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International Law Situations with Solutions and Notes

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SITUATION V.

While states X and Y are at war a port of X is blockaded by Y. There are merchant vessels and a war vessel of the United States in the port. The authorities of state X set adrift rafts loaded with explosives in the hope that they will come in contact with and destroy vessels of the blockading squadron. The captains of the United States merchant vessels request the commander of the war vessel of the United States to protest against this action as contrary to international law and as unnecessarily endangering neutral shipping.

How should the commander act and on what grounds?

SOLUTION.

The commander of the ship of war of the United States should inform the captains of the merchant vessels that he cannot protest against necessary acts of war which clearly are aimed at the enemy.

He might, however, request of the authorities of the port an opportunity for the United States merchant vessels to remove to a point of greater safety provided the necessities of the war would allow.

A belligerent is bound by the necessities of war, and should, so far as such necessities permit, guard from danger neutrals by courtesy within the port, but cannot be expected to use greater care in this respect than in regard to shipping flying its own national flag.

NOTES ON SITUATION V.

Methods used in war between Chile and Peru.—During the war between Chile and Peru there were varying rumors that questionable methods were employed by the belligerents in carrying on the war. Of one of these Mr. Evarts, writing under date of January 25, 1881, says: "This report is that the Peruvians have made use, during the present war with Chile, of 'boats containing explosive materials' which have 'in some instances been
set adrift on the chance of their being fallen in with by
some of the Chilean blockading squadron.' How far the
case of the launch to which you refer in your No. 183
(the Loa), which was loaded with concealed dynamite,
comes within the description of cases mentioned the De-
partment has not the requisite data to determine. It is
sufficiently obvious that this practice must be fraught
with danger to neutral vessels entitled to protection under
the law of nations, and that in case American vessels are
injured thereby this Government can do no less than
hold the government of Peru responsible for any damage
which may be thus occasioned.

'There is no disposition on the part of this Govern-
ment to act in anywise nor in any spirit which may be
construed as unnecessarily critical of the methods where-
by Peru seeks to protect her life or territory against any
enemy whatsoever, but it will appear, I think, to the
high sense of propriety which has in times past distin-
guished the councils of the Peruvian Government, and
which without doubt still abides therein, that in case it
is ascertained that means and ways so dangerous to neu-
trals as those adverted to have been for any reason suf-
f ered to be adopted by her forces, or any part of them,
they should be at once checked, not only for the benefit
of Peru, but in the interest of a wise and chivalrous war-
fare, which should constantly afford to neutral powers
the highest possible consideration.'

Mr. Christiancy, replying to this communication on
March 8, 1881, said:

'I will say that there never has been any real danger
to neutral vessels from the cause mentioned, so far as I
know or have been informed. But three instances have
occurred during the war (so far as I have ever heard)
which could by any possible latitude of construction
come within the grounds of complaint mentioned. * * 
No complaint was ever made or suggested to me on behalf
of any merchant vessel of the United States, nor any of
our naval vessels on this score.'

This case did not, therefore, become a precedent.

1 For. Rel., 1881, p. 857.
Methods used during the Franco-Chinese difficulties.—On July 2, 1886, Mr. Bayard, writing to Mr. Denby, at the time of the Franco-Chinese difficulties, said in regard to obstructions to neutral shipping:

"It is unquestionable that a belligerent may, during war, place obstructions in the channel of a belligerent port, for the purpose of excluding vessels of the other belligerent which seek the port either as hostile cruisers or as blockade runners. This was done by the Dutch when attacked by Spain in the time of Philip II; by England when attacked by the Dutch in the time of Charles II; by the United States when attacked by Great Britain in the Revolutionary war and in the war of 1812; by the United States during the late civil war; by Russia at the siege of Sebastopol, and by Germany during the Franco-German war of 1870."¹

The commander in chief of the military district of Odessa, in April, 1877, declared that passage of harbors in that region would be allowed only under strict regulations, as they were barred by mines.

The introduction of obstacles, whether by sinking of stones, vessels, or other materials in harbors has been of not infrequent occurrence. This has often met with protest from neutrals, but even where the obstacles were most serious the protests have not been heeded to the extent of discontinuing undertakings which were distinctly aimed at the enemy, and which would take effect within the belligerent jurisdiction. In the case of the obstructions in the Canton River in 1884, though the United States had a treaty provision allowing freedom of entrance even in war, the Secretary of State only went so far as to say:

"Even, however, under the favorable modification, the leaving of a 150-foot channel, the obstruction to the channel at Canton and Whampoa can only be tolerated as a temporary measure, to be removed as soon as the special occasion therefor shall have passed, and under no circumstances to be admitted as a precedent for setting obstacles to open navigation at the treaty ports in

¹ For. Rel., 1886, p. 95.
time of peace under pretext of being intended for ultimate strategic defense in contingency of future war."  

Mr. Frelinghuysen, in a telegram to Mr. Young, January 22, 1884, said:

"No protest can be made against China for taking such steps for its defense as it may deem necessary."

Rivier allows the obstruction of harbors against blockading forces under the necessities of war, actual or imminent.

General principles.—As a general principle neutrals have a right to carry on commerce in the time of war.

According to Bonfils the problem then becomes one of "taking into consideration the respective rights of 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 neutrals to maintain with each of the belligerents free commercial relations, without injury to the opponent of either."

It is admitted, in theory and in practice, that a belligerent may use submarine boats, mines, torpedoes, and may place obstructions in the channel "for the purpose of excluding the vessels of the other belligerent" from a harbor.

In recent wars some time has been allowed for ships to load and depart from blockaded ports when they chance to find themselves in such ports at the proclamation of hostilities. This time varies. In the recent Spanish-American war Spain, in royal decree of April 23, 1898, Article II, said:

"A term of five days from the date of the publication of the present royal decree in the Madrid Gazette is allowed to all United States ships anchored in Spanish ports, during which they are at liberty to depart."

The proclamation of the United States, of April 22, 1898, said:

"Neutral vessels lying in any of said ports (those proclaimed blockaded) at the time of the establishment of such blockade will be allowed thirty days to issue therefrom."

1 For. Rel., 1884, Frelinghuysen to Young, April 18, 1884.
2 Droit du Gens, II, p. 292.
3 Droit Int. Pub., sec. 1494 ff.
Neither of these declarations put the belligerents under any obligations toward such vessels if they remain a longer time in the blockaded port.

It is properly held that vessels that remain in port after the time specified for their departure or enter the port after knowledge of hostilities are not entitled to special protection. Such vessels would not be in the port ordinarily without the hope of an exceptional reward for the unusual risks, and this being the case the belligerent is not bound to guard them against such risks as they may incur by coming within the field where the belligerent is carrying on legitimate hostilities made necessary by the exigencies of war. The presence of neutral shipping within a port which is duly blockaded in the time of war will not prevent a belligerent from pursuing the general objects of war.

Article I of the Naval War Code of the United States states that: "The general object of war is to procure the complete submission of the enemy at the earliest possible period, with the least expenditure of life and property," and of the objects of maritime war "to aid and assist military operations on land, and to protect and defend the national territory, property, and sea-borne commerce."

Article II provides that: "The area of maritime warfare comprises the high seas or other waters that are under no jurisdiction, and the territorial waters of the belligerents."

Article III provides that: "Military necessity permits measures that are indispensable for securing the ends of the war and that are in accordance with modern laws and usages of war."

It does not permit wanton devastation, the use of poison, or the doing of any hostile act that would make the return to peace unnecessarily difficult.

Noncombatants are to be spared in person and property during hostilities, as much as the necessities of war and the conduct of such noncombatants will permit.

In the case under consideration there is no doubt that the elements necessary for a state of blockade are present. There is a state of war, the place is susceptible of
blockade and is blockaded and the neutrals have ample evidence of the fact.

The proclamations of blockade do not give to the neutrals any guarantees, but only the permit to remain within the blockaded port or ports a certain time under certain conditions.

The object of war being the submission of the enemy, the area of legitimate warfare covering the port in question, military necessity permitting such measures as accord with the laws of war, and it being necessary to spare the person and property of noncombatants as far as the conditions will permit, it is evident that neutrals within belligerent jurisdiction, whether before the expiration of the time allowed for their departure or after that time, may be liable to certain consequences.

Halleck¹ says:

"States, not parties to a war, have not only the right to remain neutral during its continuance, but to do so conduces greatly to their advantage, as they thereby preserve to their citizens the blessings of peace and commerce. Moreover, the belligerents are interested in maintaining the just rights of neutrals, as the trade and intercourse kept up by them greatly contribute to mitigate the evils of war. It has, therefore, become an established principle of international law that neutrals shall be permitted to carry on their accustomed trade with such restrictions only as are necessary for the security of the established rights of the belligerents."

Hall² says:

"A neutral individual in belligerent territory must be prepared for the risks of war and can not demand compensation for the loss or damage of property resulting from military operations carried on in a legitimate manner."

In some instances the "belligerents" exercise the so-called right of using or destroying neutral property on the plea of necessity, giving compensation. "This practice is called 'angary' or 'prestation' and is by

most jurists either condemned or regarded with disfavor. An illustration is the sinking, during the Franco-Prussian war of 1870, by the Germans, of several British merchant ships in the Seine to prevent gunboats from going up the river. During the same war the Germans seized in Alsace, for military purposes, certain railway carriages of the Central Swiss Railway and certain Austrian rolling stock, all of which remained in the possession of the Germans for some time." For this the Naval War Code of the United States provides, Article VI:

"If military necessity should require it, neutral vessels found within the limits of belligerent authority may be seized and destroyed or otherwise utilized for military purposes, but in such cases the owners of neutral vessels must be fully compensated."

It would then appear that the absolute seizure of neutral property for the purpose of using it for carrying on the war would not be allowed except in extreme cases for full recompense.

The case under consideration is one between the condition of absolute immunity from the consequence of war and the condition warranting appropriation for which compensation can be demanded.

Of this position Hall¹ says:

"As a state possesses jurisdiction, within the limits which have been indicated, over the persons and property of foreigners found upon its land and waters, the persons and property of neutral individuals in a belligerent state are in principle subjected to such exceptional measures of jurisdiction and to such exceptional taxation and seizure for the use of the state as the existence of hostilities may render necessary, provided that no further burden is placed upon foreigners than is imposed upon subjects.

"So, also, as neutral individuals within an enemy state are subject to the jurisdiction of that enemy, and are so far intimately associated with him that they can not be separated from him for many purposes, they and their property are as a general principle exposed to the

¹Int. Law, 4th ed., p. 764.
same extent as noncombatant enemy subjects to the consequences of hostilities."

Of the vessels of the United States in question within the port it may be said: "The general principle that neutral property in belligerent territory shares the liabilities of property belonging to subjects of the state is clear and indisputable; and no objection can be made to its effects upon property which is associated either permanently or for a considerable time with the belligerent territory."

The neutral merchant ships are liable to the consequences of legitimate hostilities.

**Conclusions.**—In reply to the question, "How should the commander act, and on what grounds?"

It would be safe to say that the commander could make no demands upon the belligerent, nor could he make any protest, though he might request delay sufficient to assist in placing the neutral shipping under the flag of the United States in a position as safe as possible considering the military necessity. The commander of the United States war vessel should take the position of trying to aid the vessels of his countrymen by helping them to avoid danger, rather than that of impeding the action of the belligerent within whose port he finds himself.

The belligerent within whose port the vessels of the United States are is bound to regard the safety of neutral vessels in carrying on hostile operations as far as the necessities of war permit.

It is evident that while the obligations of neutrals to belligerents has received much attention, the consideration of belligerent obligations to neutrals has received far less definition than its importance deserves.