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International Law Situations with Solutions and Notes

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SITUATION I

NEUTRALITY AND AIRCRAFT

States X and Y are at war. Other states are neutral.

(a) A dirigible, belonging to the air forces of the State X, arrives at a commercial airport of State Z, and the commander requests that the hydrogen, with which it is filled, be replaced by helium, purchased before the war, but in storage undelivered at the airport.

What reply should the government of State Z give?

(b) A naval aircraft of State X of the largest seaplane type is forced down from mechanical causes in the open sea off the coast of State Z. Help is requested and the plane is towed by a local vessel to safe moorings within harbor of Z. In the quiet waters of the harbor, the crew effect necessary repairs in 24 hours, and the commanding officer requests permission to proceed.

What reply should the government of State Z give?

SOLUTION

(a) The government of State Z should deny the request of the commander of the dirigible of the air forces of State X to replace the hydrogen by helium.

(b) The government of State Z should intern the seaplane and its personnel.

Definitions.—Aircraft as used in air navigation in the Panama Canal Zone is defined as "any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment." (Regulations to Govern
Air Navigation in the Canal Zone, September 22, 1931, sec. 11 and Appendix 2.)

Air space is "construed to mean the air vertically overlying any area that may be designated," and "The Panama Canal Zone including the 'three-mile limit'" was designated in 1926 "to be a Military Airspace Reservation." (44 U. S. Stat. 568.)

Early regulation of aerial navigation.—While there have been advocates of the doctrine of freedom of the air, in practice, states have tended to regulate the use of superjacent space by aircraft. Early regulations were mainly of the nature of national police control to prevent damage to property and persons by balloons. For many years, aerial navigation was for the most part a spectacular experiment involving risks against which each state endeavored to provide. National regulation therefore preceded international.

Discussion of international regulations was carried on before long-range flights were common. The Institute of International Law at its session in Ghent in 1906 adopted in its proposed international regulation of wireless telegraphy as "Article 1. The air is free. States have over it, in time of peace and in time of war, only the rights necessary for their preservation." Subsequent study by the institute materially changed the point of view and at the meeting at Madrid in 1911 an article on the legal status of aircraft was adopted as follows:

3. International aerial circulation is free, saving the right of subjacent States to take certain measures, to be determined, to ensure their own security and that of the persons and property of their inhabitants. (Resolutions of the Institute of International Law, Carnegie Endowment for International Peace, p. 171.)

Institute of International Law, 1927.—The institute at the session of 1927 at Lausanne adopted, after discussion of the conflicting theories of the sovereignty and
of the freedom of the air, the following as a proposed regulation of aerial navigation:

Art. 1. Il appartient à chaque État de régler l'usage de l'air au-dessus de son territoire, en tenant compte d'une part des nécessités de la circulation aérienne internationale (atterrissage compris), d'autre part, des nécessités de la sécurité nationale, tant au point de vue militaire, douanier, sanitaire, qu’au point de vue de la protection des personnes et des biens de ses habitants.


*Later regulations.*—The freedom of aerial navigation was not generally accepted, however, and states made regulations restricting the use both of national and foreign aircraft. Sometimes, even, the regulations of adjoining subdivisions of a state were not in conformity. The convention relating to the regulation of air navigation, signed at Paris, October 13, 1919, states:

Art. 1. The high contracting parties recognize that every power has complete and exclusive sovereignty over the air space above its territory.

For the purpose of the present convention the territory of a state shall be understood as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto. (1929, Naval War College, International Law Situations, p. 26.)

The same principle was affirmed at Havana in 1928 in the convention on commercial aviation.

National and international rules for registration, indemnification, flight, landing, etc., have rapidly developed. Government control has been easy because states seeking to dominate or lead in aviation have willingly granted subsidies to companies engaged both in manufacture and operation of aircraft. France seems to have increased subsidies so that the amount for 1929
was more than one hundred times the amount of 1919. Other states have followed varying systems of aiding private or quasi-private companies and there are differing opinions as to the merits of the respective systems.

Conditions of registration.—The conditions of registration vary and may in some instances determine the treatment to which an aircraft is liable in a foreign state whether that state be belligerent or neutral. In the case of the Panama Canal Zone certain prerequisites condition licensing and registration.

1. An aircraft, to be entitled to license and registry, must be airworthy and equipped in accordance with the requirements of the Canal Zone and owned by

(a) A citizen of the United States.
(b) The Government of the United States, a State, Territory, or possession, or a political subdivision thereof.

Undoubtedly war would be a “time of emergency” and it would be difficult for a neutral to determine long in advance how a modern machine like a private aircraft even thus registered should be treated. An aircraft of an enemy at the outbreak of war in a belligerent state might be seized and such an aircraft subsequently entering belligerent jurisdiction would be likewise seized.

Communication by air.—Whatever the differences of opinion in regard to the systems and regulation of aerial communication, there is no difference of opinion as to the present necessity of such communication both in time of peace and in time of war. While in the early stages of the development of aerial communication states viewed with comparative indifference the use of the superjacent air, now this use is in many states jealously guarded as would be a railway right of way across its territory, and foreign airlines are in general under restrictions prescribed in article 15 of the convention of 1919 which provides that “The establishment of international airways should be subject to the consent of the states flown over.” In some respects the slogan “free-
dom of the seas” is being superseded by the slogan “freedom of the air,” but is meeting with little approval.

Indirect limitation on aircraft.—While there may in some states be no direct limitation upon the use or number of foreign aircraft within their territorial jurisdiction, indirect limitation may arise through rules requiring landing at certain places, etc., in the time of peace. Naval powers have also been limited indirectly by conventions such as the Washington Convention of 1922 prescribing the character and the use of naval vessels as aircraft carriers.

Proclamation regarding Panama, 1914.—One of the earliest statements made by the United States in regard to aircraft was in the proclamation of November 13, 1914, concerning the neutrality of the Panama Canal Zone. While the preamble states that the United States exercises sovereignty in the land and waters of the zone, the articles assume the right to exercise authority in the superjacent air.

Whereas the United States is neutral in the present war and whereas the United States exercises sovereignty in the land and waters of the Canal Zone and is authorized by its treaty with Panama of February 26, 1904, to maintain neutrality in the cities of Panama and Colon, and the harbors adjacent to the said cities: *

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.)

Limitation, treaty of Versailles, 1919.—Part V of the treaty of Versailles, 1919, has as its introductory clause:

In order to render possible the initiation of a general limitation of the armaments of all nations, Germany undertakes strictly to observe the military, naval and air clauses which follow. (1919, Naval War College, International Law Documents, p. 70.)
In carrying out this purpose, article 198 prescribed that "The armed forces of Germany must not include any military or naval air forces."

Other articles to remain in force till January 1, 1923, unless Germany had previously become a member of the family of nations, gave the Allied and Associated Powers privileges similar to those of German aircraft.

Article 313. The aircraft of the Allied and Associated Powers shall have full liberty of passage and landing over and in the territory and territorial waters of Germany, and shall enjoy the same privileges as German aircraft, particularly in case of distress by land and sea.

Article 314. 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.

Article 315. All aerodromes in Germany open to national public traffic shall be open for the aircraft of the Allied and Associated Powers, and in any such aerodrome such aircraft shall be treated on a footing of equality with German aircraft as regards charges of every description, including charges for landing and accommodation. (Ibid, p. 156.)

These limitations were not such as the Allied Powers would propose as the basis for general regulations to prevail among themselves. Indeed, the Allied Powers would probably not wish such regulations to prevail even for themselves after normal relations were reestablished as geographical and other conditions might give unequal advantages to some of their number.

Laws of the United States.—By an act of May 20, 1926, the use of aircraft was prescribed and it was stated that—

The Congress hereby declares that the Government of the United States has, to the exclusion of all foreign nations, complete sovereignty of the airspace over the lands and waters of the United States, including the Canal Zone. Aircraft a part of the armed forces of any foreign nation shall not be navigated
in the United States, including the Canal Zone, except in accordance with an authorization granted by the Secretary of State.

(44 U. S. Stat. 572.)

Definitions of terms used in the act were given and some of these have been embodied in treaties, regulations, etc.

Prohibited carriage.—By Executive order of February 18, 1929, issued in accordance with the act of August 24, 1912 (37 U. S. Stat. 560):

a. The carriage by private aircraft of arms and munitions of war, and of such articles as are or may be prohibited by law and regulations of the United States in force in the Panama Canal Zone or of the State in which the aircraft is registered is prohibited.

b. Express license and authority must be procured from authorized Panama Canal Zone officials for the carriage in private aircraft of arms for hunting or protection of crew and cargo, commercial explosives, photographic apparatus not boxed and sealed, and such other articles as the Governor of the Panama Canal may prescribe.

Regulations in general.—It is now generally admitted that regulations for the use of aircraft may have some analogies to the regulations for the use of naval craft, yet aerial navigation is so unlike maritime navigation that analogies are often very misleading. The time element in the use of aircraft as well as the space element is, in many respects, unlike that in the use of naval craft. The increased range of vision introduces other problems which have led to propositions to extend the aerial zone beyond the commonly accepted 3-mile maritime zone of jurisdiction.

There would still remain certain problems as to using higher aerial zones along the frontier of adjacent states. In any case it is recognized that there are differences in the nature of the use of the air over land and over territorial waters.

Commission of Jurists, 1923.—The use of higher aerial zones at sea was one of the matters under consideration by the Commission of Jurists to consider and report
upon the Revision of the Rules of Warfare at The Hague in 1923. The Italian delegate particularly advocated a 10-mile national jurisdiction for aerial purposes while not proposing a change in maritime jurisdiction. The commission did not regard the proposal as practicable, calling attention to the case in which a neutral state, which maintained the 3-mile limit of maritime jurisdiction, might desire to take action against a belligerent hydroplane flying within 10 miles of the coast but over the high seas. The hydroplane might alight and at once be outside neutral jurisdiction and on the high seas. The report of the commission said:

On principle it would seem that the jurisdiction in the air-space should be appurtenant to the territorial jurisdiction enjoyed beneath it, and that in the absence of a territorial jurisdiction beneath, there is no sound basis for jurisdiction in the air.

Furthermore, it is felt that the obligation to enforce respect for neutral rights throughout a 10-mile belt would impose an increased burden on neutral Powers without adequate compensating advantages. Even with this wider belt it would still be easy for airmen fighting in the air to lose their bearings in the heat of the combat, and to encroach inadvertently on neutral jurisdiction. Lastly, the greater the distance from the coast, the more difficult it is for the position of an aircraft to be determined with precision, and the more frequent, therefore, will disputes become between belligerent and neutral States as to violation by the former's aircraft of the latter's jurisdiction. (1924, Naval War College, International Law Documents, p. 152.)

The Italian delegation while renouncing further immediate consideration of the proposition states that—

1. It does not think it desirable to resume in Plenary Commission the discussion of a question which has on several occasions been considered in all the necessary detail during the meetings of the Sub-Committee.

2. Nevertheless, although the majority of the Delegations have already put forward views opposed to its proposal, it continues to believe in the importance of that proposal and in the necessity for its adoption and insertion in an international convention.

3. From the point of view both of belligerent and of neutral States, their 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 territo­
torial 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 terri­
torial waters, the Italian Delegation being of opinion that inter­
national law, as generally recognised, contains no rule prohibit­
ing a State from extending its territorial waters to a distance
of 10 sea-miles from its coasts.

6. In conclusion, it urges that a question of such paramount
importance should be reopened and placed upon the agenda of a

League of Nations Commission.—The League of
Nations Preparatory Commission for the Disarmament
Conference considered the question of limitation of air
armament from time to time. There seemed to be a
general opinion that civil aircraft would play a very
important part in any war that might arise. It was
proposed that aircraft be distinguished by type, antici­
pating that one type would be characteristically military
and another civil. It was admitted that such distinctive
types had not yet evolved. It was also admitted that in
any attempt at limitation of air forces, it would be dif­
ficult to determine the potential air personnel and even
more difficult to determine air material in reserve. Much
difficulty was experienced in defining clearly the term
“in reserve.” Some regarded material in reserve as
merely substitute material provided for emergency need
of aircraft in commission; some would extend the idea
to cover material that could be mobilized in case of need
and others admitted that no satisfactory determination
could be made. There were also many problems in mark­ing
off civil aviation undertakings from military and
strategic.

Draft Convention, 1930.—The Draft Convention pre­
pared by the Preparatory Commission for the Disarm­
ament Conference in referring to air armament in article 28 embodied the provision, "No preparations shall be made in civil aircraft in time of peace for the installation of warlike armaments for the purpose of converting such aircraft into military aircraft." (League of Nations, C. 4, M. 4, 1931, IX (C. P. D. (1)), p. 607.) Other provisions were also embodied to distinguish military and private aircraft. In the preliminary discussions of the commission, however, many differences of opinion were manifest.

Application of rules.—Rules for land and maritime warfare have become fairly well established. It has been argued that these so far as their principles are applicable be extended to the air. Some of these rules may doubtless be applicable. The following might be in this category even if it afforded no final criteria for opinion:

XIII. HAGUE CONVENTION, RIGHTS AND DUTIES OF NEUTRAL POWERS IN MARITIME WAR

Art. 1. Belligerents are bound to respect the sovereign rights of neutral Powers, and to abstain, in neutral territory or neutral waters, from all acts which would constitute, on the part of the neutral Powers, which knowingly permitted them, a non-fulfilment of their neutrality.

There has been much discussion as to whether an aircraft is a means of transportation and analogous to a maritime vessel or an instrument of war and analogous to a projectile, i. e. a winged intelligent projectile. In any case it is an instrument in which the time and space elements in the region above the earth's surface have been reduced to the minimum.

American-German correspondence, 1915.—On January 19, 1915, the German ambassador raised question with the Secretary of State as to the delivery of hydro-aeroplanes by a neutral firm to a belligerent state. The German position was stated as follows:
There is no doubt that hydro-aeroplanes must be regarded as war vessels whose delivery to belligerents states by neutrals should be stopped under Article 8 of the thirteenth convention of the Second Hague Conference of October 18, 1907. Hydro-aeroplanes are not mentioned by name in the convention simply because there was none in 1907 at the time of the conference. (1915, Foreign Relations, Supplement, p. 777.)

To the letter of the German ambassador, Secretary of State Bryan replied on January 29:

Excellency: I have the honor to acknowledge the receipt of your excellency's note of the 19th instant, and in reply have to inform you that the statements contained in your excellency's note have received my careful consideration in view of the earnest purpose of this Government to perform every duty which is imposed upon it as a neutral by treaty stipulation and international law.

The essential statement in your note, which implies an obligation on the part of this Government to interfere in the sale and delivery of hydro-aeroplanes to belligerent powers, is:

"There is no doubt that hydro-aeroplanes must be regarded as war vessels whose delivery to belligerent states by neutrals should be stopped under Article 8 of the thirteenth convention of the Second Hague Conference of October 18, 1907."

As to this assertion of the character of hydro-aeroplanes I submit the following comments: The fact that a hydro-aeroplane is fitted with apparatus to rise from and alight upon the sea does not in my opinion give it the character of a vessel any more than the wheels attached to an aeroplane fitting it to rise from and alight upon land give the latter the character of a land vehicle. Both the hydro-aeroplane and the aeroplane are essentially aircraft; as an aid in military operations they can only be used in the air. The fact that one starts its flight from the surface of the sea and the other from the land is a mere incident which in no way affects their aerial character.

In view of these facts I must dissent from your excellency's assertion that "there is no doubt that hydro-aeroplanes must be regarded as war vessels," and consequently I do not regard the obligations imposed by treaty or by the accepted rules of international law applicable to aircraft of any sort.

In this connection I further call to your excellency's attention that according to the latest advices received by this Department the German Imperial Government include "balloons and flying machines and their component parts" in the list of conditional
contraband, and that in the Imperial prize ordinance, drafted September 30, 1909, and issued in the Reichs-Gesetzblatt on August 3, 1914, appear as conditional contraband "airships and flying machines" (Article 23, section 8). It thus appears that the Imperial Government have placed and still retain aircraft of all descriptions in the class of conditional contraband, for which no special treatment involving neutral duty is, so far as I am advised, provided by any treaty to which the United States is a signatory or adhering power.

As in the views of this Department the provisions of Convention XIII of the Second Hague Convention do not apply to hydro-aeroplanes I do not consider it necessary to discuss the question as to whether those provisions are in force during the present war. (Ibid, p. 780.)

Neutrality proclamation, 1914.—Under accepted principles of international law a neutral state may not directly or indirectly supply a belligerent with materials of war or allow its ports to be used as bases by belligerents.

Question has been raised as to whether supplies or war material purchased before the war and still within neutral jurisdiction may be withdrawn by the belligerent during the war.

The proclamation of neutrality of the United States in 1914 stated that—

Whereas the laws and treaties of the United States, without interfering with the free expression of opinion and sympathy, or with the commercial manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest;

And whereas it is the duty of a neutral government not to permit or suffer the making of its waters subservient to the purposes of war; * * * * * 

The following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit:

S. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of either of the said belligerents. * * *
10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser, or armed vessel in the service of either of the said belligerents, or belonging to the subjects of either, by adding to the number of guns of such vessels, or by changing those on board of her for guns of a larger caliber.

This proclamation also provided that—

no ship of war or privateer of any belligerent shall be permitted to make use of any port, harbor, roadstead, or other waters within the jurisdiction of the United States as a station or place of resort for any warlike purpose or for the purpose of obtaining any facilities of warlike equipment; (1915, Naval War College: International Law Topics, p. 7.)

These principles would extend equally to aircraft or other new means of warfare.

Supplies.—It is evident that law relating to certain aspects of the rights and duties of states in the superjacent air in the time of war is not yet clearly established. In many phases there are possible analogies to the principles of the law of maritime and land warfare. The fact that time and space are greatly reduced as factors in movement of aerial warcraft as compared with naval warcraft becomes a matter of great significance. Some states have accordingly prohibited to military aircraft any entrance to their jurisdiction. It is now a generally accepted principle that the belligerent should not use and that the neutral should not permit the use of its territory as a base. The fuel of an aircraft is at present a most important element in its use. To afford safe port for the exchange of a less serviceable fuel for a more serviceable fuel would not be merely to render the aircraft airworthy, but would be permitting the use of the airport as a base and should accordingly be forbidden by the neutral. In maritime war article 8 of the 1907 Hague Convention concerning the
rights and duties of neutral powers in naval war applies and is as follows:

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war. (1908, Naval War College, International Law Situations, p. 215.)

The principles of this convention would apply to aircraft within neutral jurisdiction.

British-Dutch correspondence, 1916.—In April, 1916, a British seaplane which fell well out in the North Sea was, with its pilot, picked up by a Dutch lugger and taken to a Dutch port. This event gave rise to considerable correspondence between the Governments of the parties concerned. Some of the correspondence stated the official contentions.

A memorandum of the British Foreign Office of May 31, 1916, stated the Government’s position quite fully, and is therefore given somewhat at length:

A seaplane belonging to His Majesty’s forces was recently obliged on account of engine trouble to descend while over the North Sea. The pilot was rescued by a Dutch fishing boat, which took both him and the seaplane into a Dutch port. The Netherlands Government, though they have released the pilot, appear to consider it their duty to retain the seaplane for the duration of the war. After a careful consideration of the question, His Majesty’s Government feel bound to dissent from this view, and believe that the Netherlands Government are under no obligation to intern the machine.

The Netherlands Government, in releasing the pilot, appear to have considered that he was in the same position as a member of a crew of a shipwrecked belligerent warship who is picked up by a neutral merchant vessel and conveyed to a neutral port; such a person, under the rules of The Hague Convention No. 10, of 1907, is entitled to be released. His Majesty’s Government believe their decision on this point to be correct and consider
that, while none of the rules expressly laid down by international law exactly fit the case of the seaplane, a further examination of the principles which lie behind the rules which compel neutrals to intern belligerent forces in certain circumstances shows that the seaplane should also be released.

The rules concerning internment are not based on any single and uniform principle. This fact explains itself when one takes into consideration that these rules have grown up gradually and severally and were, before the Peace Conference at The Hague in 1907, customarily agreed upon from different motives. The consequence is that the rules governing internment differ not only with regard to the internment of soldiers on neutral land and internment of warships in neutral harbours, but also with regard to the internment of troops in general, and the internment of such soldiers as have escaped from captivity.

One of the basic reasons for the rules concerning internment is no doubt the fact that a belligerent is entitled to insist that such enemy forces as have crossed neutral territory for the purpose of escaping capture, shall not be enabled to leave the neutral territory, and again resort to hostilities. But this concerns only enemy forces which have deliberately entered neutral territory for the purpose of escaping capture; it cannot apply to such enemy forces as for other purposes cross into neutral territory, or even cross accidentally without knowledge of the neutral frontier. Now, all these must likewise be interned, and the basic reason for their internment is that, in case these troops are not interned, the other belligerent would be justified in crossing into the neutral territory on his part and attacking the enemy there.

As regards the internment of men-of-war, the basic reasons are also manifold. One is—just as in the case of fugitive troops—that a belligerent is entitled to insist that enemy men-of-war which deliberately enter neutral harbours for the purpose of escaping capture, shall not after some length of time be allowed to leave and resort to hostilities again, although they may leave if they only stay twenty-four hours. Other reasons are that a neutral must not allow belligerent men-of-war to make his harbours the base of military operations, the base of supply beyond a certain limit, the base for repairing vital damages, and the like.

Considering that a neutral need not intern soldiers who escape from captivity, that he need not intern such shipwrecked men as have been rescued by neutral merchantmen and brought to neutral ports; that he need not intern such men-of-war as call at neutral
harbours for legitimate purposes; and the like—there is without doubt no general rule in existence which compels a neutral to intern in every case every member of belligerent forces who gets on to its territory, and every man-of-war which comes into its harbours. Each case must be decided according to its merits, and there are different rules for the different cases.

It seems evident that the case of the seaplane which the Netherlands Government is detaining is similar to the case of shipwrecked members of belligerent forces rescued by neutral merchantmen. Whereas, if such shipwrecked men are rescued by a neutral warship, they must be interned according to article 13 of Convention No. 10 of The Hague, 1907, they need not be interned if rescued by neutral merchantmen and brought to neutral harbours.

What are the basic reasons for this difference? That shipwrecked men rescued by neutral men-of-war must be interned is obvious, because these men have been saved from drowning, and perhaps from capture, by getting on neutral territory—a neutral man-of-war is neutral territory—and they can as little be allowed to go back to their own country as members of belligerent forces in land warfare who escaped being captured or killed by crossing into neutral territory. On the other hand, if they are rescued by neutral merchantmen they do not thereby come into neutral territory, for neutral merchantmen are not, as neutral men-of-war are, neutral territory, and any enemy warship may demand that the rescued men be handed over to her. Further, the rescuing neutral merchantmen may as well take the rescued men into a port of their own country as to a neutral port; it is a mere accident if the rescued men are taken into a neutral port instead of into a port of their own country, and for this reason they need not be interned if they are brought into a neutral port.

It may be argued that, in case she does not intern the rescued seaplane, Holland would violate her neutrality and render assistance to Great Britain by allowing the latter to recover a seaplane which were otherwise lost. However, the assistance, if any, rendered by the release of the seaplane would not be greater than the assistance, if any, to a belligerent comprised in the permission, which according to existing law may be given to escaped prisoners of war, and to prisoners brought by troops taking refuge on neutral territory, to leave such territory with the consequence that they will eventually rejoin the armed forces of their country. And why should the release of the British seaplane be an unneutral act, whereas the release of her airman, which has actually taken place, is not? If this airman was allowed to return with
the consequence of eventually joining the British forces again, why should not the same be allowed to his seaplane?

Lastly, it ought to be taken into consideration that none of the enumerated basic reasons for the duty of neutrals to intern belligerent forces can be made use of in favour of internment of the rescued seaplane. The seaplane did not go to Holland for the purpose of escaping capture, or for the purpose of taking in supplies, or for the purpose of undergoing repairs. In fact, it did not get there voluntarily and on its own account, but quite accidentally, because the rescuing merchantman might as well have taken it to an English as to a Dutch port.

It must also be remembered that if the seaplane had been left at sea it might have been salved by His Majesty's Government, or by a British ship and taken to a British port. The pilot could speak no Dutch, and the skipper of the fishing boat which rescued him could not speak English, so that the pilot was unable to give any directions or express any wish with regard to the disposal of the seaplane. (Parliamentary Papers, Misc. No. 4 (1918) [Cd. 8983], p. 3.)

Referring to this matter in a communication of July 11, 1916, the Netherlands Minister of Foreign Affairs said:

Your Excellency points out to me that the case of war material salved on the high seas is analogous to that of the shipwrecked belligerent combatant. I feel I must, however, point out to your Excellency that the analogy between these two cases is only apparent. International law has defined the treatment of combatants rescued on the high seas by a neutral vessel and disembarked in a neutral port. It has sought to safeguard personal liberty as far as possible, and has established that, only in the case of rescue by a neutral warship (which is considered to form part of the territory of the country) should the shipwrecked person necessarily be interned. This consideration did not arise in the case of material salved on the high seas. In the absence of any ruling in this connection, the neutral Governments are then called upon to retain, until the end of the war, material salved by a vessel of their nationality, whether warship or merchant-vessel.

It is true that, by leaving at liberty the belligerent combatant brought in by a merchant vessel, the neutral Government enables him to take up arms again, but, just as in the case, quoted by your Excellency, of escaped prisoners of war, regard for personal liberty does not permit of his being interned, unless the rules of international law expressly impose this restriction.
In view of the considerations set forth above, I believe that your Excellency's Government will surely recognise that the Queen's Government, while regretting their inability to accede to the wishes of the British Government, would be acting in contradiction to the principles which have till now guided them in the observation of neutrality were they to restore Sub-Lieutenant Beare's seaplane before the end of the war. (Ibid., p. 6.)

*British-Dutch correspondence, 1917.*—Later in September, 1917, another British seaplane which came down in open sea was towed with two occupants to a Dutch port. The occupants were released but the seaplane was detained. A note was sent by the British Minister at The Hague to the Dutch Foreign Office in which it was said:

A fresh case has now arisen in the case of a British seaplane, No. 1,232, manned by Flight-Lieutenant Hopcroft and Petty Officer Garner, which came down on the high seas on the 23rd September some 60 miles from the Dutch coast, was rescued by a Dutch fishing vessel, and towed into the Helder, where the machine is now detained, although the occupants have been released in accordance with the accepted tenets of international law.

I would beg to remind your Excellency that it was stated in Sir A. Johnstone's note of the 10th September, 1916, that His Majesty's Government maintains that the rule by which shipwrecked combatants brought into a neutral port by neutral merchant vessels are released applies equally to the case of war material belonging to a belligerent which is brought into a neutral port by a neutral merchant ship. This contention is still maintained by His Majesty's Government, and I have therefore to request that the Netherlands Government will order the release of the airship in question, as well as of that which came down last year with Lieutenant Beare on board.

In the course of a recent conversation, I understood your Excellency to be somewhat doubtful as to whether the decision of the Netherlands Government in the case of such aircraft brought in by a neutral vessel was undeniably good in law, but I gathered that you are of opinion that such a decision once taken cannot be reversed. I would venture with great respect to point out to your Excellency that such an attitude is equivalent to contending that two wrongs can make a right—a contention which I feel sure your Excellency will realise, on reflection, cannot be justifiably maintained as a reason for continuing to
intern aircraft that would appear to be as clearly entitled to release as the officers who manned them.

Your Excellency, in the course of the conversation to which allusion is made above, stated that you had reason to think that the rule applied in the case of these British airships had also been enforced in connection with other belligerent machines. It would be of great interest to my Government to possess details of such instances, and I should therefore be greatly obliged if your Excellency would be so good as to furnish me with the same. (Ibid., p. 12.)

In again declining to accept the British view, the Dutch Minister of Foreign Affairs gave a long argument in the course of which he said:

It goes without saying that if an analogous case concerning one of the adversaries of Great Britain were to arise, for example, if a German dirigible were brought into Holland in similar circumstances, the Queen's Government would in the same way not think of restoring it before the end of the war. I venture to make this apparently superfluous remark in order to show that, if the Queen's Government were to accept the British Government's point of view, they would be obliged in such circumstances to restore those engines of war to the Government to which they belong immediately on their arrival on Netherlands territory. As to ships of war, in view of the special stipulations of international law with regard to them, they can only be subjected to this same treatment in the case of their being found at sea deserted by their crews; if, on the contrary, the crew is still on board, while the ship has sustained damage and is trying to make a neutral port to effect repairs, the Queen's Government will have to decide whether the principle expressed in article 17 of the 13th Convention requires the release of the ship and her crew. (Ibid., p. 16.)

The British Government again renewed its contention in a note of December 21, 1917.

9. The Netherlands Government base their refusal to restore to His Majesty's Government the articles detained on the general ground that there is no precise rule covering the question of their proper treatment, and that their restoration would be an act reinforcing the armed strength of a belligerent, and therefore contrary to neutrality. The argument is supported, in the eyes of the Netherlands Government, by article 6 of the 13th Hague Convention, which forbids the direct or indirect
supply of war material by a neutral Government to a belligerent.

It is contended that the liberation of the crews of the seaplanes referred to above was prescribed by a definite rule of international law overriding the general prohibition against strengthening a belligerent's military strength; this rule cannot, according to the Netherlands Government, be applied by analogy to the articles rescued at the same time or in similar circumstances, because the general prohibition which they conceive to necessitate the action which they have taken must hold good unless explicitly overridden.

10. In all the cases enumerated above, with the exception of the seaplane rescued by the Norwegian steamship Orn, Dutch subjects have—so far as is known, unasked—taken possession of the property of His Majesty's Government on the high seas and carried it into Netherlands jurisdiction. On requesting the restoration of the property thus gratuitously taken from them, His Majesty's Government are met with the excuse that to release the articles would be to add to the armed strength of Great Britain, and would therefore be contrary to the neutrality of the Netherlands. The practical effect of such a ruling is that Dutch seamen who, from motives of humanity, rescue wrecked British airmen and their machines, become—no doubt entirely contrary to their wishes or their expectations—instrumental in diminishing the armed strength of Great Britain. In the worst case noted (that in which a machine-gun and other gear was removed from a seaplane by the crew of the Noord-Hinder lightship, who were Netherlands Government servants), it is difficult to perceive much difference between such conduct and the misappropriation of goods which becomes the subject of criminal proceedings. Yet the restoration of the articles thus taken is refused on the ground of neutrality.

11. The Netherlands Government contend that, if it were not for the existence of an express provision of international law overriding the general rule, they would be obliged by the prohibition against adding to the armed strength of a belligerent to intern the crews of belligerent warships or aircraft rescued and brought to the Netherlands by neutral merchant ships. It must be remarked that, if this general prohibition really had the effect pretended, it could scarcely be overridden without a definite regulation laying down in terms that such crews were not to be interned. No such positive regulation exists. The rule under which persons in the above position are released is merely mentioned, as it were in passing, in the report of the Drafting Committee on The Hague Convention for the adaptation of the principles of the Geneva Convention to Maritime Warfare. It is evident that it is
not a rule overriding a wider principle, but is one recognised as
flowing naturally from the general principles which govern the
question of the internment of belligerent persons and war material
by neutral Powers. Those general principles apply equally to
persons and to material by analogous circumstances, and this fact
is not altered by the chance that the case of combatants rescued
by neutral merchant ships is mentioned in the report of the 10th
Hague Convention, while no allusion to the case of material in
a similar position occurs in an equally authoritative document.

12. As regards the reference made by the Netherlands Govern­
ment to the terms of article 6 of the 13th Hague Convention, His
Majesty's Government can only express astonishment at being
asked to consider such an argument. The article refers to the
supply by a neutral to a belligerent Power of war material owned
by the neutral, and has no wider scope. Furthermore, it must be
observed that the seaplanes and other articles now in question
would never have come into the possession of the Netherlands
Government at all if they had been left alone by the Dutch sub­
jects who brought them into the Netherlands ports. There
could have been no question of the Government furnishing any of the
articles to His Majesty's Government had they simply refrained
from impounding goods which no rule of international law re­
quired them to seize.

13. I request that you will address a note in the above sense
to the Netherlands Minister for Foreign Affairs, stating that
His Majesty's Government is unable to perceive any force in the
arguments by which he seeks to defend the action of his Govern­
ment, and at the same time reiterate the request for the release
and return of the articles in question. (Ibid., p. 17.)

Some of this correspondence shows the effect of the
strain of war in an attempt to obtain from a neutral all
possible concessions in the way of favorable treatment on
the one hand and of an attempt to avoid all possible com­
lications to which a neutral might be exposed on the
other. Possibly the hope of salvage money may also
stimulate a private neutral vessel to bring in a disabled
aircraft found on the sea.

Transformation of civil aircraft.—In 1919 the Su­
preme Council of the Peace Conference proposed to the
Aeronautical Commission among others the following
question: "Can civil aeroplanes and airships be easily
transformed into weapons of war?" The aeronautical
commission made up of technical representatives from the United States, the British Empire, France, Italy, Japan, Belgium, Brazil, Cuba, Greece, Portugal, Romania and Serb-Croat-Slovene States, after consideration, replied unanimously, "Yes, commercial aeroplanes and airships can be very easily and quickly transformed into weapons of war."

General principles, 1919.—The degrees to which the principles of regulation of aviation had advanced is evident in the discussions preliminary to the negotiation of the treaty of peace and the convention relating to international air navigation in 1919. On April 7, 1919, the following was approved by the Aeronautical Commission:

List of Principles Settled by the Commission for the Purpose of Guiding the Subcommittees in Their Work

1. Recognition—

   (1) Of the principle of the full and absolute sovereignty of each State over the air above its territories and territorial waters, carrying with it the right of exclusion of foreign aircraft:
   (2) Of the right of each State to impose its jurisdiction over the air above its territory and territorial waters.

2. Subject to the principle of sovereignty, recognition of the desirability of the greatest freedom of international air navigation in so far as this freedom is consistent with the security of the State, with the enforcement of reasonable regulations relative to the admission of aircraft of the contracting States and with the domestic legislation of the State.

3. With regard to domestic regulations relative to the admission and treatment of the aircraft of the contracting States, recognition of the principle of the absence of all discrimination on the ground of nationality.

4. The recognition of the principle that every aircraft must possess the nationality of one contracting State only and that every aircraft must be entered upon the register of the contracting State the nationality of which it possesses.

5. The following provisions are recognized as desirable from an international point of view to insure the safe conduct of aerial navigation:

   (i) Regulations for compulsory certificates of airworthiness and licenses for wireless equipment, at least for aircraft used
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for commercial purposes. Mutual recognition of these certificates and licenses by the contracting States.

(ii) Regulations for compulsory licenses of pilots and other personnel in charge of aircraft. Mutual recognition of these licenses by the contracting States.

(iii) International rules of the air, including international rules as to signals, lights, and for the prevention of collisions. Regulations for landing on the ground.

6. Recognition of the principle of special treatment for military, naval, and State aircraft when they are in Government Service.

7. Recognition of the right of transit without landing for international traffic between two points outside the territory of a contracting State, subject to the right of the State traversed to reserve to itself its own internal commercial aerial traffic and to compel landing of any aircraft flying over it by means of appropriate signals.

8. Recognition of the right of use, by the aircraft of all the contracting States, of all public aerodromes upon the principle that charges for landing facilities should be imposed without discrimination on the ground of nationality.

9. Recognition of the principle of mutual indemnity between the contracting States to cover damage done to person or property in one State by Government aircraft of another State.


11. Recognition of the obligation of each contracting State to give effect to the provisions of the convention by its domestic legislation.

12. Recognition of the principle that the convention does not affect the rights and duties of belligerents or neutrals in time of war. (Commission de l'Aéronautique, p. 18.)

Questions in House of Commons.—Some of the rescues of the crews of submarines gave rise to questions in regard to their treatment by neutrals. In the House of Commons, January 13, 1916:

Mr. Swift MacNeill asked the Secretary of State for Foreign Affairs whether the crew of the British submarine which sank off Texel on the 6th instant, having sprung a leak and grounded, who were rescued by a Dutch cruiser and brought into Helder, have been interned at Groningen by the Dutch Government; whether, having regard to the fact that the British submarine whose crew were thus rescued was not sunk by a belligerent, the detention or internment of that crew by the Dutch Government
is contrary to the principles and practice of international law; whether Article 13 of Convention X, of the Second Peace Conference, providing that if shipwrecked sailors are taken on board a neutral man-of-war precaution must be taken so far as possible that they do not again take part in the operations of the war, applies only to sailors whose ships have been wrecked by the enemy, not to sailors whose ships have been wrecked in the ordinary course of navigation; and whether Great Britain will demand the immediate release from detention of these sailors, whose case does not differ from that of any other British subjects in neutral territory, and who should, even if their ship had been disabled by a belligerent, as in the case of the Russian sailors rescued by British, French, and Italian cruisers from ships disabled by the Japanese, be not detained but handed over to Great Britain on the condition that they should not take part in hostilities during the War?

Sir E. Grey. The crew of the E 17 has been interned by the Dutch Government, but the place of internment is as yet unknown to His Majesty's Government.

The answer to the second part of the question is that Article 13 of Convention X of The Hague draws no distinction between ships wrecked by the enemy or in the ordinary course of navigation. As to the remainder of the hon. Member's question, I will see that the suggestions and arguments put forward by him are very carefully considered. (Parliamentary Debates, Commons, 1915-1916, Vol. LXXVII, p. 1743.)

Repairing in neutral port.—Authorities are bound in general by the obligation to use due diligence that the port shall not become a base, and by previous principles and practice of Great Britain. This obligation to use due diligence is embodied in the provisions of the treaty of Washington, 1871, which states, in Article VI:

A neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.
Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

After 1871 these principles were generally approved.

In 1907 at The Hague Conference, Great Britain proposed as a basis for a rule:

A neutral State must not knowingly permit a warship of a belligerent to repair within its jurisdiction the injuries resulting from a combat with the enemy, nor in any case to make repairs in excess of what will be necessary for navigating.

Japan made a similar proposal.

After much discussion a provision in regard to repairs was embodied as article 17 of the Thirteenth Convention on Neutral Rights and Duties in Maritime War, as follows:

In neutral ports and roadsteads belligerent warships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

The British, while objecting to some articles of this convention, regarded this article 17 as a fair statement of the existing law.

The "Glasgow," 1914.—In the Battle of Coronel between the British and German fleets off the west coast of Chile on November 1, 1914, two British vessels were sunk and others were damaged. The cruiser Glasgow was reported to have received five holes from German shell fire. The Glasgow steamed under orders away from the area of battle, passed through the Straits of Magellan, and on November 20, was reported as repairing at Rio de Janeiro.
The Brazilian Government has given permission for the British cruiser *Glasgow* to enter the dry dock at Rio de Janeiro to make urgent repairs. The *Glasgow*, according to dispatches published in the American Press, has five holes in her hull from shell fire. Four of her crew were wounded in the battle off Chile.

Officers of the *Glasgow* are quoted as saying that at the outset of the battle Admiral Cradock from the flagship *Good Hope*, ordered the *Glasgow* and *Otranto*, in view of the higher power of the German squadron's guns, to seek a place of refuge. Notwithstanding this order the *Glasgow* answered the German fire. In the first few minutes of the fight, the officers of the *Glasgow* are stated to have said the *Good Hope* had one of her two 9-2 in. guns dismantled and her magazine exploded. Admiral Cradock and the crews of the *Good Hope* and *Monmouth*, it is believed, went down with their ships. The battleship *Canopus*, according to the story attributed to the officers of the *Glasgow*, steaming only 16 knots, could not arrive in time to participate in the fight.

The Brazilian Government has given the *Glasgow* seven days in which to make the necessary repairs. (London Times, Nov. 21, 1914.)

Later, the *Glasgow* took part in the battle off the Falkland Islands, December 8, 1914.

*The "Geier" and the "Locksun."*—On October 28, 1914, the British ambassador raised the question of detaining the *Geier*, a vessel or war of Germany, and the *Locksun*, a vessel belonging to the North German Lloyd Co., which had entered the port of Honolulu. On the same date, the Japanese ambassador raised the question in regard to the intentions of the United States in regard to the *Geier*.

On the same day, the Secretary of State received from the Treasury Department a report from the Collector of Customs at Honolulu, as follows:
On October 15 captain German gunboat Geier requested permission to make repairs to render vessel seaworthy and estimated time for same at one week. On October 20 Naval Constructor Furer, at my request, examined the vessel and recommended that time be extended eight days from 20th to place boilers in seaworthy condition. To-day consul requests from eight to ten days more in which to make repairs to steam and feed piping and boilers that have been found to be leaking. Consul states captain has used every effort to finish repairs, working Sundays and overtime, but owing to lack of labor can not finish in less time. Naval Constructor Furer has just completed another examination of the vessel and reports that he is unable to state how long repairs should take, as more leaky tubes may be found as work progresses. Honolulu iron works estimates time for repairs at from two to three weeks, which, in opinion of Furer, is a conservative minimum. Furer reports piping and boilers in bad condition; may possibly take further time to repair. Await instructions. (American Journal International Law, 1915, Spec. Sup. 9, p. 242.)

On October 30, 1914, the Counselor of the Department of State sent the following to the German ambassador in regard to the Geier:

DEPARTMENT OF STATE,
Washington, October 30, 1914.

My Dear Mr. Ambassador: The Department has been advised that the German gunboat Geier put into the port of Honolulu, and on October 15 the captain requested permission to make repairs to render the vessel seaworthy, and estimated the time for this work to be one week. The naval constructor of the United States at the port of Honolulu examined the vessel on October 20, and recommended that the time be extended eight days, from October 20, in order to place the boilers in a seaworthy condition. On October 27, the German consul at that port requested from eight to ten days additional time in which to make repairs to steam and feed piping and boilers that have been found to be in a leaking condition. Upon a further examination, the United States naval constructor reports that he is unable to state how long repairs should take, as conditions requiring remedy may be found as work progresses. It is also reported that, on account of the generally bad condition of the piping and boilers, further time may be required to complete all repairs.
The circumstances in this case point to the gunboat Geier as a ship that at the outbreak of war finds itself in a more or less broken-down condition and on the point of undergoing general repairs, but still able to keep the sea. In this situation the Government believes that it does not comport with a strict neutrality or a fair interpretation of the Hague Conventions, to allow such a vessel to complete unlimited repairs in a United States port. The Government therefore has instructed the authorities to notify the captain of the Geier that three weeks from October 15 will be allowed the Geier for repairs, and that if she is not able to leave American waters by November 6, the United States will feel obliged to insist that she be interned until the expiration of the war. (American Journal International Law, 1915, Spec. Sup. 9, p. 243.)

Later, a communication was sent in regard to the Locksun:

DEPARTMENT OF STATE,
Washington, November 7, 1914.

My Dear Mr. Ambassador: Referring to my previous communication to you of October 30 regarding the internment of the German cruiser Geier, the Department is now in possession of information that the German steamship Locksun, belonging to the Norddeutscher Lloyd Company, cleared August 16, 1914, from Manila with 3,215 tons of coal for Menado, in the Celebes; that she coaled the German warship Geier in the course of her voyage toward Honolulu, where she arrived soon after the Geier; that the Locksun received coal by transfer from another vessel somewhere between Manila and Honolulu, and that the captain stated that he had on board 245 or 250 tons of coal when he entered Honolulu, whereas investigation showed that he had on board approximately 1,600 tons.

From these facts the Department is of the opinion that the operations of the Locksun constitute her a tender to the Geier, and that she may be reasonably so considered at the present time. This Government is, therefore, under the necessity of according the Locksun the same treatment as the Geier, and has taken steps to have the vessel interned at Honolulu if she does not leave immediately. (American Journal of International Law, 1915, Spec. Sup. 9, p. 245.)

To this action the German ambassador took exception, and later the Secretary of State replied:

In the circumstances of this case, as known by the Department, it is obliged to state that it still adheres to its previous position that the status of the Locksun as a tender to the ship of war
Geier was sufficiently proved to justify her treatment as such. In this connection the Department has the honor to call to your attention the following quotation from the award of the Alabama Claims Commission, which seems to establish this principle regarding the treatment of tenders, although the application of this statement was not made to the exact circumstances of the Locksun case:

"And so far as relates to the vessels called the Tuscaloosa (tender to the Alabama), the Clarence, the Tacony, and the Archer (tenders to the Florida), the tribunal is unanimously of opinion that such tenders or auxiliary vessels, being properly regarded as accessories, must necessarily follow the lot of their principals and be submitted to the same decision which applies to them respectively."

The entire practice of the internment of vessels appears to be of recent origin. The doctrine of internment was apparently first applied to any great extent during the Russo-Japanese war, and it is believed that the treatment of the Locksun is in keeping with the high standard of neutrality upon which the doctrine of internment is based. The Department is not aware that measures to preserve neutrality are entirely dictated by precedent and international law, and it believes that belligerents hardly have proper cause to question an attitude on neutrality justly in advance of precedent and international law if it is applied by the neutral impartially to all belligerents. As to the advisability of assuming such an attitude, the Department is impressed with the proposition that the neutral and not the belligerent is the proper judge in the circumstances. (American Journal International Law, 1915, Spec. Sup. 9, p. 251.)

Spaight's opinion.—J. M. Spaight, who has written much upon various phases of air law, says particularly of the situation at the end of the World War regarding belligerent aircraft salvaged by neutral private vessels:

The law upon the point—indeed, upon the whole question of belligerent air entry—was unsettled, but a rule was being created by practice, and to allow exceptions from it was unwise. Save when allocated to, and in contact with, a warship, which, itself for some purposes the "territory" of its State, may be regarded as imparting its own character to an aircraft carried upon it or lashed to it, belligerent military aircraft brought into neutral jurisdiction under whatever circumstances should, it is submitted, be subject to the one universal and inelastic rule that they must be detained by the neutral authorities. Relax that
rule and the door opens to a host of possible exceptions and complications. (Spaight, Air Power and War Rights, p. 438.)

*Internment.*—In general, aircraft and their personnel entering neutral jurisdiction during the World War were interned. This was the case whether the aircraft entered in distress or flew within neutral jurisdiction. Sometimes aircraft flying within neutral jurisdiction were brought down by gunfire as was the case in Switzerland and the Netherlands. It made no difference even if an aircraft entered neutral jurisdiction in error supposing it was still in belligerent territory. Sometimes notification was given by signal, rocket, or in some other manner, but absence of notification was not a ground for exemption from liability.

There is no reason why belligerent aircraft should, within neutral jurisdiction, receive any more favorable treatment than that extended to naval craft, and as the risks following entrance are greater, the accepted doctrine is that belligerent military aircraft may not enter neutral jurisdiction and the rules proposed by the commission of jurists at The Hague in 1923 imposed duties upon the neutral.

Article 42. A neutral Government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

A neutral Government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted, for any reason whatsoever, together with its crew and the passengers, if any, (1924, Naval War College, International Law Documents, p. 133.)

The commission of jurists in 1923 referred to article 15 of the 1907 Hague Convention for the Adaptation to Naval War of the Principles of the Geneva Convention which provided that—

The shipwrecked, sick, or wounded, who are landed at a neutral port with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State
and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the War.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded persons belong. (1908, Naval War College, International Law Situations, p. 207.)

The proposed rules in 1923 extended this principle of internment to persons brought in upon a neutral military aircraft in article 43 as follows:

The personnel of a disabled belligerent military aircraft rescued outside neutral waters brought into the jurisdiction of a neutral State by a neutral military aircraft and there landed shall be interned. (1924, Naval War College, International Law Documents, p. 134.)

Practice in the World War was to release airmen rescued by nonmilitary craft whether air or marine when the airmen were brought within neutral jurisdiction. Whether belligerent airmen rescued by public neutral nonmilitary craft should be released is still somewhat uncertain but as the public neutral craft, e.g. a royal neutral yacht, would be exempt from visit and search, it would seem that rescued airmen should be liable to the same treatment when entering the neutral port as when rescued by a neutral vessel of war. The rescue of airmen and aircraft by neutral private vessels during the World War seems to have been followed by release of airmen and internment of the aircraft.

Seaplane rescue and repairs.—It is generally admitted that a neutral should conduct itself in a humane manner toward belligerents and that such conduct toward one belligerent can not be regarded by the other as unfriendly. The seaplane when upon the surface of the water is according to the decisions of courts to be treated as a seacraft would be treated and incurs the same liabilities. The shipwrecked personnel of a belligerent vessel of war rescued by a neutral are to be treated according to the provisions of article 15 of the Convention for the Adaptation to Naval War of the Principles of the Geneva Convention.
While a naval vessel which is within a harbor in which 24-hour sojourn is permitted, may within the period make repairs necessary to render the vessel seaworthy if it enters under its own power, if the neutral brought the disabled vessel in from the high sea, the vessel should be interned. This principle should be applied even more strictly to a seaplane. The Commission of Jurists in 1923 in its report proposing article 42 said:

The obligation on the part of the neutral Power to intern covers not only the aircraft, but its equipment and contents. The obligation is not affected by the circumstances which led to the military aircraft coming within the jurisdiction. It applies whether the belligerent aircraft entered neutral jurisdiction, voluntary or involuntarily, and whatever the cause. It is an obligation owed to the opposing belligerent and is based upon the fact that the aircraft has come into an area where it is not subject to attack by its opponent.

The only exceptions to the obligation to intern an aircraft are those arising under articles 17 and 41. The first relates to flying ambulances. Under the second, an aircraft on board a warship is deemed to be part of her, and therefore will follow the fate of that warship if she enters neutral ports or waters. If she enters under circumstances which render her immune from internment, such aircraft will likewise escape internment.

The obligation to intern belligerent military aircraft entering neutral jurisdiction entails also the obligation to intern the personnel. These will in general be combatant members of the belligerent fighting forces, but experience has already shown that in time of war military aeroplanes are employed for transporting passengers. As it may safely be assumed that in time of war a passenger would not be carried on a belligerent military aircraft unless his journey was a matter of importance to the Government, it seems reasonable also to comprise such passengers in the category of persons to be interned. (1924, Naval War College, International Law Documents, p. 133.)

**SOLUTION**

(a) The government of State Z should deny the request of the commander of the dirigible of the air forces of State X to replace the hydrogen by helium.

(b) The government of State Z should intern the seaplane and its personnel.