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International Law Situations

With Solutions and Notes

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SITUATION III

ANGARY

In case of urgent need, may a belligerent state exercise what was formerly called the right of angary?

CONCLUSION

In case of urgent need and “in absence of contrary treaty stipulation,” a belligerent state may exercise the right of angary.

NOTES

Angary.—The right of angary is in its origin traced to ancient Asiatic sources. In these ancient days it was applied to public taking over of means of transportation on land. Later it was extended to means of transportation on the sea, even on the high sea. In these early days necessity was not always the ground of exercising the right of angary nor was a state of war essential. It was sometimes considered lawful to seize ships for expeditions into unknown regions in time of peace. Compensation was to be paid and the purpose was to be stated. In many treaties, particularly when use in war is the ground, provision is made for advance payment, probably on the theory that the issue of the war might be uncertain, and advance payment removed risk. Many treaties provided for the abolition of all exercise of the right of angary.

Of about 50 treaties mentioning some form of angary or requisition before 1900, only about one-third are unfavorable to the exercise of the right, and of the 5 since 1900, 3 are unfavorable.

Neutral railway material in time of war.—Article 54 of Hague Convention II, 1899, was as follows:

Railway material coming from neutral states, whether the property of those states, or of companies, or of private persons, shall be sent back as soon as possible.
The Second Hague Conference, 1907, in Hague Convention V, article 19, provided:

Railway material coming from the territory of neutral powers, whether it be the property of the said powers or of companies or private persons, and recognizable as such, can be requisitioned and utilized by a belligerent only in the case of, and to the extent demanded by, absolute necessity. It shall be sent back as soon as possible to the country of origin.

A neutral power may likewise, in case of necessity, retain and utilize to a corresponding extent material coming from the territory of the belligerent power.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

In the first report of the second commission reference was made to the difference of opinion on neutral property among the delegations, but it was stated that the majority of the commission was of the opinion that—

Article 54 does not absolutely forbid a belligerent to utilize the material of neutrals found in the territory occupied by its army. It is limited to imposing upon him the obligation to send back this material as soon as possible to the rightful possessor.

On the question of principle raised by the Luxemburg amendments various opinions came to light in the commission and its committee of examination. Some delegations utterly denied that a belligerent has a right of requisitioning and utilizing neutral material found in its territory. Among those who admitted this right within the limits of article 70, some claimed in favor of the neutral state an indemnity as well as the right of retaining, to an equal extent, material belonging to the belligerent. Others were willing to grant to the neutral state only the indemnity without the right of retaining material, or only this right of retention to the exclusion of any indemnity.

It is impossible to reconcile these various opinions, which are contradictory on more than one point. The project contains what may be called an intermediate solution. The first paragraph of article 66, which the German delegation proposed in order to take into account the amendments presented by the delegation of Luxemburg, does not deny the belligerents the right of requisitioning and utilizing material belonging to neutral states or their grantees, but it restricts it to the cases where such a step is demanded by an imperative necessity.

For example, when mobilization takes place, it would be literally impossible to proceed to a separation of all the railway
material belonging to neutral states or their grantees. Even were it thus set apart, this material could nevertheless not be sent to its country of origin as long as the military transportation superseded and checked all other schedules. This situation of *force majeure* might occur even before the opening of hostilities. It could also arise when states are mobilizing their forces with the aim of enforcing respect for their neutrality during a war that has already been declared or one that is imminent.

All that can be done here is to restrict the right of requisition to the narrow limits stated in article 66, paragraph 1, and to recognize the right of the neutral state to the retention reserved to it in the second paragraph of the same article. This right could not be considered as having the character of reprisals. The neutral state will have recourse to it because, deprived of the material retained by the belligerent, it, in its turn, has to requisition the material that it finds in its territory to insure its domestic as well as its international railroad service. It will exercise this right only to the same extent and will be careful, by preserving an even balance between the belligerents, to observe its duty of impartiality which is too inherent in neutrality to require the express mention proposed by the Serbian delegation. Finally, the project imposes on the state making use of the right of requisition, the obligation to pay to the rightful possessors of the material an indemnity proportionate to the material utilized and to the time it is held. In this provision the project merely sanctions a principle which is already practiced everywhere in times of peace and whose application can not, it seems, cause any difficulty. (I Proceedings of the Hague Peace Conferences, Carnegie Endowment for International Peace, p. 157.)

In discussing the rights and exemptions of the means of transportation, Major General von Gündell, of the German delegation, said on August 9, 1907:

Making allusion only in passing to the rights of embargo and of angry which, though disputed, are not yet abolished in common law and which constitute the right of requisition applied to naval war, I call attention to the difficulties of a purely technical nature that stand in the way of fixing such a delay in the domain of railways. While the sea is free for navigation and the voyages of ships are made independently of rails and points so that each ship which is not retained by the authorities can leave port whenever it deems best, railway service is bound by the strictest rules, which can not be violated without running great danger, and that is all the more the case during the mobilization of the army; this is why
it is absolutely impossible to send back neutral material at the moment war is declared without deranging the entire transportation system of mobilization and concentration. (Ibid. Vol. III, p. 218.)

*The World War.*—The World War revived many practices to which there had been little resort in recent wars. Requisitions were mentioned in treaties and other international documents, but the requisitioning of neutral property on land and on water had not been common. The requisitioning of private property on land had been necessary in nearly all wars, but the World War so taxed the resources of all states that extreme measures were taken in many states.

*Law of Turkey, 1916.*—Private vessels of nationals were requisitioned during the World War. In some of these orders for requisition, however, no distinction was made as to the flag which the vessel flies. As an example, the Turkish law of requisition is somewhat more detailed than many. It is evident from article 5 of this law that national vessels are under consideration, as the services of officers and crew may in case of necessity be retained for service. This was sometimes the practice in early times, without regard to the nationality of the crew, but in later times neutral persons have not been compelled to serve, even when the vessels are taken over.

*Turkey, a law on the requisition of the means of transportation, March 13, 1916,*

**Article 1.** All through the mobilization and in case of necessity the Imperial Government, upon the advice of its Ministers of War and Marine, will proceed to the requisition of all means of transport belonging to individuals and found on seas, rivers, lakes, and canals, as well as their tools and materials.

**Art. 2.** The means of transport will, upon the request of the War Office or of Admiralty, be requisitioned by the captain of the port, or, in his absence, by the highest civil official of the locality, or by the commanding officer of the Ottoman Imperial Fleet, or by the commander of a man-of-war, or, in a word, by the Ottoman diplomatic or consular officials as well as by any member of the Ottoman Foreign Office. Means of transport will be used for
military purposes and the act of requisition will be notified by
writing to the proprietor.

Art. 3. If on board the steamers and vessels requisitioned there
are goods not belonging to the company to which the steamer be-
longs, such goods will be disembarked, and, under the responsi-
Bibility of the local authorities, will be kept in emporiums designated
by the officials mentioned in art. 2. The proprietors will be imme-
diately notified of this act. All damages caused through un-
loading will be indemnified by the Government. Goods easy to be
spoiled ought to be taken away immediately by the proprietor and
others must be removed within three months' time after the date
of notification given to the proprietor. If not, they will be sold
by public auction under the care of officials in charge of these
goods. The money realized from the sale will be deposited in the
state treasury. If the goods are sold abroad, money received
for their sale will be sent to the Ministry of Finances by an
official of the Foreign Office.

Art. 4. When the requisition takes place a procès verbal will
be drawn to that effect, besides an inventory containing the names
of all objects and materials belonging to the company, and also
those of requisitioned goods will be drawn. The procès verbal
and the inventory will be written by the functionaries who have
affected their requisition, after an understanding in the matter
with the proprietor of the goods, the captain or, in his absence,
his agent. These documents will be written in duplicate, which
will be duly signed and sealed by the two parties interested. A
copy of the procès verbal and the inventory in question, as well
as another procès verbal, will be drawn by an expert, containing
a list and the value of the goods requisitioned. A copy of the
procès verbal and the inventory, as well as the procès verbal
prepared by the expert appointed to estimate the value of the
requisitioned objects, will be transmitted to the War Office or the
Ministry of Marine. The other copy will be given to the proprie-
tor, or, in his absence, to his agent or captain.

Art. 5. If on board the steamer requisitioned there are officers
or crew, who are not liable for military service, such officers or
crew will, in case of necessity, be kept to work on board with the
same wages as they used to get. On those who are liable for
military service, the provisions of the law on military service
will be fully applied. The officers and the engineers of the
steamer requisitioned, whether liable to military duty or not and
who are disabled while in service, will be entitled to infirmity
pensions as specified in art. 28 of the law on retirement and mili-
tary pensions and the amount of the sum to be paid them will be
fixed in proportion of the degree of their infirmities. The parents
of those who die in the service will be entitled to pensions specified in art. 28 of the above mentioned law. The provisions of military law on retired officers and men will also be applied on disabled crew and others in conformity with art. 27, and the parents of those who lose their lives while in the service will be entitled, in conformity with art. 36, to a pension.

Art. 6. In case of necessity the requisitioned merchantmen will be turned into and used as warships.

Art. 7. The price to be given for the requisitioned steamers will be determined in accordance with the prescription contained in art. 10, and the amount of indemnity to be paid other than the one mentioned in art. 8 of the present law for freighting steamers as well as other indemnities, such as repairing and salvage expenses, will be fixed by a commission composed of four experts, two of which to be appointed by the War Office and Admiralty, and the two others chosen by the proprietor of the steamers or by their attorneys.

A decision must be given unanimously and, in case of not arriving at an understanding, a fifth expert sent from the tribunal of commerce will join the commission and a procès-verbal drawn to that effect will be communicated to the two parties concerned. In case of nonacceptance by one of the parties of the estimates given in the procès-verbal an application will be made to the tribunal competent in the matter.

Art. 8. Freight indemnities, such as mentioned above, will be paid, from the date of their requisition, to the proprietor of the means of transport at the following rates: For every boat of 101 to 300 tons, 5 paras per mile, and 4 paras per mile for every ton above 300 tons, for every boat of 301 to 500 tons, 3 paras per ton above 500 tons, for every boat of 501 to 1,000 tons and 2 paras per ton above 1,000 tons for every boat of more registered tons. If the navigation expenses exceed the half of the freight indemnity, surplus together with canal, lighthouse, harbor, dock, and buoy duties will be paid by the Government. All steamers under 100 tons as well as sailing vessels and boats propelled by oars will have freight indemnity paid per day. For an indemnity of 2½ piasters will be paid to all loaded steamers of 500 tons as well as boats of every description detained at anchor, steamers or boats of more than 500 tons will have 50 paras indemnity per day during their detention in a port or harbor.

Art. 9. If the private contracts concluded between the Government and the proprietors of the means of transport do not contain any special and necessary stipulations, the disposition of the present law will at once be applied.
Art. 10. In case the means of transport are damaged, sunk, or transformed into warships, as stipulated in art. 6, a commission composed of experts, as mentioned in art. 7, will be formed to fix a sum which the Government will pay in cash as indemnity to the proprietors who will give these means of transport over to the Government. The proprietors will also have the option of either accepting the sum paid as indemnity and continue to be owners of these boats, or take them back after the necessary repairs made by the Government to render them to their former state. But if the cost of repairs will exceed half of the value of the boat, the proprietors will be obliged to transfer it to the Government, in cash, the value of the same fixed by experts, and in case of difficulties arising in coming to an understanding, to accept a price determined by maritime tribunals.

Art. 11. Indemnities, and repairing and salvage expenses are, in conformity with the prescriptions of the present law, to be paid to the proprietor of the means of transport, generally in cash money:

In case of force majeure when the payments are postponed and interest of 5% is given to the proprietor of means of transport. On accounts of those whose living depends upon these means of transport settlement can by no means be postponed and are to be settled at once in cash money.

Art. 12. From the date of application of the present law all former ones dealing with the same subject will be abrogated.

Art. 13. The present law will be applied from the date of July 21, 1330 (1914) v. s.

Art. 14. The ministers of war, marine, interior, justice, finances, commerce, and agriculture are intrusted with the execution of the present law.

March 13, 1332.

Mehmed Rechad.
Mehmed Said,
Grand Vizir.

Enver,
Minister of War.

Thalatt,
Minister of Interior.

Ibrahim,
Minister of Justice.

A. Nessimy,
Minister of Commerce and Agriculture.

Lawrence's opinion.—Lawrence shares Dana's opinion that anger is not a right at all, but an act resorted to from necessity, for which apology and compensation must
be made at the peril of war." Writing in 1909, Lawrence says:

We may imagine how fiercely it might be resented, if we contemplate for a moment what would be the consequences of, say, the seizure by the United States Government of all the liners in the port of New-York in order to carry to its destination an expedition against a Central American Republic hastily planned in a sudden emergency. Half the civilized world would suffer, and the other half would make common cause with it. Even the milder manifestations of the power to seize are looked on askance, and provoke so much controversy that belligerent states will be unwilling to resort to them in future. (Principles of International Law, 4th ed., p. 627.)

United States and Spain, 1902.—Even the United States in 1902 recognized the possibility of requisition in the treaty with Spain. After exempting citizens and subjects from compulsory military service, Article V provides:

Furthermore, their vessels or effects shall not be liable to any seizure or detention for any public use without a sufficient compensation, which, if practicable, shall be agreed upon in advance.

United States and Turkey, 1830.—The treaty of 1830 between the United States and Turkey, Article VIII, provided:

Merchant vessels of the two contracting parties shall not be forcibly taken for shipment of troops, munitions, and other objects of war, if the captains or proprietors of the vessels shall be unwilling to freight them.

German treaties.—The treaty between Germany and Guatemala in 1887 is a type of many negotiated in the last quarter of the nineteenth century.

Art. VII. The vessels, cargoes, merchandise, and effects of the citizens of one or the other country shall not be subject to any embargo nor detention for any military expedition whatsoever, nor any public use, without the interested parties, or arbitrators named by them, having previously determined a just and sufficient indemnification in all cases and for all prejudices, losses, delays, and damages occasioned by or resulting from such service.

The treaty between Germany and Colombia is somewhat more detailed:
VII. The people of each of the contracting states shall be exempt from extraordinary war contributions, forced loans, military requisitions, and from military and political services of every kind, in the territory of the other. Nor may their ships, cargoes, goods, and other property be embargoed or retained extra­ judicially for military expeditions or for any other purposes. In case such a measure is unavoidable, just indemnity shall be agreed upon with them beforehand. Moreover, they shall in all cases, as regards their real and personal property, be subjected to no other burdens, duties, and imposts than those levied upon the natives and the subjects of the most favored nation.

Treaty provisions in general.—A review of a large number of treaty provisions since the eighteenth century shows a great variety of provisions in regard to the use of foreign vessels in time of war, but in general such use is conceded under differing conditions. A few states have aimed for a period to put an end to the right of angary as in the treaty between France and Russia in 1786. Some states have treaties to the opposite effect, even with France, as that with Spain in 1882 by which land transport may be requisitioned after previously agreed compensations. There is no uniformity in treaty provisions.

Franco-Prussian War, 1870.—On December 21, and 22, 1870, the Prussian forces at Rouen, “took forcible possession of, and scuttled, 6 British vessels in the River Seine, near Duclair (part of Rouen), where they were lying, taking in ballast for England.” The Prussian officer in authority said “he took them as a military requisition.” This act became the subject of immediate diplomatic negotiation. Among the early notes exchanged were the following:

No. 12.

Mr. Odo Russell to Earl Granville. (Rec. January 13.)

VERSAILLES, January 8, 1871.

My Lord: After receiving this morning your lordship’s telegram of yesterday afternoon, I called on Count Bismark and again talked
over the question of the 6 British colliers shot at and sunk by the Prussian authorities at Duclair.

His excellency said that he had not yet received a circumstantial account of the transaction, but he found that the law officers held that a belligerent had a full right, in self-defense, to the seizure of neutral vessels in the rivers or inland waters of the other belligerent, and that compensation to the owners was due by the vanquished power, not by the victors.

If conquering belligerents admitted the right of foreigners and neutrals to compensation for the destruction of their property in the invaded state they would open the door to new and inadmissible principles in warfare. Claims for indemnity were submitted to him daily by neutrals holding property in France which he could never admit. He valued, however, the friendship and good-will of England too highly to accept this interpretation of the law in the present case, and preferred to adopt one that would meet the wishes of Her Majesty's Government and give full satisfaction to the people of England.

He deplored the treatment to which the masters and crews of the colliers had been subjected, according to the accounts he had read in the newspapers, and begged I would assure your lordship, with expressions of deep regret, that when the reports from the Prussian authorities had been received he would obtain the King's permission to pay any just compensation to the owners and sufferers your lordship might think right to recommend.

I have, &c.,

Odo Russell.

Earl Granville.

No. 14.

Count Bismarck to Count Bernstorff. (Communicated to Earl Granville by Count Bernstorff, February 1)

[Translation]

Versailles, January 25, 1871.

I do myself the honour of transmitting to your excellency, in pursuance of my preliminary communication of the 4th, and my telegram of the 8th instant, a copy of the report from the 1st Army Corps on the sinking of English ships in the Seine, near Duclair, the preparation of which has been delayed by the manifold movements of the corps concerned. Your excellency will find therein, with the same satisfaction as myself, that the measure in question, however exceptional in its nature, did not overstep the bounds of international warlike usages. The report shows that a
pressing danger was at hand, and every other means of averting it was wanting; the case was, therefore, one of necessity, which, even in time of peace, may render the employment or destruction of foreign property admissible, under reservation of indemnification. I take the opportunity of calling to mind that a similar right in time of war has become a peculiar institute of law, the *jus angariae*, which so high an authority as Sir Robert Phillimore defines thus: That a belligerent power demands and makes use of foreign ships, even such as are not in inland waters, but in ports and roadsteads within its jurisdiction, and even compels the crews to transport troops, ammunition, or implements of warfare. I hope the negotiation with the owners, for which you are already authorized, will lead to an understanding as to the indemnification for the damage; if not, it would have to be submitted to an arbitrator's award. In the negotiation also the difference in the statements of the 1st Army Corps and of the English consul at Dieppe, as to the number of English vessels sunk, will be explained.

I respectfully request your excellency to communicate this despatch, with its inclosure, to the Secretary of State of Her Britannic Majesty, and to be so good as to express, at the same time, my apology for the delay, as well as my thanks to Her Majesty's Government for the just appreciation of the military necessity with which Lord Granville has apprehended and treated this matter.

Count BERNSDORFF.

(Inclosure.)

*Report of the 1st Army Corps on the sinking of ships off Duclair*

[Translation]

The 1st Army Corps having received orders to occupy Rouen with three Infantry brigades (one was left at Amiens) and to secure itself in proper positions in advance on both banks of the Seine against an enemy who was known to be numerically stronger than the Army Corps, the attention of the general in command was the more necessarily directed first of all to the Seine itself, as information had been received that French men-of-war had but a short time before left the port of Rouen.

A close examination of the Seine was therefore ordered, and soundings taken by engineer officers showed that the channel was from 30 to 35 feet deep throughout, and the depth was increased from 4 to 10 feet by the tide.

Several French men-of-war also soon appeared and steamed with the rising tide as far as off Duclair; they returned with
the ebb to Candebeec, where most of them remained for the night. Our patrols, where they showed themselves, were hotly fired upon by the men-of-war; hostile detachments were even disembarked on the left bank of the Seine. It is clear that the troops were thereby really endangered in their positions and operations.

It was not only possible for the enemy to flank an advance of our troops on the right or left bank by a direct artillery fire, but a change from one bank to the other was extraordinarily facilitated for the hostile troops—nay, they might even be disembarked in the rear of ours.

According to the statement of competent judges, a large wooden ship, which was stationed in the Seine with two or three small ships, alone held 1,000 troops for landing.

Another considerable evil was that the men-of-war entirely stopped the road to Candebeec, as it runs close to the bank at the foot of the steep rocky cliffs.

Finally, the appearance of the men-of-war kept the inhabitants of Rouen in continual excitement, which was the more to be avoided, as the quartering of troops, the closing of the manufactories, etc., already made the temper of the workmen worse from day to day.

Under these circumstances, General von Bentheim ordered Lieutenant Colonel von der Burg, chief of the general staff, to have the Seine completely blocked up. Fresh examinations and conferences with the first engineer officer, Major Fahland, gave the following result:

It is impossible to block up the channel completely by means of the low river ships; this can only be effected by sinking high-built sea ships. The great expense of attaining the end in this manner makes it appear desirable to attempt the blocking up in another and less costly manner; for example:

1. **By the formation of batteries which were made near La Fontaine.**

2. **By torpedoes.**

The first measure proved insufficient, as it was soon ascertained that some of the small steamers were armoured plated, and the commander had only field artillery at his disposal; the second failed from the want of the requisite materials at the time.

Therefore the only possible means of blocking up the channel was by the sinking of sea ships. So Lieutenant Colonel von der Burg ordered Major Fahland to seize all the sea ships which were off Duclair. This measure was necessary, because if a requisition had been made for the ships to the mayorality here, probably all the ships, timely warned, would have gone to Havre.
All the ships seized immediately hoisted neutral flags, especially English. In the urgency of the matter, researches could not then be made how far the neutral flag covers ships also in rivers, and lying especially between belligerent parties; the suitable ships were pointed out for sinking.

The work began on the 19th of December; altogether 11 ships were sunk, amongst them 7 English ones.

It is hardly worth mentioning that the reports of some French newspapers, stating that the British crews were brutally treated, are quite unfounded. As only three ships were sunk daily, there was time enough to warn the crews to save their papers and effects, which was done. Besides, an order was handed to the captains in which the value of the ship, according to the captain's own statement, was entered.

Finally, it must also be mentioned that, in order to spare the ships as much as possible, the ballast ports only were a little enlarged. Therefore, if they have not been tossed about, and damaged by the ebb and flow in the bed of the Seine, it appears not unlikely that after they are raised they may again be fit for use.

For the general in command.

VON BENTHEIM,

Lieutenant General and Commander of Division.

(61 British and Foreign State Papers, pp. 579 et seq.)

In the settlement of the claims of the British shipowners a liberal forced sale price was allowed. Mr. Rothery, of the British admiralty court, said, on April 4, 1871:

It seems now to be generally admitted that the German Government were entitled, provided that they made full compensation to the owners, to take possession of these vessels, and to sink them for the purpose of protecting themselves against the hostile attacks of French vessels of war; and, moreover, that in the exercise of that right they committed no unnecessary, arbitrary, or offensive acts, although the contrary was at first affirmed. (61 British and Foreign State Papers, p. 600.)

The British Board of Trade made an investigation and fixed the amount due the British owners of the vessels at £7,073 6s. 5d., which was immediately paid by the German Government.

British regulations, 1913.—Article 494 of the King's Regulations and Admiralty Instructions, 1913, provides,
If any British merchant ship, the nationality of which is unquestioned, should be coerced into the conveyance of troops or into taking part in other hostile acts, the senior naval officer, should there be no diplomatic or consular authority at the place, is to remonstrate with the local authorities and take such other steps to assure her release or exemption, as the case may demand, and as may be in accordance with these regulations.

This article was drawn before the World War, when the practice was drifting away from the right of angary, and following the decisions of the British prize courts the senior naval officer would now probably hesitate to take extreme action without specific instructions.

Albrecht's opinion.—Albrecht, writing in 1912, after reviewing the practice in regard to requisitions, concludes that the English theory has been gaining ground and that it seems plausible and fair. This theory makes neutral goods liable to the same requisitions as belligerent goods if they have become permanently identified with the belligerent national economy. Neutral property temporarily within belligerent territory is to be seized only in case of special need, and then full indemnity is to be paid. Neutral vessels and cargoes are in this category, and when seized under urgent necessity the owner is entitled to compensation under the "modern right of angary." (A. E. Albrecht, Requisitionen von neutralen Privateigenthum, 6 Zeitschrift für Völkerrecht, Sup. I.)

Forms of angary.—There seems sometimes to have been positive destruction for war purposes of neutral property by belligerents for which indemnities have been paid, as in the case of the British ships sunk in the Seine in the Franco-Prussian War; sometimes simply employment for war purposes and indemnity has been paid for the employment only, of which there are many examples; and sometimes denial by the belligerent to the neutral of the use of his own property lest the neutral property fall into the hands of the other belligerent or disclose information useful to the other belligerent, as in the case of the British merchant vessel Labuan, detained during the Civil War by the United States lest it disclose important
information. All of these acts have been included under the right of angary. The basis of this right seems to be the necessity of the belligerent, extending to the control of property within his jurisdiction.

Requisition of Dutch ships, 1918.—Negotiations were carried on in 1917 between the Governments of the allied powers and the Netherlands Government in regard to the use of Dutch merchant vessels by the Allies. A proposed agreement of December 24, 1917, for a modus vivendi under which Dutch ships should be used in specified manner was not accepted. This and other propositions led to long and frequent inconclusive discussions. A British memorandum of April 25, 1918, said, in looking back at the course of events:

Time was going on and, as has already been explained, the lapse of more than two months since the basis of agreement was first arrived at had made an essential difference in the tonnage situation. Nevertheless, the associated governments would, for their part, have greatly preferred to come to an arrangement by mutual agreement, and it was for that reason that another determined effort was made to reach a satisfactory conclusion with the Netherlands Government upon the lines that in return for the 100,000 tons of breadstuffs which the Netherlands Government desired, the tonnage which the associated governments would have received under the agreement should have been made available at once for use either within or without the war zone. This was the proposal which, in form, was accepted by the Netherlands Government on the 17th March. (Parliamentary Papers, Misc., No. 11, 1918.)

The form embodied in a note to the Netherlands, in which the action of the associated governments was made known, was as follows:

(Telegraphic.)

Mr. Balfour to Sir W. Townley

FOREIGN OFFICE, March 21, 1918.

I request you to make the following communication to the Minister for Foreign Affairs:

"1. After full consideration, the associated governments have decided to requisition the services of Dutch ships in their ports in exercise of the right of angary. They would have preferred to
obtain the use of the ships by way of agreement with the Netherlands Government, and, as your Excellency knows, an arrangement for this purpose was made between representatives of the Netherlands Government and of the associated governments as long ago as the beginning of last January.

"2. Unfortunately the Netherlands Government for more than two months did not see their way to ratify that arrangement. They, moreover, had found it impossible to carry out in all its terms the modus vivendi which had been arrived at pending the ratification of the agreement, explaining that the German Government would not allow them to do so. It seemed, therefore, clear to the associated governments that the proposals originally made were not adequate to the present situation. Delay had altered the circumstances. The condition that Dutch shipping was not to be used in the danger zone was no longer acceptable in itself, and might at any time have been made still less so by an extension of the zone by our enemies. Further, the fate of the modus vivendi had shown that in the very difficult position in which the Netherlands Government was placed, the execution of the agreement would probably have been attended with difficulties and delays still more prejudicial to the interest of the associated governments.

"3. The associated governments therefore proposed that the limitation on the use of Dutch shipping contemplated under the original scheme should be abandoned, and that, in its altered form, the agreement should come into force immediately. To this the Netherlands Government could not assent, except upon terms which would have made it practically impossible for the associated governments to make any use of the Dutch shipping. To say that shipping shall not be employed for the carriage of war material is at this stage of the war equivalent to saying that it shall not be used at all. For with respect to the great majority of cargoes it is impossible, to say that they are not required, directly or indirectly, for the purposes of war.

"4. For these reasons the associated governments have felt compelled to fall back on their unquestionable right to employ any shipping found in their ports for the necessities of war. But they are very anxious that the exercise of this right should be as little burdensome to the shipowners and as little obnoxious to the Netherlands Government as it can be made.

"5. The associated governments hope that it may be possible to arrive at an agreement with the owners as to rates of payment, values for insurance, &c., and on these points a further communication to the Netherlands Government will be sent very shortly. At the end of the war the ships will be returned to their owners,
who will, of course, be compensated for any losses caused among the ships by enemy action. The associated governments are willing, further, to offer the owners, on conditions to be mutually agreed upon, an option to have any ship which may be so lost in the danger zone as it exists at present actually replaced by another ship within the shortest possible period after the conclusion of peace. I need hardly assure your Excellency that all facilities in the power of the associated governments will be given for the repatriation of the crews if desired, and that all precautions will be taken to ensure that they be treated with every courtesy and consideration.

"6. Further, the associated governments hereby give to the Netherlands Government an undertaking that Dutch ships which may leave a Dutch port after the date of this communication shall not be brought into allied services otherwise than in agreement with the owners.

"7. The associated governments having been informed that, unless the stock of food grain now in the Netherlands be replenished in time, Holland is threatened with a serious shortage during the third quarter of this year, will at once place at her disposal 50,000 tons of wheat (or an equivalent quantity of flour) or other breadstuffs in a North American port and 50,000 tons in a South American port. It is hoped that the Netherlands Government will immediately send out such part of the tonnage remaining in Holland as may be necessary to lift this grain. The associated governments guarantee that as far as it is in their power these ships shall enjoy immunity from delay and detention, and receive every facility for bunkering.

"8. The United States Government have already intimated that the steamship New Amsterdam at present in New York will not be utilised by them, and will, under the special arrangement covering it, be allowed not only to return at once to Holland but to load a cargo of foodstuffs consisting of rice and coffee. This cargo will be composed of the original cargoes of the steamship Samarinda and the steamship Adonis, which would have been allowed to proceed to Holland if the modus vivendi already referred to had come into operation.

"9. As regards further supplies of cereals, foodstuffs, raw materials, and all other articles, the importation of which is provided for in the proposals for the general arrangement, the associated governments are willing to give Dutch vessels now in Dutch ports every facility for their importation into Holland in accordance with the list and the terms of the general agreement, if the Netherlands Government are ready (as the associated governments hope they are) to signify their acceptance of its terms generally.
"10. The associated governments believe that the Dutch ships now in their ports do not fully correspond with the tonnage to whose services they had hoped to become entitled under the terms of the proposed general arrangement, and that the vessels now in, or on their way to, Dutch ports will be found to exceed the tonnage needed for the imports of the Netherlands and their colonies calculated on the basis of the original tonnage proposals provisionally agreed by the Dutch delegates. If, contrary to this expectation, it should be proved to the satisfaction of the associated governments that this is not the case, the latter will be ready to make up any deficiency in the tonnage left at Holland's disposal on the lines of the various provisions of the general arrangement covering the use and distribution of Dutch tonnage as soon as the Netherlands Government shall have supplied the allied governments with definite figures of the tonnage now in or on the way to Dutch ports." (Parliamentary Papers, Misc., No. 11 [1918], p. 2.)

The Netherlands Government objected to the position taken by the associated governments, and in a reasoned argument said:

In the first place, I must remark that the Queen's Government, as your Excellency knows, in no way agree to the interpretation now given to the right of angary, an ancient rule unearthed for the occasion and adapted to entirely new conditions in order to excuse seizure en masse by a belligerent of the merchant fleet of a neutral country. This measure, which only rests on force, is unjustifiable, whether one is pleased to give it the name of "requisitioning of services" or any other label destined to conceal its arbitrary character, and if its application be limited or not to the duration of the war or mitigated in its details so as to make it more supportable. The so-called right of angry is the right of a belligerent to appropriate as an exception a neutral ship for a strategical end of immediate necessity, as, for example, to close the entrance of a seaport so as to hinder the attack of an enemy fleet. Application of this right to a fleet en masse is an interpretation entirely arbitrary and incidental ("d'occasion"). (Ibid. p. 3.)

Of this communication from the Netherlands Government Mr. Balfour said, on April 25, 1918:

It is true that the British note of the 21st March, bases the requisitioning of these ships on the right of angry, but it appears to make little difference whether the act of requisitioning is treated as founded on that right or upon the general right of sovereignty over all persons and property within the jurisdiction.
It would appear that the Netherlands Government consider the right of angary to be an ancient rule, which has fallen into desuetude until it was unearthed by His Majesty's Government as justifying an arbitrary act on their part. The right is certainly an ancient one, and its existence has been recognized, though admittedly in some cases with reluctance, by nearly all writers on international law, from Grotius downwards. It is sufficient to refer to Bluntschii, Massé, Vinnius (ad Peckium), Bonfils, Calvo, Halleck, Rivier, Heffter (especially note by Geffcken in the fourth French edition), Hall, Phillimore, Westlake, and Oppenheim. But if it is suggested that the right has fallen into disuse and is obsolete, it is fair (without quoting extensively from the many modern writers on international law who recognize the right as still existing) to point out that it was asserted by the German Government and acquiesced in by His Majesty's Government in 1871; that it is especially mentioned in the United States Naval War Code of 1900; and that during the discussions at the Naval War College in 1903, which resulted in the withdrawal of the Code, it was not suggested that the article in question required any modification. Further, the right was fully recognized during the present war, before any cases had arisen of the requisitioning of neutral ships which were not the subject of prize court proceedings, by the judicial committee of the privy council in the well-known case of the Zamora. (Ibid. p. 9.) and further in the same memorandum Mr. Balfour says:

It is a commonplace that the rights of a sovereign State extend over all property within its jurisdiction, irrespective of ownership, and neutral property within belligerent jurisdiction is, in the absence of special treaty stipulations, as liable to requisition in case of emergency as the property of subjects. If demonstration of this fact were required, it would be afforded by the circumstance that it is not an uncommon provision in commercial treaties that the property of the subjects of the contracting parties shall be exempt from military requisition in the territory of the other. Vessels calling at a foreign port are, in the absence of special treaty provisions, fully subject to the local jurisdiction. A striking example of this is the practice under which such a vessel can be arrested by reason of legal proceedings in the courts of the country which she is visiting, and detained there by order of those courts until the proceedings are finished, or she obtains her release on bail. This being so, it is not surprising that a practice should have grown up of exercising this right in the particular case where the State in question has urgent need of neutral property such as shipping within its jurisdiction, and the fact that the exercise of
this right has received a particular name should not obscure the truth that it is a legal exercise of the right of a sovereign State, and not an act by a belligerent based on no principle of law, and for which the only justification is to be found in usage. (Ibid. p. 11.)

The taking over by the United States of Dutch ships.—

The United States had been concerned in the negotiations with the Netherlands through representatives of the War Trade Board. The United States took over the Dutch ships under a presidential proclamation of March 20, 1918, and took over possession of tackle, etc., by an Executive order of March 28, 1918.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas the law and practice of nations accords to a belligerent power the right in times of military exigency and for purposes essential to the prosecution of war to take over and utilize neutral vessels lying within its jurisdiction;

And whereas the act of Congress of June 15, 1917, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for the other purposes," confers upon the President power to take over the possession of any vessel within the jurisdiction of the United States for use or operation by the United States:

Now therefore, I, Woodrow Wilson, President of the United States of America, in accordance with international law and practice, and by virtue of the act of Congress aforesaid, and as Commander in Chief of the Army and Navy of the United States, do hereby find and proclaim that the imperative military needs of the United States require the immediate utilization of vessels of Netherlands registry, now lying within the territorial waters of the United States; and I do therefore authorize and empower the Secretary of the Navy to take over on behalf of the United States the possession of and to employ all such vessels of Netherlands registry as may be necessary for essential purposes connected with the prosecution of the war against the Imperial German Government. The vessels shall be manned, equipped, and operated by the Navy Department and the United States Shipping Board, as may be deemed expedient; and the United States Shipping Board
shall make to the owners thereof full compensation, in accordance with the principles of international law.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this twentieth day of March, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-second.

Woodrow Wilson.

By the President:
Robert Lansing,
Secretary of State.

EXECUTIVE ORDER

In pursuance of the authority conferred upon the President of the United States by the act approved June 15, 1917, entitled "An act making appropriations to supply urgent deficiencies for the fiscal year ending June 30, 1917, and for other purposes," the Secretary of the Navy is hereby authorized and directed to take over, on behalf of the United States, possession of all tackle, apparel, furniture, and equipment, and all stores, including bunker fuel, aboard each of the vessels of Netherlands registry now lying within the territorial jurisdiction of the United States, possession of which was taken in accordance with the proclamation of the President of the United States promulgated March 20, 1918; and in every instance in which such possession has heretofore been taken of such tackle, apparel, furniture, equipment, and stores, such taking is hereby adopted and made of the same force and effect as if it had been made subsequent to the signing of this Executive order.

The United States Shipping Board shall make to the owners of any tackle, apparel, furniture, equipment, and stores taken under the authority of this order full compensation in accordance with the principles of international law.

Woodrow Wilson.

The White House, March 28, 1918.

The Netherlands Government published on March 30, 1918, a statement showing its attitude upon the taking over of the vessels by the United States.

The Dutch Government and the whole Dutch people have taken note with painful surprise of the proclamation and statement of the President of the United States of March 20 relative to the seizure of part of the Dutch mercantile marine. The seizure
en masse of a neutral mercantile fleet, although merely for the duration of the war, is an act which is indefensible from the point of view of international law and apart from legal considerations is unjustifiable when taken against a friendly nation. Furthermore the manner in which the act of violence is defended in the President's statement does not contribute to making it any the less grievous, for the defense has clearly been set up under the influence of an entirely wrong conception of the facts.

The manner in which the Dutch mercantile fleet has been treated for months past in the United States, the interminable difficulties placed in the way of our vessels' departure from American ports, the continually repeated refusal of bunker coal, the enforced unloading of cargoes already purchased—all of this may not be in conflict with the rights of the United States, with the exception of one case, that of the Zeelandia, which entered an American port with her own bunker coal and has been detained there illegally ever since, but it was nevertheless in conflict with the traditional friendship between the two countries. This, however, is merely said in passing. On this point, however, the statement is silent.

According to the presidential statement Holland is said not to have fulfilled entirely, because of German pressure, the provisional agreement which has been proposed in order that, pending a definite agreement relative to tonnage and the rationing of our country, our vessels lying in American ports should no longer lie there idle but be given an opportunity of making a voyage of 90 days at the most. This is absolutely incorrect, as is the assertion that Germany is said to have threatened to sink the two vessels which were to leave here in return for the two vessels leaving for Holland with America's approval and that Germany made more and more serious threats in order to prevent compliance with the modus vivendi as well as the conclusion of a permanent peace. (Staats Courant, March 30, 1918, translated in Official Bulletin, U. S. April 13, 1918, p. 2.)

To this the United States said:

The Netherlands Government have issued a statement relative to the recent action of the Government of the United States in putting into its service for the period of the present war emergency certain privately owned vessels of Netherlands registry lying within the territorial jurisdiction of the United States. While this action is referred to as being indefensible from the standpoint of international law the statement of the Netherlands Government does not argue the question of legality. Nor is this Government disposed to do so. The practice of nations and the opinions of
jurists on the right of a belligerent to utilize all vessels which come voluntarily and unconditionally within its jurisdiction are sufficiently well known to render citation of precedent and of authority unnecessary. (Official Bulletin, U. S., April 13, 1915, p. 1.)

Action of other states.—The action of other states in Europe and in South America in taking over before and during the World War German merchant vessels while called by Germany “a strange violation of right” was approved in practice.

General.—Early and late practice has shown resort to the exercise of the right of angary. Treaties have implied the right to take over vessels upon payment of indemnity. Proclamations and diplomatic papers have given the right full recognition as the French Minister of Marine declared on November 18, 1917, angary is lawful “in presence of imperative and urgent need for the national defense and in absence of contrary treaty stipulations.”

CONCLUSION

In case of urgent need and “in absence of contrary treaty stipulation” a belligerent state may exercise the right of angary.