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International Law Situations with Solutions and Notes

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SITUATION VIII.

States X and Y are at war. A port of X is duly declared under siege by the land forces of Y and all communication with the port is declared closed, and all communication except by sea is cut off. Y is not maintaining an effective blockade of the port. A United States merchant vessel carries in flour for the use of the citizens and sells it at the port, when departing is seen just at the entrance of the port by a cruiser of Y, chased into the open sea, and there seized.

The captain of the merchant vessel, when brought into port, requests the assistance of the commander of a war vessel of the United States in obtaining his release, referring to a telegram of the Navy Department in the Spanish war which contained among other items: "Neutrals have a right to trade with ports not proclaimed blockaded."

What action should the commander take, and why?

SOLUTION.

The commander of a United States war vessel should inform the captain of the merchant vessel that the state of actually existing siege of the port made the act of carrying supplies to the port of Y one which constituted a departure from neutral duty and rendered the merchant vessel liable to penalty.

He could assure the captain that he would endeavor to make sure that he should have a fair trial.

NOTES ON SITUATION VIII.

THE EFFECT OF A SIEGE ON MARITIME COMMERCE.

The Telegram.—The portion of the telegram to which reference is made is upon page 298 of Naval Operations of the War with Spain, and is as follows:

WASHINGTON, D. C., August 10, 1898.

HOWELL, Naval Base, Key West, Fla.:

Replying to the last three lines of your telegram of the 8th instant, it is considered best for a few days not
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to extend blockade beyond what has already been proclaimed. Beyond these limits be very careful not to seize vessels, unless Spanish or carrying contraband of war, as neutrals have right to trade with ports not proclaimed blockaded.

ALLEN, Acting Secretary.

This telegram was not intended to enunciate a general principle but merely to give instructions on a particular case which arose under order to "station between Port Nipe and Nuevitas sufficient force to prevent any expedition reaching Holguin between these two points, and make other disposition of the force under your command that will blockade north coast of Cuba as far as it is possible to do so with the force under your command." This telegram, as is shown in the full report, was not intended to apply to a state of siege, but merely to ordinary blockade of the coast.

In the "Situation" under consideration a siege is duly proclaimed and maintained by the forces of state Y. This siege is so effective that all communication with the port of state X, except by sea, is cut off. Under such circumstances it is held that the actions of neutrals are judged by the laws of siege rather than the laws of blockade.

The nature of a siege.—The laying of a siege is a hostile act effecting directly the population of the place besieged. It is a portion of the military operations intended to reduce the enemy to submission by cutting off all communication other than that specifically allowed to the besieged or that allowed by custom, e.g., communication by diplomatic agents with their own country.

The act of the neutral vessel bringing flour is an act that would directly tend to prolong the siege and make the achievement of the military end more difficult.

This is not simply an ordinary act of commerce.

"As a general principle, subjects of a neutral state may carry on commerce in the time of war as in the time of peace. At the same time, owing to the fact of war, a belligerent has the right to take measures to reduce his opponent to subjection. The general right of the neutral and the special right of the belligerent come into
opposition. The problem becomes one of 'taking into consideration the respective rights of the belligerents and of the neutrals; rights of the belligerents to place their opponent beyond the power of resistance, but respecting the liberty and independence of the neutral in doing this; rights of the neutral to maintain with each of the belligerents free commercial relations, without injury to the opponent of either.'

Grotius\(^2\) says, in speaking of what we call conditional contraband in such cases:

"The state of the war is to be considered. For if I can not defend myself except by intercepting what is sent, necessity, as elsewhere explained, gives us a right to intercept it, but under the obligation of restitution, except there be cause to the contrary. If the supplies sent impede the exaction of my rights, and if he who sends them may know this—as if I were besieging a town, or blockading a port, and if surrender or peace were expected—he will be bound to me for damages, as a person would who liberates a debtor from prison, or assists his flight to my injury; and to the extent of the damage, his property may be taken and ownership thereof be assumed for the sake of recovering my debt. If he has not yet caused damage, but has tried to cause it, I shall have a right by the retention of his property to compel him to give security for the future, by hostages, pledges, or in some other way."

Bynkershoek,\(^3\) while maintaining the position of Grotius, is more explicit in making a general denial of approach to assist in any way a besieged place.

Vattel\(^1\) says:

"All commerce with a besieged town is absolutely prohibited. If I lay siege to a place, or even simply blockade it, I have a right to hinder anyone from entering, and to treat as an enemy whoever attempts to enter the place to carry anything to the besieged without my

\(^1\) Wilson & Tucker, Int. Law, p. 299, sec. 130.
\(^2\) De Jure Belli ac Pacis, lib. III, cap. I, Sec. 5, 3 Whewell's ed.
\(^3\) Quaestionum Juris Publici, Lib. I, Cap. IV et XI.
\(^4\) Law of Nations, Bk. III, sec. 117.
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leave; for he opposes my undertaking, and may con-tribute to the miscarriage of it, and thus involve me in all the misfortunes of an unsuccessful war.”

Duer¹ maintains that, in general, the purpose of a blockade is to reduce the enemy by intercepting commerce, implying no act of direct hostility against the inhabitants of the place itself for the purpose of compelling surrender. The object of the siege, on the other hand, is to compel the place to capitulate or to reduce it by such means as may be within the power of the besiegers. The purpose is to use force to attain the object.

“IT does not follow from this rule (in regard to effects of commercial blockade) that, when a port is besieged by land but not blockaded by sea, the trade might be lawfully carried on by sea. This would be an infringement on the belligerent’s right of siege. The primary object of a siege being the reduction of the besieged place, all communication of neutrals with such a place, whether by water or by land, is a violation of neutrality.”²

“The aim of a siege is the capture of a strong place or town beset. The aim of a blockade is to put stress on the population of a port or on the population behind it through denying it communication, commercial or otherwise, with the rest of the world accessible to it only by sea.”³

“The general right possessed by a belligerent of restraining commercial acts done by private persons, which materially obstruct the conduct of hostilities, gives rise to several distinct groups of usage corresponding to different commercial relations between neutrals and the other belligerents.

“All trade divides itself into two great heads. It consists either in the purchase or sale of goods, or in carrying them for hire from one place to another. The purchase of goods by a neutral is the subject of no belligerent restriction. The general principle that a neutral has a right to trade with his belligerent friend necessarily covers a commerce by which the war can in

¹ On Insurance, I, lect. 7, sec. 32.
³ Maine, Int. Law, p. 108.
no case be directly affected. The belligerent gains nothing else than his mercantile profit, and to forbid such trade would therefore be to forbid all trade. But by the sale of goods the neutral may provide his customer with articles which, either by their own nature or from some peculiar need on the part of the belligerent, may be of special use in the conduct of hostilities. These, therefore, the enemy of the latter may intercept on their road after leaving neutral soil, and before sale to a belligerent purchaser has transformed them into goods liable to seizure as enemy property. Again, under the second head, a neutral may send articles innocent in themselves for sale in places access to which the belligerent thinks it necessary for the successful issue of his war to forbid altogether, and which he is allowed to bar by so placing an armed force as to make the approach dangerous; or the neutral may employ his ships in effecting a transport illicit because of the character of the merchandise or of the place to which it is taken; or finally he may associate his property with that of the belligerent in such manner as to show the existence of a community of interest, or an intention of using his neutral character to protect his friend. The effect of the various acts which fall under these heads differs with the degree of noxiousness which is attributed to them; but in all cases, as the possession of a right carries with it the further right to use the means necessary for its enforcement, the belligerent is allowed to inflict penalties of sufficient severity to be deterrent.

"The larger bodies of practice which have asserted themselves successfully with reference to these divisions may on the whole be explained by the more or less reasonable application of the principle that a belligerent has the right to carry on his operations without obstruction. It is easy to see the relation to this principle of the prohibition to carry goods the supply of which may increase the strength of a belligerent, and of that to carry any goods to besieged places."¹

"The word blockade properly denotes obstructing the passage into or from a place on either element, but is

more especially applied to naval forces preventing communication by water. Unlike siege, it implies no intention to get possession of the blockaded place. With blockades by land or ordinary sieges neutrals have usually little to do.’’¹

“There is an important distinction between sieges and blockades. The former are, as a rule, undertaken with the object of capturing the place besieged, while the usual object of the latter is to cripple the resources of the enemy by intercepting his commerce with neutral states.”²

Halleck³ treats the matter of sieges very fully; reviewing earlier writers he says:

“Grotius considers the carrying of supplies to a besieged town or a blockaded port as an offense exceedingly aggravated and injurious; both agree that a neutral so offending may be severely dealt with; Vattel says that he may be treated as a public enemy. The views of these distinguished founders of international law are fully concurred in by the opinions of modern publicists, and by the prize courts of all countries. The right of a belligerent to invest the places and ports of an enemy so as to entirely exclude the commerce (otherwise lawful) of neutrals during the continuance of the investment, to prevent exports as well as imports, and to cut off all communication of commerce with the blockaded place, is undisputed, and, however serious the grievance, it is one to which neutral governments and their subjects are bound to submit. But as this right of the belligerent is an exception to the general rights of neutrals, and bears with great severity upon their interests, its exercise is always watched with peculiar jealousy, in order to prevent its necessary evils from being aggravated by a lax construction of the laws which regulate its application.

“A siege is a military investment of a place, so as to intercept, or render dangerous, all communications between the occupants and persons outside of the besieging army; and the place is said to be blockaded when

such communication, by water, is either entirely cut off or rendered dangerous by the presence of the blockading squadron. A place may be both besieged and blockaded at the same time, or its communications by water may be intercepted, while those by land may be left open, and vice versa. Both are instituted by the rights of war, and for the purpose of injuring the enemy, and both impose upon neutrals the duty of not interfering with the operations of the belligerents. But there is an important distinction, with respect to neutral commerce, between a maritime blockade and military siege. The object of a blockade is solely to distress the enemy, intercepting his commerce with neutral states. It does not, generally, look to the surrender or reduction of the blockaded port, nor does it necessarily imply the commission of hostilities against the inhabitants of the place. The object of a military siege is, on the other hand, to reduce the place by capitulation, or otherwise, into the possession of the besiegers. It is by the direct application of force that this object is sought to be attained, and it is only by forcible resistance that it can be defeated. Hence, every besieged place is, for the time, a military post; for even when it is not defended by the military garrison, its inhabitants are converted into soldiers by the necessity of self-defense. This distinction is not merely nominal, but, as will be shown hereafter, leads to important consequences in determining the rights of neutral commerce and in deciding questions of capture.

"It might be inferred by parity of reasoning that, when a port is under a military siege, neutral commerce might still be lawfully carried on by sea, through channels of communication which could not be obstructed by the forces of the besieging army. But such inference would not be strictly correct, for the difference between a blockade and a siege, in their character and object, have led to a difference in the rules applicable, in the two cases, to neutral commerce. Although the legal effects of a siege on land that is purely a military investment of a naval or commercial port may not be an entire prohibition of neutral commerce, yet it does not leave the ordinary communications by sea open
and unrestricted, as a purely maritime blockade leaves the interior communications by land. The primary object of a blockade is, as we have already said, to prohibit commerce; but the primary object of a siege is the reduction of the place. All writers on international law impose upon neutrals the duty of not interfering with this object. To supply the inhabitants of the place besieged with anything required for immediate use, such as provisions and clothing, might be giving them aid to prolong their resistance. It is, therefore, a clear departure from neutral duty to furnish supplies, even of possible utility, to a port in a state of siege, although communication by sea may be open. It would be a direct interference in the war, tending to the relief of one belligerent and to the prejudice of the other; and such supplies are justly deemed contraband of war, to the same extent as if destined to the immediate use of the army or navy of the enemy. Hence, although the prohibition of neutral commerce with a port besieged be not entire, yet it will extend to all supplies of even possible utility in prolonging the siege."

Conclusion.—It will be seen that the international law makes a vessel liable to punishment when aiding a besieged place by useful supplies. Such action is regarded as "a clear departure from neutral duty." The action of the United States merchant vessel in carrying flour for the use of the citizens of the besieged place is clearly an act which is a "departure from neutral duty."

As, by the statement, the chase began at the entrance to the port and continued into the open sea, the vessel being guilty, capture was legal as a case of continuous pursuit begun within the jurisdiction of the pursuing party though continued on the high seas. The cruiser of state Y had full right to seize a guilty merchant vessel of the United States under the conditions given.

The reference of the captain of the merchant vessel was to a telegram referring only to a state of blockade, when it is true that "neutrals have right to trade with ports not proclaimed blockaded." This telegram is therefore not applicable to the case under consideration.
The commander of the United States war vessel should therefore inform the captain of the merchant vessel that the state of siege of the port of Y made the act of carrying supplies to the port of Y one which was a departure from neutral duty and one which rendered the merchant vessel liable to capture under the circumstances.

He might assure the captain that he would endeavor to see that a fair trial should be given him.