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 VI.

Insurgents in state A, with which the United States has full international relations, proclaim and maintain a blockade of a port occupied by state A. The captain of an American merchant ship complains to the commander of an approaching United States war ship that he can not enter port without incurring risk of the penalties for violation of blockade and desires the assistance of the United States war ship in entering the port on the ground that no war exists in state A, and he is therefore entitled by treaty and on general principles to enter this port.

What position should the commander assume?

How far is the commander of the merchant ship correct in his contentions?

SOLUTION.

The commander of the United States war ship should assume the position that, in general, naval officers of the United States will permit no interference with ordinary commerce of the United States, unless they are duly instructed by their Government. (The above position should be considered with reference to the conclusions set forth on page 74.)

The captain of the merchant vessel is correct in his claim in regard to general principles, and most treaties secure commercial freedom.

NOTES ON SITUATION VI.

PREVENTION OF ENTRY OF NEUTRAL COMMERCE BY INSURGENTS.

Definition of blockade.—The simple enumerated clauses of the Declaration of Paris, 1856, of which the fourth is applicable to blockades, viz: "Blockades in order to be binding must be effective; that is to say, maintained by force sufficient really to prevent access to the coast of the enemy," are often quoted as though these
were principles always applicable. There were prior clauses indicating under what circumstances these laws were applicable as, "Considering: That maritime law in time of war has long been the subject of deplorable disputes; that the uncertainty of the law and of the duties in such a matter give rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts," etc. These show distinctly that blockade as viewed in this declaration was a war measure.

In the Naval War College Manual of International Law, page 151, blockade is defined: "A blockade being an operation of war, any government, independent or de facto, whose rights as a belligerent are recognized, can institute it as an exercise of those rights."

Hall¹ says: "Blockade consists in the interception by a belligerent of access to a territory or a place which is in the possession of his enemy." This implies the three conditions:²

"1. The belligerent must intend to institute it as a distinct and substantive measure of war, and his intention must have in some way been brought to the knowledge of the neutrals affected.

"2. It must have been initiated under sufficient authority.

"3. It must be maintained by a sufficient and properly disposed force."

Dahlgren³ defines blockade as follows:

"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. With blockades by land, or ordinary sieges, neutrals have usually little to do."

Walker says:⁴

"The blockade must have been established under the sanction of sufficient authority. A blockade to be legally binding must be a state measure. It may be a

DEFINITION OF BLOCKADE.

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direct state measure instituted under formal ministerial notice, or by an officer in pursuance of special instructions from his government, or it may be but indirectly a state measure being established de facto by a belligerent commander in the exercise of the general powers ordinarily committed to him. But in this last case, as, for example, when the naval commander on a distant station institutes a blockade without awaiting the prior express authorization of his home authorities, the neutral trader can only be injuriously affected if the action of the officer be subsequently formally adopted by his government."

Dana, in a note to Wheaton’s International Law,¹ takes a more extreme position than is now generally accepted in regard to piracy. In speaking of the case where the insurgents and parent state are maritime he says:

“If the contest is a war, all foreign citizens and officers, whether executive or judicial, are to follow one line of conduct. If it is not a war they are to follow a totally different line. If it is a war, the commissioned cruisers of both sides may stop, search, and capture the foreign merchant vessel, and that vessel must make no resistance and must submit to adjudication by a prize court. If it is not a war the cruisers of neither party can stop or search the foreign merchant vessel, and that vessel may resist all attempts in that direction, and the ships of war of the foreign state may attack and capture any cruiser persisting in the attempt. If it is war, foreign nations must await the adjudication of prize tribunals. If it is not war no such tribunal can be opened. If it is a war, the parent state may institute a blockade jure gentium of the insurgents’ ports which foreigners must respect; but if it is not a war, foreign nations having large commercial intercourse with the country will not respect a closing of insurgent ports by paper decrees only. If it is a war, the insurgent cruisers are to be treated by foreign citizens and officials at sea and in port as lawful belligerents. If it is not a war, those cruisers are pirates and may be treated as such.”

¹Note 15, p. 35.
Boyd, in his note to Wheaton, 510a, says: "The law of blockade, like that of contraband is a compromise between the conflicting rights of belligerents and neutrals."

Rivier\(^1\) says: "The ships of a state are alone competent to blockade."

Martens\(^2\) says: "Maritime blockade can be established only by the supreme authority of a belligerent state."

Despagnet\(^3\) asserts that blockade is possible only after a declaration of war, and that blockade in civil wars is not in principle effective against neutrals, who are bound to respect only international hostilities properly so called.

Bluntschli\(^4\) maintains that the decree of a blockade is a governmental act.

Phillimore\(^5\) says:
"A blockade is a high act of sovereign power; it is a right of a very severe nature, operating lawfully but often harshly, upon neutrals, and therefore not to be aggravated or extended by construction.

"Sec. 299. It will be seen that there is no act by which a neutral more clearly and deservedly forfeits the immunities of his national character than by violation of a belligerent blockade."

It may be concluded that blockade by reasonable interpretation is a war measure permitted only to belligerents who are accorded other belligerent rights, and that it can be declared and executed by such competent belligerents only.

That parties entitled to establish blockade must be entitled to rights of belligerents is further evident from the consequences of a blockade as regards both ship and cargo. The ship may be confiscated if guilty of violation of the blockade. The cargo is confiscated if belonging to the owners of the ship or directly associated in its guilt.

\(^1\) Droit du Gens, II, p. 289.
\(^2\) F. de, Droit Int., III. p. 288.
\(^3\) Droit Int., p. 635, sec. 620.
\(^4\) Sec. 831, 1.
This confiscation should take place only after proper evidence of guilt, which in case of so-called blockade by insurgents not having belligerents status is at least very difficult of proof.

On the other hand, it has been held that: "Ships armed by factions opposed to the constituted government and not recognized as belligerents lack all representative character; they may be taken on the high sea or in the waters of their former state when they violate the law of nations to the injury of third states or their citizens."  

In 1885, April 21, Mr. Wharton, Solicitor for the Department of State, enunciated the following:

"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 the United States cruisers acting for such owners; and all force which is necessary for such purpose may be used to make the capture effectual."

The United States Revised Statutes, sec. 4295, provides:

"The commander and crew of any merchant vessel of the United States owned wholly or in part by a citizen thereof may oppose and defend against any aggression, search, restraint, depredation or seizure which shall be attempted upon such vessel, or upon any other vessel so owned, by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States, and may subdue and capture the same; and may also retake any vessel so owned which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of the United States."

This section of the Revised Statutes makes it lawful for a private vessel to resist the aggression of an insurgent not yet recognized as a belligerent.

The opinion of the court is that:

"To justify the exercise of the right of blockade, and legalise the capture of a neutral vessel for violating it,

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1 Calvo, Droit Int., sec. 501.
a state of actual war must exist, and the neutral must have knowledge or notice that it is the intention of one belligerent to blockade the ports of the other. To create the right of blockade, and other belligerent rights, as of capture, as against neutrals, it is not necessary that the party claiming them should be at war with a separate and independent power; the parties to a civil war are in the same predicament as two nations who engage in a contest and have recourse to arms. A state of actual war may exist without any formal declaration of it by either party; and this is true of both a civil and a foreign war."

It would seem from the consensus of authorities that blockade is strictly a war measure; that blockade implies the existence of belligerents and neutrals; that blockade is a measure of such grave consequences to the neutral that it should be allowed only under circumstances admitting of no doubt of the propriety of the action; that the generally accepted rule that a blockade to be binding must be effective, applies only to blockades properly instituted in the time of war; and that the earlier action the United States has been to disregard action of the nature of an insurgent blockade.

This would lead to the opinion that from authorities and general principles, as from the earlier practice of the United States, an insurgent blockade, as in the situation proposed, should not be regarded.

ATTITUDE TOWARD INSURGENCY.

(a) *English.*—T. J. Lawrence, in 1 1897, said:

"In each [case] a group of powers planned and carried out concerted action with regard to both the parties in a maritime struggle between an established government and a revolted fleet acting in the interest of insurgents whose belligerency was not recognized. Any deductions we may be able to draw from their proceedings have,

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1 The Prize Cases, 3 Black., 635; 3 Whart. Dig., p. 362.
therefore, a greater authority than conclusions based upon the action of one or two states only.

"In January, 1891, a few days after the commencement of the revolt of the Congressional party in Chile, the diplomatic representatives of Great Britain, Germany, France, and the United States met the Chilean minister for foreign affairs. They agreed that the blockade of Valparaiso and Iquique, notified by the revolted fleet, was illegal, and instructed their consuls in the two ports to protest against it. This was done, and the protests were backed up by the concentration of a considerable number of neutral men-of-war in Chilean waters, the strongest force being the British squadron under Rear Admiral Hotham. The insurgents were careful to conciliate neutral opinion. They committed few violent acts against British shipping. Their blockades were not enforced against foreign vessels; and in February, 1891, at the instance of Rear Admiral Hotham, their naval commanders were instructed by the proper officer of their government that 'it is absolutely necessary to respect foreign interests, and to limit our vigilance in ships under a foreign flag solely to articles which are contraband of war.' This reservation of a right to capture contraband goods seems to have been acquiesced in by the British commander and the other neutral representatives. Rear Admiral Hotham contented himself with pointing out that cargoes of coal and provisions bona fide consigned to noncombatants could not be considered contraband of war. He added that 'any seizure or detention of vessels carrying such cargoes is a gross breach of their neutral rights,' thus admitting by implication the legality of the capture of neutral vessels laden with goods undoubtedly contraband. I can not, however, understand on what principle a blockade can be held to be unlawful, while the seizure of contraband of war is lawful. Both operations are permitted to regular belligerents. The right to perform them is given by war, and by war alone. Neutrals are not bound to submit to either if there is no war in the full legal sense of the word. The distinction drawn between them seems to point to some confusion of ideas on the part of the
British Foreign Office. I can not help thinking that it was not fully prepared for the problems which suddenly confronted it at this time; and I am confirmed in this view by finding a brief note to Messrs. Smith & Service, sent at the beginning of the insurrection. It runs thus: ‘Assuming effective blockade to exist, escort through it can not be given.’ One ought not, perhaps, to lay much stress upon a telegraphic dispatch, forwarded in haste to meet an emergency; but certainly the words I have quoted appear to indicate that Great Britain was at that moment prepared to recognize the insurgent blockades, provided only they were effective. If that be so, she changed her mind very quickly, and I can not help thinking that in this case second thoughts were best. In other matters the theory was maintained that neutral powers had no concern with domestic disturbances and would not permit the exercise of warlike operations against their subjects. We declined to accept the Chilean Government’s declaration of nonresponsibility for the acts of the insurgent fleet. We refused to recognize the validity of the decree whereby it closed ports in the effective possession of the insurgents, or to allow it to exact a second time from British vessels export duties which had been already paid to insurgent authorities in possession of the port of export. We declared we should hold it responsible for any loss that might fall upon British subjects if it carried out its proposed policy of destroying the nitrate factories, and we declined to put the foreign enlistment act into force in our ports. Further, it may be noted that in this case, as in all others, communications between neutral powers and the rebel leaders were made through the consuls and naval or military officers of the former, and not through their diplomatic representatives.

“The next and last case need not detain us long. It commenced in September, 1893, and lasted till March, 1894. During these seven months the greater part of the Brazilian fleet was in rebellion against the established government. Under Admirals de Mello and da Gama it occupied the inner harbor of Rio de Janeiro, and kept up an artillery duel with the forts and batteries
that remained faithful to the regular authorities. As soon as the insurrection commenced the various foreign legations concerted measures to keep open trade and prevent a bombardment. On October 2, 1893, De Mello was informed by the commanders of the English, American, French, Italian, and Portuguese naval forces before Rio that they would resist, by force if needful, any attack on the city; and the diplomatic representatives of the powers in question requested the government to refrain from fortifying the inhabited and commercial quarters. Thus the insurgent admiral was to be deprived of any pretext for attack, and a sort of *modus vivendi* would be established. This was done, and in the course of the diplomatic correspondence on the subject the foreign representatives disclaimed all design of interfering in the internal affairs of Brazil, and declared that their action would be limited to 'the necessity of protecting the general interests of humanity and the lives and property of their countrymen.' On the whole, these limitations were observed. Anything like a general bombardment of Rio de Janeiro was prevented. Neutral merchantmen were protected while loading and unloading, and, on one occasion, after an American boat had been fired upon by an insurgent vessel, the American admiral, Benham, returned the fire from the *Detroit*. After this occurrence the insurgents became more careful. The principles which should guide foreign powers in such cases were laid down in a dispatch of January 11, 1894, from the late Judge Gresham, then Secretary of State in President Cleveland's Cabinet, to Mr. Thompson, the American minister at Rio. The views therein expressed are, with one exception, so sound that I make no apology for quoting them. The American statesman wrote: 'An actual condition of hostilities existing, this Government has no desire 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 * * * interference * * * 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 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.’ The exception to the general soundness of these views is to be found in the last clause. A fleet of irresponsible sea rovers has no right to establish a blockade against foreign vessels. The more effective the blockade, the worse is the outrage. None but recognized belligerents in a regular war can exercise belligerent rights against neutral commerce. ‘We are now in a position to sum up the results of a long inquiry. Much uncertainty has been felt as to the rights and duties of neutral powers toward a maritime force whose belligerency has not been recognized. The rules of international law are deduced from the practice of states, and in this matter practice has not been quite uniform or consistent. Considerations connected with piracy have been allowed to intrude into the question and darken its solution. But recent cases show a tendency toward the adoption of rules and principles which only require to be clearly stated and divested of extraneous matter in order to meet with general acceptance. A state can not rid itself of responsibility for the acts of its rebel cruisers by proclaiming them pirates. Such a proclamation has no international validity. All it can do is to alter the status of the vessels according to the municipal law of the country to which they belong. Foreigners must regulate their conduct toward such vessels without reference to a purely domestic question. If the ships in question attempt to establish blockades against neutral commerce, or bombard neutral property, or molest neutral vessels pursuing their lawful avocations on the high seas or in the territorial waters which are the scene of conflict, the injured neutral may proceed against them directly, and use what force is necessary to compel them to desist. It knows three things: There is no war; its subjects have been treated as if there were war; those who have inflicted this treatment have no recognized government behind them to be answerable for their misdeeds. Under
such circumstances, it simply says to the parties concerned: 'Fight out your own quarrel with your own countrymen. With that I have no concern. But, unless and until you receive recognition as lawful belligerents, I will not submit to the exercise of belligerent rights against my subjects or my sea-borne commerce.' This is an intelligible rule. It rests upon admitted principles, and is a sure guide in practice. Moreover, it has the further advantage of avoiding all questions connected with piracy and limiting the action of the aggrieved power to what is necessary for the protection of its own interests. The injured neutral strikes directly at the offender, just as it does when the ship of a recognized belligerent attempts to make a capture in one of its ports. Force would be used then, though the peccant vessel would not be in the position of an authorized depredator. Much more, therefore, may it be used against ships which bear the commission of no recognized authorities. But in neither case does the use of it imply a pronouncement upon technicalities connected with the exact position in international law of the vessel attacked. If it be objected that there is no middle term between a belligerent and a pirate, and that a ship engaged in acts of depredation at sea must be the latter when it is not the former, I reply that the cases collected in this paper point to a condition midway between the two."

For this position between belligerency and piracy Mr. Lawrance would approve the term insurgency. The English view as expressed by Mr. Lawrance has met with general approval.

(b) United States in recent years.—Recently the United States has not hesitated to admit the existence of insurgency without acknowledging belligerency.

The proclamation issued by President Cleveland, June 12, 1895, announces that the island of Cuba was the "seat of serious civil disturbances accompanied by armed resistance to the authority of the established government of Spain." In his annual message, December 2, 1895, President Cleveland says:

"Cuba is gravely disturbed. An insurrection, in some respects more active than the last preceding revolt,
which continued from 1868 to 1878, now exists in a large part of the eastern interior of the island, menacing even some populations on the coast * * * this flagrant state of hostility * * * has entailed earnest effort on the part of this Government to enforce obedience to our neutrality laws and to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty."

In the case of the Three Friends, the Supreme Court of the United States regarded such admission as sufficient basis for action, stating: "We are thus judicially informed of the existence of an actual conflict of arms in resistance of a government with which the United States are on terms of peace and amity, although acknowledgment of the insurgents as belligerents by the political department has not taken place."

It was held that this acknowledged status of insurgency brought into operation the domestic laws of neutrality.

In the case of Underhill v. Hernandez Chief Justice Fuller held that:

"Revolutions or insurrections may inconvenience other nations but by accommodation to the facts the application of settled rules is readily reached. And where the fact of the existence of war is in issue in the resistance of complaint of acts committed within foreign territory, it is not absolute prerequisite that the fact should be made out by an acknowledgment of belligerency as other recognition may be sufficient proof thereof."

The United States admits that the existence of an insurrection brings into operation under certain circumstances the neutrality laws and that insurrections may cause inconvenience to other nations. There is, however, a limit to the amount of inconvenience and sacrifice which a foreign state may be called upon by the legal state to undergo during an insurrection.

"The legitimate government of the state in which the insurrection exists can not throw the burden of executing its decrees upon a foreign state. This has been

168 U. S., 250. 2 Dec. 29, 1897.
recognized already in the case of decrees declaring insur­
gents outlaws, which have no effect in determining
the relations of foreign states to the insurgents."

The position of Secretary Fish in the case of the
insurgents against Haiti in 1869 was as follows:

"Regarding them simply as armed cruisers of insur­
gents 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 their
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 in­
dividual offenders, not to depredate in a criminal sense
and for private gain, but to capture and destroy jure
belli. It is sufficient for the present purpose that the
United States will not admit any commission or author­
ity proceeding from the rebels as a justification or excuse
for injury to persons or property entitled to the protec­
tion 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

He also maintains the right to destroy rebel vessels
making aggressions upon persons or property entitled to
the protection of the United States.

The position of Admiral Benham in the Brazilian
revolt of 1893–94 seems to be one justified by principles
and reason: "that any movement on the part of the
American merchant vessels during the continuance of
actual hostile operations was at their own risk; but any
attempt upon the part of the insurgents to prevent legiti­
mate movements of our merchant vessels at other times
was not to be permitted, and that all possible protection

¹Wharton Dig., sec. 381.
was to be afforded such movements by the naval force of the United States assembled at Rio under his command."

The action of insurgents till the recognition of belligerency being domestic action, the foreign vessel is responsible only so far as it comes within the range of "actual hostile operations."

In the Haitian revolt of 1902 the United States took the ground that the importance of the world’s commercial relations was too great to permit interference with such relations by parties engaged in domestic struggles in which one or both the contestants have no responsible status. Other important states concurred in the action taken by the United States. This stronger policy is not only conducive to the protection of the world’s commerce, but also to the promotion of peace by discouraging uprisings which are entered upon because of the personal ambitions of party leaders rather than because of desires to reform and benefit the state.

During this Haitian insurrection of 1902 the commander of the U. S. S. Machias had under his protection the foreign commerce in that region. He informed the commander of the insurgent gunboat of his position on August 10, 1902, as follows:

"Sir: I wish to give you notice that I am charged with the protection of British, French, German, Italian, Spanish, Russian, and Cuban interests, as well as those of the United States. You are informed, also, that I am directed to prevent the bombardment of this city without due notice; also to prevent any interference with commerce by the interruption of telegraph cables or the stoppage of steamers engaged in innocent trade with a friendly power. All interference excepting with Haitian interests I shall endeavor to prevent."

United States Minister Powell telegraphed, "Gonaives Government not recognized. Killick can not declare blockade of port; inform him. Give your protection to any American, Cuban, or foreign vessel that desires to enter cape." While, of course, the naval officer was in no way bound by this telegram of the minister, as the commander is responsible only to his own Department
for his action, yet this telegram would be taken as evidence of the attitude of the Department of State.

Later the commander of the U. S. S. Machias informed Killick, the commander of the insurgent gunboat, that “until belligerent rights are accorded you, no right to visit or search any foreign vessel is permitted.” With this position the representatives of other states agreed.

The German gunboat Panther took a positive position in demanding, on September 6, 1902, the surrender of the insurrectionist gunboat Crête-à-Pierrot, which had, on September 2, taken possession of the munitions of war that were on the way to the provisional government of Haiti on the German merchant steamer Markomannia. The insurgent gunboat was set on fire before the surrender was made. The Germans, seeing this, opened fire upon the Crête-à-Pierrot and completed its destruction. This action further manifests the disposition of the states having important commercial interests not to submit to interference with commerce by insurgents who have not acquired belligerent status.

The drift of practice on the part of the United States has been toward a considerable leniency in dealing with those in revolt against constituted authorities. “It may be said that there has been a growing tendency to admit a hostile status short of belligerency of which it may be expedient for a state to take cognizance at a time when it is not expedient to recognize belligerency, that the actions of the party hostile to the parent state are not those of outlaws, and that the practice of the United States is to admit this hostile status as one affecting the operation of its domestic laws and changing the relations of its servants toward the parties to the conflict.”

General attitude toward insurgency.—It may now be said that insurgency is often regarded as a fact which in a manner varying according to circumstances is accepted in international practice. “The admission of this fact is by such domestic means as may seem expedient. This admission is made with the object of bringing to the knowledge of citizens, subjects, and officers of the state such facts and conditions as may enable them to act properly. In the parent state the
METHOD OF CONDUCTING THE HOSTILITIES MAY BE A SUFFICIENT ACT OF ADMISSION, AND IN A FOREIGN STATE THE ENFORCEMENT OF A NEUTRALITY LAW. THE ADMISSION OF INSURGENCY BY A FOREIGN STATE IS A DOMESTIC ACT WHICH CAN GIVE NO OFFENSE TO THE PARENT STATE, AS MIGHT BE THE CASE IN THE RECOGNITION OF BELLIGERENCY. INSURGENCY IS NOT A CRIME FROM THE POINT OF VIEW OF INTERNATIONAL LAW. A STATUS OF INSURGENCY MAY ENTITLE THE INSURGENTS TO FREEDOM OF ACTION IN LINES OF HOSTILE CONFLICT WHICH WOULD NOT OTHERWISE BE ACCORDED, AS WAS SEEN IN BRAZIL IN 1894, AND IN CHILE IN 1891. IT IS A STATUS OF POTENTIAL BELLIGERENCY WHICH A STATE, FOR THE PURPOSE OF DOMESTIC ORDER, IS OBLIGED TO COGNIZE. THE ADMISSION OF INSURGENCY DOES NOT PLACE THE FOREIGN STATE UNDER NEW INTERNAL OBLIGATIONS AS WOULD THE RECOGNITION OF BELLIGERENCY, THOUGH IT MAY MAKE THE EXECUTION OF ITS DOMESTIC LAWS MORE BURDENSOME. IT ADMITS THE FACT OF HOSTILITIES WITHOUT ANY INTIMATION AS TO THEIR EXTENT, ISSUE, RIGHTEOUSNESS, ETC. * * * THE ADMISSION OF INSURGENCY IS THE ADMISSION OF AN EASILY DISCOVERED FACT. THE RECOGNITION OF BELLIGERENCY INVOLVES NOT ONLY A RECOGNITION OF A FACT, BUT ALSO QUESTIONS OF POLICY TOUCHING MANY OTHER CONSIDERATIONS THAN THOSE CONSEQUENT UPON THE SIMPLE EXISTENCE OF HOSTILITIES." ¹

THE FACT THAT INSURGENTS HAVE NOT ENFORCED, AGAINST OTHER THAN THE VESSELS OF THE STATE TO WHICH THEY WERE OPPOSED, THE BLOCKADE WHICH THEY HAD PROCLAIMED IS SEEN IN THE CASES WHICH HAVE ARISEN.

THE RIGHT OF INSURGENTS TO MAKE CAPTURES OF VESSELS NOT BELONGING TO THE PARENT STATE HAS NOT BEEN RECOGNIZED.

THE CASES OF CHILE AND BRAZIL ARE NOT SUFFICIENTLY IN HARMONY TO WARRANT A PRECEDENT OF RECOGNITION OF INSURGENT BLOCKADE.

THE POSSIBLE PUTTING INTO OPERATION OF DOMESTIC NEUTRALITY LAWS HAS NO EFFECT IN DETERMINING ACTION IN FOREIGN WATERS.

THE AKNOWLEDGMENT BY A NEUTRAL OF FULL RIGHT TO BLOCKADE ON THE PART OF INSURGENTS NOT YET RECOGNIZED AS BELLIGERENTS IS A QUESTIONABLE ACT AS REGARDS THE PARENT STATE.

BLOCKADE, FROM ITS CONSEQUENCES, SHOULD BE RESERVED AS FAR AS POSSIBLE WITHIN THE LAWS OF WAR FOR THE STATUS OF FULL BELLIGERENCY.

¹ Wilson, Insurgency, p. 16, Lectures, Naval War College, 1900.
The status of insurgents is too indefinite to permit them to freely use against neutrals the extreme measure of blockade, and the consequent rights of visit, search, etc.

Insurgents, unless they have obtained a status entitling them to be recognized as belligerents, would not have any prize courts acting upon sufficient authority to warrant third parties in allowing to them the right to inflict the penalties of violation of blockade.

They have been permitted to seize, after making compensation, articles contraband on foreign vessels which they may approach. This act, open to most serious question, does not, however, imply a right to seize and confiscate ship and cargo for violation of blockade.

The position enunciated by Snow is correct: "As to the position of insurgents in general, it is agreed that they have no belligerent rights. Their war vessels are not received in foreign ports, they can not establish a blockade which third powers will respect, and they must not interfere directly with the commerce of third states."

Conclusions of the Institute of International Law.—Many of the above and other considerations were discussed by the Institute of International Law in its session of September, 1901, when it adopted the following resolutions:

"Art. 5, Sec. 1. Une tierce puissance n'est pas tenue de reconnaître aux insurgés la qualité de belligérants, par cela seul qu'elle leur est attribuée par le gouvernement du pays où la guerre civile a éclaté.

"Sec. 2. Tant qu'elle n'aura pas reconnu elle-même la belligérance, elle n'est pas tenue de respecter les blocus établis pas les insurgés sur les portions du littoral occupées par le gouvernement régulier."

"Art. 3. L'obligation du dédommagement disparaît, lorsque les personnes lésées sont elles-mêmes cause de l'événement qui a entraîné le dommage. Il n'existe pas, notamment, d'obligation d'indemniser ceux qui sont rentrés dans le pays en contrevenant a un arrêté d'expulsion, ni ceux qui se rendent dans un pays où veulent s'y livrer au commerce ou à l'industrie, alors qu'ils

1 Int. Law, 2d ed., p. 12.  
2 Quartrieme Commission.
savent ou ont dû savoir que des troubles y ont éclaté, non plus que ceux qui s’établissent ou séjournent dans une contrée ne présentant aucune sécurité par suite de la présence de tribus sauvages, à moins que le gouvernement du pays n’ait donné aux immigrants des assurances particulières.”

These resolutions show that the opinion of the authorities on international law is that third powers who have not recognized the belligerency of those in revolt against a constituted state are not under obligation to respect a so-called blockade established by such insurgents. The Institute admits, however, that a third power may not obtain damages for injuries which its subjects bring upon themselves. This position would agree with the position taken by Admiral Benham at Rio de Janeiro. This position as a whole seems to accord with the best opinion and with practice and is at the same time easily understood.

Conclusions.—1. Blockade is a war measure and should be reserved for a state of war between responsible belligerents.

2. The precedents allowing certain interference with the commerce of states not concerned in insurrections has been based rather on policy and convenience than upon principles of international law. Even this interference must be in pursuance of orderly military operations, and commerce must not “be at the mercy of every petty contest carried on by irresponsible insurgents and marauders under the name of war.”

3. Insurgents can not be allowed to establish a blockade binding on foreign states because the status of insurgents is uncertain and the enforcement of blockade involves the establishment of prize courts and the exercise of extreme measures which can be allowed by foreign states only after belligerency has been recognized.

4. Insurgents should not be allowed to establish blockades because the growing importance of the world’s commerce demands that for the well-being of mankind commerce should be in the fullest degree free, and that interference with it should be tolerated only after due

1 Neuvième Commission.
notice of a contest of sufficient magnitude to constitute belligerency.

5. The Institute of International Law at its session in 1901 declared that a third state which has not itself recognized the belligerency, is not bound to respect blockades established by insurgents upon portions of the coast occupied by the regular government.

6. Public officials abroad, as of the State and Navy Departments, are entitled to instructions sufficiently definite to guide them in case of interference with foreign commerce by insurgents as the precedents and interpretations have been varied and confusing.

Note.—In accordance with the sixth item of these conclusions, the Department of State, in a letter of November 15, 1902 (which see below), set forth clearly the attitude of that Department upon the so-called "insurgent blockade." The correspondence relative to this matter is herewith.

[Copy.]

NAVAL WAR COLLEGE,
Newport, R. I., November 7, 1902.

SIR: 1. I beg to lay before the Department certain suggestions respecting interference with commerce by insurgent vessels, which are in condensed form the outcome of the discussions upon this subject at the War College during the past summer. It is felt generally by naval officers that the subject is in a very unsatisfactory and indefinite status, and these suggestions are respectfully offered as forming a basis of action. They have been prepared, at the request of the College, by Prof. George Grafton Wilson, who was in charge of the subject of international law this last summer at the College. The full discussion of the subject at the College will shortly be in print as part of the "International Law Situations, with Solutions and Notes," of the present year, so that I shall not enter upon a discussion of the subject here.

2. I inclose also Professor Wilson’s letter to myself, which is explanatory of his paper.
INTERFERENCE BY INSURGENTS WITH COMMERCE.

3. I would add that I believe these instructions to be in accord with the views of Dr. John Bassett Moore and Mr. Adee, of the Department of State, both of whom are high authorities in the subject.

4. I would also add that the word "blockade," as used in Professor Wilson's paper, is in the strictly technical sense, as defined in the Declaration of Paris, April 16, 1856, and that the officers were unanimous in opinion that the use of the word "blockade" should be restricted to this technical meaning.

Very respectfully,

F. E. CHADWICK,
Captain, U. S. N., President.

The Secretary of the Navy,
Navy Department, Washington, D. C.
(Through Bureau of Navigation.)

[Brown University,
Providence, R. I., October 11, 1902.

Capt. F. E. CHADWICK, U. S. N.,
President Naval War College, Newport, R. I.

DEAR SIR: I inclose a statement in a brief form of the general reasons why there should be some understanding in regard to what has been unfortunately termed "insurgent blockade;" also a form for instructions which might be issued, and a résumé of the reasons why such instructions as those particularly mentioned might be issued. I think these cover the points upon which there was agreement among the officers and those which seem most important. These instructions will leave the Department at Washington to decide, except in the most unusual cases, what should be done. With the growing importance of our commerce some such definite stand entirely within the law and precedent is necessary.

The more extended treatment of this matter will appear in the solutions to the "Situations." If any conference is held on this matter, and it seems advisable to you, I will try to go into the subject more fully before the members.

Very truly yours,

GEORGE GRAFTON WILSON.
The limits of interference with the world's commerce permissible to insurgents not yet recognized as belligerents should be more clearly determined:

1. Because the importance of the world's commercial relations demands freedom only to be denied in the case of grave public necessity.

2. In order that insurgents, often irresponsible, may not unduly interfere with the commerce and rights of foreign citizens.

3. In order that public officials may not be misled by the lack of agreement in the precedents relating to the treatment of insurgents interfering with foreign commerce.

4. Particularly because frequently called upon to act when in the neighborhood of such insurrectionary movements, naval officers are entitled to instructions more definite than those now in force.

The following propositions are offered as bases for instructions:

1. Insurgents not recognized as belligerents have not the right to establish a blockade, nor have they the right to exercise in regard to the commerce of the United States any of the rights appertaining to the establishment of a blockade.

2. When insurgents actually have before a port of the state against which they are in insurrection a force sufficient, if belligerency already had been recognized, to maintain an effective blockade, the United States Government may admit that such insurgent force may prevent the entry of United States commerce.

3. The insurgents, even after such admission, may use against United States commerce only such force, however, as is necessary to prevent the entry of merchant vessels already notified by the officer of the insurgents before the port that the United States has admitted its closure by the insurgents, and force can be used only while such vessel is actually attempting to pass in or out of the port after such notification.

4. In general, the naval officers of the United States will permit no interference with ordinary commerce of
the United States unless they are duly instructed by their Government.

In regard to the proposition that insurgents have not the right to establish a blockade, it may be said that this is the position assumed by practically all the leading authorities on international law.

Blockade as defined by the Declaration of Paris, April 16, 1856, has often been cited as applicable to every attempt to prevent entry to a port. The clause thus used, "Blockade in order to be binding must be effective," was specifically made with reference to a state of war involving belligerents and neutrals and there was no thought that it would be extended to insurgents. The declaration states that it was made with the idea of introducing "into international relations fixed principles," because "that maritime law in the time of war has long been the subject of deplorable disputes," and "that the uncertainty of the law and of the duties in such a matter give rise to difference between neutrals and belligerents which may occasion serious difficulty and even conflicts."

Insurgents have not a status that would justify foreign states in allowing them to exercise the rights of visit, search, seizure, and other rights appertaining to the enforcement of a blockade. In general, responsible prize courts are necessary. Such courts insurgents not yet recognized as belligerents could hardly possess, and even if they did possess such courts their decrees would be of doubtful authority. The implication that insurgents may have any such rights should be most carefully avoided.

The Institute of International Law at its twentieth session, in September, 1901, adopted the following resolutions:

Art. 5, Sec. 1. Une tierce puissance n'est pas tenue de reconnaître aux insurgés la qualité de belligérants, par cela seul qu'elle leur est attribuée par le gouvernement du pays où la guerre civile a éclaté.

Sec. 2. Tant qu'elle n'aura pas reconnu elle-même la belligérance, elle n'est pas tenue de respecter les blocus établis par les insurgés sur les portions du littoral occupées par le gouvernement régulier.
In practice the United States has never allowed insurgents to enforce against its commerce those rights which blockade in the proper sense would carry, and other states have often denied this right to insurgents. As was said in the case of the *Ambrose Light*, commerce must not "be at the mercy of every petty contest carried on by irresponsible insurgents under the name of war."

As the earliest and latest opinions agree and practice and reason support the position that insurgents have not the right to establish a blockade, it seems expedient that instructions be issued to this effect.

The aim of the remaining propositions is to permit the insurgents to exercise in regard to the commerce of the United States such power as this Government acknowledges that they actually possess and to exercise this power in a regular way with the minimum of damage to commerce and the least danger of injustice. These instructions would relieve the naval officer of the responsibility for the decision upon questions which should properly be decided by the Government.

The aim of these instructions, as a whole, is to allow to insurgents the exercise of that power which they actually possess and that only, without attributing to them any of those extreme powers and rights that might belong to recognized belligerents under similar circumstances.

[Copy.]

**DEPARTMENT OF STATE,**

*Washington, D. C., November 15, 1902.*

The Honorable

The Secretary of the Navy.

Sir: I have the honor to acknowledge the receipt of the letter of the Acting Secretary of the Navy (346855 B), under date of November 12, inclosing copy of a letter from the president of the Naval War College containing certain suggestions respecting interference with commerce by insurgent vessels, and requesting my comments thereon.

While as a rule this Department is reluctant to express, of record, general opinions or comments upon questions
of a more or less academic character, the papers you submit to me, and particularly the statement prepared by Professor Wilson and submitted to Capt. F. E. Chadwick, may justify some general observations.

Cases involving assertion of the rights of insurgent "blockade" are necessarily exceptional, to be considered as governed by exigent circumstances rather than by doctrine.

In dealing with concrete cases arising within the official cognizance of the Department of State and embracing points of international law like those presented in Mr. Wilson’s memorandum, this Department endeavors to interpret the consensus of international law authorities with due regard to the precise significance of the term "blockade."

Blockade of enemy ports is, in its strict sense, conceived to be a definite act of internationally responsible sovereign in the exercise of a right of belligerency. Its exercise involves the successive stages of, first, proclamation by a sovereign state of the purpose to enforce a blockade from an announced date. Such proclamation is entitled to respect by other sovereigns conditionally on the blockade proving effective. Second, warning of vessels approaching the blockaded port under circumstances preventing their having previous actual or presumptive knowledge of the international proclamation of blockade. Third, seizure of a vessel attempting to run the blockade. Fourth, adjudication of the question of good prize by a competent court of admiralty of the blockading sovereign.

Insurgent "blockade," on the other hand, is exceptional, being a function of hostility alone, and the right it involves is that of closure of avenues by which aid may reach the enemy.

In the case of an unrecognized insurgent, the foregoing conditions do not join. An insurgent power is not a sovereign maintaining equal relations with other sovereigns, so that an insurgent proclamation of blockade does not rest on the same footing as one issued by a recognized sovereign power. The seizure of a vessel attempting to run an insurgent blockade is not generally
followed by admiralty proceedings for condemnation as good prize, and if such proceedings were nominally resorted to a decree of the condemning court would lack the title to that international respect which is due from sovereign states to the judicial act of a sovereign. The judicial power being a coordinate branch of government, recognition of the government itself is a condition precedent to the recognition of the competency of its courts and the acceptance of their judgments as internationally valid.

To found a general right of insurgent blockade upon the recognition of belligerency of an insurgent by one or a few foreign powers would introduce an element of uncertainty. The scale on which hostilities are conducted by the insurgents must be considered. In point of fact, the insurgents may be in a physical position to make war against the titular authority as effectively as one sovereign could against another. Belligerency is a more or less notorious fact of which another government, whose commercial interests are affected by its existence, may take cognizance by proclaiming neutrality toward the contending parties, but such action does not of itself alter the relations of other governments which have not taken cognizance of the existence of hostilities. Recognition of insurgent belligerency could merely imply the acquiescence by the recognizing government in the insurgent seizure of shipping flying the flag of the recognizing state. It could certainly not create a right on the part of the insurgents to seize the shipping of a state which has not recognized their belligerency.

It seems important to discriminate between the claim of a belligerent to exercise quasi sovereign rights in accordance with the tenets of international law and the conduct of hostilities by an insurgent against the titular government.

The formal right of the sovereign extends to acts on the high seas, while an insurgent's right to cripple his enemy by any usual hostile means is essentially domestic within the territory of the titular sovereign whose authority is contested. To deny to an insurgent the
right to prevent the enemy from receiving material aid can not well be justified without denying the right of revolution. If foreign vessels carrying aid to the enemies of the insurgents are interfered with within the territorial limits, that is apparently a purely military act incident to the conduct of hostilities, and, like any other insurgent interference with foreign property within the theater of insurrection, is effected at the insurgent's risk.

To apply these observations to the four points presented in Professor Wilson's memorandum, I may remark:

1. Insurgents not yet recognized as possessing the attributes of full belligerency can not establish a blockade according to the definition of international law.

2. Insurgents actually having before the port of the state against which they are in insurrection a force sufficient, if belligerency had been recognized, to maintain an international law blockade, may not be materially able to enforce the conditions of a true blockade upon foreign vessels upon the high seas even though they be approaching the port. Within the territorial limits of the country, their right to prevent the access of supplies to their enemy is practically the same on water as on land—a defensive act in the line of hostility to the enemy.

3. There is no call for the Government of the United States to admit in advance the ability of the insurgents to close, within the territorial limits, avenues of access to their enemy. That is a question of fact to be dealt with as it arises. But in no case would the insurgents be justified in treating as an enemy a neutral vessel navigating the internal waters—their only right being, as hostiles, to prevent the access of supplies to their domestic enemy. The exercise of this power is restricted to the precise end to be accomplished. No right of confiscation or destruction of foreign property in such circumstances could well be recognized, and any act of injury so committed against foreigners would necessarily be at the risk of the insurgents. The question of the nature and
mode of the redress which may be open to the government of the injured foreigners in such a case hardly comes within the purview of your inquiry, but I may refer to the precedents heretofore established by this Government in enunciation of the right to recapture American vessels seized by insurgents.

I have the honor to be, sir, your obedient servant,

JOHN HAY.