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International Law Situations with Solutions and Notes
U.S. Naval War College (Editor)

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SITUATION V.

While war exists between the United States and State X a number of the war vessels of State X are pursued by a United States fleet and seek refuge in a port of State Y, a neutral. The commander of the United States fleet, after waiting outside the port for twenty-four hours, protests to the authorities of State Y, claiming that as the vessels of the enemy have entered the neutral port to escape his fleet they may not justly be sheltered longer.

(a) Is the position taken by the United States commander correct?

(b) What should the authorities of State Y do?

SOLUTION.

(a) The United States commander would be justified in requesting that belligerent vessels entering and remaining in the neutral port solely in order to escape capture by his fleet be interned for the remaining period of the war.

(b) The authorities of State Y would be acting in accord with the best opinion in granting his request.

NOTES ON SITUATION V.

The twenty-four hour rule.—(a) The commander of the United States fleet waits twenty-four hours before entering his protest, probably on the ground that a belligerent war vessel is usually allowed twenty-four hours sojourn in a neutral port.

Upon this practice, however, there is considerable difference of opinion, some writers considering it to have the force of law, others regarding it as in effect only when so proclaimed.

Text writers' opinions.—Risley, discussing sojourn of a belligerent ship in a neutral port, says:

There is on principle no reason for limiting the stay of a belligerent ship in a neutral port, provided of course that she receives no augmenta-

tion of force there; but in the event of a ship belonging to the other belligerent appearing at the same port, restrictions become necessary in order to prevent a collision in neutral waters.

In 1759 Spain laid down the rule that the first of two vessels of war belonging to different belligerents to leave one of her ports should not be followed by the other until the expiration of twenty-four hours. At first this rule was only imposed upon privateers, the word of a captain of a ship of war that he would not commit hostilities being sufficient; but it has now been extended to all ships of war by most of the great states, including Great Britain, France, and the United States.

The "twenty-four hours rule," as it is called, is not, however, sufficient of itself to prevent abuse of neutral ports. In 1861 the United States ship *Tuscarora* took advantage of the rule to practically blockade the Confederate cruiser *Nashville* in Southampton Water. The *Tuscarora* contrived always to start before the *Nashville*, when the latter attempted to sail, and returned before the twenty-four hours—during which the *Nashville* had to stay behind—had expired. A similar case occurred during 1862 at Gibraltar, where the Confederate ship *Sumter* was practically blockaded, at first by the *Tuscarora*, and afterwards by the *Ino* and *Kearsarge*. This blockade was terminated by the sale of the *Sumter* to a British subject, and her subsequent escape to England. She was ultimately wrecked in attempting to run the blockade of Charleston. Accordingly, in 1862 Great Britain laid down the rule that war vessels of either belligerent must not remain in British ports for more than twenty-four hours, except under stress of weather, or in order to effect necessary repairs, in either of which cases the ship must put to sea as soon as possible after the expiration of the twenty-four hours.

During the Franco-Prussian war this rule was again adopted by Great Britain, and also by the United States, and, taken in conjunction with the old "twenty-four hours rule," seems likely to be accepted in the future for the regulation of the hospitality accorded to belligerent cruisers in neutral ports. But it can never be a hard-and-fast rule of International Law, because, as Hall well observes, "the right of the neutral to vary his own port regulations can never be ousted. The rule can never be more than one to the enforcement of which a belligerent may trust in the absence of notice to the contrary." (J. S. Risley, *The Law of War*, p. 206.)

Lawrence gives considerable attention to the subject but does not regard the rule as fixed:

We will consider next the duty of belligerent states to obey all reasonable regulations made by neutral states for the protection of their neutrality.

This duty relates chiefly, though not exclusively, to maritime affairs. The land forces of the combatants are not permitted to enter neutral territory, but unless a neutral expressly forbids the entry of belligerent war ships, they may freely enjoy the hospitality of its ports and waters. Permission is assumed in the absence of any notice to the contrary, but nevertheless it is a privilege based upon the consent of the neutral, and therefore capable of being accompanied by any conditions he chooses to

impose. Belligerent commanders can demand that they shall not be asked to submit to unjust and unreasonable restraints, and that whatever rules are made shall be enforced impartially on both sides. But further they can not go. Where they enter on sufferance they must respect the wishes of those who permit their presence. Only when their vessels are driven by stress of weather, or otherwise reduced to an unseaworthy condition, can they demand admission as a matter of strict law. Their right to shelter under such circumstances is called the right of asylum, and it can not be refused by a neutral without a breach of international duty.

In recent times neutral states have acted upon their right of imposing conditions upon belligerent vessels visiting their ports. The twenty-four hour rule is the oldest and the most common. It lays down that when war vessels of opposing belligerents are in a neutral ports at the same time, or when war vessels of one side and merchant vessels of the other are in the like predicament, at least twenty-four hours shall elapse between the departure of those who leave first and the departure of their opponents. The object of this injunction is to prevent the occurrence of any fighting, either in the waters of the neutral or so close to them as to be dangerous to vessels frequenting them. Sometimes the word of the commanders that they will not commence hostilities in or near neutral territorial waters has been accepted as sufficient. Greater precautions were generally taken for the restraint of privateers; but the practical abolition of privateering by the Declaration of Paris has made obsolete the distinction between two classes of belligerent cruisers. The possibility of evading the twenty-four hours rule was shown by the conduct of the United States steamer *Tuscarora* at Southampton in December, 1861, and January, 1862. The southern cruiser *Nashville* was undergoing repairs in the harbor, and by keeping steam up, claiming to precede her whenever she attempted to depart, and then returning within a day, the *Tuscarora* really blockaded her in a British port. In the end a British ship of war, exercising a right which a neutral possesses in extreme cases, escorted the *Nashville* past the *Tuscarora* and out to sea, while the latter was forbidden to leave the port for twenty-four hours. This and other circumstances caused the British Government to issue, on January 31, 1862, a series of neutrality regulations more stringent than any hitherto published. They provided that no ship of war of either belligerent should be permitted to leave a British port from which a ship of war or merchant vessel of the other belligerent had previously departed, until after the expiration of at least twenty-four hours from the departure of the latter. They laid down further that war vessels of either belligerent should be required to depart within twenty-four hours of their entry, unless they needed more time for taking in innocent supplies or effecting lawful repairs, in which case they were to obtain special permission to remain for a longer period, and were to put to sea within twenty-four hours after the reason for their remaining ceased. They might freely purchase provisions and other things necessary for the subsistence of their crews; but the amount of coal they were allowed to receive was limited to as much as was necessary to take them to the nearest port of their country.

Moreover, no two supplies of coal were to be obtained in British waters within three months of each other. These restrictions upon the liberty of belligerent vessels in British ports have been reimposed in subsequent wars. The United States adopted them in 1870 at the outbreak of the conflict between France and Germany, and other powers have copied them wholly or in part. In fact, they have become so common that they are sometimes regarded as rules of International Law. This is especially the case with regard to the supply of coal. It is often said that a neutral state is bound to allow belligerent cruisers to take on board no more than is sufficient to carry them to the nearest port of their own country. Such an obligation is unknown to the law of nations, which arms neutrality with authority to impose what restraint they deem necessary, but does not condemn them if they impose none. (Lawrence, *Principles of International Law*, p. 509.)

Hall regards the twenty-four rule as "practically sure to be enforced in every war:"

Marine warfare so far differs from warfare on land that the forces of a belligerent may enter neutral territory without being under stress from their enemy. Partly as a consequence of the habit of freely admitting foreign public ships of war belonging to friendly powers to the ports of a state as a matter of courtesy, partly because of the inevitable conditions of navigation, it is not the custom to apply the same rigour of precaution to naval as to military forces. A vessel of war may enter and stay in a neutral harbor without special reasons; she is not disarmed on taking refuge after defeat; she may obtain such repair as will enable her to continue her voyage in safety; she may take in such provisions as she needs; and if a steamer, she may fill up with enough coal to enable her to reach the nearest port of her own country; nor is there anything to prevent her from enjoying the security of neutral waters for so long as may seem good to her. To disable a vessel, or to render her permanently immovable, is to assist her enemy; to put her in a condition to undertake offensive operations is to aid her country in its war. The principle is obvious; its application is susceptible of much variation; and in the treatment of ships, as in all other matters in which the neutral holds his delicate scale between two belligerents, a tendency toward the enforcement of a harsher rule becomes more defined with each successive war.

It is easy to fix the proper means of repairs; difficulties short of such circumstances as those which have already been discussed may sometimes occur with reference to supplies of coal or provisions; but if a belligerent can leave a port at his will, the neutral territory may become at any time a mere trap for an enemy of inferior strength. Accordingly, during a considerable period, though not very generally or continuously, neutral states have taken more or less precaution against the danger of their waters being so used. Perhaps the usual custom until lately may be stated as having been that the commander of a vessel of war was required to give his word not to commit hostilities against any vessel issuing from a neutral shortly before him, and that a privateer as being less responsible person, was subjected to detention for twenty-four hours. The disfavor however, with

which privateers have long been regarded has not infrequently led to their entire exclusion, save in cases of danger from the sea or of absolute necessity; and the twenty-four hours rule has been extended to public ships of war by Italy, France, England, the United States, and Holland. Probably it may now be looked upon as a regulation which is practically sure to be enforced in every war. (Hall, *International Law*, 5th ed., p. 626.)

Hall also points out that the earlier view of the twenty-four hour rule was not sufficient to cover the cases which may easily arise, and that a limit to the time of sojourn should be made more definite. This position taken by Hall is emphasized by the differentiation in modern war vessels in respect to speed and seaworthiness.

On the general subject of the twenty-four hour rule Hall says:

It will probably be found necessary to supplement the twenty-four hours rule by imposing some limit to the time during which belligerent vessels may remain in a neutral port when not actually receiving repairs. The insufficiency of the twenty-four hours rule, taken by itself, is illustrated by an incident which occurred during the American civil war. In the end of 1861, the United States corvette *Tuscarora* arrived in Southampton waters with the object, as it ultimately appeared, of preventing the exit of the Confederate cruiser *Nashville*, which was then in dock. By keeping up steam and having slips on her cable, so that the moment the *Nashville* moved the *Tuscarora* could precede her, and claim priority of sailing, by moving and returning again within twenty-four hours and by notifying and then postponing her own departure, the latter vessel attempted and for some time was able to blockade the *Nashville* within British waters.

In order to guard against the repetition of such acts, it was ordered in the following January that during the continuance of hostilities any vessel of war of either belligerent entering an English port "should be required to depart and to put to sea within twenty-four hours after her entrance into such port, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs;" in either of which cases the authorities of the port were ordered "to require her to put to sea as soon as possible after the expiration of such period of twenty-four hours." In 1870 [and in 1898] the same rule was laid down; and the United States, unwilling to allow the others the license which she permitted to herself, adopted an identical resolution. It is perhaps not unlikely soon to become general. (Hall, *International Law*, 5th ed., p. 628.)

With these opinions continental writers in the main concur, some asserting it even more strongly than the British writers cited.

It is evident that while the twenty-four hour rule can not be held to be obligatory upon a neutral at the present

time in the absence of the neutral's own declaration to that effect, it is nevertheless in a high degree incumbent upon a neutral State to enforce the rule.

The technical correctness of the action of the commander in waiting twenty-four hours may be admitted, provided that it is granted that belligerent vessels may seek a neutral port in order to escape capture or defeat at the hands of the enemy.

Twenty-four hour rule in proclamations.—The proclamations of neutrality of the various States at the time of the Spanish-American war show the current of opinion.

The regulation of Great Britain, which in spirit serves as a model to a large number of others, is as follows upon this point:

GREAT BRITAIN.

RULE 2. If there is now in any such port, roadstead, or waters subject to the territorial jurisdiction of the British Crown any ship of war of either belligerent, such ship of war shall leave such port, roadstead, or waters within such time (not less than twenty-four hours) as shall be reasonable, having regard to all the circumstances and the condition of such ship as to repairs, provisions, or things necessary for the subsistence of her crew; and if after the date hereof any ship of war of either belligerent shall enter any such port, roadstead, or waters subject to the territorial jurisdiction of the British Crown, such ship shall depart and put to sea within twenty-four hours after her entrance into any such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs, in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed. Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war or merchant ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war or merchant ship) of the one belligerent, and the subsequent departure therefrom of any ship of war of the other belligerent; and the time hereby limited for the departure of such ships of war respectively shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but no further or otherwise.

(The same communication is sent by Lord Lansdowne to the Lords Commissioners of the Admiralty, etc., February 10, 1904.)

The British regulation would make it obligatory for a belligerent vessel to depart at the end of the twenty-four hour period, unless, on account of necessary repairs, provisions, stress of weather, or presence in port of a ship of the other belligerent.

The colonial regulations are in some instances more detailed.

China in the main follows Great Britain, though requiring the officials in charge of the port to compel the vessel to leave at the expiration of the period.

CHINA.

(2) After issuance of this proclamation, should any war ship of either belligerent come into a Chinese port, except on account of heavy winds or storms, or to obtain food for crews or for repairs, it must not remain over twenty-four hours, and the officials in charge of the port or waterway must, at the end of twenty-four hours, compel said boat to leave, and must not permit the loading of more provisions than are actually needed by the crew. In case of repairs, the ship must leave within twenty-four hours after repairs are completed. No delay must be permitted. War or merchant ships, of whichever nation, in a Chinese port, must be separated in leaving by twenty-four hours' time, and must not leave before or remain longer than said time.

The proclamation of Japan is more general, as is the Netherlands proclamation and the Dutch West Indies regulations:

JAPAN.

2. No man-of-war or other ship belonging to one or the other of the belligerent powers shall be permitted to commit any act of war or visit, search, or capture merchantmen within the territorial waters of the Empire. Neither shall such man-of-war or such other ship be allowed to make use of any portion of the territorial waters of the Empire as the basis or headquarters of naval operations or for any warlike purposes whatever.

3. The men-of-war and other ships used for warlike purposes, belonging to one or the other of the belligerent powers, may enter any of the ports that are open to ships for ordinary purposes of navigation, but should not stay in the waters of such port longer than twenty-four hours. In case when such men-of-war or such other ships used for warlike purposes have been compelled to seek the waters of such port on account of unavoidable circumstances, such as stress of weather, destitution of articles necessary for

navigation, or disablement, and are unable to quit the port within twenty-four hours, they should leave the territorial waters of the Empire as soon as such circumstance or circumstances shall have ceased to exist.

NETHERLANDS.

ARTICLE I. The vessels and ships of war of the parties at war shall be admitted to the Kingdom's sea channels, mentioned in article 1 of the royal order of February 2, 1893 (Official Gazette, No. 46), with due observance of the further provisions of that order, for a sojourn not exceeding twenty-four hours, unless it is absolutely necessary that a longer sojourn be granted them, either for the procuring of provender or coal or in case of distress or dangers of the sea.

DUTCH WEST INDIES.

ARTICLE I. Ships and vessels of war of the belligerents will be admitted to the harbors and roadsteads of the colony for a stay of twenty-four hours at most, unless it is shown to be necessary to grant them a longer stay to enable them to provide themselves with provisions or coal, or in cases of distress or in dangers of the sea. In such cases, however, they must depart as soon as they have finished taking in provisions or coal, within the first twenty-four hours, if possible; otherwise, as quickly as practicable, as soon as the danger is past, and in the case of repairs within twenty-four hours at the furthest after the repairs have been finished. The period of twenty-four hours at the utmost fixed for the stay in port shall be exceeded only when necessary to the execution of the provisions of article 5 of this publication. Such quantity of provisions may be taken on board as is sufficient for the subsistence of the crew, but the supply of coal must not be more than sufficient to enable the ship or vessel to reach the nearest port of the country to which it belongs or that of one of its allies in the war. The same vessel shall not be supplied a second time with coal until at least three months have elapsed since the former supply, unless special permission be granted to that effect.

The Italian regulation is concise and definite.

ITALY.

ART. VII. No belligerent ship of war or cruiser can remain more than twenty-four hours in a port or roadstead, or on the coasts of the Kingdom, or in the adjacent waters, even when it comes there alone, except in case of arrival under stress on account of bad weather, of damages, or want of the necessary provisions for the safety of the voyage.

For Russia a longer delay than twenty-four hours requires special Imperial authorization.

RUSSIA.

The Imperial Government further declares that the ships of war of two belligerent powers may only enter Russian ports for twenty-four hours. In case of stress of weather, absence of goods or provisions necessary to

the maintenance of the crew, or for indispensable repairs, the prolongation of the above-mentioned time can only be accorded by special authorization of the Imperial Government.

The proclamation of Brazil, one of the fullest in its provisions, makes definite reference to the refuge from the enemy.

BRAZIL.

No war ship or privateer shall be permitted to enter and remain with prizes in our ports or bays during more than twenty-four hours, except in case of a forced putting into port, and in no manner shall it be permitted to it to dispose of its prizes or of articles coming out of them.

By the words "except in case of a forced putting into port" should also be understood that a ship shall not be required to leave port within the said time:

First. If it shall not have been able to make the preparations indispensable to enable it to go to sea without risk of being lost.

Second. If there should be the same risk on account of bad weather.

Third, and finally, if it shall be menaced by an enemy.

In these cases it shall be for the Government, at its discretion, to determine, in view of the circumstances, the time within which the ship should leave.

Conclusion.—It may be said in regard to the protest of the commander that he is in the main justified in making a protest against a sojourn of longer than twenty-four hours on the part of the war vessel of State X unless the sojourn be on the grounds of special necessity and not for military reasons. In this position the opinions of writers and the general drift of neutrality proclamations agree.

Internment.—(b) The question next arising is in regard to the proper course of action of State Y, a neutral, in view of the fact that the belligerent vessels of State X have sought her port to escape the capture by the vessels of the United States.

Land forces thus entering neutral territory are interned for the remainder of the war. Some maintain that the same course should be pursued in regard to maritime forces.

Unmanned vessel in neutral port.—The completed torpedo boat *Somers* belonging to the United States was not allowed to leave the British port for military purposes during the Spanish war. The dispatches concerning this boat show that the boat was practically interned.

Mr. Hay to Mr. White.

DEPARTMENT OF STATE,
Washington, November 19, 1898.

SIR: In view of a letter from the Secretary of the Navy, dated the 15th instant, you are instructed to make, if practicable, arrangements with the British Government permitting the bringing to the United States of the torpedo boat *Somers*, now stored at Falmouth, England, giving assurance that in case of the resumption of hostilities with Spain this vessel will not be made use of.

I am, etc.,

JOHN HAY.

Mr. White to Mr. Hay.

AMERICAN EMBASSY,
London, December 10, 1898.

SIR: Referring to your instruction 959, of the 19th ultimo, I have the honor to inform you that upon the day of its receipt I called at the foreign office and had an interview with Mr. Assistant Under Secretary Villiers, through whom I requested Her Majesty's Government to allow the torpedo boat *Somers* to leave Falmouth, on the understanding that in the event of a renewal of hostilities between ourselves and Spain she should not be made use of.

I subsequently addressed a note, of which I inclose a copy, to the Marquis of Salisbury on the subject, and you will observe from his lordship's reply, which is also transmitted herewith, that our request has been granted.

I yesterday communicated this fact to you by a telegram, whereof I inclose a copy.

I have, etc.,

HENRY WHITE.

Mr. White to Lord Salisbury.

AMERICAN EMBASSY,
London, December 1, 1898.

MY LORD: I have the honor, in accordance with instructions from the Secretary of State, to invite the good offices of your lordship with a view to obtaining the consent of Her Majesty's Government to the departure from Falmouth, where she has been stored since the outbreak of the war, of the United States torpedo boat *Somers*.

I am instructed, in making this request, to give assurance to your lordship, in behalf of my Government, that in case hostilities should unfortunately be resumed with Spain, which would now appear to be highly improbable, the *Somers* will not be made use of, and I venture to hope that, upon this understanding, Her Majesty's Government may see their way to allow her to leave for the United States.

I have, etc.,

HENRY WHITE.

Lord Salisbury to Mr. White.

FOREIGN OFFICE, *December 8, 1898.*

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, in which you invite my good offices with a view of obtaining the consent of Her Majesty's Government to the departure from Falmouth, where she has been stored since the outbreak of the war, of the United States torpedo boat *Somers*. You add that you are instructed by the United States Government to give an assurance that in the event of hostilities being resumed with Spain, which would now appear to be highly improbable, the *Somers* will not be made use of.

In view of this assurance I have the honor to state that Her Majesty's Government are glad to comply with your request, and that the necessary instructions will at once be sent to the proper authorities in order to facilitate the departure of the vessel.

I have, etc.,

F. H. VILLIERS,

(For the Marquis of Salisbury.)

(United States Foreign Relations, 1898, p. 1006.)

Asylum to vessels pursued by enemy.—Galiani (*Dei doveri dei principii neutrali*, I, cap. X, §4) maintains that asylum can be afforded to a ship pursued into neutral waters by an enemy only on condition that it practically be interned for the remainder of the war.

Gessner opposes this position of Galiani (*Le Droit des neutres*, p. 78). Perels follows Gessner, maintaining that even in a case where entrance to neutral waters is forbidden to a belligerent ship the position of Galiani is not justifiable, because the prohibition ought to hold only against voluntary and not against forced entrance. (*Seerecht*, section 39, II, a.)

Fiore (*Droit International*, III, p. 476) maintains that it seems that there should be a difference made between ships of war of the belligerents which are forced by the elements to make an entrance and those which seek the port as a refuge to escape pursuit by a victorious enemy about to capture or to sink them. In the first case, according to the usages of international law, the neutral state ought not to disarm the ship nor to prevent it from again taking part in the hostilities; but the second case is altogether exceptional, since the victor may be deprived of his prey through the protection afforded. This is without question an act of humanity, but if the belligerent can not continue his attack upon his opponent

in territorial waters, he should not be allowed to obtain safety and after making repairs to return to the combat. The refugee would thus obtain the protection of the neutral not only to escape the superior victorious force, but also to put himself again in condition for battle. Following this line of reasoning, Fiore concludes that the duties of humanity should be reconciled with the exigencies of war by preventing the belligerent ship from taking further part in the war, by retaining it in port, after disarming, or by allowing it to depart only after obtaining the word of the commander not to take any part during the remainder of the war.

The question of asylum to belligerent vessels in time of war in neutral ports was fully considered by the Institute of International Law in 1898. The report of the Institute recognized the difference between forces upon the sea and those upon land, due to natural conditions, which made it impossible to obtain supplies, fuel, repairs, etc., with the same facility as upon land, and also recognized the special dangers from the natural elements, as from stress of weather. The Institute in its discussions recognized the propriety of admitting belligerent vessels to neutral ports in time of war upon such grounds as might be regarded broadly as grounds of humanity. An admission to neutral ports under such conditions, for such specific purposes, limiting supplies, etc., to those absolutely necessary, and the duration of sojourn to period likewise absolutely necessary, would be no violation of neutrality, nor would it make the neutral port a base of military operations. It was held that such action of the neutral was not military in its nature and did not necessarily affect the issue of the conflict or modify the relations of the belligerent.

On the other hand, the admission to a neutral port of a belligerent ship pursued by its opponent and unable or even unwilling to meet its pursuer is to put the pursued ship beyond the reach of the other belligerent even more effectively than might have been the case had she entered one of her home ports. Such action may directly influ-

ence the issue of the war. Yet, in the first place it is admittedly impossible for the neutral in every instance to prevent the entrance of a vessel thus pursued, and in the second place the neutral may not allow any combat within neutral jurisdiction.

If the neutral allows the belligerent vessel fleeing from its opponent to find refuge in its neutral port for a time and then to go forth to meet the enemy, the neutral in effect makes the port a base of operations. The fleeing belligerent may in many instances within the twenty-four hour period summon and receive such reenforcement that when she again goes forth she may join with other of the forces of State X sufficient to secure her own safety or to threaten the force of the United States. In many other ways the twenty-four hour sojourn may be a decided or even a decisive military advantage. It is evident in this situation that the vessel of State X entered the port of Y from overwhelming military reasons. The vessel entered to escape capture or destruction by the enemy. To afford shelter under such circumstances and to allow the vessel to again set forth from the neutral port upon a military expedition is to act as an ally of State X.

In order that the neutral may not violate neutrality and in order that the pursuing belligerent may not be deprived of some of the rewards of his effort to place his enemy beyond the power of further contest, there seems to be a single line of approved conduct, viz, to intern the belligerent vessel coming within neutral jurisdiction in order to escape capture by a pursuing enemy.

Kleen, in *La Neutralité*, 1898, Volume I, on page 533, says:

Donc, un navire de guerre *fuyant* devant l'ennemi et réfugié dans un port neutre, y est traité à l'instar des fuyards de la guerre continentale, c'est-à-dire désarmé et interné après avoir joui des soins humanitaires; tandis qu'au contraire, le navire entré en *disette* ou détresse proprement dite peut et doit quitter le port et mettre au large aussitôt qu'il est hors de danger.

Opinion of the Institute of International Law.—Kleen was also instrumental in drawing up the rules adopted by the

Institute of International Law in 1898. These were unanimously adopted, as follows:

(*Annuaire de l'Institut de Droit International, XVII, 1898, Session de la Haye, page 285.*)

Art. 42 La concession d'asile aux belligérants dans les ports neutres, tout en dépendant de la décision de l'État souverain du port et ne pouvant être exigée, est presuée, à moins de notification contraire préalablement communiquée.

Toutefois, quant aux navires de guerre, elle doit être limitée aux cas de véritable détresse, par suite de: (1^o) Défaite, maladie ou équipage insuffisant, (2^o) péril de mer, (3^o) manque des moyens d'existence ou de locomotion (eau, charbon, vivres), (4^o) besoin de réparation.

Un navire belligérant se réfugiant dans un port neutre devant la poursuite de l'ennemi, ou après avoir été défait par lui, ou faute d'équipage pour tenir la mer, doit y rester jusqu'à la fin de la guerre. Il en est de même s'il y transporte des malades ou des blessés, et qu'après les avoir débarqués, il soit en état de combattre. Les malades et les blessés, tout en étant reçus et secourus, sont, après guérison, internés également, à moins d'être reconnus impropres au service militaire.

Un refuge contre un péril de mer n'est donné aux navires de guerre des belligérants que pour la durée du danger. On ne leur fournit de l'eau, du charbon, des vivres et autres approvisionnements analogues qu'en la quantité nécessaire pour atteindre le port national le plus proche. Les réparations ne sont permis que dans la mesure nécessaire pour que le bâtiment puisse tenir la mer. Immédiatement après, le navire doit quitter le port et les eaux neutres.

Si deux navires ennemis sont prêts à sortir d'un port neutre simultanément, l'autorité locale établit, entre leurs appareillages, un intervalle suffisant de vingt-quatre heures au moins. Le droit de sortir le premier appartient au navire le premier entré, ou, s'il ne veut pas en user, à l'autre, à la charge d'en réclamer l'exercice à l'autorité locale, qui lui délivre l'autorisation si l'adversaire, dûment avisé, persiste à rester. Si, à la sortie du navire d'un belligérant, un ou plusieurs navires ennemis sont signalés, le navire sortant doit être averti et peut être réadmis dans le port pour y attendre l'entrée ou la disparition des autres. Il est défendu d'aller à la rencontre d'un navire ennemi dans le port ou les eaux neutres.

Les navires des belligérants doivent, en port neutre, se conduire pacifiquement, obéir aux ordres des autorités, s'abstenir de toutes hostilités, de toute prise de renfort et de tout recrutement militaire, de tout espionnage et de tout emploi du port comme base d'opération.

Les autorités neutres font respecter, au besoin par la force, les prescriptions de cet article.

L'État neutre peut exiger une indemnité de l'État belligérant dont il a entretenu soit des forces légalement internées, soit des malades et blessés, ou dont les navires ont, pas mégarde ou par infraction à l'ordre du port, occasionné des frais ou dommage.

Internment in Russo-Japanese War.—On August 10, 1904, the *Czarevitch*, a Russian battle ship, accompanied by destroyers, pursued by a Japanese fleet, sought shelter in the port of Tsingtau, and the German authorities interned the vessels. Certain other Russian vessels were interned at British ports in which they sought shelter. The Russian transport *Lena* received like treatment by the United States at San Francisco.

Conclusion.—(a) From the point of view of both theory and practice it would seem that the United States commander, under the circumstances as stated in the situation, would be justified in claiming that belligerent vessels entering and remaining in the neutral port in order to escape capture by his vessels, should be interned for the remaining period of the war.

(b) The authorities of State Y would also be under obligations to intern the vessels of State X thus seeking neutral protection.