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International Law Situations with Solutions and Notes

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SITUATION III

INLAND STATE AT WAR

States X and Y are at war. All states other than state D declare neutrality. State Y has no seacoast. The Black River is the common boundary of X and Y for 100 miles. Y has private merchant vessels and aircraft under its flag. All vessels and aircraft of Y are registered at Yara, the capital of Y. Some of the merchant vessels of Y have had their decks strengthened so that they may take on 6-inch guns. Some of these vessels have already installed these guns. X has vessels and aircraft of the same character under its flag.

(a) State A under its proclamation of neutrality excludes from its waters both types of vessels of X and Y, and all vessels of war and vessels assimilated thereto.

(b) State B refuses to admit vessels of X and Y with prize.

(c) State C, adjoining state Y, refuses to permit an aircraft of Y to fly over its territory to a vessel of Y which is at sea.

(d) State D, a maritime state, refuses to grant to either X or Y any rights which might flow from a declaration of war or to accept any neutral obligations so far as aerial or maritime acts are concerned, on the ground that the war must be confined to the land territory of X and Y.

What are the lawful rights of the parties—

(1) If the Black River is navigable to Yara?

(2) If the Black River is not navigable to any point in state Y?
(a) State A may lawfully in its proclamation of neutrality exclude all vessels of war and vessels assimilated thereto. This would apply to armed merchant vessels, but ordinarily not to unarmed merchant vessels whether or not decks had been strengthened.

(b) State B may lawfully refuse to admit vessels of war of X and Y with prize except on account of unseaworthiness, stress of weather, or lack of fuel or supplies.

(c) State C may lawfully refuse to permit aircraft of Y to fly over its territory to a vessel of Y which is at sea.

(d) State D may not lawfully refuse to grant to X and Y rights which might flow from a declaration of war or refuse to accept any neutral obligations so far as aerial or maritime acts are concerned though the geographical location of state D might make special regulations justifiable.

NOTES

Status in time of conflict.—The recognition of belligerent and of neutral status has been of slow growth. The recognition of belligerent status and the gradual determination of the rights appertaining to this status can be traced before the sixteenth century but from that time the recognition is clear and the determination of rights is marked. Gentilis (1588) defined war as “a properly conducted contest of armed public forces.” (De jure belli, bk. I, ch. 2.) Since that time further attempts have been made to set bounds to the status of belligerency, such as regards the beginning of war in the Hague Convention III, 1907, providing that hostilities between the contracting parties should “not commence without previous and explicit warning” and in Convention II providing against the employment of force for the recovery of contract debts claimed from one government by another government as due to its nationals unless the debtor state fails
to respond to arbitral methods. These limitations upon time and cause of war have in practice seemed to meet general approval. Other attempts to limit the actual conduct of war have also been elaborated and even in the strain of the time of belligerency the conventions relating to the rules and customs of war on land and sea have in large measure been respected and departures from these rules have been widely condemned.

The laws of neutrality have been developing and many of these were embodied in the Hague conventions of 1899 and 1907 and in the unratified Declaration of London of 1909. The Declaration of Paris of 1856 has received approval of most of the states of the world.

The rules of war and of neutrality, written and unwritten, have been the subject of many court decisions which serve to define the limits of lawful action.

Diplomatic and other negotiations have also clarified the understanding and application of these rules.

The rules and customs of war on land and sea at any particular period have not been found clearly applicable to every problem to which war might give rise, but considering difference in character and interests of the parties at war, the effect has been generally approved as aiding in progress toward removing of grounds of international friction. Sudden and marked attempts to change established rules have unsettled conditions and multiplied the possibilities of friction and misunderstandings. International laws of war and of neutrality have tended to regard custom and precedent while recognizing the force of changing conditions.

It is true that at times a state has conceived that its interests might be better served by a course of action not in accord with international law, but such a condition has not been regarded in practice or in the courts as sufficient ground for setting aside accepted law or for proclaiming a purpose of following a policy at wide variance with international law though exceptional conditions have
been from time to time admitted as ameliorating obligations.

War and neutrality.—When two or more states are at war, other nonparticipating states are generally neutral. It is customary for states to issue declarations of neutrality, often outlining the course of conduct they propose to follow. If the neutral states are strong, the course of conduct prescribed in the proclamations will probably be followed. If the neutral states are weak or timid or both, the belligerents will tend to override the prescriptions whenever it can be advantageously done.

While it is presumed that states which take no part in the war are neutral, it is not necessarily true that uncertainty may not arise in case a declaration does not exist, is withdrawn, or modified.

There are rules which are accepted as generally binding, yet from the nature of conditions in different areas special regulations may be reasonable and neutrality regulations have varied greatly.

The content of the idea of neutrality is not fixed and no concept of neutrality has existed sufficiently long to make its continuance assured. Grotius in his great treatise, De Jure Belli ac Pacis, in 1625 gave little attention to the subject, but Bynkershoek early in the next century gave a good definition of neutrality, a status which was then in fact uncommon in interstate relations. At the end of the eighteenth century the idea of neutrality was somewhat further defined by the practice of the United States following the proclamation of Washington of December 3, 1793, in which, while not mentioning “neutrality”, he asserts that the United States “should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers.” Neutrality laws were subsequently enacted by many states. The fundamental idea was as Bynkershoek said to be “of neither party.”

It has been pointed out that in some conditions an attitude of impartiality might be as valuable as an alli-
ance. This might be the case when one of the belligerents lacked entirely an article essential to the conduct of war which a nearby neutral could furnish in unlimited quantity without risk of interference from the other belligerent. Such situations have given rise to discussions in regard to the obligations of neutrals to accommodate their conduct to the geographic relationship of the belligerents, so that one might not be benefited more than the other.

Protests have been made by one belligerent to the effect that the nationals of a neutral should not sell to another belligerent goods which were of a nature to aid in carrying on the war, particularly if the protesting belligerent was not in position to take advantage of such trade. Such protests have not been regarded as valid as is evident in the correspondence during war.

A circular of the Department of State of the United States early in the World War, October 15, 1914, states:

"In the first place it should be understood that, generally speaking, a citizen of the United States can sell to a belligerent government or its agent any article of commerce which he pleases. He is not prohibited from doing this by any rule of international law, by any treaty provisions, or by any statute of the United States. It makes no difference whether the articles sold are exclusively for war purposes, such as firearms, explosives, etc., or are foodstuffs, clothing, horses, etc., for the use of the army or navy of the belligerent.

"Furthermore, a neutral government is not compelled by international law, by treaty, or by statute to prevent these sales to a belligerent. Such sales, therefore, by American citizens do not in the least affect the neutrality of the United States.

"It is true that such articles as those mentioned are considered contraband and are, outside the territorial jurisdiction of a neutral nation, subject to seizure by an enemy of the purchasing government, but it is the enemy's duty to prevent the articles reaching their destination, not the duty of the nation whose citizens have sold them. If the enemy of the purchasing nation happens for the time to be unable to do this that is for him one of the misfortunes of war; the inability, however, imposes on the neutral government no obligation to prevent the sale." (1916 Naval War College, International Law Topics, p. 95.)
Status of Brazil, 1917.—Brazil by Decree of August 4, 1914, declared its neutrality, broke diplomatic relations with Germany, April 11, 1917, revoked its neutrality, June 4, 1917, and declared war against Germany, October 26, 1917. There was uncertainty as to the status of Brazil during the period from June 4, 1917, when Brazil revoked its neutrality and October 26, 1917, when Brazil declared war. The note on revocation of neutrality of June 4, 1917, as addressed by the Brazilian Ambassador to the Secretary of State of the United States was as follows:

"WASHINGTON, June 4, 1917.

"Mr. Secretary of State: The President of the Republic has just instructed me to inform your excellency’s Government that he has approved the law which revokes Brazil’s neutrality in the war between the United States of America and the German Empire. The Republic has thus recognized the fact that one of the belligerents is a constituent portion of the American Continent and that we are bound to that belligerent by traditional friendship and the same sentiment in the defense of the vital interests of America and the accepted principles of law.

"Brazil ever was, and is now, free from warlike ambitions, and while it always refrained from showing any partiality in the European conflict, it could no longer stand unconcerned when the struggle involved the United States actuated by no interest whatever but solely for the sake of international judicial order and when Germany included us and the other neutral powers in the most violent acts of war.

"While the comparative lack of reciprocity on the part of the American republics has hitherto divested the Monroe Doctrine of its true character, permitting an interpretation based on the prerogatives of their sovereignty, the present events, now bringing Brazil to the side of the United States at a critical moment in the history of the world, continue to impart to our foreign policy a practical form of continental solidarity; a policy, however, which was also that of the former régime whenever one of the other sister friendly nations of the American Continent was concerned. The Republic has strictly observed our political and diplomatic traditions and remained true to the liberal principles in which the nation was nurtured.

"Thus understanding our duty, and taking the position indicated by Brazil’s antecedents and the conscience of a free people,
Whatever developments the morrow may have in store for us, we shall conserve the constitution which governs us and which has not yet been surpassed in the guaranties due to the rights, lives, and property of foreigners.

"In bringing the above stated resolution to your excellency's knowledge I beg you to be pleased to convey to your Government the sentiments of unalterable friendship of the Brazilian people and Government.

DOMICIO DA GAMA."

(Foreign Relations, 1917, Supplement I, p. 294.)

In acknowledging this communication from Brazil the acting Secretary of State of the United States said:

"WASHINGTON, June 16, 1917.

"Excellency: I have the honor to acknowledge the receipt of your note of June 4, by which, in pursuance of instructions from the President of Brazil, you inform me of the enactment of a law revoking Brazil's declaration of neutrality in the war between the United States and Germany, and request me to convey to this Government the sentiments of unalterable friendship of the Brazilian people and Government.

"I have received with profound gratification this notification of the friendly cooperation of Brazil in the efforts of the United States to assist in the perpetuation of the principles of free government and the preservation of the agencies for the amelioration of the sufferings and losses of war, so slowly and toilfully built up during the emergence of mankind from barbarism.

"Your Government's invaluable contribution to the cause of American solidarity, now rendered more important than ever as a protection to civilization and a means of enforcing the laws of humanity, is highly appreciated by the United States.

"I shall be glad if you will be good enough to convey to the President, the Government, and the people of Brazil, the thanks of this Government and people for their course, so consistent with the antecedents of your great and free nation and so important in its bearing on issues which are vital to the welfare of all the American republics.

"Requesting that you will also assure your Government and people of most cordial reciprocation by the Government and people of the United States of their assurances of friendship, always so greatly valued, and now happily rendered still warmer and closer by the action of Brazil, I avail my self [etc.].

(Ibid., p. 300.)

FRANK L. POLK."
Other South and Central American States took action of a similar nature supporting American solidarity. Some of these states were unable to engage in aggressive hostilities toward Germany but did not maintain neutrality, and by permitting use of ports to the Allies and by other conduct manifested an attitude of passive hostility toward the Central Powers.

Apparently even in Brazil the breaking of diplomatic relations and the expression toward the United States of "the sentiments of unalterable friendship of the Brazilian people and Government" did not involve definite participation in the war for it was not till more than 4 months later that Brazil declared war against Germany. The Department of State of the United States announced on October 26, 1917, that it had been informed that the Brazilian Senate at 6:20 o’clock, Friday afternoon, October 26, 1917, had voted the declaration of war against Germany which had been approved by the Chamber at 3 o’clock.

"A state of war between Brazil and the German Empire, provoked by the latter, is hereby recognized and proclaimed, and the President of the Republic, in accordance with the request contained in his message to the National Congress, is hereby authorized to take such steps for the national defense and public safety as he shall consider adequate, to open the necessary credits and to authorize the credit operations required. All previous measures to the contrary are hereby revoked." (Ibid., p. 65.)

There was thus a period under neutrality regulations, August 4, 1914, to June 4, 1917, during a part of which, April 11 to June 11, 1917, diplomatic relations with Germany were severed. This period was followed by a period during which diplomatic relations were still severed and neutrality revoked and a recognition of the American "continental solidarity" was announced and a spirit of friendship for the United States was expressed but without declaration of war till October 26, 1917.

Costa Rica in World War, 1914–18.—In spite of the refusal of the United States to recognize the revolutionary
government of Tinoco in Costa Rica in 1917, Tinoco's Secretary of State for Foreign Affairs informed the American Minister to Costa Rica of the attitude of the government of Tinoco, April 3, 1917:

"Government of Tinoco expresses desire to make known that without taking into account recognition on behalf of the Government of the United States in any emergencies which arise between Germany and the United States by reason of the relations in which these two countries find themselves to-day, Government of Costa Rica not only is disposed to observe towards the United States a benevolent neutrality but also to prevent development upon its territory of any hostility against them." (Foreign Relations, U. S., 1917, Supplement 1, p. 243.)

Like Brazil, Costa Rica expressed in a note of April 9, 1917, the idea of American "solidarity" and also offered the use of its ports and waters to the navy of the United States. Costa Rica did not, however, break diplomatic relations with Germany till September 1, 1917, and declared war on May 24, 1918.

State without seacoast.—There has been some argument that when a state without a seacoast is at war with a state having a seacoast, other maritime and neutral states should in their neutrality proclamations embody such restrictions as would equalize the conditions of the belligerent states as respects commerce. Such a practice might imply that the neutral maritime states should prohibit commerce in articles of contraband and destined to the belligerent maritime state while territorially adjacent states might carry on commerce with both belligerents. The doctrine of continuous voyage has become too well established to easily adapt itself to such conditions. If the landlocked state is to be permitted to have its flag upon the sea and upon aircraft above the sea, it might create a privileged position for the state without a seacoast and this geography does not do.

World War treaties on flags.—The Treaty of Versailles, June 28, 1919, made provision for the recognition of flags flown by vessels of states having no seacoast.
Article 273 stated:

"In the case of vessels of the Allied or Associated Powers, all classes of certificates or documents relating to the vessel, which were recognized as valid by Germany before the war, or which may hereafter be recognized as valid by the principal maritime States, shall be recognized by Germany as valid and as equivalent to the corresponding certificates issued to German vessels.

"A similar recognition shall be accorded to the certificates and documents issued to their vessels by the Governments of new States, whether they have a sea-coast or not, provided that such certificates and documents shall be issued in conformity with the general practice observed in the principal maritime States.

"The High Contracting Parties agree to recognize the flag flown by the vessels of an Allied or Associated Power having no sea-coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels." (1919 Naval War College, International Law Documents, p. 120.)

By article 153 of the Treaty of Neuilly, November 27, 1919, Bulgaria agrees to the same provisions as to the flag as those in the Treaty of Versailles. Article 225 of the Treaty of Saint-Germaine-en-Laye, September 10, 1919, contained the same provision relating to Austria except that the words "any contracting party" were substituted for the words "an Allied or Associated Power." This article was identical with article 209 of the Treaty of Trianon, June 4, 1920, with Hungary.

In article 102 of the Treaty of Lausanne, July 24, 1923, Turkey undertakes to adhere to the Barcelona Convention of April 20, 1921.

Barcelona Convention, 1921.—The regulation of transit on land and sea was at the close of the World War regarded as a matter of capital world importance. A conference for the purpose of reaching agreement on this subject was held at Barcelona early in 1921, and on April 20 reached the following agreement as to the use of the national flag upon vessels belonging to states which have no seacoast:

"The undersigned, duly authorised for the purpose, declare that the States which they represent recognise the flag flown by
the vessels of any State having no seacoast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

"Barcelona, April the 20th, 1921, done in a single copy of which the English and French texts shall be authentic." (7 LNTS, p. 73; 1924 Naval War College, International Law Documents, p. 83.)

**Article XIV, Washington Treaty, 1922.**—Article XIV of the Washington Treaty of 1922 on the Limitation of Naval Armament provided that:

"No preparations shall be made in merchant ships in time of peace for the installation of warlike armaments for the purpose of converting such ships into vessels of war, other than the necessary stiffening of decks for the mounting of guns not exceeding 6 inch (152 millimetres) calibre." (1921 Naval War College, International Law Documents, p. 299.)

This article did not receive much attention in the way of discussion in the Washington Conference. It constitutes a limitation upon construction in the time of peace of vessels which might be converted in time of war. Such vessels might be treated by the opposing belligerent as potential auxiliary vessels, but there would not necessarily be any evidence apparent to a neutral which would be convincing as to the nature of the vessel.

Under article XIV a belligerent finding a merchant vessel of an enemy, the decks of which are stiffened for the mounting of guns, would be competent to decide upon the treatment of such a vessel as a potential vessel of war.

In the Second Hague Conference, 1907, the convention relating to the status of enemy merchant ships at the outbreak of hostilities stated in article 5 that the article relating to days of grace for enemy merchant ships “does not affect merchant ships whose build shows that they are intended for conversion into warships.” This article seems to be entirely reasonable, as a belligerent could not be expected to grant release to an enemy vessel which is in his power and which if released is adapted to conversion into an enemy vessel of war.
A belligerent would not only have the right to inspect a merchant vessel of an enemy in order to determine whether it is adapted for conversion into a vessel of war, but this would also seem to be an essential precaution.

A neutral in the ordinary exercise of due diligence would, however, be concerned with the entrance and sojourn within its waters of vessels of belligerents which had already been converted into vessels of war or which from external appearances were to be used for hostile purposes. There is no obligation resting upon a neutral to make an examination of the structural character of a ship before permitting it to enter its ports nor can a neutral be expected to know the intention as to the ultimate use of a vessel which may enter or be in its ports. If a belligerent vessel, with guns mounted or from its external appearance already adapted to engage in hostilities, enters a neutral jurisdiction, the neutral may prescribe or deny it such privileges as may correspond to the neutral's conception of its obligations or rights. The neutral state may forbid the use of its waters to "vessels of war or vessels assimilated thereto" and if permitting entrance, may prescribe the conditions of sojourn.

It is also for the neutral state to determine what vessels are assimilated to vessels of war. The attitude of a neutral state may depend upon many circumstances, such as geographical proximity, commercial relations, etc. If the merchant vessels of X, having decks stiffened for the mounting of guns, have all been built in neutral state N, it may be presumed that state N may know of this or may have it brought to its attention. By article XIV of the Washington Convention, the purpose of stiffening of decks is stated and state N may be desirous of avoiding any act or failure to act which might imply a non-fulfillment of neutral obligations.

Admission of vessels of war.—Hall in referring to a vessel converted by government commission into a public vessels says:
"But though, if a vessel so commissioned is admitted at all within the ports of the neutral, it must be accorded the full privileges attached to its public character, there is no international usage which dictates that ships of war shall be allowed to enter foreign ports, except in cases of imminent danger or urgent need. It is fully recognised that a state may either refuse such admission altogether, or may limit the enjoyment of the privilege by whatever regulations it may choose to lay down" (International Law, 8th edition, p. 746.)

Regulation of entrance of vessels of war.—Neutrals have maintained the right to regulate the entrance and sojourn of vessels of war. The regulations have sometimes been drawn up before the war and sometimes proclaimed after the war. Objections have been raised to regulations proclaimed after the war but these have not been sustained because a neutral has the right to take action for preserving its neutrality.

Identical rules were agreed to by Denmark, Norway, and Sweden in December 1912 as follows:

"War vessels of belligerent powers are permitted to enter ports and roadsteads as well as other territorial waters of the kingdom. At the same time admission is subject to the exceptions, restrictions, and conditions which follow:

1. (a) It is forbidden belligerent war vessels to enter the ports and roadsteads of war, which have been proclaimed as such.

(b) It is also forbidden such vessels to enter territorial waters whose entrances are closed by submarine mines or other means of defense.

(c) The King reserves the right to forbid under the same conditions to the two belligerent parties, access to other Norwegian ports or roadsteads and other defined parts of the interior Norwegian waters, when special circumstances demand and for safeguarding the sovereign rights of the kingdom and to maintain its neutrality.

(d) The King also reserves the right to forbid access to ports and roadsteads of the kingdom to belligerent war vessels which have neglected to conform to rules and prescriptions promulgated by the competent authorities of the kingdom and which have violated its neutrality." (1917 Naval War College, International Law Documents, p. 184.)

Vessels assimilated to vessels of war.—The treatment of vessels assimilated to vessels of war has varied in
many ways and in different states. The practice in regard to armed merchant vessels was somewhat fully considered at the Naval War College in 1927 (1927 Naval War College, International Law Situations, pp. 73-105), showing wide divergence in practice and a drift toward treating armed merchant vessels under the same rules as vessels of war.

Many states put restrictions upon the entrance of vessels which might from their equipment participate in the war either directly by engaging in hostilities or indirectly by supporting the belligerents as auxiliaries. Certain states permitting entrance of armed merchant vessels restricted such armament to defensive armament, but found difficulty in making the distinction between such vessels as were intended for purposes of war and those which were not so intended. So many controversies arose on this matter that the safe course seemed to be to treat armed vessels as vessels of war.

The Netherlands regulations of August 5, 1914, issued before the controversy had become acute, state:

"ARTICLE 4. No warships or ships assimilated thereto belonging to any of the belligerents shall have access to the said territory."

An earlier proclamation of July 30, 1914, stated:

"ARTICLE 2. As long as the Order mentioned in Article I (Royal Order of October 30, 1909) is not in force, it is forbidden to war ships or similar vessels of foreign powers to enter the Netherlands territorial waters from the sea or to remain therein."

Of course regulations did not exclude ships in distress.

**Territorial waters.**—The proclamation excluding vessels of war and vessels assimilated thereto from territorial waters has been further complicated by varying attitudes upon the extent of territorial waters. While some states have accepted the 3-mile limit, other states have maintained claims to 4, 5, 6, 10, or more miles as the proper line. In the early part of the World War the Italian Ambassador at Washington in a note to the Secretary of State said on November 6, 1914:
"By note of August 13 last the Royal Embassy had the honor to inform your excellency that under a Royal decree of the 6th of that month the limit of territorial waters, for the purposes of neutrality, had been set at six nautical miles, and certain special rules were laid down for the delimitation of such territorial waters in bays, bights, and gulfs in accordance with Article 2 of said decree. In a subsequent note of September 8 the Royal Embassy quoted for your excellency's due information the text of the provisions contained in the said article of the Royal decree. Your excellency was pleased to acknowledge the said communications by your notes of August 17 and September 19.

"Whether because of the fact that the limits of the marginal sea are not regulated by international conventions or general rules of international law—thus leaving every state at liberty to fix them within the sphere of its own sovereignty without subjecting its decision to the recognition of the other states—or because of the fact that no comment was made by your excellency on the Royal Embassy's communications, His Majesty's Government knows that no objections are made by the Federal Government to the six-mile limit set by us on our territorial waters for the purpose of neutrality.

"Yet, with a view to removing any possible uncertainty, His Majesty's Government would be very thankful for a declaration which would explicitly convey acceptance by the Federal Government of the decision as adopted. And, in compliance with instructions I have just received on the subject, I have the honor to apply to your excellency's tried courtesy for such a declaration." (Foreign Relations, U. S., 1914, Supplement, p. 665.)

This note made it necessary for the United States to reply or tacitly to admit that 6 miles might be a lawful claim to jurisdiction. This the United States was unwilling to do and the reply from the Acting Secretary of State on November 28, 1914, was as follows:

"I have the honor to acknowledge receipt of your excellency's note of November 6, 1914, having reference to your previous notes of August 13 and September 8 last, the first of which notes contained announcement that by a Royal decree of the Italian Government, dated August 6, 1914, the limits of its territorial waters were set at six nautical miles from the shore, and the latter of which notes quoted the text of article 2 of that decree, prescribing rules for the determination of the territorial waters in the bays, bights, and gulfs which indent the Italian shore. Of these notes I had the honor to acknowledge receipt, respectively, on August 17 and September 19 last gone.
"In your note of November 6 your excellency says that in order to remove any possible uncertainty respecting the position of this Government, you will appreciate an explicit declaration on behalf of the United States accepting the decision of the Italian Government as embodied in the Royal decree referred to.

"I am compelled to inform your excellency of my inability to accept the principle of the Royal decree in so far as it may undertake to extend the limits of the territorial waters beyond three nautical miles from the main shore line and to extend thereover the jurisdiction of the Italian Government.

"An examination into the question involved leads to the conclusion that the territorial jurisdiction of a nation over the waters of the sea which wash its shore is now generally recognized by the principal nations to extend to the distance of one marine league or three nautical miles, that the Government of the United States appears to have uniformly supported this rule, and that the right of a nation to extend, by domestic ordinance, its jurisdiction beyond this limit has not been acquiesced in by the Government of the United States.

"There are certain reasons, brought forward from time to time in the discussion of this question and advanced by writers on international law, why the maritime nations might deem the way clear to extend this determined limit of three miles, in view of the great improvement in gunnery and of the extended distance to which, from the shore, the rights of nations could be defended; but it seems manifestly important that such a construction or change of the rule should be reduced to a precise proposition and should then receive in some manner reciprocal acknowledgment from the principal maritime powers; in fine, that the extent of the open or high seas should better be the result of some concerted understanding by the nations whose vessels sail them than be left to the determination of each particular nation, influenced by the interests which may be peculiar to it." (Ibid., p. 665.)

_Internment of the "Farn," 1915._—Just what vessels may be included in the category of vessels assimilated to vessels of war has not been specifically determined. Armament or flag might be the determining factor in some cases, and conduct might be considered in other cases. Use was offered as the ground of internment of the _Farn_ in 1915. The Secretary of State, in reply to a communication of the British Ambassador requesting the release of the _Farn_ as being a prize brought into San Juan
and not departing at once in accord with article 21 of
Hague Convention XIII, said:

"I have the honor to acknowledge the receipt of your excel­
lency’s note of the 26th ultimo in relation to the steamship
Farn, or KD-3, which has been interned in the port of San Juan,
Porto Rico, as a tender to a belligerent fleet. The Department is
advised that the Farn left Cardiff about September 5, 1914, for
Montevideo, with a clause in her charter to deliver coal to war­
ships if they so desired. Though, as you state, the vessel was
not employed as a collier, or otherwise, in the Admiralty service,
this fact would not in the opinion of the Department affect her
status at the time of internment if she indeed acted as a collier
or auxiliary to a belligerent fleet. It is understood that the
Farn was a British merchant vessel; that she had on board a
cargo of Cardiff coal amounting to some 3,000 tons; that she was
captured by the German cruiser Karlsruhe on October 5; that
the cruiser placed a prize crew and officers on board; and that
notwithstanding the known practice of the Karlsruhe to sink
her enemy prizes, the vessel had been at sea continuously since
the date of capture until she put into the port of San Juan on
January 12 last for provisions and water. The Department be­
lieves that the only reasonable conclusion in the circumstances,
is that between October 5 and January 12 the Farn was used as
a tender to German warships. It appears obvious that a bel­
ligerent may use a prize in its service and that the prize there­
by becomes stamped with a character dependent upon the nature
of the service. It is upon this view of the case that the United
States Government concluded to treat the vessel as a tender,
which character accords with her presumed service to the Ger­
man fleet.” (Foreign Relations, U. S., 1915 Supplement, p. 823.)

**Armed merchant vessel.**—The problem of the armed
merchant vessels perplexed neutrals during the World
War and was the subject of many exchanges of diplo­
matic notes. A proposal which brought the issue clearly
to the attention of the belligerents was made by Secre­
tary Lansing in January 1916. The communication of
January 18, 1916, which was sent to the British, French,
and Russian ambassadors and the Belgian minister dis­
cusses the use of submarines in the war up to that date.
This document, which has been often cited, contains com­
ments on what Secretary Lansing terms “a doubtful legal
right” and expresses the hope that the belligerents may
agree to a reciprocal and reasonable arrangement with view to ending submarine attacks upon merchant vessels:

"In order to bring submarine warfare within the general rules of international law and the principles of humanity without destroying its efficiency in the destruction of commerce, I believe that a formula may be found which, though it may require slight modifications of the practice generally followed by nations prior to the employment of submarines, will appeal to the sense of justice and fairness of all the belligerents in the present war.

"Your excellency will understand that in seeking a formula or rule of this nature I approach it of necessity from the point of view of a neutral, but I believe that it will be equally efficacious in preserving the lives of all non-combatants on merchant vessels of belligerent nationality.

"My comments on this subject are predicated on the following propositions:

1. A non-combatant has a right to traverse the high seas in a merchant vessel entitled to fly a belligerent flag and to rely upon the observance of the rules of international law and principles of humanity if the vessel is approached by a naval vessel of another belligerent.

2. A merchant vessel of enemy nationality should not be attacked without being ordered to stop.

3. An enemy merchant vessel, when ordered to do so by a belligerent submarine, should immediately stop.

4. Such vessel should not be attacked after being ordered to stop unless it attempts to flee or to resist, and in case it ceases to flee or resist, the attack should discontinue.

5. In the event that it is impossible to place a prize crew on board of an enemy merchant vessel or convoy it into port, the vessel may be sunk, provided the crew and passengers have been removed to a place of safety.

"In complying with the foregoing propositions which, in my opinion, embody the principal rules, the strict observance of which will insure the life of a non-combatant on a merchant vessel which is intercepted by a submarine, I am not unmindful of the obstacles which would be met by undersea craft as commerce destroyers.

"Prior to the year 1915 belligerent operations against enemy commerce on the high seas had been conducted with cruisers carrying heavy armaments. Under these conditions international law appeared to permit a merchant vessel to carry an armament for defensive purposes without losing its character as a private commercial vessel. This right seems to have been predicated on
the superior defensive strength of ships of war, and the limitation of armament to have been dependent on the fact that it could not be used effectively in offense against enemy naval vessels, while it could defend the merchantman against the generally inferior armament of piratical ships and privateers.

"The use of the submarine, however, has changed these relations. Comparison of the defensive strength of a cruiser and a submarine shows that the latter, relying for protection on its power to submerge, is almost defenseless in point of construction. Even a merchant ship carrying a small caliber gun would be able to use it effectively for offense against a submarine. Moreover, pirates and sea rovers have been swept from the main trade channels of the seas, and privateering has been abolished. Consequently, the placing of guns on merchantmen at the present day of submarine warfare can be explained only on the ground of a purpose to render merchantmen superior in force to submarines and to prevent warning and visit and search by them. Any armament, therefore, on a merchant vessel would seem to have the character of an offensive armament.

"If a submarine is required to stop and search a merchant vessel on the high seas and, in case it is found that she is of enemy character and that conditions necessitate her destruction, to remove to a place of safety all persons on board, it would not seem just or reasonable that the submarine should be compelled, while complying with these requirements, to expose itself to almost certain destruction by the guns on board the merchant vessel.

"It would, therefore, appear to be a reasonable and reciprocally just arrangement if it could be agreed by the opposing belligerents that submarines should be caused to adhere strictly to the rules of international law in the matter of stopping and searching merchant vessels, determining their belligerent nationality, and removing the crews and passengers to places of safety before sinking the vessels as prizes of war, and that merchant vessels of belligerent nationality should be prohibited and prevented from carrying any armament whatsoever.

"In presenting this formula as a basis for conditional declarations by the belligerent governments, I do so in the full conviction that your Government will consider primarily the humane purpose of saving the lives of innocent people rather than the insistence upon a doubtful legal right which may be denied on account of new conditions." (Foreign Relations, U. S., 1916, Supplement, p. 146.)

The American proposition was not adopted.
Admission of submarines.—The British Government set forth its opinion in regard to the closing of neutral ports to submarines in a communication to the Secretary of State on July 3, 1916:

"The enemy submarines have been endeavouring for nearly eighteen months to prey upon the Allied and neutral commerce, and throughout that period enemy governments have never claimed that their submarines were entitled to obtain supplies from neutral ports. This must have been due to the fact that they thought they would be met with a refusal and that hospitality could not be claimed as of right. The difficulty of knowing the movements or controlling the subsequent action of the submarines renders it impossible for the neutral to guard against any breaches of neutrality after the submarine has left port and justifies the neutral in drawing a distinction between surface ships and submarines. The latter, it is thought, should be treated on the same footing as seaplanes or other aircraft and should not be allowed to enter neutral ports at all. This is the rule prescribed during the present war by Norway and Sweden. Another point of distinction between surface ships and submarines should be borne in mind. A surface vessel demanding the hospitality of a neutral port runs certain inevitable risks; its whereabouts become known and an enemy cruiser can await its departure from port. This and similar facts put a check on the abuse by belligerent surface ships of neutral hospitality. No such disadvantages limit the use to which the Germans might put neutral ports as bases of supplies for submarine raiders.

"For these reasons, in the opinion of His Majesty's Government, if any enemy submarine attempts to enter a neutral port, permission should be refused by the authorities. If the submarine enters it should be interned unless it has been driven into port by necessity. In the latter case it should be allowed to depart as soon as necessity is at an end. In no circumstances should it be allowed to obtain supplies.

"If a submarine should enter a neutral port flying the mercantile flag His Majesty's Government are of opinion that it is the duty of the neutral authorities concerned to enquire closely into its right to fly that flag, to inspect the vessel thoroughly and, in the event of torpedoes, torpedo tubes or guns being found on board, to refuse to recognise it as a merchant ship." (Foreign Relations, U. S., 1916, Supplement, p. 766.)

It is difficult to reconcile this position, if taken in regard to a merchant submarine with the attitude of the British toward other armed merchant vessels. In August
1916 the Allied Government in identic notes stated to the United States that:

"Submarine vessels should be excluded from the benefit of the rules hitherto recognized by the law of nations regarding the admission of vessels of war or merchant vessels into neutral waters, roadsteads, or ports, and their sojourn in them.

"Any belligerent submarine entering a neutral port should be detained there." (Ibid., p. 770.)

In its reply the United States Government said:

"In the opinion of the Government of the United States the Allied powers have not set forth any circumstances, nor is the Government of the United States at present aware of any circumstances, concerning the use of war or merchant submarines which would render the existing rules of international law inapplicable to them. In view of this fact and of the notice and warning of the Allied powers announced in their memoranda under acknowledgment, it is incumbent upon the Government of the United States to notify the Governments of France, Great Britain, Russia, and Japan that, so far as the treatment of either war or merchant submarines in American waters is concerned, the Government of the United States reserves its liberty of action in all respects and will treat such vessels as, in its opinion, becomes the action of a power which may be said to have taken the first steps toward establishing the principles of neutrality and which for over a century has maintained those principles in the traditional spirit and with the high sense of impartiality in which they were conceived." (Ibid, p. 771.)

Norway and other powers had indicated that they also regarded the existing principle of international law as applicable to submarines.

American opinion, January 1917.—A case showing that the United States was endeavoring to clarify its position on armed merchant vessels arose in consequence of the action of the French S. S. Mississippi in late 1916. This is set forth in a letter from the Secretary of State to the French Ambassador:

"WASHINGTON, January 6, 1917.

"MY DEAR MR. AMBASSADOR: It has been brought to this Department’s attention that on November 8 last the French S. S. Mississippi fired on a submarine in the English Channel prior to warning or attack by the submarine. This report is virtually con-
firmed by the affidavits of the first lieutenant, the second captain, and the second lieutenant of the vessel, which is now at the port of New York. The following statement from the affidavit of the second lieutenant is pertinent:

"My station was at the stern in command of the gun, and the captain told me to be prepared to fire at the submarine at a range of about 4,000 yards. The captain sent the second captain to the stern to instruct me to fire one shot when he gave the signal. The captain gave the signal by raising his hand and I fired one shot, and reloaded the gun and remained ready to fire another."

"The facts before the Department indicate that this action was initiated by the Mississippi and therefore offensive in its nature—a circumstance which might well be regarded as placing this vessel in the class of offensively armed ships, to which this Government is firmly convinced the hospitality usually granted to merchantmen in United States ports may be denied. As, however, this is the first instance of the sort which has come to my Government's notice, and out of regard to the possibility of a mistake in this case, the vessel will be allowed to depart as usual, on your Government's assurance. I would, however, be remiss in my duty if I did not bring this case to your notice with the request that it be brought to your Government's attention, with the opinion of my Government, as herein expressed.

"In this relation I attach a copy of instructions said to have been issued by your Government to merchant sea captains, and in force in October and November last on French vessels. These instructions (if genuine) lay the armament on merchant vessels of France open at least to the inference that its purpose is for offensive attack on submarines of the enemy. I have, therefore, to ask that you be good enough to advise me at the earliest moment as to whether these instructions have been issued to the masters of French merchant vessels by your Government and are now in force. I would be grateful if you could inform me on these points as soon as possible.

"I am, etc. [Signature]"

(Robert Lansing.)

(Foreign Relations, U. S., 1917, Supplement I, p. 544.)

As the United States entered the war within a few months there seems to have been no answer to this communication.

Prize and neutral ports.—In early days as the laws of neutrality were developing, the practice in regard to reception of prizes in neutral ports varied. Treaties em-
bodying differing principles were negotiated from time to time.

In the case of the Appam, a British vessel captured in 1917 off the west coast of Africa by the German cruiser Moewe, was brought into Hampton Roads, an American port more than 3,000 miles distant. The German contention was that the bringing in and keeping of the Appam in an American port was justified under article 10 of the treaty of 1799 between the United States and Prussia. (8 U. S. Stat., 172.) In the decision upon the case of the Appam, the Supreme Court said:

Article 19 of the treaty of 1799, using the translation adopted by the American State Department, reads as follows:

"The vessels of war, public and private, of both parties, shall carry [conduire] freely, wheresoever they please, the vessels and effects taken [pris] from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes [prises] be arrested, searched or put under legal process, when they come to and enter the ports of the other party, but may freely be carried [conduites] out again at any time by their captors [le vaisseau preneur] to the places expressed in their commissions, which the commanding officer of such vessel [le dit vaisseau] shall be obliged to show. (But conformably to the treaties existing between the United States and Great Britain, no vessel [vaisseau] that shall have made a prize [prise] upon British subjects shall have a right to shelter in the ports of the United States, but if [il est] forced therein by tempests, or any other danger, or accident of the sea, they [il sera] shall be obliged to depart as soon as possible.)"

The provision concerning the treaties between the United States and Great Britain is no longer in force, having been omitted by the treaty of 1828 [8 Stat. L. 378]. See Compilation of Treaties in Force, 1904, pages 641 and 646.

We think an analysis of this article makes manifest that the permission granted is to vessels of war and their prizes, which are not to be arrested, searched, or put under legal process when they come into the ports of the high contracting parties, to the end that they may be freely carried out by their captors to the places expressed in their commissions, which the commanding officer is obliged to show. When the Appam came into the American harbor she was not in charge of a vessel of war of the German Empire. She was a merchant vessel, captured on the high seas
and sent into the American port with the intention of being kept there indefinitely, and without any means of leaving that port for another, as contemplated in the treaty, and required to be shown in the commission of the vessel bringing in the prize. Certainly such use of a neutral port is very far from that contemplated by a treaty which made provision only for temporary asylum for certain purposes, and can not be held to imply an intention to make of an American port a harbor of refuge for captured prizes of a belligerent Government. We can not avoid the conclusion that in thus making use of an American port there was a clear breach of the neutral rights of this Government, as recognized under principles of international law governing the obligations of neutrals, and that such use of one of our ports was in no wise sanctioned by the treaty of 1799. (242 U. S. Supreme Court Reports, 124; see also 1922 Naval War College, International Law Decisions, p. 160.)

In general during the World War neutral states prohibited the entrance of prize to their territorial waters except in case of distress, shortage of fuel or coal.

XIII Hague Convention, 1907, provided in regard to the entrance of prize to neutral waters, and the American attitude toward these provisions was stated in the case of the Appam cited above.

"This policy of the American Government was emphasized in its attitude at The Hague Conference of 1907. Article 21 of The Hague treaty provides:

"A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

"It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral power must order it to leave at once; should it fail to obey, the neutral power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew."

"Article 22 provides:

"A neutral power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in article 21."

"To these articles, adherence was given by Belgium, France, Austria-Hungary, Germany, the United States, and a number of other nations. They were not ratified by the British Government. This Government refused to adhere to article 23, which provides:
"A neutral power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a prize court.'" (1922 Naval War College, International Law Decisions, p. 159.)

_Brazil in World War, 1914-18._—By decree no. 11,037 of August 4, 1914, Brazil announced detailed rules of neutrality. The rules were reaffirmed as other states later joined in war. In earlier wars, Brazilian rules have also been very comprehensive. During the World War, Brazil from time to time modified the regulations.

Article 20, which was issued on August 4, 1914, read as follows:

"The captures made by a belligerent may only be brought to a Brazilian port in case of unseaworthiness, stress of weather, lack of fuel or food provisions, and also under the conditions provided hereinbelow in Article 21st.

"The prize must depart as soon as the cause or causes of her arrival cease. Failing that departure, the Brazilian authority will notify the commander of the prize to leave at once, and, if not obeyed, will take the necessary measures to have the prize released with her officers and crew, and to intern the prize crew placed on board by the captor.

"Any prize entering a Brazilian port or harbor, except under the aforesaid four conditions, will be likewise released." (1916 Naval War College, International Law Topics, p. 13.)

By degree no. 11,093 of August 24, 1914, a fifth condition of entrance with prize was published as follows:

"In any one of the hypotheses of the Articles 20 and 21 the Brazilian Government reserves to itself the right to demand the disembarking from on board the prizes of the merchandise destined to Brazil." (1917 Naval War College, International Law Documents, p. 62.)

Other changes in Brazilian neutrality rules were also announced.

_League of Nations and communications._—Under article 23 of the Covenant of the League of Nations, the members of the League of Nations, subject to the provisions of international conventions, agree that they:
(c) will make provisions to secure and maintain freedom of communications and of transit and equitable treatment, for the commerce of all members of the League."

To carry out this agreement and following certain preliminary investigations, the first General Conference on Communications and Transit was held at Barcelona on March 10 to April 20, 1921.

The Advisory and Technical Committee for Communications and Transit of the League also worked upon the same subject. The object of the conference was to devise measures to remove interference with international transport and to take steps toward "rendering international friction less frequent and diminishing the risk of war." The conventions agreed upon at the Barcelona Conference were to apply in time of war "as far as might be compatible." The conference also recognized the possibility of special regulations depending upon regional or geographical circumstances.

Transport in transit.—The question of transport in transit had been defined as "transport which crosses a state, its points of departure and destination being outside that state." In the explanation of this term, the report says:

"Transport of this kind is specially in need of international guarantees. In the case of the transport of exports and imports, a State which obstructs or prevents free movement of such transport may indirectly cause serious prejudice to the economic reconstruction of the world. In this way it injures every State, but it directly injures only, either those exporting States the transport of whose goods it prevents or obstructs in the course of importation, or those importing States which may, for instance, be in need of raw materials, which the obstructing State possesses, and the export of which it prohibits. As regards transport in transit, on the other hand, any interruption or obstruction injures third parties, both the States which export and those which import the products, the passage of which has been prevented. Such an interruption of traffic inevitably causes reprisals and counter-effects, the results of which cannot be limited.

"The International Convention of Barcelona on Freedom of Transit is, therefore, designed to prevent interruption or obstruction of this kind. With this object it provides—making due al-
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allowance, of course, for legitimate restrictions as regards police, national security, transport in war-time, etc., and also for the need of adapting its measures to the existing legal position, and to the local or regional conditions in various parts of the world— for complete freedom of transit and complete equality of transit conditions." (League of Nations. A45.1921.VIII, p. 3.)

The provisions in regard to transport in transit were in principle to apply to traffic overland or by water.

Transit through the Netherlands, 1918.—Problems arose during the World War in regard to the transit of goods and persons across Limburg from Germany into Belgium. The American Minister reported from The Hague, April 23, 1918, that:

"Germany has within the last few days demanded of Holland:

"(1) Removal of vexations customs examinations at the frontiers;

"(2) Passage of civil goods on the Limburg railways, from München-Gladbach via Roermond to Antwerp;

"(3) That the Rhine convention shall be understood as Germany understands it, namely, that everything goes through in war, as in peace;

"(4) Unrestricted and uncontrolled transit of sand and gravel; and—

"(5) That troops and munitions shall be allowed to pass through Limburg.

"The best obtainable information is to the effect that demand number 5 has not actually been presented to the Dutch Government, but that a statement regarding it was handed in by German Legation through 'mistake' with the four other demands. The Austrian Minister, I learn from what I consider to be perfectly good authority, was informed by his German colleague of the presentation of the first four demands, and he learned about the fifth demand only through the British Chargé d'Affairs, the Dutch Minister of Foreign Affairs having told Sir Walter Townley of it and he having told a go-between. Loudon, Treub and, so far as I can learn, the members of the Government as a rule, and the Dutch Army pretend publicly to believe that these German demands are nothing but a bluff and that they are not in the least worried about them. Bluff or not, they produce a situation that Loudon states privately he considers serious.

"German policy is now controlled entirely from General Headquarters. Nobody doubts that they would order Holland entered
for their own purposes, at any time, if they thought they had anything to get thereby. The demand for the passage of troops and munitions through Limburg, if it should be made, would not differ in its effects from a demand for the use of the Scheldt, or a demand for the use of any other part of Dutch territory. The Dutch would resent it and though I find that Entente military circles here believe or profess to believe that the Dutch Army would fight, there are other well-informed circles that think that the Dutch would not go beyond a breaking off of diplomatic relations with the Central Powers and the necessary formal protests.” (Foreign Relations, U. S., 1918, Supplement, p. 1797.)

Navigable waterways.—The Treaty of Versailles, June 28, 1919, in effect January 10, 1920, provided for certain navigable waterways in article 331:

“The following rivers are declared international:

the Elbe (Labe) from its confluence with the Vltava (Moldau), and the Vltava (Moldau) from Prague;

the Oder (Odra) from its confluence with the Oppa;

the Niemen (Russstrom-Memel-Niemen) from Grodno;

the Danube from Ulm;

and all navigable parts of these river systems which naturally provide more than one State with access to the sea, with or without transshipment from one vessel to another; together with lateral canals and channels constructed either to duplicate or to improve naturally navigable sections of the specified river systems, or to connect two naturally navigable sections of the same river.” (1919 Naval War College, International Law Documents, p. 160.)

At the Barcelona Conference in 1921 further suggestions were made which were embodied in a statute which defined rivers of international concern:

“ARTICLE 1. In the application of the Statute, the following are declared to be navigable waterways of international concern:

1. All parts which are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States.” (League of Nations Documents, C.479.M.327.1921.VIII, p. 17.)
Aerial Navigation.—The Treaty of Versailles, in providing for aerial navigation, in article 314 made specific provision in regard to Germany as follows:

"The aircraft of the Allied and Associated Powers shall, while in transit to any foreign country whatever, enjoy the right of flying over the territory and territorial waters of Germany without landing, subject always to any regulations which may be made by Germany, and which shall be applicable equally to the aircraft of Germany and to those of the Allied and Associated countries."

These conditions were regarded as imposed obligations to remain in force till January 1, 1923, unless Germany was earlier admitted to adhere to the Aerial Navigation Convention or had become a member of the League of Nations.

Aircraft over the Straits.—A convention on the Régime of the Straits signed at Lausanne, July 24, 1923, provides for freedom of transit and of navigation by sea and by air of the Strait of Dardanelles, the Sea of Marmora and the Bosphorus. Turkey ratified this convention on March 31, 1924, and British, Italian, Japanese, and French ratifications were deposited later in 1924.

In the annex stating the rules for passage of vessels and aircraft, there are provisions regulating the details of passage:

"1. (b). In Time of War, Turkey being Neutral.

"Complete freedom of navigation and passage by day and night under the same conditions as above. The duties and rights of Turkey as a neutral Power cannot authorize her to take any measures liable to interfere with navigation through the Straits, the waters of which, and the air above which, must remain entirely free in time of war, Turkey being neutral just as in time of peace."  *  *  *

"2. (b). In Time of War, Turkey being Neutral.

"Complete freedom of passage by day and by night under any flag, without any formalities, or tax, or charge whatever, under the same limitations as in paragraph 2 (a).

"However, these limitations will not be applicable to any belligerent Power to the prejudice of its belligerent rights in the Black Sea."
"The rights and duties of Turkey as a neutral Power cannot authorise her to take any measures liable to interfere with navigation through the Straits, the waters of which, and the air above which, must remain entirely free in time of war, Turkey being neutral, just as in time of peace.

"Warships and military aircraft of belligerents will be forbidden to make any capture, to exercise the right of visit and search, or to carry out any other hostile act in the Straits.

"As regards revictualling and carrying out repairs, war vessels will be subject to the terms of the Thirteenth Hague Convention of 1907, dealing with maritime neutrality.

"Military aircraft will receive in the Straits similar treatment to that accorded under the Thirteenth Hague Convention of 1907 to warships, pending the conclusion of an international Convention establishing the rules of neutrality for aircraft." (2 Hudson, International Legislation, pp. 1030, 1032.)

Panama Canal.—The proclamation of the United States, November 13, 1914, in regard to the Panama Canal contained rules in regard to the Canal:

"Rule 15. Aircraft of a belligerent power, public or private, are forbidden to descend or arise within the jurisdiction of the United States at the Canal Zone, or to pass through the air spaces above the lands and waters within said jurisdiction.

"Rule 16. For the purpose of these rules the Canal Zone includes the cities of Panama and Colon and the harbors adjacent to the said cities." (1915 Naval War College, International Law Topics, p. 11; 38 U. S. Stat., p. 2039.)

After the United States became a belligerent power it was necessary to amend these rules and on May 23, 1917, it was proclaimed that:

"Rule 13. Aircraft, public or private, of a belligerent, other than the United States, are forbidden to descend or arise within the jurisdiction of the United States at the Canal Zone, or to pass through the air spaces above the lands and waters within said jurisdiction.

"Rule 14. For the purpose of these rules the Canal Zone includes the cities of Panama and Colon and the harbors adjacent to the said cities." (Foreign Relations, U. S., 1917, Supplement II, p. 1267.)

1 For canals in wartime, see 1930 Naval War College, International Law Situations, pp. 115-134.
Suez Canal, 1915.—A circular of May 1915 gave the Turkish point of view in regard to the status of the Suez Canal:

"Considering that the British Government not only has failed to observe, in reference to the powers, the engagements to which it is bound by the convention of 1888, stipulating that no war vessel can remain in the Suez Canal, but also it is now fortifying the canal, while, on the other hand, the French Government, in view of hostile action against the Ottoman Empire, has landed troops in Egypt, the Imperial Ottoman Government, by reason of these facts, considers itself under the imperious necessity of taking military measures for the protection of the imperial territory, of which Egypt forms a part, and of extending hostilities to the Suez Canal. If such measures cause any injury whatever to neutral vessels, it is thus evident that the responsibility will be upon the French and British Governments." (1917 Naval War College, International Law Documents, p. 221.)

Marginal air zone.—At the meeting of the Commission of Jurists at The Hague in 1923, the Italian delegation proposed that along the seacoast there should be an air belt under national jurisdiction extending seaward ten miles. This was not acceptable to the commission. It was argued that such a provision would give rise to confusion, that jurisdiction in the air should be appurtenant to the subjacent jurisdiction, that it would enlarge the area of neutral obligation without "compensating advantages", and would make it more difficult for aircraft to determine with precision their location and to act accordingly. It was also pointed out that if the ten-mile air zone was adopted by a neutral, the belligerent aircraft might alight on the sea and pass at once out of the neutral jurisdiction. (1924 Naval War College, International Law Documents, p. 152.) It has also been pointed out that under such a rule a vessel of war, surface or submarine, might on passing within ten miles of a neutral shore be exempt from aerial attack, and it should be pointed out that the aircraft would not be exempt from attack by anti-aircraft guns of the enemy vessels.
A statement of the Italian delegation nevertheless maintained that:

"3. From the point of view both of belligerent and of neutral States, there are reasons of the highest juridical and technical importance which make it indispensable to allow each State the power of including in its jurisdiction the atmospheric space to a distance of 10 miles from its coast.

"4. The difficulties resulting from the difference between the width of the marginal air-belt and the width of national territorial waters would not seem to be so serious as to render the Italian proposal unacceptable in practice.

"5. In any case, there is no juridical obstacle to the fixing of the same width of space for the marginal air-belt as for territorial waters, the Italian Delegation being of opinion that international law, as generally recognised, contains no rule prohibiting a State from extending its territorial waters to a distance of 10 sea-miles from its coasts." (Ibid, p. 153.)

It is evident that while aerial navigation may and does call for further regulations, such regulations should be based upon a comprehensive understanding of all their bearings upon accepted laws relating to other jurisdiction. Action by a single state which would attempt to modify the laws of war or neutrality in time of war leads to confusion and may lead to an extension of the war to other states.

_Brazil and neutrality, 1933._—In the war between Bolivia and Paraguay, Brazil declared neutrality on May 23, 1933. In introducing the declaration there was a somewhat long explanatory statement in which it was said:

"Considering, that not being a member of the League of Nations, Brazil is not bound by the prescriptions of the Pact, and that, having to affirm its neutrality, it is guided by international law, written and customary, and by the elevated spirit of justice and morality which civilization has inculcated in the conscience of cultured peoples

"Considering, that the General Rules of Neutrality adopted by Brazil during the World War, prior to having been drawn into it, and which were established by decree No. 11,037 of August 4, 1914, and completed or modified by subsequent acts, do not fully satisfy the requirements of the present moment, because, at the time of their publication war in another continent was contem-
plated, the acts of belligerency on the sea being those which would most preoccupy the country, whereas now the strife is between neighboring and mediterranean nations, problems of river navigation have arisen, and while the international spirit has greatly increased during the past years ideas regarding war have changed considerably;” * * *

“Considering, however, that in order to settle the incidents which may arise and to govern the actions of Brazil and the Brazilians, there is the general idea of neutrality, which consists in the neutral State abstaining from taking part directly or indirectly in the action of the belligerents; in not disturbing in any way war operations occurring outside of its territory; in not allowing, within it, acts of hostility; and in having assured the freedom of its peaceful commerce, the expression of its sovereignty, which war abroad cannot reasonably limit; deducing from this last proposition that only the normal purpose of the merchandise and its destiny, can influence its classification as hostile or innocent;”.

While the rules in regard to neutrality issued under the declaration contained the ordinary provisions in regard to the use of Brazilian waters by vessels of war, there were also such provisions as the following:

“Article 5. It is forbidden to the belligerents to make on the land, river, or maritime territory of the United States of Brazil, a base of war operations or to practice acts which may constitute a violation of Brazilian neutrality.”

“Article 21. Belligerent airplanes may not fly over the territory or jurisdictional waters of Brazil without previous authorization. Those not authorized that land on Brazilian territory or waters will be detained.

“Military airplanes will not be given authorization to fly over Brazilian territory.”

Neutralization of maritime areas.—Proposals were made early in the World War to close considerable areas of the Atlantic Ocean to belligerents or to apply the ordinary rules of neutrality according to a geographical interpretation. It was suggested that a neutral zone in the Atlantic from the American coast to the meridian of Cape Verde be established to prevent interference with American commerce. This proposition was considered by the Chilean Government and the following reply was made:
"This Government has already been seeking means to diminish the disturbances which the activities of the belligerents off the American coasts have been causing to the maritime commerce of the nations of this continent, and had, in the first place, considered the idea of fixing a neutral zone within which said commerce would not be disturbed. Nevertheless, a careful study of the question leads me to think that a measure of this nature will not be accepted by the Government of Great Britain, and that, even though it were accepted by that Government, it would not be productive of any appreciable results in the sense desired. As a matter of fact, it seems doubtful that the British Government would accept a measure which in reality would be of much greater profit to Germany, whose merchant marine is now totally paralyzed, than to England which still maintains a maritime movement of some vitality in American waters. On the other hand, the efficacy of such a measure would have very little weight on the commercial interchange between Europe and America, because the danger would continue beyond the neutral zone, that is to say, in European waters wherein the situation of belligerent ships would remain as it is to-day. Consequently, the advantages of the measure would be restricted to the interchange between American countries. Finally, the enormous extent of the neutral zone would render the surveillance required by our neutral duties still much more difficult and costly than it is today, unless the measure were to be a merely illusory one."

(Foreign Relations, U.S., 1914, Supplement, p. 436.)

There was also some discussion as to the joint action of the American states as to a proposition to the belligerents that "sections of the Southern Atlantic and Pacific should be closed to naval warfare and that the belligerents should come to some agreement with the Union as to the protection of neutral shipping."

The Pan American Union on December 8, 1914, passed a resolution favoring a commission to study "the problems presented by the present European War" particularly as regards neutral relations.

The Peruvian Minister at Washington in a communication of December 12, 1914, mentioned the proposal of

"an American continental agreement with the object of imposing on belligerents for the first time respect for the inviolability of the American highways of commerce, as a new principle of international law arising out of the needs of a situation created by
the devastating clash of such formidable elements of force and destruction.

"The fundamental object of the agreement which the Peruvian Government is seeking once clearly determined, there can enter into consideration no possibility that such an agreement may prove injurious to this or that belligerent and meet with its more or less open opposition. Since all that we seek is to prevent violent aggressions from being carried beyond their proper theatre to the enormous distance at which America lies, and since in support thereof a pacific right of self-preservation is invoked, which is obviously more worthy of respect than the right of destruction and annihilation which each belligerent claims against his enemy, there is no occasion to ask which of the combatants will accept it. Let us proclaim, maintain, and enforce the right of the neutral nations, consolidated in the form of a continental agreement, to keep hostilities away from geographical areas not involved in the natural influences and effects of the war, where prevails a normal, valuable, and peaceful trade, which is experiencing disastrous effects to the extent of crisis and ruin, daily aggravated by the continuance of such a state of things. The territorial waters fiction and, to a certain degree, the very right of asylum for ships of the belligerent countries in neutral harbors, have as their true foundation the safeguarding of moral and physical interests whose defense could not be subordinated to the right of aggression, if it may be so called, of one belligerent against the other. Respect of territorial waters and of vessels accorded asylum was enforced without ascertaining who might complain against those principles being put in practice; it was enough to know that they were the result of justified necessity, and the principles have grown to the estate of a right and of a right that is compulsory." (Ibid., p. 445.)

In some of the South American states such propositions as related to neutralization met with little response and the American Legation in Brazil reported on December 11, 1914:

"The members of the Foreign Office are particularly jubilant over what is considered a decided success for their initiative. In business circles and among those not directly connected with the Government it must be confessed that there is no special enthusiasm on this subject as it seems to be the general opinion that little of practical importance can be accomplished by the Pan American Union in the premises. Now that the German war vessels in this part of the World have been destroyed, it seems to
be the impression among practical persons that there is at present no further need for the good offices of the union.” (Ibid., p. 452.)

**Attitude of United States toward Switzerland.—**The neutralization of Switzerland had been generally respected during the World War, and Switzerland had shown a disposition to maintain its neutrality by force when necessary. While the United States was not a party to the neutralization treaties in regard to Switzerland, it made known its attitude.

“Washington, November 30, 1917, 5 p.m.

“1171. You are instructed to formally present the following communication to the Minister of Foreign Affairs:

“In view of the presence of American forces in Europe engaged in the prosecution of the war against the Imperial German Government, the Government of the United States deems it appropriate to announce for the assurance of the Swiss Confederation and in harmony with the attitude of the co-belligerents of the United States in Europe, that the United States will not fail to observe the principle of neutrality applicable to Switzerland and the inviolability of its territory, so long as the neutrality of Switzerland is maintained by the Confederation and respected by the enemy.

Lansing.”


**Limiting areas of hostilities.—**Early in August 1914 China raised the question as to whether European belligerents might consent “not to engage in hostilities either in Chinese territory and marginal waters, or in adjacent leased territories.” Propositions “concerning the possible neutralization of the Pacific Ocean” were advanced. There was in early August a general desire for the maintenance of the status quo in the Far East. On August 13 the German Government said:

“1. Germany does not seek war with Japan.

“2. If Japan, on account of the treaty with England, asks that Germany do nothing against English colonies, warships, or commerce in East, Germany will assent in return for corresponding promise from England.

“3. England and Germany to reciprocally agree that either all warships of both in East leave eastern waters or remain inactive as against the other, if remaining there.
LIMITING AREAS OF HOSTILITIES

"4. Japan, England, and Germany to agree that none of these three shall attack warships, colonies, territory, or commerce of any of the others in the East.

"5. The East to mean all lands and seas between parallels London 90 east and all Pacific to Cape Horn.

"Notify German Ambassador in Tokyo.

"If this zone is too large, smaller limits will be accepted."

(Foreign Relations, U. S., 1914, Supplement, p. 169.)

Japan on August 15 proposed to Germany:

"(1) To withdraw immediately from the Japanese and Chinese waters German men-of-war and armed vessels of all kinds and to disarm at once those which cannot be so withdrawn.

"(2) To deliver on a date not later than September 15, 1914, to the Imperial Japanese authorities without condition or compensation the entire leased territory of Kiaochow, with a view to eventual restoration of the same to China.

"The Imperial Japanese Government announce at the same time that in the event of their not receiving by noon, August 23, 1914, the answer of the Imperial German Government signifying an unconditional acceptance of the above advice offered by the Imperial Japanese Government, they will be compelled to take such action as they may deem necessary to meet the situation." (Ibid, p. 170.)

On August 18 the British chargé d'affaires in Washington communicated to the Secretary of State the following memorandum,

"The Governments of Great Britain and Japan having been in communication with each other are of opinion that it is necessary for each to take action to protect the general interests in the Far East contemplated by the Anglo-Japanese Alliance, keeping especially in view the independence and integrity of China as provided for in that agreement.

"It is understood that the action of Japan will not extend to the Pacific Ocean beyond the China Seas, except in so far as it may be necessary to protect Japanese shipping lines in the Pacific, nor beyond Asiatic waters westward of the China Seas, nor to any foreign territory except territory in German occupation on the continent of eastern Asia." (Ibid., p. 171.)

On August 23 the Japanese informed the United States that as Germany had failed to make answer to the Japanese note of August 15, a state of war existed between Japan and Germany from noon August 23, 1914.
In spite of discussion of limiting the area of hostilities, no agreement could be reached.

Limits of belligerent rights.—When Germany issued on February 4, 1915, the war zone proclamation stating that neutral vessels exposed themselves to danger in the waters surrounding Great Britain and Ireland and in the English Channel, the United States sent a note of protest. In this note of February 10, 1915, it was said:

“It is of course not necessary to remind the German Government that the sole right of a belligerent in dealing with neutral vessels on the high seas is limited to visit and search, unless a blockade is proclaimed and effectively maintained, which this Government does not understand to be proposed in this case. To declare or exercise a right to attack and destroy any vessel entering a prescribed area of the high seas without first certainly determining its belligerent nationality and the contraband character of its cargo would be an act so unprecedented in naval warfare that this Government is reluctant to believe that the Imperial Government of Germany in this case contemplates it as possible. The suspicion that enemy ships are using neutral flags improperly can create no just presumption that all ships traversing a prescribed area are subject to the same suspicion. It is to determine exactly such questions that this Government understands the right of visit and search to have been recognized.” (Foreign Relations, U. S., 1915, Supplement, p. 98.)

Foreign interpretation of national duties.—Belligerent rights and duties as well as neutral rights and duties rest upon international law. Belligerents have often attempted to extend their rights and neutral duties even by suggesting that neutrals take action in regard to opposing belligerents which might be beyond neutral obligations.

On January 30, 1917, the Norwegian Government by a Royal Ordinance prescribed that after February 6, 1917:

"Submarines, equipped for use in war, and belonging to a belligerent power, may not be navigated or remain in Norwegian territorial waters. Breach of this prohibition will render such vessels liable to attack by armed force without previous warning.

"This prohibition shall not prevent submarines from seeking Norwegian territorial waters on account of stress of weather, or
damage, or in order to save human life; when within territorial waters in such cases the vessel shall be kept at the surface and shall fly her national flag and also the international signal indicating the reason of her presence. As soon as the reasons justifying the arrival of the vessel are no longer present, she shall depart from territorial waters." (1917 Naval War College, International Law Documents, p. 195.)

The British and American Governments had raised question as to the measures taken to enforce this ordinance. To the Government of the United States in reply to a suggestion of a few days previous that Norwegian waters be mined against German submarines in addition to the patrolling of the waters, the Minister of Foreign Affairs on August 20, 1918, said:

"With reference to the statement of the American Government that the Norwegian Government has not insisted on impartial compliance with the Norwegian resolution in question, and that the measures hitherto adopted have only been nominal, and in view of the recommendation of the American Government to the Norwegian Government to take such new and effective measures as will effectually prevent the passage of German submarines through Norwegian territorial waters, the Norwegian Government desires to point [out] the following:

"The duties imposed in time of war by international law on a neutral state in respect of its territorial waters consist, partly in the obligation that it shall prevent by all the means at its disposal any of the belligerents utilizing them for operations of war or as a base there for, and partly in the obligation that it shall enforce upon all the belligerents equally the observance of the regulations it issues. No matter what may flow from these obligations, none of the belligerents is justified by international law in demanding that special measures be taken by the neutral state in its own territorial waters. The Norwegian Government is convinced that it has unquestionably fulfilled its obligations in respect of both the above-mentioned points. Just as its efforts since the commencement of the war have been directed towards the maintenance of an inviolable neutrality, so it is still its firm intention to maintain it in the future and to avoid any step which may be considered as a deviation from this attitude.

"The above-mentioned resolution of January 30, 1917, which concerns the passage through and sojourn in territorial waters of submarines, is solely based on consideration of Norwegian interest and is obviously not intended to facilitate the war meas-
ures of one or other of the belligerents. Neither does it enjoin upon Norway any other obligation under international law than that of enforcing the resolution equally upon all parties concerned which the Norwegian Government, as already mentioned, is convinced that it has done. It cannot concede the right to any state to demand special measures in order to insure its observance.

"It will, however, be calculated to call forth the serious consideration of the Norwegian Government if it be established that German submarines have utilized Norwegian territorial waters as a passage in violation of the said resolution. The Norwegian Government must request the American Government for more detailed information in regard to the cases which the latter has in mind relative to the appearance of German submarines in Norwegian territorial waters. The Norwegian Government would appreciate as complete information as possible, such as fuller details as to the time and place and the certainty that the submarines in question were German in each case, besides information as to the state of the weather.

"When the Norwegian Government receives the information referred to from the American Government, it will immediately take into consideration [the measures] occasioned thereby in the interests of Norway and the Government might then feel called upon to take measures for sharper protection of Norwegian territorial waters. But it must definitely insist that it is its incontestable right by international law to determine for itself what measures should be taken in this respect." (Foreign Relations, U. S., 1918, Supplement I, vol. II, p. 1779.)

Position of state D.—While the geographical contiguity of states X, Y, and D might give rise to certain doubts as to the neutral obligations of state D, this contiguity would not affect the rights of X and Y under a declaration of war.

The vessels of war of X or of Y might visit and search the merchant vessels of state D or of any neutral state. If a vessel of war of state Y should capture a merchant vessel of D or of a neutral state, the vessel of war might find difficulty in bringing it to a prize court and other problems might arise but it is possible that these might not arise and it would be for states Y and D to adjust such difficulties after they arise rather than for state D to presume in advance to declare the rights of Y. It is clear that state D could not legally determine the bellig-
erent rights of state X nor could state D lawfully refuse to recognize these rights. The rights in regard to contraband, continuous voyage, unneutral service, and other belligerent rights could not be denied to state X by state D.

As a state not a party to the war, state D would not be at liberty to permit indefinite sojourn in its ports of vessels of war or to tolerate any act within its jurisdiction which would constitute a nonfulfillment of neutral duties.

Manifestly from its geographical position, state Y may be under certain disadvantages when at war with a maritime state, but the laws of war and of neutrality are not conditioned upon premises of a geographical nature though one or the other of the belligerents may be more strategically at an advantage on account of its location.

**SOLUTION**

(a) State A may lawfully in its proclamation of neutrality exclude all vessels of war and vessels assimilated thereto. This would apply to armed merchant vessels, but ordinarily not to unarmed merchant vessels whether or not decks had been strengthened.

(b) State B may lawfully refuse to admit vessels of war of X and Y with prize except on account of unseaworthiness, stress of weather, or lack of fuel or supplies.

(c) State C may lawfully refuse to permit aircraft of Y to fly over its territory to a vessel of Y which is at sea.

(d) State D may not lawfully refuse to grant to X and Y rights which might flow from a declaration of war or refuse to accept any neutral obligations so far as aerial or maritime acts are concerned though the geographical location of state D might make special regulations justifiable.