention XI, Relating to the Exercise of the Right of Capture in naval war. Article II: The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to neutral merchant ships in general. The ship, however, may not be searched except whenever absolutely necessary, and then only with as much consideration and expedition as possible.

THE "ALTMARK" CASE

On February 16th, 1940, the British destroyer Cossack forced the German vessel Altmark into a Norwegian fjord and removed three-hundred-odd captives who were on board. The Altmark had formerly been a merchant tanker but at the time of the incident was a naval auxiliary flying the German official service flag. Although the Altmark case deals with a neutral State's duties in regard to belligerent ships in territorial waters, and though it does not concern belligerent rights over neutral public ships on the high seas, it is of considerable general importance and involves interesting problems concerning jurisdiction over vessels, both public and private, within the territorial limits. The British government and some international lawyers charged that Norway had failed in its duties and that it should not have allowed the
Altmärk to transport prisoners along its coast. More careful examination of the situation, however, indicates that Norway had no obligation to halt the Altmärk, to force it to leave, to intern it, or to release the prisoners. Following is the opinion of Prof. Edwin Borchard of Yale University:

As a public ship the Altmärk was free from visit and inspection except possibly to verify her conformity with Norway's neutrality regulations. Norway's jurisdiction over the vessel was at best extremely limited and under no circumstances would it seem that Norway was privileged to break the relation between the master and the captives on board and release them. Even if the ship had anchored or docked in Bergen, that legal relationship could not have been legally broken. In the Franco-Prussian War, a French war vessel entered the Firth of Forth with German prisoners on board, whereupon the German Consul at Leith asked Great Britain to release the prisoners in accordance with Britain's alleged neutral duty. The British government replied that the French warship was privileged to enter and to remain for a limited time, that the prisoners on board did not become free, that while on board they were under French jurisdiction, and that the neutral authorities had no right to interfere with them. In an earlier case arising during the Crimean War, Attorney General Cushing in an exhaustive opinion held that a United States court had no power to release the captive seamen on board the Russian vessel Sitka brought into San Francisco as a prize by a British man-of-war.

Nor is it material what the Altmärk's papers showed, provided she was a public vessel. Even if she were a merchant vessel, Norway as a coastal state had no power to punish her for carrying false papers, or, in either event, for the false character of the captain's answers to the questions put. The British seamen were not technically prisoners of war because they were not part of the armed forces of a belligerent nor ancillary thereto. Even if it should be said that the Altmärk was violating international law by taking them to Germany instead of leaving them at the nearest port, it was hardly Norway's duty to correct the violation. The term
"prison ship" is not a term of art and hardly clarifies the legal position. The *Altmark* would seem to have been under no duty to account to Norway for what she was carrying, nor was Norway bound to inquire whether she was passing through territorial waters to escape capture. Such a motive which was doubtless accurate, does not diminish the privilege of using the territorial waters for transit (American Journal of International Law, April 1940, pp. 292–294).

**SEIZURE FOR CONTRABAND**

Though there is no binding general international agreement as to what articles should properly be considered contraband, the seizure of both the *Cora* and the *Elrod* appears legitimate. Oil and gasoline are now of the utmost importance in warfare and may rightly be considered to be absolute contraband. The basis for the seizure of the *Cora*, which was carrying oil to a State adjacent to a belligerent, was that of continuous voyage, a doctrine recognized as applicable to absolute contraband in the unratified Declaration of London of 1909 and extensively invoked in the war of 1914–18 and in the war which began in September 1939. The law is therefore clear in regard to the *Cora* but is by no means as definite in regard to the extensions of the doctrine of continuous voyage in both great wars. In these two conflicts the Allied States never proclaimed a formal blockade of Germany but relied upon contraband, continuous voyage, and reprisal orders which carried the doctrine to almost unrecognizable lengths.
CONTRABAND LISTS OF THE 1939-40 WAR

Great Britain:

“Schedule I

“Absolute Contraband

“(a) All kinds of arms, ammunition, explosives, chemicals, or appliances suitable for use in chemical warfare and machines for their manufacture or repair; component parts thereof; articles necessary or convenient for their use; materials or ingredients used in their manufacture; articles necessary or convenient for the production or use of such materials or ingredients.

“(b) Fuel of all kinds; all contrivances for, or means of, transportation on land, in the water or air, and machines used in their manufacture or repair; component parts thereof; instruments, articles, or animals necessary or convenient for their use; materials or ingredients used in their manufacture; articles necessary or convenient for the production or use of such materials or ingredients.

“(c) All means of communication, tools, implements, instruments, equipment, maps, pictures, papers and other articles, machines, or documents necessary or convenient for carrying on hostile operations; articles necessary or convenient for their manufacture or use.

“(d) Coin, bullion, currency, evidences of debt; also metal, materials, dies, plates, machinery, or other articles necessary or convenient for their manufacture.

“Schedule II

“Conditional Contraband

“(e) All kinds of food, foodstuffs, feed, forage, and clothing and articles and materials used in their production.”

(The Department of State Bulletin, September 16, 1939, Vol. I, No. 12, Publication 1377, pp. 250-251.)
"Article 1

The following articles and materials will be regarded as contraband (absolute contraband) if they are destined for enemy territory or the enemy forces:

One. Arms of all kinds, their component parts and their accessories.

Two. Ammunition and parts thereof, bombs, torpedoes, mines and other types of projectiles; appliances to be used for the shooting or dropping of these projectiles; powder and explosives including detonators and igniting materials.

Three. Warships of all kinds, their component parts and their accessories.

Four. Military aircraft of all kinds, their component parts and their accessories; airplane engines.

Five. Tanks, armored cars and armored trains; armor plate of all kinds.

Six. Chemical substances for military purposes; appliances and machines used for shooting or spreading them.

Seven. Articles of military clothing and equipment.

Eight. Means of communication, signaling and military illumination and their component parts.

Nine. Means of transportation and their component parts.

Ten. Fuels and heating substances of all kinds, lubricating oils.

Eleven. Gold, silver, means of payment, evidences of indebtedness.

Twelve. Apparatus, tools, machines and materials for the manufacture or for the utilization of the articles and products named in numbers one to eleven.

"Article 2

"Article one of this law becomes article 22 paragraph one of the Prize Law Code.

"This law becomes effective on its promulgation."

The Government of the Reich on September 12, 1939, made an announcement relating to conditional contraband which read in part:

"The following is accordingly announced:"
"The following articles and materials will be regarded as contraband (conditional contraband) subject to the conditions of article 24 of the Prize Law Code of August 28, 1939 (Reichsgesetzblatt part one page 1585):

"Foodstuffs (including live animals) beverages and tobacco and the like, fodder and clothing; articles and materials used for their preparation or manufacture.

"This announcement becomes effective on September 14, 1939."


France:

"The Government of the French Republic makes known to interested parties, that, during the course of hostilities, it will consider as articles of contraband the following objects:

"Absolute Contraband

"(a) All sorts of arms, munitions, explosives, chemical products or apparatuses which may be utilized in chemical warfare, and machinery intended for their manufacture or repair; component parts of these articles, articles necessary or appropriate for their utilization; substances or ingredients employed in their manufacture; articles necessary or appropriate for the production or utilization of these substances or ingredients;

"(b) Combustibles of all sorts; all apparatuses or means permitting of the transportation on land, water or in the air, and all machinery utilized for their manufacture or repair; component parts of these articles; instruments, articles or animals necessary or appropriate for their employment, substances or ingredients utilized in their manufacture; articles necessary or appropriate for the production or employment of the said substances or ingredients;

"(c) All means of communication, tools, implements, instruments, equipment, geographic maps, pictures, papers and other articles, machinery or documents necessary or appropriate for the conduct of enemy operations, articles necessary or appropriate for their manufacture and their employment;"
“(d) Coins, gold and silver ingots, bank notes, bonds, as well as metals, materials, specie, metal sheets, machinery or other articles necessary or appropriate for their manufacture.

“Conditional Contraband

“All sorts of foodstuffs, provisions, products for feeding animals, fodder, clothing, as well as objects and material utilized for their production.”

(The Department of State Bulletin, November 18, 1939, Vol. I, No. 21, Publication 1405, p. 555.)

AMERICAN POSITION CONCERNING BRITISH “BLOCKADE”

Note of December 8, 1939:

“My Government has noted with regret that by its Order-in-Council of November 28, the British Government has undertaken to intercept all ships and all goods emanating from German ports, and ports in territory under German occupation, after December 4, 1939, and all ships from whatever port sailing after December 4 having on board goods of German origin or German ownership, and to require that such goods be discharged in a British or allied port and placed in the custody of the marshal of the prize court. This order if applied literally would subject American vessels to diversion to British ports if they are found to be carrying goods of German origin or German ownership, regardless of the place of lading of such goods or the place of destination and regardless of the ownership of the goods at the time that the vessel is intercepted, the words ‘enemy origin’, according to the order, covering any goods having an origin in any territory under enemy control, and the words ‘enemy property’ including goods belonging to any person in any such territory.

“Interference with neutral vessels on the high seas by belligerent powers must be justified upon some recognized belligerent right. It is conceded that a belligerent government has a right to visit and search neutral vessels on the high seas for the purpose of determining whether the vessel is carrying contraband of war to an opposing belligerent, is otherwise
engaged in some form of unneutral service, or has broken or is attempting to break an effective blockade of an enemy port and, if justified by the evidence, to take the vessel into port.

"American vessels are at the present time prohibited by our domestic law from engaging in any kind of commerce on the west coast of Europe between Bergen, Norway, on the north, and the northern part of Spain on the south. This prohibition applies to neutral as well as to belligerent ports within that area. Consequently, justification for interfering with American vessels or their cargoes on grounds of breach of blockade can hardly arise. Likewise the question of contraband does not arise with respect to goods en route from Germany to the United States.

"Whatever may be said for or against measures directed by one belligerent against another, they may not rightfully be carried to the point of enlarging the rights of a belligerent over neutral vessels and their cargoes, or of otherwise penalising neutral states or their nationals in connection with their legitimate activities.

"Quite apart from the principles of international law thus involved, the maintenance of the integrity of which cannot be too strongly emphasized at this time when a tendency toward disrespect for law in international relations is threatening the security of peace-loving nations, there are practical reasons which move my Government to take notice of the Order-in-Council here in question. In many instances orders for goods of German origin have been placed by American nationals for which they have made payment in whole or in part or have otherwise obligated themselves. In other instances the goods purchased or which might be purchased cannot readily, if at all, be duplicated in other markets. These nationals have relied upon such purchases or the right to purchase for the carrying on of their legitimate trade, industry and professions. In these circumstances, the British Government will readily appreciate why my Government cannot view with equanimity the measures contemplated by the Order-in-Council, which, if applied, cannot fail to add to the many inconveniences and damages to which innocent trade and commerce are already being subjected."
“My Government is, therefore, under the necessity of requesting that measures adopted by the British Government shall not cause interference with the legitimate trade of its nationals and of reserving meanwhile all its rights and the rights of its nationals whenever, and to the extent that they may be infringed.”


Aide Memoire, January 20, 1940:

“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.

“Since ample time has elapsed to permit the setting up of an efficient system of control, it would seem that the present situation can no longer be ascribed to the confusion attendant on early organization difficulties.

“From information reaching this Government it appears that American vessels proceeding to neutral ports en route to or from ports of the United States have been detained at Gibraltar for periods varying from nine to eighteen days; that cargoes and mail have been removed from such ships; that official mail for American missions in Europe has been greatly delayed; that in some instances American vessels have been ordered to proceed, in violation of American law, to the belligerent port of Marseille to unload cargoes and there to experience further delays. It is further reported that cargoes on Italian vessels receive more favorable consideration that similar or equivalent cargoes carried by American ships, and that Italian vessels are permitted
to pass through the control with far less inconvenience and delay.

"There is attached a list of American vessels en route to neutral ports detained by the British Contraband Control during the period Nov. 15 to Dec. 15, from which it will be seen that the average delay imposed has amounted to approximately 12.4 days. From information in possession of this government, it is established that Italian vessels detained during the same period were held for an average delay of only 4 days.

"This government must expect that the British Government will at least take suitable and prompt measures to bring about an immediate correction of this situation. It will appreciate receiving advices that the situation has been corrected."

ENCLOSURE:

List of American vessels, as stated.

DEPARTMENT OF STATE,

Washington, Jan. 30, 1940.

American vessels reported to the Department of State to have been detained by the British Blockade Control in the Mediterranean for examination of papers and cargo, Nov. 15-Dec. 15, 1939:


S. S. Nishmaha—(Nov. 11-23) thirteen days. Lykes Brothers Steamship Company—cotton, paraffin, beef casings—detained by the British authorities at Gibraltar. Large number of items of cargo seized. Free to depart after Nov. 17 on captain’s undertaking to unload at Barcelona cargo for that port, and to proceed to Marseille for unloading seized items.

S. S. Examiner—(Nov. 17-Dec. 4) eighteen days. American Export Line—general cargo, oil, grease, rubber tires,
cotton goods—detained by the British authorities at Gibraltar. Eleven bags first-class mail removed.

S. S. Excambion—(Nov. 20–27) eight days, American Export Line—general cargo, oil, films—detained by British authorities at Gibraltar.


S. S. Extavia—(Nov. 29–Dec. 14) sixteen days. American Export Line—mixed cargo—detained by the British authorities at Gibraltar. Ship free to depart on giving Black Diamond guarantee in respect to one item of cargo.

S. S. Exochorda—(Dec. 5–13) nine days. American Export Line—mixed cargo, burlap, tinplate, tobacco, oil—detained by the British authorities at Gibraltar.


S. S. Explorer—(Dec. 9–23)—fifteen days. American Export Line—mixed cargo—detained by the British authorities at Gibraltar.

(The Department of State Bulletin, January 27, 1940, Vol. II, No. 31, Publication 1428, pp. 93–94.)

THE "CITY OF FLINT"

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 *Flint*, carrying a mixed cargo destined for British ports, was seized by the German cruiser on grounds of contraband, and a German prize crew was placed on board. Between the 9th of October and the 4th of November 1939 the American ship was taken first to the Norwegian port of Tromsoe, then to the Russian city of Murmansk, and then after two days in the last-named port, back along the Norwegian coast as far as Haugesund where the Norwegian author-
ities on November 4th released the *Flint* on the grounds of the international law rules contained in articles XXI and XXII of Hague Convention XIII of 1907. Prizes may be taken to a neutral harbor only because of an "inability to navigate, bad conditions at sea, or lack of anchors or supplies." The entry of the *Flint* into Haugesund on November 3 was not justified by the existence of any one of these conditions. 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. The stay in the harbor of Murmansk, however, was of doubtful legality. No genuine distress or valid reason for refuge in a so-called neutral harbor is evident from the examination of the facts. Perhaps the Germans and the Russians hoped to invoke the provisions of Article XXIII of Hague Convention XIII which authorizes a neutral power to permit "prizes to enter its ports and roadsteads * * * when they are brought there to be sequestrated pending the decision of a prize court." This article has never been accepted generally as a part of international law and was specifically rejected by the United States in ratifying the convention. The situation was complicated by the equivocal position of Soviet Russia which was not a neutral in the traditional sense, in the European war. Under strict rules of international law the U. S. S. R. was derelict in regard to its neutral duties and should not have permitted the *Flint* either to enter Murmansk or to find any sort of a haven there.
NORWEGIAN STATEMENT ON THE "CITY OF FLINT"

The Foreign Office finds it correct to give the complete account of how the German prize, City of Flint, has been handled by Norwegian authorities.

The City of Flint is an American vessel which, with a German prize crew aboard, came for the first time to Tromsoe on Oct. 20 and asked for fuel and water. Permission was given in accordance with Norwegian neutrality rules of 1928 based upon the international agreements about neutrality duties in maritime warfare of Oct. 18, 1907 (The Hague agreement Number 13).

The Flint, however, was ordered to remain some hours longer than necessary for taking on fuel and water. Thus it emerged that it had British citizens aboard. Crews had been taken off one or more vessels which German warships sank and these British citizens, according to a request from the prize ship, were put ashore at Tromsoe.

The City of Flint left Tromsoe on Oct. 21 and, because the stay there had been prolonged according to the Norwegian order, the ship obtained permission to continue to sail within Norwegian territories for twenty-four hours reckoned on the time of departure from Tromsoe.

This was in accord with Norwegian neutrality rules.

On the following day, which was Sunday, the German Chargé d'Affaires at Oslo said his government found it incorrect that the stay within Norwegian territorial waters be limited this way and asked that the ship be allowed to continue within Norwegian territorial waters.

The Foreign Office answered on Oct. 25 by citing the neutrality rules. The German chargé d'affaires then came back with new overtures on the following Sunday, Oct. 29.

The German Government maintained the Norwegian Government had supposed incorrectly that the prize should be treated in the same way as a warship and the German Government was of the opinion that, according to The Hague agreement of 1907, the prize could remain in transit in Norwegian territorial waters without a time limit.

The Norwegian Foreign Minister answered the next day that as far as the question about transit of prizes and war-
ships, they were placed under the same footing in The Hague agreement, but in this case there had not been a question about transit but about a stay in a neutral port and about the leaving of the port.

On the question about the transit in neutral waters, the Foreign Minister declared himself in agreement with the German Government.

This last question became effective that same day.

Two hours before the Foreign Minister saw the German chargé d’affaires, the City of Flint had anew entered the harbor of Tromsoe, following the waters from the north from Murmansk. This time the vessel did not stop but only asked permission to continue south. There were no hindrances and the vessel continued southward in Norwegian waters.

When this became known, the possibility arose that another warfaring power would try to stop the ship on its way. To control the boat as long as it was in Norwegian territory and to safeguard Norway’s neutrality, the Norwegian admiral in command ordered a Norwegian naval ship to accompany the City of Flint southward.

Farther south, the boat was met by the Olav Trygvgasson, which took over the watch.

Outside of Sogn (a fiord north of Bergen), the chief of the City of Flint reported a sick man aboard and said that he should be permitted to stop at Haugesund to get the man under medical treatment.

A doctor was sent aboard from the Olav Trygvgasson and when he had seen the sick man had only an insignificant wound in the leg, the chief of the City of Flint was informed he could not for this reason be permitted to anchor at Haugesund. The prize chief agreed.

The City of Flint, despite this, anchored at Haugesund on Nov. 3 in the evening and when the captain of the Olav Trygvgasson went aboard and asked why he put at anchor, the prize chief answered “according to orders from my government.” Later he said he wanted to confer with the German Consul at Haugesund.

The Hague Agreement of 1907, which had been ratified by both the German and Norwegian Governments and which
had been referred to expressly by the German Government in connection with the *City of Flint's* stay at Tromsoe, states in Article XXI that prizes can be taken to a neutral harbor owing "only to the inability to navigate, bad conditions at sea, or lack of anchors or supplies."

None of these conditions was present.

If none of the conditions is present, Article XXII says "the neutral power must give free the prize which has been brought into harbor."

In accordance with this, the *City of Flint* during the night was taken out of the prize commander's power and was given free while the prize crew was interned temporarily on the *Olav Trygvasson*.

Early next morning, the *City of Flint* left Haugesund. On that same morning, Nov. 4, the German chargé d'affaires at Oslo delivered to the Norwegian Foreign Minister a protest against the way in which Norwegian authorities had acted in connection with the *City of Flint*.

The Norwegian Foreign Minister on the spot showed the protest was without reason and that Norwegian authorities acted exactly in accordance with The Hague agreement rules. The German Minister demanded the *City of Flint* be held back as long as the case was discussed between the two governments, but the Norwegian Government found no legal base on which to take such steps against the American boat.

The whole action in this matter has been explained by the Norwegian Government in a note which today has been delivered to the German chargé d'affaires.

(New York Times, November 6, 1939.)

**TREATMENT OF THE UNITED STATES MAILS**

As in the war of 1914–18, an exchange of notes took place during the Winter of 1939–40 between the Governments of the United States and Great Britain on the subject of seizure and censorship of the mails. The American Government admitted that the British had a right to censor private mails which normally passed through British ports or territory, but denied the right of Great Britain to
interfere with American mails on neutral ships on the high seas or on ships which entered British ports involuntarily. The United States Government based its case, just as it did 23 years before, on Hague Convention XI, which specified that postal correspondence is inviolable on the high seas. During the war of 1914-18 the American Government had agreed that only "genuine" correspondence was immune from search and had conceded that where mail was used as a cover for the shipment of contraband articles it was no longer "genuine" and so no longer inviolable. This left open the question: How was the belligerent (Great Britain) to decide or to find out whether the mail was truly "genuine" or not? The practical answer was that all was subject to opening because, in effect, the belligerent had to open all mail in order to find out whether it ought to have opened the mail! The position of the American Government was thus not a particularly strong one when it came to protesting mail censorship during the war which began in September 1939. The British in their reply were quick to point out that the United States in 1916 had already "admitted in principle the right of the British authorities to examine mail bags with the view to ascertaining whether they contained contraband."

The strong wording of the Hague Convention has thus been emasculated in practice and all correspondence, in fact, seems to be subject to belligerent interference.

**American note, January 2, 1940:**

"The United States Department of State has been advised that British authorities have removed from British ships and from American and other neutral ships American mails ad-
dressed to neutral countries and have opened and censored sealed letter mail sent from this country.

"The following cases among others have come to the Department of State’s attention: On October 10 the British authorities took from the steamship Black Gull 293 sacks of American mail addressed to Rotterdam and ten sacks addressed to Antwerp. On October 12 authorities in the Downs removed from the Zuandam 77 sacks of parcel post, 33 sacks of registered mail, and 156 sacks of ordinary mail addressed to the Netherlands, as well as 65 sacks of ordinary mail addressed to Belgium, four to Luxemburg, three to Danzig and 259 to Germany. On October 12 authorities at Weymouth removed from the Black Tern 94 sacks of American mail addressed to Rotterdam, 81 to Antwerp and 184 to Germany. On October 24 authorities at Kirkwall removed from the Astrid-Thorden 468 bags mail from New York to Gothenburg and 18 bags from New York to Helsinki. Many individual instances of British censorship of American mails have come to the Department’s attention.

"This Government readily admits the right of the British Government to censor private mails originating in or destined to the United Kingdom or private mails which normally pass through the United Kingdom for transmission to their final destination. It cannot admit the right of the British authorities to interfere with American mails on American or other neutral ships on the high seas nor can it admit the right of the British Government to censor mail on ships which have involuntarily entered British ports.

"The eleventh Hague Convention recognizes that postal correspondence of neutrals or belligerents is inviolable on the high seas. The United States Government believes also that the same rule obtains regarding such correspondence on ships which have been required by British authorities to put into a British port. This view is substantiated by Article 1 of the Convention which stipulates: ‘If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.’ The United States Government regards as particularly objectionable the practice of taking mails from vessels which ply directly between American and neutral European ports and which through some form of duress are
induced to call at designated British control bases. This is believed to be a clear violation of the immunity provided by the Hague Convention.

“The United States Government feels compelled to make a vigorous protest against the practices outlined above and to express the hope that it will receive early assurances that they are being discontinued.”

(The Department of State Bulletin, January 6, 1940, Vol. II, No. 28, Publication 1422, p. 3.)

*British reply, January 17, 1940:*

“ONE. I have the honour to invite reference to your note No. 1730 of the 27th December in which you drew attention to certain specific instances of the removal from British, United States and other neutral ships, and of the examination by the British censorship authorities, of United States mail addressed to neutral countries and of sealed letter mail despatched from the United States. You also stated that your Government admitted the right of His Majesty’s Government to censor private mails originating in or destined for the United Kingdom or private mails which normally pass through the United Kingdom for transmission to their final destination, but that in view of The Hague Convention No. 11, your Government could not admit the right of the British authorities to interfere with United States mail in United States or other neutral ships on the high seas or to censor mail in ships which have involuntarily entered British ports.

“TWO. His Majesty’s Government in the United Kingdom are happy to note that there is substantial agreement between them and the United States Government as regards the rights of censorship of terminal mails and that the only point of difference seems to lie in the interpretation of The Hague Convention in regard to correspondence in ships which are diverted into British ports.

“THREE. The view of His Majesty’s Government as regards the examination of mail in ships on the high seas or involuntarily entering British ports is that the immunity conferred by Article I of The Hague Convention No. 11, which in any case does not cover postal parcels, is enjoyed
only by genuine postal correspondence, and that a belligerent is therefore at liberty to examine mail bags and, if necessary, their contents in order to assure himself that they constitute such correspondence and not articles of a noxious character such as contraband. This view must, in the opinion of His Majesty’s Government, be regarded as established by the practice during the war of 1914–1918, when none of the belligerents accepted the view that Article I of this convention constituted an absolute prohibition of interference with mail bags, and the general right to search for contraband was regarded as covering a full examination of mails for this purpose. Reference to the correspondence between the United States Government and His Majesty’s Government in 1916 shows that at that date the United States admitted in principle the right of the British authorities to examine mail bags with a view to ascertaining whether they contained contraband.

“FOUR. It will be appreciated that the letter post as well as the parcel post can be used to convey contraband; and that even though letters may be addressed to a neutral country their ultimate destination may be Germany. For instance, the letter mails may be used to convey securities, cheques or notes or again they may be used to send industrial diamonds and other light contraband. It must be remembered that the limit of size, weight and bulk of letters sent is sufficient to allow the passage of contraband of this nature which may be of the utmost value to the enemy.

“It was presumably for this reason that the United States Government in their note of the 24th May, 1916, stated that “The Government of the United States is inclined to the opinion that the class of mail matter which includes stocks, bonds, coupons and similar securities is to be regarded as of the same nature as merchandise or other articles of property and subject to the same exercise of belligerent rights. Money orders, cheques, drafts, notes and other negotiable instruments which may pass as the equivalent of money are, it is considered, also to be classed as merchandise.”
“It is clear that in the case of merchandise His Majesty’s Government are entitled to ascertain if it is contraband intended for the enemy or whether it possesses an innocent character, and it is impossible to decide whether a sealed letter does or does not contain such merchandise without opening it and ascertaining what the contents are. It would be difficult to prevent the use of the letter post for the transmission of contraband to Germany, a use which has been made on an extensive scale, without submitting such mail to that very examination to which the United States Government is taking objection.

“FIVE. The Allied governments in their correspondence with the United States Government in 1916 also had occasion to demonstrate the extent to which the mails were being employed for the purpose of conveying contraband articles to Germany. The position in this respect is identical today, and, in this connection, I have the honor to invite reference to an aide memoire dated the 23d November, 1939, which was communicated to a member of your staff and in which clear evidence was given of the existence of an organized traffic in contraband on a considerable scale between German sympathizers in the United States and Germany through the mail.

“An article in a newspaper published in German in the United States, which was handed to him at the same time, showed that an organization existed in United States territory for the purpose of facilitating this traffic.

“SIX. Quite apart from transmission of contraband the possibility must be taken into account of the use of the letter post by Germans to transmit military intelligence, to promote sabotage and to carry on other hostile acts. It is in accordance with international law for belligerents to prevent intelligence reaching the enemy which might assist them in hostile operations.

“SEVEN. I may add that in another respect, namely, the destruction of mails on board ships sunk by the illegal methods of warfare adopted by Germany, the situation today is identical with that which existed in the war of 1914–1918. Between the 3d September, 1939, and the 9th January, 1940, the German naval authorities have destroyed, without pre-
vious warning or visit, in defiance of the rules of war and of obligations freely entered into, the S. S. Yorkshire, the S. S. Dunbar Castle, the S. S. Simon Bolivar and the S. S. Terukuni Maru, all of which are known to have been carrying mails to or from neutral countries, with as little regard for the safety of the neutral correspondence on board as for the lives of the inoffensive passengers and crew. Yet His Majesty’s Government are not aware that any protest regarding this destruction of postal correspondence has been made to the German Government.

"EIGHT. In contrast to this reckless and indiscriminate destruction of neutral property, the examination conducted by His Majesty’s Government of the mails which are under discussion does not involve innocent mail being either confiscated or destroyed. In accordance with the terms of The Hague Convention, mail found in ships which have been diverted to British ports is forwarded to its destination as soon as possible after its innocent nature is established. In no case is genuine correspondence from the United States seized or confiscated by His Majesty’s Government.

"NINE. For the above reasons His Majesty’s Government find themselves unable to share the views of the United States Government that their action in examining neutral mail in British or neutral shipping is contrary to their obligations under international law. They are, however, desirous of conducting this examination with as little inconvenience as possible to foreign nations, and you may rest assured that every effort has been and will be made to reduce any delays which may be occasioned by its enforcement.

"If the United States Government have occasion to bring any specific complaints to the notice of His Majesty’s Government concerning delays alleged to be due to the examination of these mails, His Majesty’s Government will be happy to examine these complaints in as accommodating and friendly a spirit as possible. While the task of examination is rendered heavy as a result, it is believed that arrangements which have been made to deal with this correspondence will insure that all genuine correspondence will reach its destination in safety and with reasonable dispatch."

(The Department of State Bulletin, January 27, 1940, Vol. II, No. 31, Publication 1428, pp. 91-93.)
CAPTURE, ESCORT, AND CONTROL BY WARSHIP AND AIRPLANE

In Situation I the Cruiser Bax of State B did not place a prize crew on board the Elrod; instead an airplane was sent out by the Bax "periodically" to make certain that the Elrod did not deviate. The issue is not one of deviation before visit and search, a problem which was extensively considered by the Commission of Jurists in 1923 and in Naval War College International Law Situations in 1930 and 1938. Rather, the question is one of deviation after capture. Under international law the commander of a belligerent cruiser which has captured an enemy merchantman or seized a neutral vessel has the option of placing a prize crew on board or of escorting the ship into port. What is crucial in such a situation is that the captured or seized vessel be under the effective control of the belligerent. A mere order to proceed to a specified destination need not be obeyed by the captured or seized craft which is legally free to sail where it wishes if the control over it is no longer maintained. The captured ship has no right to attempt to escape or deviate, but if control ceases the merchant ship is at liberty. The belligerent cruiser, acting as escort, or the prize crew, must operate in such a way as to convince the captain of the seized ship that he is under actual constraint. The question is both one of fact and of thought as to the fact. Objectively the case might be one in which the belligerent captor did not have the physical force to maintain his authority but if he performed in such a way as to create a reasonable belief in the minds of those on board the captured
vessel that such authority could be maintained, then legally the belligerent would be in control. There is the famous story about the British steamer *Appam* which was captured in 1916 by the German cruiser *Moewe*. The Germans could not spare many men for a prize crew, and to bolster their authority they told the British that they had mined the *Appam* and could blow it to bits at the slightest sign of insubordination. Whether the *Appam* was really mined or not, and whether the English crew really would have had the power to retake command, does not change the fact that by their actions and tactics the Germans gave convincing evidence of control.

In each case of capture and seizure examination has to be made into this question of control. Categorical assertions as to the size of the prize crew or as to the distance between the escort and the escorted are impossible and useless. Instead, the law must employ a rule of reason, and a judicial authority would have to decide whether in a given instance adequate effort had been made by the captor to convince the captured that he was in control. If sufficient authority had been made manifest to make plain to any sensible, rational person that he could not proceed freely, then legally control could be said to exist. In the case at hand, the *Bax* sends out the airplane periodically. This might seem at first as if control existed only when the airplane was actually within the sight of those on board the *Elrod*. It might be argued by some that either the *Bax* or the airplane must be physically present every moment in order to maintain its authority, and it is true that on the face of it, a dangerous precedent might be set if such periodic visits were
too readily condoned. The rules require the belligerent to make some effort in return for compliance on the part of the seized or captured ship; the law is a sensible compromise between the belligerent's natural desire to capture a ship and to go on his way after merely issuing an order, and the merchantman's wish to break away and resume his normal course after capture. If the law in regard to control is too greatly relaxed, grave dangers may be foreseen; belligerents could capture, give orders, sail after other ships and then attempt to penalize the vessels which it had not bothered to escort and which it might have reencountered. Undue advantage would thus accrue to belligerent warships.

In the case of the Elrod, however, it is not absolutely certain that the Bax by means of its airplane is not in control. The airplane may be looked upon as an extension of the guns of the Bax and in these days of radio, a warship out of sight over the horizon might escort and keep control for a time over a merchantman which would be within the range of the warship's guns and would have reason to believe that it was not "free." If the airplane appeared sufficiently often, or if the warship made it clear that it was keeping watch in effective fashion, there would be no release from control. The point at issue is whether, under the circumstances, the airplane was around enough to convince the Elrod captain that he was being watched and controlled. How much is "enough"? How often is "sufficiently"? These are questions which the commander of a warship or the judge of the prize court must answer and must decide in terms of what is reasonable in the particular
situation. Therefore, though the action of the Bax is open to grave criticism, and though it may look like an unwarranted attempt to prevent deviation by means of ineffective control, it must be admitted that the use of radio and airplane demands a greater flexibility in the application of the old rules which required the actual physical presence of an accompanying warship. The action of the Bax is not necessarily illegal, and careful scrutiny of all the facts might reveal that there was sufficient evidence of control to make the Elrod's captain believe that the physical might of the plane or warship could be exerted at any moment.

RÉSUMÉ

It is plain that the rules of international law are being profoundly affected by the social and technical developments of the present epoch. Collectivistic tendencies are forcing a reexamination of the fundamental postulates of neutrality, and it seems inevitable that adjustments must be made to permit the continuation of commerce between belligerents and neutrals despite the advance of governments into the terrain formerly occupied by private enterprise alone. Likewise in matters pertaining to contraband, the maintenance of blockades and the exercise of control over captured vessels, the introduction of the airplane, of the radio, and of other devices in this new power age, raise new problems in regard to the application of the old rules. This is not to assert that changing conditions or new methods of warfare justify the abandonment of former legal restraints. It does mean, however, that international law, like domestic law,
must keep in touch with its social, economic, and political environment. Law stands for order but it must also allow for change, and the task of adapting rules to shifting conditions is a never-ending one.

**SOLUTION**

(a) State C should cancel or refuse to have the agreement made, though it should have the opportunity to prove that the transaction was purely commercial and nonpolitical in character. The evidence in this case however does not seem to support any such contention on the part of State C.

(b) Visit and search of the *Cora* by the *Byron* was legal.

(c) The *Elrod* is not guilty of unneutral service. It is not impossible that the *Elrod* was legally under the control of the *Bax*. The question hinges upon this point: Was the airplane sufficiently in evidence to convince the captain of the *Elrod* that he was watched and under control?