The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government, the U.S. Department of the Navy or the Naval War College.
SITUATION II

VISIT AND SEARCH

Note.—In this situation it is granted that the vessels have a legal right to fly the flags mentioned and that all states conform in their actions to the rules of international law.

States X and Y are at war. Other states are neutral. A small torpedo boat of X meets a large passenger liner bound for a port of Y and known to be privately owned by a company of Z and flying the flag of Z. The commander of the torpedo boat can not search the liner nor spare a prize crew, and his duties do not permit him to escort the liner into port. He suspects there may be some contraband on board and signals the liner to go to a named port of X for search. The liner sails away and goes to the port of Y and is subsequently met on the high sea by the same torpedo boat.

What is the liability of the liner of Z?

SOLUTION

Under existing international law the movements of neutral vessels on the high sea are subject to belligerent direction only when under belligerent control by a prize crew or escorting vessel and the liner has incurred no liability.

NOTES

Naval War College discussions.—The subject of visit and search has naturally received much consideration at this Naval War College. Certain aspects of the subject received extended consideration in 1905 (1905 N. W. C. International Law Topics, 48-61), and less extended discussions have been carried on at other times, while frequent references to visit and search have been made in other discussions. The conduct of visit and search has, however, been particularly prominent in relation to
other practices in consequence of events in the World War, 1914–1918.

Early understanding.—In a report of the British law officers in 1753 the law of capture with other matters relating thereto was discussed:

When two powers are at war, they have a right to make prizes of ships, goods, and effects of each other upon the high seas; whatever is the property of the enemy may be acquired by capture at sea; but the property of a friend can not be taken, provided he observed his neutrality.

Hence the law of nations has established:
That the goods of an enemy on board the ship of a friend may be taken.
That the lawful goods of a friend on board the ship of an enemy ought to be restored.
That contraband goods going to the enemy, though the property of a friend, may be taken as prize, because supplying the enemy with what enables him better to carry on the war is a departure from neutrality.

By the maritime law of nations universally and immemorially received, there is an established method of determination whether the capture be, or be not, lawful prize.

Before the ship or goods can be disposed of by the captor, there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon as prize in a court of admiralty, judging by the law of nations and treaties.

The proper and regular court for these condemnations is the court of that State to whom the captor belongs.

The evidence to acquit or condemn, with or without costs or damages, must, in the first instance, come merely from the ship taken, viz, the papers on board, and the examination on oath of the master and other principal officers; for which purpose there are officers of Admiralty in all considerable sea ports of every maritime power at war, to examine the captains and other principal officers of every ship brought in as prize, upon general and impartial interrogatories. If there do not appear from thence ground to condemn as enemy's property, or contraband goods going to the enemy, there must be an acquittal; unless from the aforesaid evidence the property shall appear so doubtful, that it is reasonable to go into further proof thereof. (2 Marsden, Laws and Custom of the Sea, p. 350.)

The “Zamora,” 1916.—This case, which was very fully argued and upon which a long opinion was given, went
on appeal to the judicial committee of the privy council. In the opinion Lord Parker, of Waddington, said:

It was suggested in argument that a vessel brought into harbor for search might, before seizure, be requisitioned under the municipal law. This point, if it ever arises, would fall to be decided by a court administering municipal law, but from the point of view of international law it would be a misfortune if the practice of bringing a vessel into harbor for the purpose of search—a practice which is justifiable because search at sea is impossible under the conditions of modern warfare—were held to give rise to rights which could not arise if the search took place at sea. ([1916] 2 A. C. 77; see also 1922 N. W. C. Int. Law Decisions, p. 126.)

Case of the "Maria," 1799.—The case of the Maria, decided by Sir William Scott in 1799, became almost classic as stating the British position on visit and search. In the beginning Sir William says:

I state a few principles of that system of law which I take to be incontrovertible.

1st, That the right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation. I say, be the ships, the cargoes, and the destinations what they may, because, till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists. This right is so clear in principle, that no man can deny it who admits the legality of maritime capture; because if you are not at liberty to ascertain by sufficient inquiry whether there is property that can legally be captured, it is impossible to capture. Even those who contend for the inadmissible rule, that free ships make free goods, must admit the exercise of this right at least for the purpose of ascertaining whether the ships are free ships or not. The right is equally clear in practice; for practice is uniform and universal upon the subject. * * * The right must unquestionably be exercised with as little of personal harshness and of vexation in the mode as possible; but soften it as much as you can, it is still a right of force, though of lawful force—something in the nature of civil process, where force is employed, but a lawful force which cannot lawfully be resisted.
For it is a wild conceit that wherever force is used, it may be forcibly resisted; a lawful force cannot lawfully be resisted. The only case where it can be so in matter of this nature, is in the state of war and conflict between two countries, where one party has a perfect right to attack by force, and the other has an equally perfect right to repel by force. But in the relative situation of two countries at peace with each other, no such conflicting rights can possibly coexist. (1 C. Rob. Admiralty Reports, p. 340.)

After a considerable discussion of convoy the judgment speaks of bringing vessels in for further inquiry than can be made at sea.

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

I take the rule of law to be, that the vessel shall submit to the inquiry proposed, looking with confidence to those tribunals whose noblest office (and I hope not the least acceptable to them) is to relieve, by compensation, inconveniences of this kind, where they have happened through accident or error; and to redress, by compensation and punishment, injuries that have been committed by design. (Ibid.)

Bringing seized vessels to port.—Domestic legislation (United States Revised Statutes, secs. 4615, 4617) and international regulation (Institute of International Law, 1913, art. 103) and many national regulations (Russian, 1895, art. 22; Italy, 1913, art. 11; German ordinance, 1909, art. 111) provide for bringing seized vessels to port. These all imply that, either in charge of a prize crew or under escort, the vessel which has by visit and search at sea been found liable to suspicion of acts which would make it subject to prize-court procedure should remain under the control of the belligerent until delivered to the prize court. None of these regulations provide for sending in a neutral merchant vessel in order that the search for evidence shall be made in port, though if suspicion exists or is aroused at the point of visit and search at sea it would be justifiable to send the vessel to port for further investigation or for confirmatory evidence.
Resolution of the Institute of International Law, 1913.—In the Oxford Manual of Naval War, drawn up and approved by the institute at its Oxford meeting in 1913, articles 32 and 100 give the general principles in regard to visit and search and seizure. These resolutions have been translated as follows:

ARTICLE 32. Public and private vessels—Stopping, visit, and search. All vessels other than those of the navy, whether they belong to the State or to individuals, may be summoned by a belligerent warship to stop that a visit and search may be conducted on board them.

The belligerent warship, in ordering a vessel to stop, shall fire a charge of powder as a summons and, if that warning is not sufficient, shall fire a projectile across the bow of the vessel. Previously or at the same time, the warship shall hoist its flag, above which at night, a signal light shall be placed. The vessel answers the signal by hoisting its own flag and by stopping at once; whereupon, the warship shall send to the stopped vessel a launch manned by an officer and a sufficient number of men, of whom only two or three shall accompany the officer on board the stopped vessel.

Visit consists in the first place in an examination of the ship’s papers.

If the ship’s papers are insufficient or not of a nature to allay suspicion, the officer conducting the visit has the right to proceed to a search of the vessel, for which purpose he must ask the cooperation of the captain.

Visit of post packets must, as Article 53 says, be conducted with all the consideration and all the expedition possible.

Vessels convoyed by a neutral warship are not subject to visit except in so far as permitted by the rules relating to convoys.

ARTICLE 100. Formalities of seizure. When, after the search has been conducted, the vessel is considered subject to capture, the officer who seizes the ship must:

1. Seal all the ship’s papers after having inventoried them;
2. Draw up a report of the seizure, as well as a short inventory of the vessel, stating its condition;
3. State the condition of the cargo which he has inventoried, then close the hatchways of the hold, the chests, and the store-room and, as far as circumstances will permit, seal them;
4. Draw up a list of the persons found on board;
5. Put on board the seized vessel a crew sufficient to retain possession of it, maintain order upon it, and conduct it to such port as he may see fit.
If he thinks fit, the captain may, instead of sending a crew aboard a vessel, confine himself to escorting it. (Resolutions of the Institute of International Law, Scott, Carnegie Endowment, pp. 181, 197.)

Changing conditions of maritime war.—A common contention is that the change in tonnage, the use of steam, the introduction of undersea craft, and other recent modifications in sea transportation have rendered early maritime laws inoperative. That the manner of application of a law may be modified through such changes is usually admitted, but that the principle of the law is no longer applicable may at the same time be denied. During the World War the character of vessels of war and merchant vessels varied more widely than in any previous war. There were changes in tonnage, speed, stability, method of propulsion, use of subsurface craft, and the like. One group maintained that as corresponding changes had been made or might be made both in the one and the other type of craft the belligerent could not justly contend that the same principles did not apply in the relations of its vessels of war to neutral vessels as applied in earlier wars. The fact that one type of belligerent vessel of war was relatively weaker than a merchant vessel did not give it special exceptional belligerent rights as regards a neutral vessel, nor did the fact that another type of vessel of war might find it particularly hazardous to act in a manner formerly sanctioned by the law of war give the belligerent the right to enunciate new principles of law. During the World War it was from time to time affirmed by the belligerents that the firm intent was to follow in their prize courts accepted international law.

Statement of British attorney general, 1917.—Sir Frederick Smith in 1917, while British attorney general, after reviewing conventions and practice said:

From these considerations it follows that the commander of a belligerent warship may not dispense with the practice of visit and search in regard to suspected or enemy merchantmen. It is his duty, before resorting to forcible measures, to ascertain the
true character of the vessel, the nationality of the passengers and crew on board, and the nature and destination of the cargo. (The Destruction of Merchant Ships under International Law, p. 16.)

It is inevitable that in maritime warfare belligerent interests may conflict with neutral interests. The relations between these interests have gradually become defined and at the beginning of the World War were considered fairly established. Of this the attorney general said:

When, in naval warfare, the interests of belligerents come into conflict with those of neutrals, it does not follow, under the existing law of nations, that the former predominate over the latter. Neutrals have the right to sail the high seas; they are entitled to use this international highway unmolested, as long as they observe the clearly defined obligations of neutrality. Belligerents' convenience may not override neutral rights. Indeed, it may be argued in accordance with the fundamental principles of jurisprudence applicable to the society of states that, as war is from the point of view of international law an abnormal condition, the right of neutrals to use the high seas and carry on their legitimate commerce even prevails over the claims of belligerents to make use of this or that portion of the open sea for the purposes of their conflict. So long as neutral vessels do not encroach within the limited theatre of warlike operations, so long as they commit no violation of the rules of neutrality, for example, as to blockade running, contraband trading, or unneutral service, they are entitled to be left alone, subject, of course, to visit and search in case of suspicion. The observance of their obligations necessarily implies the enjoyment of relative rights on their part, and a corresponding imposition of indefeasible obligations on belligerents. (Ibid. p. 73.)

J. A. Hall's opinion, 1921.—Referring to the French comment on the place of search, J. A. Hall says:

Except that the last paragraph might imply that the mere fact of being in the zone of hostilities is by itself a matter of suspicion sufficient to justify the vessel being diverted for search in port, which in some geographical circumstances could scarcely be reasonable, the declaration by the French Ministry of Marine seems a very fair statement of what the modern right of visit and search should be. Apart altogether from the special circumstances of the Great War arising out of Germany's illegal
practices at sea, the following permanent reasons for this development of the right seem to afford it full justification:

1. The ship's papers in these days, when telegraphs and other means of rapid communication are available for merchants, need afford no reliable indication of the destination of the cargo.

2. The destination of the vessel owing to railways and other modern means of land transport is no criterion of the destination of the cargo.

3. The ship's officers may be equally ignorant on this point.

4. Modern means of communication, while reducing the value of evidence from the ship, has enormously increased the powers of a belligerent government to obtain information from the vessel's port of departure and pass on instructions to its examining cruisers.

5. The size of modern merchant ships enables them to keep at sea when weather conditions make even visiting them impossible.

6. The necessary extension of contraband to cover articles of small bulk but of great value for war, together with the huge cargo capacity of modern ships, has made concealment easy and an adequate examination of such cargo at sea impossible.

Neutral commerce must always inevitably suffer inconvenience from the exercise of belligerent rights in time of war. If these rights are to be retained, they must be capable of effective use and adaptable to modern conditions, for as Lord Stowell truly remarked, "If you are not at liberty to ascertain by sufficient enquiry whether there is property that can be legally captured, it is impossible to capture," and diversion into port or other suitable waters for search is not unduly hard upon neutrals if exercised with proper safeguards against abuse. In the first place the spot selected for search must not involve an unreasonable deviation of the vessel from her voyage. In the second place, it seems perfectly clear that nothing in international law can justify diversion merely in the hope of discovering by subsequent search evidence of contraband or other noxious trading; there must be some substantial ground, no matter from what source it is derived, for suspecting that this particular vessel is engaged in such trade, although the evidence may not at the moment be sufficient to support a plea for condemnation in the prize court. Given these two conditions diversion should be permissible in all cases where the weather makes a visit impossible, or where the visit and such search as is possible at sea does nothing to dispel the suspicions already reasonably deduced from information from external sources. And finally, the neutral owners affected must be able to obtain damages from the belligerent for losses arising from unreasonable diversion or from
unreasonable delay in carrying out the search and in releasing the vessel or cargo or bringing them before the prize court. (Law of Naval Warfare, 2d ed., p. 286.)

Visit and search before 1915.—While from the development of law of maritime warfare visit and search has been approved, the general rule had been that reason for seizure should be evident at the place where the merchant vessel was stopped. The preliminary inspection of the ship's papers or other circumstances then known might furnish grounds for suspicion. Leslie Scott and Alexander Shaw presented the British view in 1915:

In short the right of search is a clearly established principle of international law and the points of criticism which have arisen are levelled not against the right of search itself, but against the particular method in which it has sometimes been exercised. The main criticism of Great Britain's present and recent action is that neutral ships have been taken into port to be searched. This is spoken of by some as if it were a new departure. We propose to show in the first place that this method of exercising the right of search is by no means without ample precedent; and then to discuss the modern conditions of commerce and of warfare which have made this particular method of exercising the right imperative, and the means which have been taken to render this method as little onerous as may be to the neutral interests concerned.

I. It is plain that no belligerent can abandon the right of search; it is clear also that it is of the essence of the right that it shall be effective. The principle at stake is the right to make an effective investigation into the character, ownership and destination of cargoes. That principle is unchallenged and remains. No nation will ever, or can ever, abandon it. To do so would be suicidal. At the worst any changes in this respect which are charged against the British Government are changes not of principle but changes of method necessary to preserve the principle.

It is interesting, however, to note that what is spoken of as a new departure by Great Britain—the taking of vessels into port for search—is really a hoary and time-hallowed way of exercising the right. So long ago as 1808 Lord Ellenborough in the case of Barker v. Blakes (9 East at p. 292) treated the taking of vessels into port as a well recognized and established custom. "The American" the report of his judgment reads "was at liberty to pursue his commerce with France and to be the carrier of goods for French subjects; at the risk indeed of having his voyage intercepted by the goods being seized; or of the vessel itself, on board
which they were being detained or brought into British ports for the purpose of search."

It is not surprising to find that the obvious convenience of search in a port, even in days before it was so necessary as at the present time, led belligerents to adopt this method.

As was pointed out by Sir Edward Grey in his communication of the 10th February to the American Government. "The present conflict is not the first in which this necessity has arisen: as long ago as the Civil War the United States found it necessary to take vessels into the United States ports in order to determine whether the circumstances justified their detention." Sir Edward Grey also pointed out that the same need arose during the Russo-Japanese War and also during the second Balkan War when British vessels were compelled to follow cruisers to some spot where the right of search could be more conveniently carried out, and that this was ultimately acquiesced in by the British Government.

It is clear then that Great Britain has not done anything unprecedented, and a consideration of the conditions of modern commerce and of modern naval warfare makes it clear that the action of Great Britain in taking vessels to port for search is bound, in the nature of things, to be adopted more and more widely in future if the right of search is to be preserved at all. (Great Britain and Neutral Commerce, p. 4.)

It is true that prior to the World War vessels were taken into port for further search when suspicion justified such action but there could not be said to be any right to take a vessel into port for search in absence of suspicion. Indeed in the case of Barker v. Blakes, to which reference is made, there was no ground for drawing the sweeping generalization in regard to practice of visit and search. The award of the judges constituting the Permanent Court of Arbitration in the case of the Carthage shows the existing law in the pre-war period.

The case of the "Carthage," 1912.—The facts of this case as stated by the tribunal were as follows:

The French mail steamer Carthage of the Compagnie Générale Transatlantique, in the course of a regular voyage between Marseilles and Tunis, was stopped on January 16, 1912, at 6:30 A. M., in the open sea, 17 miles from the coast of Sardinia, by the torpedo destroyer Agordat of the Royal Italian Navy.
The commander of the Agordat, having ascertained the presence on board the Carthage of an aeroplane belonging to one Duval, a French aviator, and consigned to his address at Tunis, declared to the captain of the Carthage that the aeroplane in question was considered by the Italian Government contraband of war.

As the transshipment of the aeroplane could not be made, the captain of the Carthage received the order to follow the Agordat to Cagliari, where he was detained until January 20. (Wilson, The Hague Arbitration Cases, p. 363.)

France and Italy, differing as to the rights of the parties in the case, agreed to submit the following question to the Permanent Court of Arbitration at The Hague:

1. Were the Italian naval authorities within their rights in proceeding as they did to the capture and temporary seizure of the French mail steamer Carthage? (Ibid. p. 353.)

The Tribunal in its award stated:

According to the principles universally acknowledged, a belligerent ship of war has, as a general rule and except for special circumstances, the right to stop in the open sea a neutral commercial vessel and to proceed to visit and search it to assure himself whether it is observing the rules of neutrality, especially as to contraband.

On the other hand, the legality of every act going beyond the limits of visit and search depends upon the existence either of contraband trade or of sufficient reasons to believe that there is such. * * *

The information possessed by the Italian authorities was of too general a nature and had too little connection with the aeroplane in question to constitute sufficient juridical reasons to believe in any hostile destination whatever and, consequently, to justify the capture of the vessel which was transporting the aeroplane. (Ibid. p. 365.)

After further statement of arguments, the tribunal declared and pronounced that:

The Italian naval authorities were not within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Carthage."

American-British exchange of notes, 1914–15.—Almost at the beginning of the World War differences arose as
to the method of exercise of the right of visit and search. Many notes were exchanged between belligerents and neutrals. In a note of December 26, 1914, to the American ambassador in London the Secretary of State said:

The Government of the United States readily admits the full right of a belligerent to visit and search on the high seas the vessels of American citizens or other neutral vessels carrying American goods and to detain them when there is sufficient evidence to justify a belief that contraband articles are in their cargoes; but His Majesty's Government, judging by their own experience in the past, must realize that this Government can not without protest permit American ships or American cargoes to be taken into British ports and there detained for the purpose of searching generally for evidence of contraband, or upon presumptions created by special municipal enactments which are clearly at variance with international law and practice. (9 Special Supplement, A. J. I. L., July, 1915, p. 58.)

The Secretary of State expressed the opinion that observance of accepted law would better serve belligerents and neutrals, and that a continuance of the British practices might "arouse a feeling contrary to that which has so long existed between the American and British peoples."

In replying to this note on January 7, 1915, Sir Edward Grey said:

It is, however, essential under modern conditions that where there is real ground for suspecting the presence of contraband, the vessels should be brought into port for examination; in no other way can the right of search be exercised, and but for this practice it would have to be completely abandoned. (Ibid. p. 63.)

This note gave an extended argument of the comparative shipments of goods to different countries before and after the war, the implication being that such increase in shipments was strong presumption of belligerent destination. In a further reply of February 10, 1915, the argument was elaborated, and it was stated:

The opportunities now enjoyed by a belligerent for obtaining supplies through neutral ports are far greater than they were fifty years ago, and the geographical conditions of the present
struggle lend additional assistance to the enemy in carrying out such importation. We are faced with the problem of intercepting such supplies when arranged with all the advantages that flow from elaborate organization and unstinted expenditure. If our belligerent rights are to be maintained, it is of the first importance for us to distinguish between what is really bona fide trade intended for the neutral country concerned and the trade intended for the enemy country. Every effort is made by organizers of this trade to conceal the true destination, and if the innocent neutral trade is to be distinguished from the enemy trade it is essential that His Majesty's Government should be entitled to make, and should make, careful enquiry with regard to the destination of particular shipments of goods even at the risk of some slight delay to the parties interested. If such enquiries were not made, either the exercise of our belligerent rights would have to be abandoned, tending to the prolongation of this war and the increase of the loss and suffering which it is entailing upon the whole world, or else it would be necessary to indulge in indiscriminate captures of neutral goods and their detention throughout all the period of the resulting prize court proceedings. Under the system now adopted it has been found possible to release without delay, and consequently without appreciable loss to the parties interested, all the goods of which the destination is shown as the result of the enquiries to be innocent.

It may well be that the system of making such enquiries is to a certain extent a new introduction, in that it has been practised to a far greater extent than in previous wars; but if it is correctly described as a new departure, it is a departure which is wholly to the advantage of neutrals, and which has been made for the purpose of relieving them so far as possible from loss and inconvenience. (Ibid. p. 73.)

This note maintained that there were precedents for the British practice in the records of the United States and other states. It also referred to the note of the United States of November 7, 1914, in which it was said:

In the opinion of this Government, the belligerent right of visit and search requires that the search should be made on the high seas at the time of the visit, and that the conclusion of the search should rest upon the evidence found on the ship under investigation and not upon circumstances ascertained from external sources. (Ibid. p. 74.)

The British contention was that this was inconsistent with practice and with the decision of the Supreme Court:
of the United States in the case of the *Bermuda*. Nevertheless the British note continues:

It is not impossible that the course of the present struggle will show the necessity for belligerent action to be taken in various ways which may at first sight be regarded as a departure from old practice. (Ibid. p. 75.)

In further support of the tendencies toward new practices it maintains:

No Power during these days can afford during a great war to forego the exercise of the right of visit and search. Vessels which are apparently harmless merchantmen can be used for carrying and laying mines and even fitted to discharge torpedoes. Supplies for submarines can without difficulty be concealed under other cargo. The only protection against these risks is to visit and search thoroughly every vessel appearing in the zone of operations, and if the circumstances are such as to render it impossible to carry it out at the spot where the vessel was met with the only practicable course is to take the ship to some more convenient locality for the purpose. To so do is not to be looked upon as a new belligerent right, but as an adaptation of the existing right to the modern conditions of commerce. Like all belligerent rights, it must be exercised with due regard for neutral interests, and it would be unreasonable to expect a neutral vessel to make long deviations from her course for this purpose. It is for this reason that we have done all we can to encourage neutral merchantmen on their way to ports contiguous to the enemy country to visit some British port lying on their line of route in order that the necessary examination of the ship's papers, and, if required, of the cargo, can be made under conditions of convenience to the ship herself. The alternative would be to keep a vessel which the naval officers desired to board waiting, it might be for days together, until the weather conditions enabled the visit to be carried out at sea. (Ibid. p. 76.)

This note of February 10, 1915, embodies many other statements which might give rise to questions such as:

The principle that the burden of proof should always be imposed upon the captor has usually been admitted as a theory. In practice, however, it has almost been always otherwise, and any student of the prize courts decisions of the past or even of modern wars will find that goods seldom escape condemnation unless their owner was in a position to prove that their destination was innocent. (Ibid. p. 78.)
War zone proclamation, February 4, 1915.—The German proclamation of February 4, 1915, declaring that as from February 19, in the waters surrounding Great Britain and Ireland every enemy merchant ship "will be destroyed without its being always possible to avert the dangers threatening the crews and passengers on that account," shifted attention for a time to German practices and the Secretary of State of the United States in a communication to the German Government 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. (Ibid. p. 86.)

Acts based upon the plea of retaliation in disregard of accepted laws of maritime war followed and arguments varying in weight were presented by all parties. On this situation on March 30, 1915, the Secretary of State writes to the American ambassador at London for transmission to the British Government:

A belligerent nation has been conceded the right of visit and search, and the right of capture and condemnation, if upon examination a neutral vessel is found to be engaged in unneutral service or to be carrying contraband of war intended for the enemy's government or armed forces. It has been conceded the right to establish and maintain a blockade of an enemy's ports and coasts and to capture and condemn any vessel taken in trying to break the blockade. It is even conceded the right to de-
tain and take to its own ports for judicial examination all vessels which it suspects for substantial reasons to be engaged in unneutral or contraband service and to condemn them if the suspicion is sustained. But such rights, long clearly defined both in doctrine and practice, have hitherto been held to be the only permissible exceptions to the principle of universal equality of sovereignty on the high seas as between belligerents and nations not engaged in war. (Ibid. p. 117.)

Note of Sir Edward Grey, 1915.—In a note of July 31, 1915, Sir Edward Grey quotes with approval the following from Sir Samuel Evans’s recent decision in the British prize court in the case of the Zamora:

I make bold to express the hope and belief that the nations of the world need not be apprehensive that Orders in Council will emanate from the Government of this country in such violation of the acknowledged laws of nations that it is conceivable that our prize tribunals, holding the law of nations in reverence, would feel called upon to disregard and refuse obedience to the provisions of such orders.

Sir Edward Grey in the same note further says:

In the note which I handed to Your Excellency on the 24th July, I endeavoured to convince the Government of the United States, and I trust with success, that the measures that we have felt ourselves compelled to adopt, in consequence of the numerous acts committed by our enemies in violation of the law of war and the dictates of humanity, are consistent with the principles of international law. (9 Special Supplement, A. J. I. L., July, 1915, p. 164.)

American-British notes, October 21, 1915, April 24, 1916.—The American and British positions in regard to visit and search were most fully set forth in the long notes of October 21, 1915, and April 24, 1916.

In the American note of October 21, 1915, the Secretary of State expresses his regret that the hope based upon assurances of the allied Governments that the measures taken by them would “not infringe unjustifiably upon the neutral right of American citizens engaged in trade and commerce” had not been realized. The Secretary of State then enumerated certain conditions which
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aroused his apprehensions of even greater dangers to American rights.

The method of visit and search received particular attention and was quite fully treated in this note. The Secretary of State said:

(3) First. The detentions of American vessels and cargoes which have taken place since the opening of hostilities have, it is presumed, been pursuant to the enforcement of the Orders in Council, which were issued on August 20 and October 29, 1914, and March 11, 1915, and relate to contraband traffic and to the interception of trade to and from Germany and Austria-Hungary. In practice these detentions have not been uniformly based on proofs obtained at the time of seizure, but many vessels have been detained while search was made for evidence of the contraband character of cargoes or of an intention to evade the non-intercourse measures of Great Britain. The question, consequently, has been one of evidence to support a belief of—in many cases a bare suspicion of—enemy destination, or occasionally of enemy origin of the goods involved. Whether this evidence should be obtained by search at sea before the vessel or cargo is taken into port, and what the character of the evidence should be, which is necessary to justify the detention, are the points to which I direct Your Excellency's attention.

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

(5) An examination of the opinions of the most eminent text writers on the laws of nations shows that they give practically no consideration to the question of search in port, outside of examination in the course of regular prize court proceedings.

(6) The assertion by His Majesty’s Government that the position of the United States in relation to search at sea is inconsistent with its practice during the American Civil War is based upon a misconception. Irregularities there may have been at the
beginning of that war, but a careful search of the records of this Government as to the practice of its commanders shows conclusively that there were no instances when vessels were brought into port for search prior to instituting prize court proceedings, or that captures were made upon other grounds than, in the words of the American note of November 7, 1914, "evidence found on the ship under investigation and not upon circumstances ascertained from external sources." A copy of the instruction issued to American naval officers on August 18, 1862, for their guidance during the Civil War, is appended.

(7) The British contention that "modern conditions" justify bringing vessels into port for search is based upon the size, the seaworthiness of modern carriers of commerce, and the difficulty of uncovering the real transaction in the intricate trade operations of the present day. It is believed that commercial transactions of the present time, hampered as they are by censorship of telegraph and postal communication on the part of belligerents, are essentially no more complex and disguised than in the wars of recent years, during which the practice of obtaining evidence in port to determine whether a vessel should be held for prize proceedings was not adopted. The effect of the size and seaworthiness of merchant vessels upon their search at sea has been submitted to a board of naval experts, which reports that:

"At no period in history has it been considered necessary to remove every package of a ship's cargo to establish the character and nature of her trade or the service on which she is bound, nor is such removal necessary. * * *

"The facilities for boarding and inspection of modern ships are in fact greater than in former times, and no difference, so far as the necessities of the case are concerned, can be seen between the search of a ship of a thousand tons and one of twenty thousand tons—except possibly a difference in time—for the purpose of establishing fully the character of her cargo and the nature of her service and destination. * * * This method would be a direct aid to the belligerents concerned in that it would release a belligerent vessel overhauling the neutral from its duty of search and set it free for further belligerent operations." (10 Special Supplement, A. J. I. L., Oct. 1916, p. 74.)

The British reply, six months later, April 24, 1916, is so important that it deserves consideration.

4. The question whether the exercise of the right of search can be restricted to search at sea was dealt with in Sir E. Grey's note of the 7th January, 1915, and His Majesty's Government would again draw attention to the facts that information has
constantly reached them of attempts to conceal contraband intended for the enemy in innocent packages, and that these attempts can only be frustrated by examination of the ship and cargo in port. Similarly, in Sir E. Grey's note of the 10th February, 1915, it was pointed out that the size of modern steamships, and their capacity to navigate the waters where the allied patrols have to operate, whatever the conditions of the weather, frequently render it a matter of extreme danger, if not of impossibility, even to board the vessels unless they are taken into calm water for the purpose. It is unnecessary to repeat what was said in that note. There is nothing that His Majesty's Government could withdraw or that the experience of the officers of the allied fleets has tended to show was inaccurate.

5. When visit and search at sea are possible, and when a search can be made there which is sufficient to secure belligerent rights, it may be admitted that it would be an unreasonable hardship on merchant vessels to compel them to come into port, and it may well be believed that maritime nations have hesitated to modify the instructions to their naval officers that it is at sea that these operations should be carried out, and that undue deviation of the vessel from her course must be avoided. That, however, does not affect the fact that it would be impossible under the conditions of modern warfare to confine the rights of visit and search to an examination of the ship at the place where she is encountered without surrendering a fundamental belligerent right.

6. The effect of the size and seaworthiness of merchant vessels upon their search at sea is essentially a technical question, and accordingly His Majesty's Government have thought it well to submit the report of the board of naval experts, quoted by the United States Ambassador in paragraph 7 of this note, to Admiral Sir John Jellicoe for his observations. The unique experience which this officer has gained as the result of more than 18 months in command of the Grand Fleet renders his opinion of peculiar value. His report is as follows:

"It is undoubtedly the case that the size of modern vessels is one of the factors which renders search at sea far more difficult than in the days of smaller vessels. So far as I know, it has never been contended that it is necessary to remove every package of a ship's cargo to establish the character and nature of her trade, etc.; but it must be obvious that the larger the vessel and the greater the amount of cargo, the more difficult does examination at sea become, because more packages must be removed.

"This difficulty is much enhanced by the practice of concealing contraband in bales of hay and passengers' luggage, casks, etc.,
and this procedure, which has undoubtedly been carried out, necessitates the actual removal of a good deal of cargo for examination in suspected cases. This removal can not be carried out at sea, except in the very finest weather.

"Further, in a large ship the greater bulk of the cargo renders it easier to conceal contraband, especially such valuable metals as nickel, quantities of which can easily be stowed in places other than the holds of a large ship.

"I entirely dispute the contention, therefore, advanced in the American note, that there is no difference between the search of a ship of 1,000 tons and one of 20,000 tons. I am sure that the fallacy of the statement must be apparent to anyone who has ever carried out such a search at sea.

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

"The German practice of misusing United States passports in order to procure a safe conduct for military persons and agents of enemy nationality makes it necessary to examine closely all suspected persons, and to do this effectively necessitates bringing the ship into harbor."

7. Sir John Jellicoe goes on to say:

"The difference between the British and the German procedure is that we have acted in the way which causes the least discomfort to neutrals. Instead of sinking neutral ships engaged in trade with the enemy, as the Germans have done in so many cases in direct contravention of article 113 of their own Naval Prize Regulations, 1909, in which it is laid down that the commander is only justified in destroying a neutral ship which has been captured if—

(a) She is liable to condemnation, and

(b) The bringing in might expose the warship to danger or imperil the success of the operations in which she is engaged at the time—

we examine them, giving as little inconvenience as modern naval conditions will allow, sending them into port only when this becomes necessary.
It must be remembered, however, that it is not the allies alone who send a percentage of neutral vessels into port for examination, for it is common knowledge that German naval vessels, as stated in paragraph 19 of the American note, 'seize and bring into German ports neutral vessels bound for Scandinavian and Danish ports.'

"As cases in point, the interception by the Germans of the American oil-tankers Llama and Platuria in August last may be mentioned. Both were bound to America from Sweden and were taken into Swinemunde for examination."

8. The French Ministry of Marine shares the views expressed by Sir J. Jellicoe on the question of search at sea, and has added the following statement:

"Naval practice, as it formerly existed, consisting in searching ships on the high seas, a method handed down to us by the old navy, is no longer adaptable to the conditions of navigation at the present day. Americans have anticipated its insufficiency and have foreseen the necessity of substituting some more effective method. In the instructions issued by the American Navy Department, under date of June 20, 1898, to the cruisers of the United States, the following order is found (clause 13):

"'If the latter (the ship's appers) show contraband of war, the ship should be seized; if not, she should be set free unless by reason of strong grounds for suspicion a further search should seem to be requisite.'

"Every method must be modified having regard to the modifications of material which men have at their disposal, on condition that the method remains humane and civilized.

"The French Admiralty considers that to-day a ship, in order to be searched, should be brought to a port whenever the state of the sea, the nature, weight, volume, and stowage of the suspect cargo, as well as the obscurity and lack of precision of the ship's papers, render search at sea practically impossible or dangerous for the ship searched.

"On the other hand, when the contrary circumstances exist, the search should be made at sea.

"Bringing the ship into port is also necessary and justified when, the neutral vessel having entered the zone or vicinity of hostilities, (1) it is a question, in the interests of the neutral ship herself, of avoiding for the latter a series of stoppages and successive visits and of establishing once for all her innocent character and of permitting her thus to continue her voyage freely and without being molested; and (2) the belligerent, within his rights of legitimate defence, is entitled to exercise special vigilance over unknown ships which circulate in these waters." (Ibid, p. 121.)
Diplomatic correspondence on the "Bernisse" and the "Elve," 1917.—These two small Dutch vessels while being taken into Kirkwall by British authority were torpedoed by German submarines. The Dutch authorities maintained that the vessels' papers were in order and their cargoes innocent. The Dutch minister in London in a communication to the British foreign office enclosing the detailed statement said, October 26, 1917:

3. In these circumstances all responsibility for damage resulting from the detention falls upon the British Government, independently of the cause which occasioned the loss. This responsibility is all the more unquestionable in view of the fact that the British authorities knew beforehand that the detention would bring about not only a loss of time, but obliged the vessels to navigate the danger zone, where they were exposed to attacks by German submarines.

4. In permitting vessels to be taken to British ports without accepting the responsibility therefor in the above sense, the British Government would make it impossible for Dutch vessels to continue to sail to ports of Powers allied to Great Britain.

5. The Queen's Government, going by the above, think that they may expect your Excellency's Government to compensate the shipping company concerned for the losses which they have suffered. (British Parliamentary Papers, Misc. No. 1 [1917–1918], Cd. 8909, p. 2.)

In a reply from the British foreign office, November 16, 1917, there is expressed surprise that the protest and claim has not been made against the German Government rather than against the British Government and it is presumed that this has not been done, and it is said:

The situation, therefore, is that, in the opinion of the Netherlands Government, His Majesty's Government are to be held responsible because, while they were performing the perfectly legitimate act of sending a neutral vessel into port for examination, an act was committed by their enemies for which no justification whatever is possible; and the German Government are apparently to be held blameless. The right of a belligerent to examine and search neutral vessels can not be questioned; the fact that in modern conditions such examination can not take place at sea can not be disputed, and the legality of sending such vessels into port for examination has been admitted in practice
throughout the present war; but the Netherlands Government appear to consider that His Majesty's Government ought to abandon an established right, because their enemies have seen fit to adopt a course of action for which it is not suggested that any justification is to be found.

4. A considerable portion of the enclosures in your note is occupied with an attempt to prove that it was unnecessary, in the particular circumstances of this case, for these vessels to be sent into port. I do not think it necessary to go into this point, because, apart from any question as to the possibility or desirability of discussing the circumstances in which an admitted right might, in the discretion of the officers concerned, be waived, it is clear that had it not been for the utterly unjustifiable action of the German submarines, the sending in of these vessels would have caused no loss to the owners, except the slight delay caused by such diversion and examination. The damage, in fact, suffered was directly caused by the illegal acts of the German submarines; for the consequences of those illegal acts His Majesty's Government could not in any circumstances be responsible.

5. Although it is not disputed that the German action in proclaiming vast tracts of sea to be a "barred zone" in which neutral vessels will be sunk without warning was utterly illegal, to say nothing of its inhumanity, and although His Majesty's Government are of opinion that the neutral Governments affected should have taken such steps as were open to them to resist this German attempt to forbid all navigation within the area in question, they have, in fact, as the Netherlands Government are aware, at some inconvenience to themselves, made arrangements whereby neutral vessels whose owners are prepared to accept certain reasonable conditions may be examined at certain points outside the "danger zone." The vessels now in question had made no attempt to obtain these facilities, but preferred to run such risks as might be incurred, should it be decided that they must be examined in a British port.

6. In these circumstances His Majesty's Government must decline to accept any liability of any sort or kind for loss which may be caused to neutrals by the illegal action of the German Government. I am constrained to say that the action of a neutral nation, which apparently accepts without protest the proceedings of German submarines in such a case as this, and confines its efforts to presenting claims for the loss caused by such action to His Majesty's Government, is, in their opinion, inconsistent with the obligations of neutrality. Indeed, it is not easy to characterise such action by a professedly friendly Power with due regard to the customary amenities of diplomatic correspondence.
I have only to add that if the owners of these two vessels are still of opinion that they have a justifiable claim against His Majesty's Government, it is open to them to present it in the Prize Court; but if such a claim is made, it will be strenuously resisted by the representatives of the Crown.

I have, etc.

A. J. BALFOUR.

(Ibid. p. 11.)

The Dutch minister replied on December 17, 1917, stating that they were unable to recognize the lawfulness of the British action in taking the vessels to Kirkwall, but—

On the contrary, they contest the point of view held by the British Government that a belligerent has the right in any circumstances to bring into port a neutral vessel, and that if they do not avail themselves of this right it is only due to good will on their part. In the opinion of the Netherlands Government, the right of bringing a vessel into port is inadmissible where, as in the case of the vessels Elve and Bernisse, the ships' papers, as well as the circumstances in which the vessels are sailing, prove distinctly that there is no question of transport of contraband.

The British Government plead that, had it not been for their illegal destruction by the Germans, the fact of bringing the vessels into port—even if it were contrary to law—would not have caused any damage to their owners beyond loss of time. Now, putting aside whatever value this argument might have had in other circumstances, it is clear that it cannot be taken into consideration in the present case, seeing that the British warships were aware of the dangers to which the Dutch vessels were exposed by the fact of their being brought through the danger zone. As the British forces compelled them, nevertheless, to cross this zone, the British Government can not, in the opinion of the Netherlands Government, decline responsibility for the damages incurred.

English as well as American prize law admits in a case of illegal capture the responsibility of the captor for any loss sustained from any cause whatever, even that due to force majeure or to hazard.

The Queen's Government consider that a belligerent should, a fortiori, be held responsible in the case of illegal capture for any loss which they might have foreseen.

The Netherlands Government, for the reasons set forth above, are unable to waive their claim for compensation on behalf of the parties interested in the vessels Elve and Bernisse. My Government will not refer to the remarks contained in paragraph 6 of
your Excellency's note; they think these passages, as well as the unusual tone of this note, should be attributed to an interpretation which is clearly erroneous from the Netherlands point of view. (Ibid. p. 12.)

The British note of December 31, 1917, acknowledged the Dutch note and reaffirmed the British position indicating that the prize court was open to the claimants.

The considerations advanced in your note have received the attentive consideration of His Majesty's Government, but they do not affect the essential element in the case, which is that the vessels in question, having been respectively sunk and damaged by the admittedly illegal action of German submarines, the Netherlands Government proceed to present a claim to His Majesty's Government and not to the German Government, thus seeking to make His Majesty's Government responsible for the illegal action of their enemies, while taking no steps to obtain compensation from the latter.

3. His Majesty's Government can in the circumstances only repeat that they are unable to entertain any claim of this nature, which it is, however, open to the claimants, as already observed, to make in the Prize Court, should they think fit to do so.

I have, etc.

A. J. BALFOUR.

(Ibid. p. 14.)

Court decision on the "Bernisse" and the "Elve," 1920.—In this case two small neutral vessels were ordered to proceed to Kirkwall. There were placed on board each vessel a British officer and some men. The counsel for the vessel argued that there was not good ground for sending the vessels in and that though there was no question as to the right to visit and search there was "no right to send the vessels to Kirkwall for examination" and that there must be a cause for suspicion before a vessel can be sent into a port. The counsel for the captor argued that:

It was impossible, having regard to the German submarine peril, to examine any vessel, however small, at sea, and the naval authorities were bound to send all vessels into port for search. (1923 N. W. C. Int. Law Decisions, p. 123.)
and that the sending in was merely a prolongation of the right of visit and search. The president of the court did not rest his decision on this ground but said that:

It is therefore necessary to consider whether there was any reasonable cause for putting the vessels in charge of a British officer and crew, and taking them into Kirkwall. In my opinion this depends upon the question whether in the circumstances the absence of what is called a green clearance formed such a justification. Wider questions were argued during the case involving the whole question of the rights of a belligerent to send a vessel into port for examination instead of examining her at sea, as was the practice in former times. I do not think this case raises that question, for I am satisfied upon the evidence that the officer who stopped the vessels was satisfied that there was nothing connected with the papers, or the cargoes of the vessels, which required further search to be made, and that no one considered that there was any reasonable ground for detaining the vessels any longer, or sending them in for examination, except the absence of the so-called green clearance. ([1920] P. 1; see also 1923 N. W. C. Int. Law Decisions, p. 121.)

After reviewing the evidence in detail, the president said:

I am therefore of opinion that the absence of a green clearance afforded no reasonable ground for sending these vessels to Kirkwall, and as no other reasonable ground was suggested I think there must be a decree of restitution with costs. I do not think there is any ambiguity or difficulty in the terms of the order in council and that it clearly did not apply to this case. (Ibid.)

*British procedure, 1914–1918.*—There were new methods introduced by belligerents in order to determine the character of neutral trade during the World War. Mr. J. A. Salter, chairman of the allied transport executive, stated:

Immediately on the outbreak of war an Examination Service was established at Kirkwall, the Downs, Port Said and Gibraltar, and the North Sea between the Orkneys and Norway was patrolled. Merchant vessels were brought into port and examined there, for boarding and search at sea were rendered dangerous by submarines, and officers afloat could not be kept adequately informed of the intricate developments in policy. The Examining Officers in the ports acted under direct, and constantly more
stringent, orders from London as to the vessels and cargoes which they were to seize or release. (Allied Shipping Control, J. A. Salter, p. 99.)

Soon even this policy gave way to reprisals and to acts of interference on a scale not contemplated in any rules of maritime warfare. Mr. Salter further said:

The neutral countries were therefore compelled to adopt internal rationing measures, so that the system of official control extended over almost the whole world—neutral and belligerent alike. The actual privations of some of the neutrals were indeed much more serious than those in the Allied countries, no doubt partly because their export prohibitions were not sufficient to prevent supplies slipping across the border under the attraction of very high profits. (Ibid. p. 100.)

Other methods of controlling neutral commerce were adopted.

The first important method by which the economic resources of the Allies were used to supplement mere chartering was to attach conditions to the supply of bunkers from bunker stations. Great Britain and her Allies controlled the main sources of supply of bunker coal in Europe and the Middle East, and the main bunker deposits on most of the great trade routes of the world. This provided a most effective instrument by which to induce neutral owners to allot their tonnage to work that was in the interests of the Allies, as the following short statement of the world’s sources of supply and the principal coaling depots will show.

A. Europe. The British Isles represented practically the only source of supply during the war, the amount of Westphalian coal finding its way whether from Germany or Rotterdam being negligible.
B. Africa and Australasia. Durban, South Australia, New Zealand, Newcastle (N. S. W.), and Freemantle.
D. India. Calcutta.

Résumé.—Early regulations, legislation, and cases relating to seizing and bringing vessels to port implied that merchant vessels were to be under escort or that a prize crew was to be put on board. The bringing in was upon grounds of suspicion existing at the time of
the visit in hope that evidence to justify suspicion might subsequently be discovered in port. As J. A. Hall said:

it seems perfectly clear that nothing in international law can justify diversion merely in the hope of discovering by subsequent search evidence of contraband or other noxious trading. (The Law of Naval Warfare, 2d. ed., 1921, p. 267.)

This position seems to be taken by the tribunal of the Permanent Court of Arbitration in the case of the Carthage.

The exchange of notes between belligerent and neutral powers and some of the decisions of prize courts during the World War, 1914–1918, show attempts in the time of war to give new interpretations to accepted principles. Many contentions aimed to extend to the doctrine of visit and search the right of a belligerent to interfere with a neutral. The extension of the practice of interference with neutral commerce was supported by some of the belligerents on the ground of the exceptional nature of the war, the geographical relations of the belligerents, the new methods of warfare, and other reasons. The United States in the note of October 21, 1915, reaffirms the statement in the American note of November 17, 1914, objecting to the bringing in of vessels except on “evidence found on the ship under investigation and not upon circumstances ascertained from external sources.”

When reprisals were resorted to by the belligerents, the rights of neutrals and their protests against unlawful acts received scant attention. The belligerents prescribed or attempted to prescribe entirely new and very burdensome rules for the conduct of commerce by neutrals and in some instances practically put an end for the time to such commerce. Neutral commerce was instructed to pursue certain defined routes. The supply of bunkers was conditioned on certain pledges as to conduct. Goods were subjected to new inquiries and other restrictions were established. It was predicted that in the next war there would be no neutrals.
Vessels were routed or required to call at certain ports for inspection. This requirement was often stated, with an argument that it was for the convenience and safety of the neutral merchant vessel. It was pointed out, on the other hand, that if each belligerent should maintain the right to route neutral vessels, such vessels might be instructed to go in opposite directions at the same time and might run the risks imposed whatever they might do. It was not denied that a vessel of war might at its own risk escort a neutral merchant vessel to port if it had ground to suspect the merchant vessel of acts which would make it liable to condemnation, or a prize crew might be put on board under similar conditions for similar purposes. The action of the merchant vessel would then be under control of the belligerent and not merely under instructions of the belligerent. The neutral merchant vessel could plead that it was acting under *force majeure* if the actual belligerent force was present or within range. A simple order from one belligerent even if accompanied by a threat as to consequences if not carried out would not justify obedience in the opinion of the opposing belligerent. If the conditions were otherwise, neutral shipping would be in the impossible position of being under an obligation simultaneously to carry out the orders of two opposing forces for it would not be inconceivable that such orders might be broadcast by radio to all neutral ships from the vessels of war of X and Y.

If there is a right of visit and search, and that is at the present time admitted, there must be conceded the opportunity and conditions making its exercise possible. This would imply the right to take the visited vessel to smooth or safe water, or to escort it to such a place, or to retain the custody of the visited vessel till arrival of a force adequate to exercise visit and search.

The sending of a vessel into port under a prize crew or escort presupposes a suspicion of liability to prize pro-
ceedings based on information in possession of the visiting vessel at the time. Suspicion that all vessels may be found liable is not sufficient ground for indiscriminately sending in of merchant vessels.

**SOLUTION**

Under existing international law the movements of neutral vessels on the high seas are subject to belligerent direction only when under belligerent control by a prize crew or escorting vessel and the liner has incurred no liability.