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 V.

Hostilities have broken out in a certain country between the titular government and its opponents. These hostilities are carried on only to a slight extent on land, where the government for the most part successfully maintains its authority. The opponents of the government have not been recognized by foreign governments as belligerents. Their force is derived chiefly from the national navy, which, with the exception of two or three vessels, took an original part in the insurrection. The ships in revolt, without attempting to maintain a blockade, endeavor to control and interrupt the commerce of one of the principal ports of the country. On one occasion they arrest, within the limits of the port and in territorial waters, a neutral ship laden with arms and munitions of war and on its way to a wharf to deliver its cargo to agents of the titular government. The master appeals to the commander of a naval force of his own country for protection. Naval vessels of several foreign countries are then lying in the harbor, and there has been a general cooperation among them for the protection of commerce from unlawful interference. The foreign governments, however, all profess an attitude of nonintervention in the conflict.

What action should be taken on the appeal of the master?

SOLUTION.

On the situation above stated the reports of the various committees exhibited a divergence of views. This divergence may be explained as follows:

On the one hand, the view was taken that, as the trade in arms and munitions of war is not prohibited by the neutrality laws, and as the insurgents had not been recognized as belligerents, foreign governments might, in their discretion, according to the measure of privilege which they should accord to the insurgents, protect or decline to protect their citizens in furnishing arms and munitions of war to the titular government, even in the territorial waters of the country where the insurrection prevails.

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SITUATION V—SOLUTION.

In support of this view the following well-known passage, in an instruction of Mr. Fish, as Secretary of State, in relation to certain vessels in the service of insurgents against the Government of Haiti, was cited:

"Regarding them simply as armed cruisers of insurgents not yet acknowledged by this Government to have attained belligerent rights, it is competent to the United States to deny and resist the exercise by those vessels or any other agents of the rebellion of the privileges which attend maritime war, in respect to our citizens or property entitled to our protection. We may or may not, at our option, as justice or policy may require, treat them as pirates in the absolute and unqualified sense, or we may, as the circumstances of any actual case shall suggest, waive the extreme right and recognize, where facts warrant it, an actual intent on the part of the individual offenders, not to depredate in a criminal sense and for private gain, but to capture jure belii. It is sufficient for the present purpose that the United States will not admit any commission or authority proceeding from rebels as a justification or excuse for injury to persons or property entitled to the protection of this Government. They will not tolerate the search or stopping by cruisers in the rebel service of vessels of the United States, nor any other act which is only privileged by recognized belligerency."¹

On the other hand, the view was maintained that the solution in the present case does not depend upon the recognition or nonrecognition of belligerency, nor upon the extent of the obligations which neutral governments are obliged to perform; that Mr. Fish, in denying to the insurgents "the privileges which attend maritime war," evidently referred to the exercise of the rights of war on the high seas, and not to the conduct of hostilities within the jurisdiction of Haiti; that the acts, the commission of which within their jurisdiction neutral governments are obliged to prevent, by no means comprise all acts of an unneutral character, against which the parties to an armed conflict are permitted to exercise, within proper limits, measures of prevention; and that, as the supply of arms and munitions of war is a direct military aid, foreign governments, though they abstain from recognizing the insurgents as belligerents and from thus acknowledging their

¹Wharton's Int. Law Digest, III, 466.
right to interrupt even unneutral commerce on the high seas, are not, so long as they profess an attitude of non-intervention, justified in interfering at the domestic scene of hostilities to protect their citizens in furnishing such materials to either party.

It may be observed that the instructions issued by the United States in the case of the insurrection in Brazil, in 1893–1894, although they explicitly concede the right of the insurgent fleet to carry on hostilities within Brazilian jurisdiction, do not expressly cover the present situation; nor does it appear to have been involved in any protective action taken by the naval representatives of the United States on that occasion. The question was, however, suggested in correspondence, and as the record leaves it in an unsatisfactory position, it appears to be a proper subject for official elucidation.

NOTES ON SITUATION V.

Revolution in Chile, 1891.—This situation is suggested by events which took place in Chile during the revolution of 1891, and by certain occurrences in the harbor of Río de Janeiro during the revolt of the Brazilian squadron in 1893–1894. It involves the question of the rights of insurgents, who have not been recognized as belligerents, when such insurgents are carrying on hostilities within the jurisdiction of the disturbed state. The question of hostilities on the high seas, discussed in the case of the Ambrose Light,¹ is not embraced in it, though it may now and then incidentally appear in the narrative.

The revolution in Chile grew out of a controversy between President Balmaceda and the Congress as to the power of the former to maintain in office a cabinet upon which Congressional censure had been pronounced. Under the Chilean constitution of 1833 the President possessed the power to appoint and remove public officials; but it had been the practice for the ministry, on a vote of censure by Congress, to resign. This custom President Balmaceda essayed to break. On the night of January 6, 1891, a number of the leaders of the opposition, including the vice-president of the Senate and the president of the Chamber of Deputies, went on board the national fleet lying at Valparaíso, and in the name of the Congress pro-

claimed a revolution. The ships taking part in the movement were the *Blanco Encalada*, *Almirante Cochrane*, *Esmeralda*, *Huascar*, *O'Higgins*, and *Magallanes*, the command of which when they revolted was assumed by Capt. Jorge Montt, of the Chilean navy.\(^1\)

The principal incident in which the United States was concerned during the continuance of hostilities, was the recovery of the *Itata*, the insurgent transport, which escaped from the custody of United States officials at San Diego, California, while under arrest on a charge of violating the neutrality laws. This incident, however, does not fall within the purview of the present discussion.

*Report of Admiral McCann.*—In a report to the Secretary of the Navy, February 9, 1891, Rear-Admiral McCann, U. S. flagship *Pensacola*, stated that the insurgents had seized Chilean coast steamers for use as transports, but had not interfered with foreign steamers; that merchant vessels were asked for supplies, which were refused in order not to incur trouble with the shore authorities; that the insurgent ships were stationed off the port for observation rather than blockade, vessels being allowed to pass in and out freely; but that in some instances lighters loaded with supplies had been taken from alongside merchant steamers.\(^2\)

*Instructions to Admiral Brown.*—March 26, 1891, Mr. Tracy, Secretary of the Navy, gave to Rear-Admiral Brown, who had been sent out to relieve Admiral McCann, the following instructions: \(^3\)

“(1) To abstain from any proceedings which shall be in the nature of assistance to either party in the present disturbance, or from which sympathy with either party could be inferred.

“(2) In reference to the ships which have been declared outlawed by the Chilean Government, if such ships attempt to commit injuries or depredations upon the persons or property of Americans, you are authorized and directed to interfere in whatever way may be deemed necessary to prevent such acts; but you are not to interfere except for the protection of the lives or property of American citizens.

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\(^1\) H. Ex. Doc. 91, 52 Cong., 1 sess., 2-3.

\(^2\) H. Ex. Doc. 91, 52 Cong., 1 sess., 235.

\(^3\) H. Ex. Doc. 91, 52 Cong., 1 sess., 245-246.
Vessels or other property belonging to our citizens which may have been seized by the insurgents upon the high seas and for which no just settlement or compensation has been made are liable to forcible recovery; but the facts should be ascertained before proceeding to extreme measures and all effort made to avoid such measures.

(4) Should the bombardment of any place, by which the lives or property of Americans may be endangered, be attempted or threatened by such ships, you will, if and when your force is sufficient for the purpose, require them to refrain from bombarding the place until sufficient time has been allowed for placing American life and property in safety.

You will enforce this demand if it is refused, and if it is granted, proceed to give effect to the measures necessary for the security of such life or property.

6th. Referring to paragraph 18, page 137, of the Navy Regulations of 1876, which is as follows:

If any vessel shall be taken acting as a vessel of war or a privateer without having proper commission so to act, the officers and crew shall be considered as pirates, and treated accordingly.

You are informed that this paragraph does not refer to vessels acting in the interests of insurgents and directing their hostilities solely against the state whose authority they have disputed. It is only when such vessels commit piratical acts that they are to be treated as pirates, and unless their acts are of such a character or are directed against the persons or property of Americans you are not authorized to interfere with them.

7th. In all cases where it becomes necessary to take forcible measures, force will only be used as a last resort, and then only to the extent which is necessary to effect the object in view.

British Correspondence.—A fuller report of the acts of the insurgent fleet may be found in the correspondence of the British Government, under whose supervision the commercial and shipping interests of the country, being largely in English hands, immediately fell. Questions were raised (1) as to blockade, (2) as to seizures of coal and other cargoes, and (3) as to the payment of duties.
Questions of blockade.—When the revolution was announced, the British naval forces in Chile were instructed by the Admiralty to “take no part except protection of British interests.” Early in the conflict, the Congressional deputation on the insurgent fleet notified the Government authorities and the foreign representatives that Iquique and Valparaiso would be blockaded on February 1, 1891. The Government declared that the blockade would be illegal, and urged the diplomatic corps to protest against it. At the request of the minister for foreign affairs, the diplomatic representatives of France, Germany, Great Britain, and the United States met at the foreign office to discuss the subject. On consulting they agreed that the blockade would be illegal, but that they could not directly protest against it, as this would involve a recognition of the insurgent fleet, which the Government had declared to be piratical. As a compromise they instructed the consuls to protest at their respective ports. A protest was made by the consular body at Iquique, January 18, 1891, to the captain of the Almirante Cochrane as follows: “The consular body being of opinion that the blockade notified to them will cause considerable damage to the persons and property of neutrals represented by them, protest against the act, and reserve the right to claim compensation for losses incurred.” A similar protest was made by the consular corps at Valparaiso.

At the same time Mr. Kennedy, then British minister at Santiago, telegraphed for instructions as to the course which should be pursued in the event of a blockade being established. The views of the foreign office on the subject may be found in a telegram to a firm in Glasgow, January 24, 1891, as follows: “Assuming effective blockade to exist, escort through it can not be given.”

In consequence of certain incidents the original notice was changed by the insurgents and it was announced that a blockade of Valparaiso would begin on the 18th of January, and of Iquique on the 20th of the same month. In reality neither blockade was actually established. Captain

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1 Blue Book, Chile, No. 1 (1892), 2.  
3 Blue Book, 8.
St. Clair, of H. B. M. S. Champion, expressed the belief that the nonenforcement of the blockade at Valparaiso was the result of an interview which he held with Captain Montt, January 16, 1891, on board the Blanco Encalada at that port, and in which he pointed out "the illegality of any captures he might make." 1

It appears that when Captain St. Clair, on the 20th of January, delivered to the commander of the O'Higgins the protest of the consular corps against the proposed blockade of Valparaiso, he was assured that only vessels carrying contraband of war would be interfered with. 2

Rear-Admiral Hotham arrived at Iquique in H. B. M. S. Warpite, January 26, 1891. He found the Almirante Cochrane "blockading" the port. She saluted his flag with 13 guns, "and," said Admiral Hotham, "as it was a personal salute I returned it with the same number." The blockade was merely nominal. The Almirante Cochrane permitted free access to the shore by British vessels, and also allowed the mails, after examination, to be landed, and in some cases passengers from English steamers. 3

Admiral Hotham arrived at Valparaiso January 31. There were then no Chilean men-of-war in the harbor, and vessels were going in and out and loading as usual. On the night of February 1 a man-of-war was seen in the "offing showing a searchlight." Next day the Esmeralda and two transports were observed some distance off the harbor and later were seen by a British man-of-war 25 miles away standing to the northward. The British steamer Arica arrived February 2, and reported that she had been stopped off the port by an officer from the Esmeralda, who took out of her some dispatches for the Government authorities and searched the ship, but did not interfere with any other mails.

Seizures of coal and other cargoes.—As to seizures of coal and other cargoes, it appears that early in January, 1891, Captain St. Clair asked of the Congressionalists an assurance that neutral property would not be interfered with in its transit from ship to shore or shore to ship. Captain Montt replied that until the blockade should be

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1 Blue Book, 41. 2 Blue Book, 47-50. 3 Blue Book, 45.
established free transit would be allowed to all foreign merchandise not contraband of war. 1

The British steamer *Aricea*, on her arrival at Valparaiso on the 2d of February, reported that on January 21 she was boarded 6 miles from land by an officer from the insurgent transport *Cachapoal* and was ordered not to go to certain ports to which she was bound, but to go to Pisagua. The master protested, but had to go. On his arrival there the captain of the insurgent ship *Magellanes* ordered him to deliver up his cargo of bullocks. He protested, but, on the advice of the British consul, delivered up the cattle and obtained a receipt for them. He was then ordered to go to Coquimbo to get more bullocks. He declined to comply with this demand and declared that he would, on his arrival at Coquimbo, place himself under the protection of H. B. M. S. *Acorn*. On hearing of the incident, Admiral Hotham dispatched Captain St. Clair in the *Champion* with a letter to Captain Montt denouncing the act of the commander of the *Magellanes* as "a piece of presumption" inconsistent with assurances given to Captain St. Clair, and requesting Captain Montt to convey to his officers "the necessity of the discontinuance of such proceedings."

Early in February, 1891, the insurgent fleet sought to take coal from certain English and German ships and send it to Iquique. A guard from a British man-of-war was placed on board each of the British ships and a protest made to the commander of the Chilean squadron. The latter accepted the protest as to the British ships, but proceeded to coal from the German collier *Rajah*, which was towed out to sea. Admiral Hotham gave notice that he was charged with the protection of German, French, and Italian vessels as well as of British, and that he desired to impress upon the commander of the squadron "the absolute necessity of the ships of war under your orders refraining from any interference with the merchant vessels of the above-named nations trading with a friendly power. Cargoes of coal, provisions, etc., *bona fide* consigned to noncombatants, can not be considered as contraband of

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1 Blue Book, 47-50.
2 Blue Book, 45-47.
war; and any seizure or detention of vessels carrying such cargoes is a gross breach of their neutral rights." It appears that besides the Rajah, a British collier, the Kilmorey, was seized by a Chilean transport under the orders of the Esmeralda. Admiral Hotham sent for the master of the Kilmorey and an arrangement was made with the insurgent fleet to purchase the coal on terms with which the master expressed himself as satisfied. Captain Montt offered in satisfaction of the seizure of the Rajah and Kilmorey (1) a salute of 21 guns to the English and German flags, and (2) a promise of indemnity for any damages which either the ships or the consignees of the cargoes might have sustained in consequence of the seizure. This offer was accepted by Admiral Hotham and the incident treated as closed. The ships on arriving at Iquique were fully compensated.  

February 17, 1891, Mr. Kennedy wrote to Lord Salisbury that the operations of the insurgent fleet up to that time had been limited to attempted landings on the coast, to the stoppage on the high seas of neutral ships chiefly for purposes of information, and to the seizure in various ports of launches laden with coal or provisions. For these articles payment had been made or promised and no serious complaint had reached him of violent acts committed against British shipping.  

April 10, 1891, the foreign office sent to the Admiralty a draft of a telegram to Admiral Hotham, drawn up in consultation with the law offices of the Crown, saying:  

"Information has been received that the Congressional Party threaten that if steamers omit to call at the ports at which they usually touch such omission will be considered a hostile act, and will render them liable to be seized. You should state to the heads of the party that their right to dictate to British vessels which ports they shall visit can not be admitted by Her Majesty's Government, and that you have received instructions to protect such vessels from molestation on this account if necessary."  

**Payment of duties.**—Various questions arose as to the payment of duties, especially on the exportation of

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1 Blue Book, 13, 59-62, 73, 113.  
3 Blue Book, 70.
nitrates, in consequence of the claim of the Government to exercise authority over ports and places of which the insurgents, in the progress of the revolution, obtained possession. The British foreign office at first declined to take the responsibility of advising merchants as to the course they should pursue, but suggested that if duties were exacted by insurgent authorities in actual possession, payment should be made on compulsion and under protest, and better still, that a bond should be given for the amount if the insurgent authorities would accept it. On the other hand, it was declared that Her Majesty’s Government did not admit the right of the Chilean Government to require the payment over again of duties when there was evidence that they had already been paid on compulsion and under protest to the authorities in actual and complete possession of the port of export. Should the claim be persisted in, a bond might be given for the amount pending a settlement between the two Governments.  

In June, 1891, a gunboat belonging to the Balmaceda Government entered the port of Tocopilla, then in possession of the insurgents, and exacted payment of duty on 1,600 tons of nitrate loading for a British company on the British steamship Chépica. The foreign office advised that if the Congressional authorities insisted on the payment of any further and separate duties, as a condition of the vessel’s leaving the port, the best course would be to give a bond for the amount of such duties under protest. At the same time Mr. Kennedy was instructed that in the opinion of Her Majesty’s Government the action of the gunboat in exacting duties was “altogether wrongful and irregular, such dues being ordinarily and properly payable to the customs authorities at the port of clearance,” and that the amount exacted would be claimed back from the Chilean Government. On arriving at the port Captain Parr, of H. B. M. S. Melpomene, found that the payment of the duties a second time was claimed by the revolutionary authorities, and that in default of their payment the shipment of the cargo had been stopped. Captain Parr remonstrated with the intendente and requested him to telegraph the provisional government at Iquique

1 Blue Book, 69, 71, 75.
for instructions, which he did. The provisional government replied that "solely out of deference to the commandant of the Medpomene, and as an act of respect to the British navy," they would accept payment of the duties in drafts on London, at ninety days' sight, thus giving the company four months and a half grace, as the term of the drafts would not begin to run till they were accepted. On receipt of this reply the manager of the nitrate firm agreed to sign the drafts as required.¹

By this review it appears—

1. That the British Government admitted the right of the insurgents to establish a blockade on the usual condition of effectiveness.

2. That the British naval officers recognized the right of the insurgents to intercept contraband of war, and allowed them to a limited extent, but not as of right, to obtain coal and supplies for their fleet from neutral vessels.

3. That the right to collect duties was acknowledged to belong to the insurgents wherever they maintained complete and effective possession of the place.

Insurrection in Brazil, 1893-94.—September 6, 1893, Mr. Thompson, the minister of the United States at Rio de Janeiro, reported that the navy of Brazil had revolted, assumed complete control over the harbor, and seized all the war vessels, and that it threatened, unless the vice-president resigned, to bombard the city. The revolted squadron, comprising the warships Aquidaban, Jupiter, and República, together with a number of Brazilian merchant vessels which had been seized in the harbor, was under the command of Admiral José Custodio de Mello, of the Brazilian navy. The Government held possession of Fort Santa Cruz, which commands the entrance to the harbor, and retained the loyalty of the army. The squadron controlled the inner harbor to within a limited distance of the shore line, which was defended by artillery, infantry, and the police force.²

Question of bombardment.—Toward the end of September much firing took place between the squadron and

¹Blue Book, 144, 157, 219-220. ²For. Rel., 1893, 45-46.
loyal forts and batteries on shore, and many shots from
the ships fell in the city, causing much damage to property
and some loss of life, while business houses remained
closed because of rumors that the city would be bom-
[...]
Under these circumstances, the commanders of
the naval forces of the United States, Great Britain,
France, Italy, and Portugal, then present in the harbor,
informed Admiral Mello that they would oppose, by force
if necessary, an attack upon the city; and the diplomatic
representatives of those powers, "continuing in the line
of conduct followed up to this time, not to interfere in
the internal affairs of Brazil, but to assure the protection
and safety of their fellow-countrymen and the higher
interests of humanity," urgently requested the Brazilian
Government, in view of the action of the foreign com-
manders, "to deprive Admiral de Mello of all pretext for
hostile action" against the city. In the event of a refusal
of this request, they stated that they would communicate
the reply to their Governments and ask for instructions.¹
The Brazilian Government promised to deprive Admi-
ral Mello of every pretext for hostilities against the city;
but a misunderstanding immediately arose between the
Government on the one hand and the foreign diplomatic and
naval officers on the other as to whether this promise
included the removal of cannon from some of the batteries
and whether the work of strengthening the batteries was
not actually continued; and in view of this misunder-
standing the diplomatic representatives declared that they
could not accept "any other responsibility than that
which may result from the necessity of protecting the
general interests of humanity and the lives and property
of their countrymen."²

Question of Recognition.—On the 23d of October, 1893,
Admiral Mello informed Mr. Thompson, through the
officer in command of the United States naval forces, that
the insurgents had established a provisional government
at Desterro, the capital of the State of Santa Catharina,
and asked that they be recognized as belligerents. This
request the Government of the United States refused, on

¹For. Rel., 1893, 56. ²For. Rel., 1893, 58-59.
the ground that its concession "would be an unfriendly act toward Brazil and a gratuitous demonstration of moral support to the rebellion, the insurgents having not, apparently, up to date established and maintained a political organization which would justify such recognition;" but Mr. Thompson was instructed "to observe, until further advised, the attitude of an indifferent spectator."  

Conduct of Commercial Operations.—On the 30th of October, Mr. Thompson inquired by telegraph whether he was "authorized to protect American merchandise on Brazilian barges against the insurgents, using force if necessary." He explained that cargoes could not be landed in Rio de Janeiro unless barges were used.

Mr. Gresham, then Secretary of State, replied: "There having been no recognition by United States of the insurgents as belligerents, and there being no pretense that the port of Rio is blockaded, it is clear that if an American ship anchored in the harbor employs barges and lighters in transferring her cargo to the shore in the usual way and in doing so does not cross or otherwise interfere with Mello's line of fire and he seizes or attempts to seize the barges or lighters, he can and should be resisted. You will deliver a copy of this telegram to the commander of the insurgents."

December 1, 1893, Admiral Mello left Rio de Janeiro in his flagship, the Aquidaban, going south, and was succeeded in the command of the naval forces in the harbor by Rear-Admiral Luis Felippe de Saldanha da Gama, who, after having maintained an apparent neutrality, announced in a proclamation his espousal of the cause of the revolution and of the restoration of the Empire, subject to ratification by the people.

December 25, 1893, threats of a bombardment having again been made, the commanders of the naval forces of the United States, France, Great Britain, Austria-Hungary, Italy, and Portugal replied that, in case such a measure should become inevitable, they would, while not committing themselves to any course of action, require a previous notice of at least two days to be given in order

1 For. Rel., 1893, 63.  
2 For. Rel., 1893, 64.  
3 For. Rel., 1893, 77, 83.
to insure the safety of the persons and property of their fellow-countrymen.¹

Meanwhile an effort was made by the foreign representatives to secure a safe place for the discharge of foreign shipping. This action was taken in consequence of an understanding that it was Admiral da Gama's intention to prevent all merchandise from reaching either the custom-house or the shore. November 6, 1893, the American, English, French, German, Italian, and Portuguese naval commanders, by a general communication, had informed Admiral Mello (1) that they did not recognize the right of the insurgent forces to interfere with commercial operations conducted anywhere "except in the actual lines of fire of the batteries of the land fortifications," and that they would protect merchandise not only on board vessels of their respective countries, but also on lighters, barges, and other transports, whatever might be their nationality, employed by those vessels in commercial operations, and (2) that such transports or their tugs would carry at their prow the flag of the country under whose protection they might at the time be.² Difficulties and uncertainties, by reason of acts of the Government as well as of the insurgents, having arisen in the interpretation and enforcement of this plan, the question as to what constituted a "line of fire" being shifting and unsettled, Mr. Gresham, January 6, 1894, directed Mr. Thompson "to induce, by cooperation with the commanding officer of the forces of the United States, and if possible with others, the insurgents to designate a place, if such a place can be found, at which vessels of neutral nations may, without interfering with military operations, take and discharge cargoes in safety."³

United States instructions.—January 11, 1894, Mr. Gresham addressed to Mr. Thompson, by mail, full instructions, as follows:⁴

"Under date of the 5th instant Captain Picking reports the effective fortification and armament of strategic positions within the limits of the city, adding that the naval

¹ For. Rel., 1893, 89. ² For. Rel., 1893, 95-96. ³ For. Rel., 1893, 98. ⁴ For. Rel., 1893, 99.
commanders in conference had thereupon agreed that in view of this action they could no longer maintain their intention to prevent bombardment. The facts reported appear to justify this conclusion.

"An actual condition of hostilities existing, this Government has no desire to intervene to restrict the operations of either party at the expense of its effective conduct of systematic measures against the other. Our principal and obvious duty, apart from neutrality, is to guard against needless or illegitimate interference, by either hostile party, with the innocent and legitimate neutral interests of our citizens. Interruption of their commerce can be respected as a matter of right only when it takes one of two shapes—either by so conducting offensive and defensive operations as to make it impossible to carry on commerce in the line of regular fire, or by resort to the expedient of an announced and effective blockade.

"Vexatious interference with foreign merchant shipping, at a designated anchorage, or with the lighterage of neutral goods between such anchorage and a designated landing, by random firing not necessary to a regular plan of hostilities and having no other apparent object than the molestation of such commerce, is as illegitimate as it is intolerable. Hence, we have a right to expect and insist that safe anchorage and time and place for loading and unloading be designated, if practicable, to be interrupted only by notice of actual intention to bombard, or by notification and effective enforcement of blockade.

"The insurgents have not been recognized as belligerents, and should they announce a blockade of the port of Rio the sole test of its validity will be their ability to make it effective.

"Our naval commander at Rio has been instructed as above with regard to the protection of neutral commerce under our flag, which it would seem represents only a small part of the foreign commercial interests afloat in the harbor of Rio. The British ships there are said to outnumber those of the United States nine to one, but no substantial interference with our vessels, however few, will be acquiesced in, unless made effective with regard to all
foreign shipping, and, moreover, so made effective in pursuance of some tangible plan of orderly military operations."

The substance of these instructions may be stated thus—

1. That, in view of the creation of fortified and armed strategic positions within the limits of the city, the foreign naval forces would not be justified in forcibly preventing its bombardment.

2. That, while an effective blockade of the port by the insurgents would be respected, they would not be permitted to accomplish indirectly the ends of a blockade by employing, either openly or under the guise of military operations, acts of force against foreign vessels engaged in commercial transactions.

These instructions recognized the right of the insurgents to carry on hostilities even by means of a commercial blockade of the port, a measure the enforcement of which might involve the extension of the insurgent operations to the high seas. They denied to the insurgents the right, after allowing foreign commerce to enter the port, to seek to accomplish the objects of a blockade either by seizing particular vessels or by firing upon them when they were engaged in discharging or receiving cargo.

Question as to coal.—January 12, 1894, Mr. Thompson reported that the insurgents had taken possession of an island in the harbor, used as a coal depot, and with it had captured large quantities of coal belonging to the Royal Mail Steamship Company of England. It seems that Admiral da Gama issued orders to prevent the landing of coal, apparently with the object of preventing the Government from obtaining it for its ships. The subject was discussed by the diplomatic corps; and the British minister, with the concurrence of his Belgian, French, Italian, and Portuguese colleagues, declared that all other means would be exhausted, perhaps even that of recognition, before a resort to force to prevent the execution of the order.  

Protection of American vessels.—January 12, 1894, Mr. Thompson reported that since the advent of Admiral da Gama several American vessels had gone to the docks on

their own responsibility, and with the consent of the Government had discharged and taken in cargo without interference; that some German and other foreign ships had also proceeded with their operations without interruption; and that the Germans had maintained independently the position taken by all the powers in regard to commerce, in the communication to Admiral Mello.\footnote{For. Rel., 1893, 105-106.}

On the 26th of January Mr. Thompson wrote that commercial operations in the harbor continued to be carried on “without any serious interference with American interests.” Three days later, however, he telegraphed: “American vessels will be convoyed to the dock by the U. S. S. Detroit, and a general engagement may follow if she is fired upon, as she is ready to return the fire.” A telegram having also been received from Admiral Benham, who had succeeded Captain Picking in command of the United States naval force, indicating a serious situation, Mr. Gresham directed Mr. Thompson to make a full report, and particularly to state whether any, and if any what, change had taken place in the attitude of the United States naval force; whether Admiral Benham disagreed with the other naval commanders, and if so on what points; whether United States merchant vessels were enjoying any protection not previously given, and “whether a blockade is enforced by the insurgents or any attempt made by them to that end.”

Mr. Thompson telegraphed January 31, 1894, the following reply:

“Mr. Thompson telegraphs that he is informed by Admiral Benham, with whom he had an interview on this day, that a full report of his action was sent on the preceding morning to the Navy Department. After notifying the insurgents and the city that he intended to protect by force, if necessary, and to place all American vessels who might wish to go to the docks alongside the wharves, the war vessels of the United States got under way and cleared for action. The Detroit, which was stationed in the best position for the ends of protection, had orders to fire back if the merchant vessels were fired upon. A shot
from one of the insurgents' vessels was fired at, but missed, the boat of one of the American vessels that was making preparations for hauling in by means of a line running to the shore. The *Detroit* replied with a shot from a 6-pounder, which struck under the insurgent's bows. The latter then fired one shot to leeward from her broadside battery and subsequently another over the merchant vessel. The *Detroit* answered with a musket shot, which struck the sternpost of the insurgent vessel. The latter was hailed by the commander of the *Detroit*, as he passed by, who declared that he would return the fire and sink her, if necessary, in the event of her again firing. By this time one of the American vessels was moored near the dock in her new berth, and a tug came up offering to discharge without cost the cargoes of all the vessels. Notice was then given to the commander of the insurgent forces that the cargoes would be taken out of the vessels in the berths they then occupied, but that it was determined, as theretofore, that if American vessels wished to have berths in the docks they would be placed there and given full protection by the squadron of the United States. The *Detroit* was afterwards withdrawn and the war vessels anchored. He states that the naval or military operations of either side were not in the least interfered with by Admiral Benham, who entertains no such intention. What he proposes to do is to fulfill his duty of protecting the citizens and trade of the United States, and of this the insurgents have been notified by him. Admiral Benham declares that if American vessels get in the line of fire during the actual course of legitimate hostilities they must take the consequences, but their freedom of movement must be respected. The insurgents are denied the right to search neutral vessels or to seize any part of their cargoes, even though such cargoes should comprise such articles as would, in case of war between two independent Governments, come within the class of merchandise defined as contraband of war. The insurgents, in their present status, would commit an act of piracy by forcibly seizing such merchandise.

"He adds that, to the best of his information, all the foreign commanders agree with Admiral Benham, and that
the effective action of last Monday has restored complete tranquillity, broken the attempted blockade of commerce and trade, and placed everything in even motion."

Mr. Gresham, in acknowledging, on February 1, the receipt of this telegram, said "that Admiral Benham has acted within his instructions." ¹

On the 2nd of February Mr. Thompson telegraphed that the insurgents had "withdrawn their restrictive orders," that ships of all nationalities were "no longer kept from coming to the shore," and that a favorable progress was noticeable in commerce, all of which was due "to the influence of the war vessels of the United States having stopped the insurgents' fire against American merchant vessels." ²

When Admiral Benham took the action which has been narrated, Mr. Gresham's instructions to Mr. Thompson of the 11th of January had not reached Rio de Janeiro. Those instructions seem, however, to have been intended merely as an amplified and explanatory restatement of the position held by the United States from the beginning; and there is no reason to suppose that Mr. Gresham, when he telegraphed that the Admiral had "acted within his instructions," contemplated any departure from that position. On the contrary, his first inquiry, when advised of a serious situation, was whether any "change" had taken place in the attitude of the United States naval forces, and "whether a blockade is enforced by the insurgents or any attempt made by them to that end." As reported, Admiral Benham's action did not appear to have involved any question as to the right of the insurgents to prevent the supply of contraband of war to their antagonist; but it must be admitted that the intention to deny them such a right was declared in Mr. Thompson's telegram, and it was explicitly announced by Admiral Benham to Admiral da Gama in a letter of January 30, 1894, a copy of which could not, however, have reached Washington in the regular course till the insurrection was practically at an end. With regard to what had taken place, Admiral Benham in that letter said: "In no case have I interfered in the

¹ For. Rel., 1893, 115-117. ² For. Rel., 1893, 120.
PROTECTION OF COMMERCIAL OPERATIONS. 127

slightest way with the military operations of either side in the contest now going on, nor is it my intention to do so. * * * My duty is to protect Americans and American commerce, and this I intend to do to the fullest extent. American vessels must not be interfered with in any way in their movements in going to the wharves or about the harbor, it being understood, however, that they must take the consequences of getting in the line of fire where legitimate hostilities are actually in progress."

So much as to what had actually been done. Admiral Benham added, however, that there was "another point," of which it might be "well to speak." This was: "Until belligerent rights are accorded you, you have no right to exercise any authority whatever over American ships or property of any kind. You can not search neutral vessels or seize any portion of their cargoes, even though they be within the class which may be clearly defined as contraband of war, during hostilities between two independent governments. "The forcible seizure of any such articles by those under your command would be, in your present status, an act of piracy." 1

Mr. Thompson, in a telegram of February 1, 1894, stated that as the situation was understood by him Admiral Benham had maintained the same attitude as was from the first assumed by the United States forces, "except perhaps by refusing to recognize da Gama's authority." 2 This statement, read in connection with Admiral Benham's letter to Admiral da Gama, seems to refer, at least inclusively, to the question of preventing the supply of contraband.

This question, which may at any moment become a practical one to the naval officer, is left by the record in a position that can hardly be deemed satisfactory. It may be argued that, as the intention to prevent the insurgents from interfering with the supply of contraband articles to the government was clearly declared and not expressly disapproved, it was impliedly approved. On the other hand, it may be argued that, as the question was apparently not involved in the case that had arisen, the approval of what was done does not necessarily imply approval of

1 For. Rel., 1893, 122. 2 For. Rel., 1893, 118.
all that was said: that the question of vexatiously interrupting commerce by firing upon or seizing innocent neutral ships, which is not permissible in any case, and that of preventing the supply of contraband are radically different; that by Mr. Gresham's instructions of January 11, 1894, the right to carry on hostilities, even by means of a blockade, was expressly admitted to belong to the insurgents, and that this necessarily implied that they possessed the right to prevent within the national theater of hostilities the supply of contraband of war to their adversary. The record being thus inconclusive, the question may be considered in the light of elementary principles.

1. The right of insurgents to carry on hostilities against the titular government and the recognition of them as belligerents are different things and are not interdependent. When we speak of the "recognition" of belligerency, we necessarily imply the preexistence of the condition of things which we in that form acknowledge. It would not be difficult to cite instances in which insurgents have overthrown the titular government and established one of their own in its place without having received from any foreign power "recognition" as belligerents. Where such a contest exists foreign powers, if they profess to be neutral in the conflict, acknowledge, with or without recognition of belligerency, the duty of noninterference. So clearly is this the case that in recent times the word "insurgency" has found its way into the terminology of law and diplomacy, as a term denoting the existence of a state of domestic hostilities, without recognition of belligerency.

2. The existence of domestic hostilities does not confer upon foreign powers any legal authority within the jurisdiction of the nation within which the insurrection prevails; nor is such authority gained either by conceding or withholding recognition of belligerency. As regards relations with foreign powers, the nonrecognition of belligerency has two results. The first is that the parties to the conflict are denied the right to interfere with neutral vessels on the high seas. There all nations are, in time of peace, equal, none possessing any authority over another; it is only in the abnormal condition of recognized belliger-
ency that authority to interfere with such vessels on the high seas is conceded. The second result is, that the titular government remains presumptively responsible for the redress of injuries done to neutral aliens within the national jurisdiction. Should a foreign government recognize the insurgents as belligerents, it would thereby elect to look to the insurgent authorities for the redress of injuries which they may commit, and would to that extent relieve the titular government. But while responsibility may thus shift from one set of authorities to another, the national sovereignty remains supreme and the national jurisdiction inviolate. Within such jurisdiction foreign powers can set up no claim to equality with the titular sovereign as a ground on which to oppose the exercise by either party of the rights of war. Their right of interference is limited to acts of necessary self-defense, under circumstances such as justify a disregard of the rule of territorial sovereignty.

Of these distinctions an illustration may be found in a case which occurred in Colombia in 1885. During the insurrection which prevailed in that year certain vessels belonging to the United Magdalena Steam Navigation Company, an American corporation, were seized by the insurgents. The case having been laid by the company before the Government of the United States, Dr. Francis Wharton, who was then Solicitor of the Department of State, made, April 21, 1885, a report, in the course of which he said:

"When vessels belonging to citizens of the United States have been seized and are now navigated on the high seas by persons not representing any government or belligerent power recognized by the United States, such vessels may be captured and rescued by their owners, or by United States cruisers acting for such owners." ¹

In a later report of May 18, 1885, referring to the same question, Dr. Wharton repeated this opinion, and recommended that the Secretary of the Navy be requested to give instructions that the vessels thus unlawfully seized and now possessed by the insurgents be retaken when on

¹ For. Rel., 1885, 212.
the high seas by any force the United States may be able to use for that purpose." He added that, while it might be conceded that the insurgent crews manning the vessels unlawfully seized could not be regarded as pirates, yet vessels belonging to citizens of the United States so seized by them may be rescued by our cruisers acting for the owners of such vessels in the same way that we could reclaim vessels derelict on the high seas." May 19, 1885, Mr. Bayard, Secretary of State, inclosed copies of these reports to Mr. Scruggs, then minister of the United States at Bogota, and referred to the Department's recommendation "that proper instructions be immediately issued to the commander of the naval authorities in Colombia for the recapture, when on the high seas, by any force the United States may be able to use for that purpose, of the vessels of the Magdalena Steam Navigation Company thus unlawfully seized and possessed by the insurgents." 1

It is to be observed that in this case the assertion of the right of the United States naval forces to recapture the vessels was uniformly limited to the high seas. Although it by no means follows that the Government might not, under different circumstances, have gone further, this limitation is to be particularly noted, since the seizure of the vessels by the insurgents appears to have been an unlawful act of violence.

The position taken by the Department of State in 1885 has lately been reaffirmed, it being stated—in a case presenting similar conditions—that the vessel "could be re-captured for the benefit of its lawful owners on the high seas by our naval force." 2

With regard to the instructions of Mr. Fish, as quoted in the solution, 3 touching certain vessels in the service of insurgents against the Government of Haiti, it may be pointed out that no right to seize such vessels within the territorial waters of that country is asserted. The general

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1 For. Rel., 1885, 211.
2 Mr. Hay, Secretary of State, to Mr. Merry, March 3, 1899, MS. Instr. to Central America, XXI, 427, citing Mr. Bayard to Mr. Scruggs, May 19, 1885, For. Rel., 1885, 211; also, Mr. Hay, Secretary of State, to the Secretary of the Navy., March 13, 1899, 235 MS. Dom. Let., 416.
3 Supra. p. 109.
police power which all nations possess to seize and punish pirates obviously does not extend to that part of the sea which lies within the jurisdiction of particular nations. In the case before Mr. Fish the vessels in question had been declared by the Haitian Government to be piratical, and on the strength of this declaration the secretary of foreign affairs had addressed to the several members of the diplomatic corps at Port au Prince a note requesting that each Government whose representative was thus addressed would give, by means of its naval forces, "an adequate and efficacious cooperation in maintaining for the marine of the civilized world the securities of the seas." and "guarantee the protection of private property." Replying to this request, Mr. Fish, in a passage which immediately follows that quoted in the solution, but which has not heretofore been printed, said:

"No facts have been presented to this Government to create a belief that the operations of the vessels in question have been with a view to plunder or had any other than a political object. That object is hostile to a government with which the United States have maintained a friendship that it requires no fresh manifestation to evince. We deem it most decorous to leave it to that government to deal with the hostile vessels as it may find expedient, reserving the consideration of our action in respect to them till some offense, actual or apprehended, to the United States shall render it imperative." 1

In a recent case the Department of State discussed a suggestion which had been put forward in a country in which an insurrection prevailed, that the acts of insurgents were to be considered as mere "lawlessness" against the established authority, and that any injury which they might do to the persons or property of foreign noncombatants should be "looked upon as outlawry on mankind," for the prevention of which the naval forces of foreign powers might be employed. With regard to this suggestion the Department of State expressed the opinion that it failed to discriminate between the right of a foreign

1 Mr. Fish, Sec. of State, to Mr. Bassett, Sept. 14, 1869, MS. Instr. to Haiti, I, 150.
naval force to extend protection against "wanton injury by whatever aggressor," and the supposed obligation to treat the acts of insurgents as outlawry; that this supposed obligation, since it proceeded upon the theory that the insurrection itself was to be treated as an act of lawlessness, would imply the duty of siding with the titular authorities against the insurgents; that this would obviously be incompatible with the dictates of neutrality; and that the only duty of foreign naval forces was to shield the persons and property of alien neutrals placed under their protection against "acts of wanton injury," to which end they might "in extreme need be rightfully employed."¹

3. We have seen (1) that the right of parties to a domestic conflict to carry on hostilities does not depend upon the recognition of belligerency, and (2) that, as the existence of domestic hostilities confers no authority upon foreign powers within the jurisdiction of the nation in which the insurrection prevails, such powers are not allowed to interfere there except upon the ground of necessary self-defense against acts of wanton injury. The question therefore arises whether the act of insurgents in preventing the supply of contraband, such as arms and munitions of war, to the government against which they are carrying on hostilities is such an injury, or whether it can be considered as an injury at all. In order to answer this question it is necessary to consider the nature of the act which the insurgents seek to prevent.

Much misapprehension as to the quality of the act of supplying contraband articles, such as arms and munitions of war, to the parties to an armed conflict, has arisen from the statement so often made that the trade in contraband is lawful and not prohibited. This statement, when used with reference to the preventive duties of neutral governments, is quite correct, but if applied to the duties of individuals it is quite incorrect. The acts which individuals are forbidden to commit and the acts which neutral governments are obliged to prevent are by no means the same; precisely as the acts which the neutral government is obliged to prevent and the acts which it is forbid-

¹ Mr. Hay, Sec. of State, to Sec. of the Navy, Oct. 17, 1869, 240 MS. Dom. Let., 534.
den to commit are by no means the same. The supply of materials of war, such as arms and ammunition, to either party to an armed conflict, although neutral governments are not obliged to prevent it, constitutes on the part of the individuals who engage in it a participation in hostilities, and as such is confessedly an unneutral act. Should the government of the individual itself supply such articles it would clearly depart from its position of neutrality. The private citizen undertakes the business at his own risk, and against this risk his government can not assure him protection without making itself a party to his unneutral act.

These propositions are abundantly established by authority.

Maritime states, says Heffter, have adopted, "in a common and reciprocal interest, the rule that belligerents have the right to restrict the freedom of neutral commerce so far as concerns contraband of war, and to punish violations of the law in that regard. * * * This right has never been seriously denied to belligerents." 1

Says Kent: "The principal restriction which the law of nations imposes on the trade of neutrals is the prohibition to furnish the belligerent parties with warlike stores and other articles which are directly auxiliary to warlike purposes." 2

"If the neutral [government]," says Woolsey, "should send powder or balls, cannon or rifles, this would be a direct encouragement of the war, and so a departure from the neutral position. * * * Now, the same wrong is committed when a private trader, without the privy of his government, furnishes the means of war to either of the warring parties. It may be made a question whether such conduct on the part of the private citizen ought not to be prevented by his government, even as enlistments for foreign armies on neutral soil are made penal. But it is difficult for a government to watch narrowly the operations of trade, and it is annoying for the innocent trader. Moreover, the neutral ought not to be subjected by the quarrels of others to additional care and expense. Hence

1 Heffter, Droit Int., Bergson's ed., by Geffcken, 1883, p. 384.
by the practice of nations he is passive in regard to violations of the rules concerning contraband, blockade, and the like, and leaves the police of the sea and the punishing or reprisal power in the hands of those who are most interested, the limits being fixed for the punishment by common usage or law. * * * It is admitted that the act of carrying to the enemy articles directly useful in war is a wrong, for which the injured party may punish the neutral taken in the act.”

Says Manning: “The right of belligerents to prevent neutrals from carrying to an enemy articles that may serve him in the direct prosecution of his hostile purposes has been acknowledged by all authorities, and is obvious to plain reason. * * * The nonrecognition of this right * * * would place it in the power of neutrals to interfere directly in the issue of wars—those who, by definition, are not parties in the contest thus receiving a power to injure a belligerent, which even if direct enemies they would not possess.”

“A belligerent,” says Creasy, “has by international law a right to seize at sea, and to appropriate or destroy, articles, to whomsoever they may belong, which are calculated to aid the belligerent’s enemy in the war, and which are being conveyed by sea to that enemy’s territory.”

“The neutral power,” says Holland, “is under no obligation to prevent its subjects from engaging in the running of blockades, in shipping or carrying contraband, or in carrying troops or dispatches from one of the belligerents; but, on the other hand, neutral subjects so engaged can expect no protection from their own government against such customary penalties as may be imposed upon their conduct by the belligerent who is aggrieved by it.”

“By this term [contraband] we now understand,” says Baker, “a class of articles of commerce which neutrals are prohibited from furnishing to either one of the belligerents, for the reason that by so doing injury is done to

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1 Woolsey, Int. Law, §§ 178, 179.
3 Creasy, First Platform of Int. Law, 604.
4 Holland, Studies in International Law, 124-125.
the other belligerent. To carry on this class of commerce is deemed a violation of neutral duty, inasmuch as it necessarily interferes with the operations of the war by furnishing assistance to the belligerent to whom such prohibited articles are supplied."1

It may be observed that in some of the foregoing quotations the question is discussed as one affecting the rights of "belligerents." But the question of belligerency is important only as affecting the question of the right of seizure on the high seas. The circumstance that the parties, in consequence of the nonrecognition of their belligerency, are not permitted to exercise visitation and search on the high seas does not alter the nature or detract from the unnuetral character of the act of supplying arms and munitions of war to the parties to an armed conflict.

The fact that the supplying of such articles is considered as a participation in the hostilities is shown not only by the authority of writers, but also by numerous state papers.

President Washington, in his famous neutrality proclamation of April 22, 1793, countersigned by Mr. Jefferson, as Secretary of State, announced "that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture."2

Mr. Jefferson, in the subsequent note to the British minister, quoted in Wharton's Digest (I, 510), observes that in the case of contraband the law of nations is satisfied with the "external penalty" pronounced in the President's proclamation.

President Grant, in the proclamation issued by him August 22, 1870, during the Franco-German war, declares, in the most precise terms:

"While all persons may lawfully, and without restriction, by reason of the aforesaid state of war, manufacture

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1 Baker's First Steps in International Law, 281.
2 Am. State Papers, For. Rel., I, 140.
and sell within the United States arms and munitions of war, and other articles ordinarily known as ‘contraband of war,’ yet they can not carry such articles upon the high seas for the use or service of either belligerent, * * * without incurring the risk of hostile capture and the penalties denounced by the law of nations in that behalf. And I do hereby give notice that all citizens of the United States, and others who may claim the protection of this Government, who may misconduct themselves in the premises, will do so at their peril, and that they can in no wise obtain any protection from the Government of the United States against the consequences of their misconduct.”¹

In the neutrality proclamations, issued during the war between the United States and Spain, the following provisions are found, in which the furnishing of arms and munitions of war to either party to the conflict is expressly treated as an act of unneutrality.

The Brazilian Government, by a circular of April 29, 1898, declared to be “absolutely prohibited” the “exportation of material of war from the ports of Brazil to those of either of the belligerent powers, under the Brazilian flag or that of any other nation.”²

The King of Denmark issued April 29, 1898, a proclamation prohibiting Danish subjects “to transport contraband of war for any of the belligerent powers.”³

Great Britain’s proclamation of April 23, 1898, warned British subjects against doing any act “in derogation of their duty as subjects of a neutral power,” or “in violation or contravention of the law of nations,” among which was enumerated the carrying of “arms, ammunition, military stores or materials;” and declared that “all persons so offending, together with their ships and goods, will rightfully incur and be justly liable to hostile capture, and to the penalties denounced by the law of nations.”⁴

The governor of Curacao, acting under instructions of the minister of the colonies of the Netherlands, issued a

¹ Wharton’s Dig., 111, 607-608.
² Proclamations and Decrees during the War with Spain, 13.
³ Proclamations, 22.
⁴ Proclamations, 35.
DOCTRINE OF INFECTION.

decree prohibiting "the exportation of arms, ammunition, or other war materials to the belligerents." 1

Portugal, while stating, in Article IV of her neutrality decree of April 29, 1898, that "all articles of lawful commerce" belonging to subjects of the belligerent powers might be carried under the Portuguese flag, and that such articles belonging to Portuguese subjects might be carried under the flag of either belligerent, yet declared: "Articles that may be considered as contraband of war are expressly excluded from the provisions of this article." 2

Were further proof needed of the unneutral and noxious character of contraband trade, it might be found in the doctrine of infection, under which innocent cargo is condemned when associated with contraband merchandise of the same proprietor, and the transportation penalized by loss of freight and expenses, and, under various circumstances, by confiscation of the ship. 3

From what has been shown it may be argued that, without regard to the recognition or nonrecognition of belligerency, a party to a civil conflict who seeks to prevent, within the national jurisdiction and at the scene of hostilities, the supply of arms and munitions of war to his adversary commits not an act of injury, but an act of self-defense, authorized by the state of hostilities; that, the right to carry on hostilities being admitted, it seems to follow that each party possesses, incidentally, the right to prevent the other from being supplied with the weapons of war; and that any aid or protection given by a foreign government to an individual to enable him with impunity to supply either party with such articles is to that extent an act of intervention in the contest.

1 Proclamations, 27.
2 Proclamations, 61. (See also, the proclamation of the toatai of Shanghai, id., 20, and the instructions of the Haitian Government, id., 39.)
3 Walker's Science of Int. Law, 511-512.