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International Law Situations with Solutions and Notes

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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.
A revolutionary outbreak occurs in a South American state.

The officer in command of a United States ship of war lying in the harbor of the capital city of the South American state is asked by a messenger from the President of that state whether he will receive the President and his cabinet on board the ship of war in case they are in serious danger of personal injury from attack by the insurgents.

What should be the reply of the officer?

**SOLUTION.**

The commander of the ship of war should reply that his Government discountenances the practice of granting asylum on board of ships of war, and also that the regulations of the service allow the grant of asylum only under extreme and exceptional circumstances, of which he as commander must judge in the actual emergency should such emergency unfortunately arise in regard to the President and his cabinet while he remains in port. The commander could in no case promise asylum for a future time of which the conditions could not be foretold.

**NOTES ON SITUATION II.**

**ARGUMENT IN FAVOR OF PROMISING ASYLUM.**

Article 308 of the United States Naval Regulations, 1900, provides as follows:

"The right of asylum for political refugees has no foundation in international law. In countries, however, where frequent insurrections occur, and constant instability of government exists, usage sanctions the granting of asylum; but even in the waters of such countries officers should refuse all applications for asylum except when required by the interests of humanity in extreme or exceptional cases, such as the pursuit of a
refugee by a mob. Officers must not directly or indirectly invite refugees to accept asylum."

It is held by some that this article of the Naval Regulations does not apply to a "Situation" like the one proposed, that an officer of the United States should extend to the officers of the constituted government of the state in which they may be as much courtesy as possible, and that to promise asylum under the circumstances would be in accord with practice and would be good policy.

The argument in favor of the grant of asylum is somewhat as follows:

The officer in command of the United States ship of war desires to extend so much courtesy to President and officials of the state in which he is as may be possible, believing that this is merely a temporary uprising against the constituted authority and that the officers of the government are entitled to this courtesy. He has in mind the case of General Savasti, who was received during the revolution of 1895, when the regular government of Ecuador was overthrown and no government had been established.

He believed that an officer of the constituted state was not in the category of those who should be refused when following article 308 of the Naval Regulations of 1900, as outlined in the second sentence, which states that "officers should refuse all applications for asylum except when required by the interests of humanity in extreme or exceptional cases, such as the pursuit of a refugee by a mob." He maintains that the circumstances under consideration constitute an exceptional case in which the interests of humanity demand that he shall grant the application even more than in such case of pursuit as mentioned in the Regulations. He further maintains that this is in no sense an invitation, direct or indirect, but merely a reply to a question which demands a reply and to which he would give an affirmative reply even should he read to the foreign minister Regulation 308, which provides for just such an extreme and exceptional case.

It has been said that:

"As to whether the degree of humanity involved justifies the granting of an asylum the commanding officer
on the spot must be the judge and can be guided only by international precedents and Naval Regulations."

The officer maintains that the Regulations do not forbid an affirmative reply, and that the international precedents and authorities also sanction his action as it affects the officials of the constituted government.

Hall, speaking of harboring criminals and nonpolitical offenders, says of political refugees:

"The case is again different if a political refugee is granted simple hospitality. The right to protect him has been acquired by custom. He ought not to be sought out or invited, but if he appears at the side of the ship and asks admittance he need not be turned away, and so long as he is innoxious the territorial government has no right either to demand his surrender or to expel the ship on account of his reception."

And in a note—

"Something more may be permitted, or may even be due, in the case of the chiefs, or of prominent members of a government overturned by revolution. They retain a certain odour of legitimacy. In 1848 the admiral commanding the British Mediterranean Squadron detached a vessel to take the pope on board in case refuge were needed; and in 1862, on the outbreak of revolution in Greece, a British frigate escorted a Greek man of war with the King and Queen on board, out of Greek waters and received them so soon as some slight danger of mutiny appeared."  

He also cites the letter of Secretary Olney to Mr. Tillman, minister to Ecuador, September 25, 1895, in which Mr. Olney says:

"I note your statement that the family of the late minister of war came to your residence on the seventeenth of August seeking shelter, and that, at the date you write, they were still inmates of your house. You add that General Savasti himself joined them on the following night, and still remains your guest, quite ill. The shelter thus given by you to one of the prominent members of the overturned government, and as it appears

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1 Int. Law, p. 203, 4th ed.
similarly granted by other foreign representatives to the families of members of the late government, does not appear up to the time of writing to have been of the nature of asylum as the word is properly understood by international authorities, there having been apparently no national or municipal government in the capital. Shelter under such circumstances was a mere act of humanity, unaccompanied by an assumption of extraterritorial prerogatives by you, or interference with any rights of legitimate government or sovereignty. This is quite distinct from the so-called right of asylum, which can logically only be exercised in disparagement of the rights of the sovereign power by withdrawing an accused subject from its rightful authority."

Then Mr. Olney quotes the instructions of Mr. Fish and Mr. Frelinghuysen discountenancing the practice of granting asylum, and stating that the Department's printed personal instructions relate in terms to the extension of asylum to unsuccessful insurgents and conspirators as an act of humanity when the hospitality afforded does not go beyond sheltering the individual from lawlessness. It may not be tolerated should it be afforded with a view to remove a subject beyond the reach of the law to the disparagement of the sovereign authority of the state.

"It seems to be very generally supposed that the case of a member of an overturned titular government is different; and so it may be until the empire of law is restored and the successful revolution establishes itself in turn as the rightful government, competent to administer law and justice in orderly process. Until that happens the humane accordance of shelter from lawlessness may be justifiable; but when the authority of the state is reestablished upon an orderly footing, no disparagement of its powers under the mistaken fiction of extraterritoriality can be countenanced on the part of the representatives of this Government." ¹

The officer of the United States bases his claim to correct action in granting the request of the messenger

¹ For. Rel., 1895, p. 245.
on the ground that this is an exceptional case as provided for by the Naval Regulations; that it is not an invitation direct or indirect; that, as stated in Snow's Lectures, p. 28, he is supported by international precedents; that the position assumed is supported by Hall in his statement that "something more may be permitted, or may even be due, in the case of the chiefs, or of prominent members of a government overturned by revolution. They retain a certain odour of legitimacy," and further that the letter of Mr. Secretary Olney to Mr. Tillman in 1895 fully justifies his course as not being asylum but merely shelter, not interfering with the rights of legitimate government or sovereignty. As Mr. Olney says:

"This is quite distinct from the so-called right of asylum, which can logically only be exercised in disparagement of the right of the sovereign power by withdrawing an accused subject from its rightful authority."

By these and other arguments he maintains that he should grant an affirmative reply to the messenger of the constituted authorities. The officer also cites the instructions issued by the Secretary of the Navy during the civil war in Chile in 1891:

"In reference to the granting of asylum, your ships will not, of course, be made a refuge for criminals. In the case of persons other than criminals, they will afford shelter wherever it may be needed, to Americans first of all, and to others, including political refugees, as far as the claims of humanity may require and the service upon which you are engaged will permit."

"The obligation to receive political refugees and to afford them an asylum is in general, one of pure humanity. It should not be continued beyond the urgent necessities of the situation, and should in no case become the means whereby the plans of contending factions or their leaders are facilitated. You are not to invite or encourage such refugees to come on board your ship, but should they apply to you, your action will be governed by considerations of humanity and the exigencies of the service upon which you are engaged."
ARGUMENTS AGAINST PROMISING ASYLUM

In a parallel case in regard to asylum in legations consequent upon uprisings in Ecuador in 1899 the United States minister maintains that he was acting, in promising asylum if need be to the chief officials of the government of Ecuador, on the ground that he "would have saved from death the legitimate heads of the government until such time as they could again assume the functions of their respective offices."

Secretary Hay, replying, reviews the conclusions of Secretary Olney already cited, particularly the clause reading:

"It seems to be generally supposed that the case of a member of an overturned titular government is different; and so it may be until the empire of law is restored and the successful revolution establishes itself in turn as the rightful government, competent to administer law and justice in orderly process. Until that happens the humane accordance of shelter from lawlessness may be justifiable; but when the authority of the state is re-established upon an orderly footing no disparagement of its powers in the mistaken fiction of extraterritoriality can be countenanced on the part of representatives of this Government."

Commenting on this position, Secretary Hay says:

"From the foregoing considerations it is evident that a general rule, in the abstract, can not be laid down for the inflexible guidance of the diplomatic representatives of the Government in according shelter to those requesting it. But certain limitations to such grant are recognized. It should not, in any case, take the form of a direct or indirect intervention in internecine conflicts of a foreign country, with a view to the assistance of any of the contending factions, whether acting as insurgents or as representing the titular government.

"I therefore regret that I am unable to approve the promise of shelter made by you to the members of the titular government before the emergency had actually arisen for decision as to whether the circumstances then existing would justify or make it permissible, and

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especially am I unable to approve the apparent ground or motive of the promise that you would have saved from death the legitimate heads of the government 'until such time as they would again assume the functions of their respective offices.'

"The Government of the United States remains a passive spectator of such conflicts unless its own interests or the interests of its citizens are involved, and I conceive that it might lead to great abuses in the grant of such shelter, which is afforded only from motives of humanity, if assurances were given in advance to leaders of either of the contending factions that they might carry the conflict to whatever extremes with the knowledge that at last they should enjoy impunity in the protection of this Government; yet such might be construed as the practical effect of the assurance given in this case. I am therefore constrained to withhold my approval of the assurances given at the time and under the circumstances stated in your dispatches and as understood by the Department."

Still less is there reason for the commander to promise to grant asylum on board a ship of war since he is liable to receive orders at any moment which may change his plans or move the ship to another part of the world. The naval officer can not foretell the circumstances under which the President and his cabinet may finally come to him. He can not foretell what his own circumstances may be at a time indefinite in the future—indeed, he is not certain that his ship will be in the harbor or in condition to receive the President and cabinet in their emergency. As a promise to receive these persons would, in a measure, prejudge a controversy to which he should remain a "passive spectator," he would not be justified in making an affirmative reply.

He should therefore reply that his Government dis- countenances the practice of granting asylum on board ships of war, and the regulations of the service allow it only under extreme and exceptional cases, of which he would be obliged to judge in the actual emergency should such emergency unfortunately arise in regard to the President and cabinet or other persons while he remains in port. He could in no case promise asylum in advance of the urgent necessity.