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International Law Situations

With Solutions and Notes

U.S. Naval War College (Editor)

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Government, the U.S. Department of the Navy or the Naval War College.

APPENDIX I

CONVENTION ON MARITIME NEUTRALITY

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a Convention on Maritime Neutrality was adopted in the English, Spanish, Portuguese and French languages by the Plenipotentiaries of the United States of America (with a reservation in respect of Section 3 of Article 12), Peru, Uruguay, Panama, Ecuador, Mexico, El Salvador, Guatemala, Nicaragua, Bolivia, Venezuela, Colombia, Honduras, Costa Rica, Chile (with a reservation), Brazil, Argentina, Paraguay, Haiti, Dominican Republic and Cuba (with a reservation), at the Sixth International Conference of American States which assembled at Habana, Cuba, from January 16 to February 20, 1928, the English text of which convention, as contained in the final act signed by the Plenipotentiaries of the said states at the closing session of the said conference, is word for word as follows:

CONVENTION

ON MARITIME NEUTRALITY

The Governments of the Republics represented at the Sixth International Conference of American States, held in the city of Habana, Republic of Cuba, in the year 1928;

Desiring that, in case war breaks out between two or more states the other states may, in the service of peace, offer their good offices or mediation to bring the conflict to an end, without such an action being considered as an unfriendly act;

Convinced that, in case this aim cannot be attained, neutral states have equal interest in having their rights respected by the belligerents;

Considering that neutrality is the juridical situation of states which do not take part in the hostilities, and that it creates rights and imposes obligations of impartiality, which should be regulated;

Recognizing that international solidarity requires that the liberty of commerce should be always respected, avoiding as far as possible unnecessary burdens for the neutrals;

It being convenient, that as long as this object is not reached, to reduce those burdens as much as possible; and

In the hope that it will be possible to regulate the matter so that all interests concerned may have every desired guaranty;

Have resolved to formulate a convention to that effect and have appointed the following plenipotentiaries:

[Here follow the names of the plenipotentiaries.]

Section I.—Freedom of commerce in time of war

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. If the submarine cannot capture the ship while observing these rules, it shall not have the right to continue to attack or to destroy the ship.

ARTICLE 2.—Both the detention of the vessel and its crew for violation of neutrality shall be made in accordance with the procedure which best suits the state effecting it and at the expense of the transgressing ship.

Said state, except in the case of grave fault on its part, is not responsible for damages which the vessel may suffer.

Section II.—Duties and rights of belligerents

ARTICLE 3.—Belligerent states are obligated to refrain from performing acts of war in neutral waters or other acts which may constitute on the part of the state that tolerates them, a violation of neutrality.

ARTICLE 4.—Under the terms of the preceding article, a belligerent state is forbidden:

a) To make use of neutral waters as a base of naval operations against the enemy, or to renew or augment military supplies or the armament of its ships, or to complete the equipment of the latter;

b) To install in neutral waters radio-telegraph stations or any other apparatus which may serve as a means of communication with its military forces, or to make use of installations of this kind it may have established before the war and which may not have been opened to the public.

ARTICLE 5.—Belligerent warships are forbidden to remain in the ports or waters of a neutral state more than twenty-four hours. This provision will be communicated to the ship as soon as it arrives in port or in the territorial waters, and if already there at the time of the declaration of war, as soon as the neutral state becomes aware of this declaration.

Vessels used exclusively for scientific, religious, or philanthropic purposes are exempted from the foregoing provisions.

A ship may extend its stay in port more than twenty-four hours in case of damage or bad conditions at sea, but must depart as soon as the cause of the delay has ceased.

When, according to the domestic law of the neutral state, the ship may not receive fuel until twenty-four hours after its arrival in port, the period of its stay may be extended an equal length of time.

ARTICLE 6.—The ship which does not conform to the foregoing rules may be interned by order of the neutral government.

A ship shall be considered as interned from the moment it receives notice to that effect from the local neutral authority, even though a petition for reconsidera-

tion of the order has been interposed by the transgressing vessel, which shall remain under custody from the moment it receives the order.

ARTICLE 7.—In the absence of a special provision of the local legislation, the maximum number of ships of war of a belligerent which may be in a neutral port at the same time shall be three.

ARTICLE 8.—A ship of war may not depart from a neutral port within less than twenty-four hours after the departure of an enemy warship. The one entering first shall depart first, unless it is in such condition as to warrant extending its stay. In any case the ship which arrived later has the right to notify the other through the competent local authority that within twenty-four hours it will leave the port, the one first entering, however, having the right to depart within that time. If it leaves, the notifying ship must observe the interval which is above stipulated.

ARTICLE 9.—Damaged belligerent ships shall not be permitted to make repairs in neutral ports beyond those that are essential to the continuance of the voyage and which in no degree constitute an increase in its military strength.

Damages which are found to have been produced by the enemy's fire shall in no case be repaired.

The neutral state shall ascertain the nature of the repairs to be made and will see that they are made as rapidly as possible.

ARTICLE 10.—Belligerent warships may supply themselves with fuel and stores in neutral ports, under the conditions especially established by the local authority and in case there are no special provisions to that effect, they may supply themselves in the manner prescribed for provisioning in time of peace.

ARTICLE 11.—Warships which obtain fuel in a neutral port cannot renew their supply in the same state until a period of three months has elapsed.

ARTICLE 12.—Where the sojourn, supplying, and provisioning of belligerent ships in the ports and jurisdictional waters of neutrals are concerned, the provisions relative to ships of war shall apply equally:

1. To ordinary auxiliary ships;
2. To merchant ships transformed into warships, in accordance with Convention VII of The Hague of 1907.

The neutral vessel shall be seized and in general subjected to the same treatment as enemy merchantmen:

- a) When taking a direct part in the hostilities;
- b) When at the orders or under the direction of an agent placed on board by an enemy government;
- c) When entirely freight-loaded by an enemy government;
- d) When actually and exclusively destined for transporting enemy troops or for the transmission of information on behalf of the enemy.

In the cases dealt with in this article, merchandise belonging to the owner of the vessel or ship shall also be liable to seizure.

3. To armed merchantmen.¹

ARTICLE 13.—Auxiliary ships of belligerents, converted anew into merchantmen, shall be admitted as such in neutral ports subject to the following conditions:

1. That the transformed vessel has not violated the neutrality of the country where it arrives;

2. That the transformation has been made in the ports or jurisdictional waters of the country to which the vessel belongs, or in the ports of its allies;

3. That the transformation be genuine, namely, that the vessel show neither in its crew nor in its equipment that it can serve the armed fleet of its country as an auxiliary, as it did before;

4. That the government of the country to which the ship belongs communicate to the states the names of auxiliary craft which have lost such character in order to recover that of merchantmen; and

5. That the same government obligate itself that said ships shall not again be used as auxiliaries to the war fleet.

ARTICLE 14.—The airships of belligerents shall not fly above the territory or the territorial waters of neutrals if it is not in conformity with the regulations of the latter.

Section III.—Rights and duties of neutrals

ARTICLE 15.—Of the acts of assistance coming from the neutral states, and the acts of commerce on the part of individuals, only the first are contrary to neutrality.

¹ This sec. 3 was not accepted by the United States of America.

ARTICLE 16.—The neutral state is forbidden:

a) To deliver to the belligerent, directly or indirectly, or for any reason whatever, ships of war, munitions or any other war material;

b) To grant it loans, or to open credits for it during the duration of war.

Credits that a neutral state may give to facilitate the sale or exportation of its food products and raw materials are not included in this prohibition.

ARTICLE 17.—Prizes cannot be taken to a neutral port except in case of unseaworthiness, stress of weather, or want of fuel or provisions. When the cause has disappeared, the prizes must leave immediately: if none of the indicated conditions exist, the state shall suggest to them that they depart, and if not obeyed shall have recourse to the means at its disposal to disarm them with their officers and crew, or to intern the prize crew placed on board by the captor.

ARTICLE 18.—Outside of the cases provided for in Article 17, the neutral state must release the prizes which may have been brought into its territorial waters.

ARTICLE 19.—When a ship transporting merchandise is to be interned in a neutral state, cargo intended for said country shall be unloaded and that destined for others shall be transhipped.

ARTICLE 20.—The merchantman supplied with fuel or other stores in a neutral state which repeatedly delivers the whole or part of its supplies to a belligerent vessel, shall not again receive stores and fuel in the same state.

ARTICLE 21.—Should it be found that a merchantman flying a belligerent flag, by its preparations or other circumstances, can supply to warships of a state the stores which they need, the local authority may refuse it supplies or demand of the agent of the company a guaranty that the said ship will not aid or assist any belligerent vessel.

ARTICLE 22.—Neutral states are not obligated to prevent the export or transit at the expense of any one of the belligerents of arms, munitions and in general of anything which may be useful to their military forces.

Transit shall be permitted when, in the event of a war between two American nations, one of the belliger-

erents is a mediterranean country, having no other means of supplying itself, provided the vital interests of the country through which transit is requested do not suffer by the granting thereof.

ARTICLE 23.—Neutral states shall not oppose the voluntary departure of nationals of belligerent states even though they leave simultaneously in great numbers; but they may oppose the voluntary departure of their own nationals going to enlist in the armed forces.

ARTICLE 24.—The use by the belligerents of the means of communication of neutral states or which cross or touch their territory is subject to the measures dictated by the local authority.

ARTICLE 25.—If as the result of naval operations beyond the territorial waters of neutral states there should be dead or wounded on board belligerent vessels, said states may send hospital ships under the vigilance of the neutral government to the scene of the disaster. These ships shall enjoy complete immunity during the discharge of their mission.

ARTICLE 26.—Neutral states are bound to exert all the vigilance within their power in order to prevent in their ports or territorial waters any violation of the foregoing provisions.

Section IV.—Fulfilment and observance of the laws of neutrality.

ARTICLE 27.—A belligerent shall indemnify the damage caused by its violation of the foregoing provisions. It shall likewise be responsible for the acts of persons who may belong to its armed forces.

ARTICLE 28.—The present convention does not affect obligations previously undertaken by the contracting parties through international agreements.

ARTICLE 29.—After being signed, the present convention shall be submitted to the ratification of the signatory states. The Government of Cuba is charged with transmitting authentic certified copies to the governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, the Union to notify the signatory governments of said deposit. Such notifications shall be considered as an

exchange of ratifications. This convention shall remain open to the adherence of nonsignatory states.

In witness whereof, the aforementioned plenipotentiaries sign the present convention in Spanish, English, French, and Portuguese, in the city of Habana, the 20th day of February, 1928.

Ratification deposited, March 22, 1932.

Proclaimed by President of the United States, May 26, 1932.