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 IV.

War exists between the United States and State X. A war vessel of the United States enters a harbor of State Y, a neutral. In the harbor is a supply ship of the United States. The war ship is about to take on coal, oil, etc., from the supply ship, when the authorities of State Y protest against the action as a violation of neutrality and forbid the use of the port for such purposes, claiming that it would be equivalent to allowing the port to be used for the fitting out of an hostile expedition.

(a) Is the protest of State Y valid?  
(b) What should the commander do?  
(c) Would the case be different provided there was a fleet of war vessels of the United States with supply ships instead of the two vessels above mentioned?

Solution.

(a) The protest of State Y is valid, as State Y has full right to regulate the conditions of entrance and sojourn of war vessels in her ports.  
(b) The commander should heed the protest as valid.  
(c) The presence of a fleet of war vessels with supply ships would make it necessary for State Y to use greater care to see that there should be no violation of neutrality.

Notes on Situation IV.

Jurisdiction over public vessels.—(a) The matter of treatment of belligerent war vessels in neutral ports in time of war has received much attention. There has been a tendency toward uniformity in modern practice.  

The question of jurisdiction of a foreign neutral state over a war vessel of a belligerent has been quite fully set forth in the opinion rendered by Chief Justice Marshall in the case of the Exchange v. M'Faddon. This case has been frequently cited as setting forth the fundamental principles of jurisdiction and as showing that the jurisdiction of a state can be limited only by self-imposed restriction, and, further, that the state is itself the
exclusive judge of the nature of those restrictions. Yet the determination of the limits of this jurisdiction is to be in accord with the general principles set forth in the practice of the law of nations. This opinion is worthy of a somewhat full presentation:

*Marshall's opinion.*—The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction and an investment of that sovereignty to the same extent in that power which could impose such restriction.

All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

This consent may be either express or implied. In the latter case it is less determinate, exposed more to the uncertainties of construction, but, if understood, not less obligatory.

The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other and by an interchange of those good offices which humanity dictates and its wants require, all sovereigns have consented to a relaxation in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers.

This consent may, in some instances, be tested by common usage, and by common opinion growing out of that usage.

A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilized world.

The full and absolute territorial jurisdiction being alike the attribute of every sovereign, and being incapable of conferring extraterritorial power, would not seem to contemplate foreign sovereigns nor their sovereign rights as its objects. One sovereign being in no respect amenable to another, and being bound by obligations of the highest character not to degrade the dignity of his nation by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication and will be extended to him.

This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of the complete exclusive territorial jurisdiction which has been stated to be the attribute of every nation.
First. One of these is admitted to be the exemption of the person of the sovereign from arrest or detention within a foreign territory. * * *

Second. A second case, standing on the same principles with the first, is the immunity which all civilized nations allow to foreign ministers. * * *

Third. A third case in which a sovereign is understood to cede a portion of his territorial jurisdiction is where he allows the troops of a foreign prince to pass through his dominions. * * *

But the rule which is applicable to armies does not appear to be equally applicable to ships of war entering the ports of a friendly power. The injury inseparable from the march of an army through an inhabited country and the dangers often, indeed generally, attending it do not ensue from admitting a ship of war without special license into a friendly port. A different rule, therefore, with respect to this species of military force has been generally adopted. If, for reasons of state, the ports of a nation generally, or any particular ports, be closed against vessels of war generally or the vessels of any particular nation, notice is usually given of such determination. If there be no prohibition the ports of a friendly nation are considered as open to the public ships of all powers with whom it is at peace, and they are supposed to enter such ports and to remain in them, while allowed to remain, under the protection of the government of the place.

In almost every instance the treaties between civilized nations contain a stipulation to this effect in favor of vessels driven in by stress of weather or other urgent necessity. In such cases the sovereign is bound by compact to authorize foreign vessels to enter his ports. The treaty binds him to allow vessels in distress to find refuge and asylum in his ports, and this is a license which he is not at liberty to retract. It would be difficult to assign a reason for withholding from a license thus granted any immunity from local jurisdiction which would be implied in a special license.

If there be no treaty applicable to the case, and the sovereign, from motives deemed adequate by himself, permits his ports to remain open to the public ships of foreign friendly powers, the conclusion seems irresistible that they enter by his assent; and if they enter by his assent, necessarily implied, no just reason is perceived by the court for distinguishing their case from that of vessels which enter by express assent.

In all cases of exemption which have been reviewed much has been implied, but the obligation of what was implied has been found equal to the obligation of that which was expressed. Are there reasons for denying the application of this principle to ships of war?

In this part of the subject a difficulty is to be encountered, the seriousness of which is acknowledged but which the court will not attempt to evade.

Those treaties which provide for the admission and safe departure of public vessels entering a port from stress of weather or other urgent cause, provide in like manner for the private vessels of the nation; and where public vessels enter a port under the general license which is implied merely from the absence of a prohibition, they are, it may be urged, in the same condition with merchant vessels entering the same port for the purposes of trade, who can not thereby claim any exemption from the jurisdiction of
the country. It may be contended, certainly with much plausibility, if not correctness, that the same rule and same principle are applicable to public and private ships; and since it is admitted that private ships entering without special license become subject to the local jurisdiction, it is demanded on what authority an exception is made in favor of ships of war.

It is by no means conceded that a private vessel, really availing herself of an asylum provided by treaty, and not attempting to trade, would become amenable to the local jurisdiction, unless she committed some act of forfeiting the protection she claims under compact. On the contrary, motives may be assigned for stipulating and according immunities to vessels in cases of distress which would not be demanded for or allowed to those which enter voluntarily and for ordinary purposes. On this part of the subject, however, the court does not mean to indicate any opinion. The case itself may possibly occur and ought not to be prejudged.

Without deciding how far such stipulations in favor of distressed vessels, as are usual in treaties, may exempt private ships from the jurisdiction of the place, it may safely be asserted that the whole reasoning upon which such exemption has been implied in other cases applies with full force to the exemption of ships of war in this.

"It is impossible to conceive," says Vattel, "that a prince who sends an ambassador or any other minister can have any intention of subjecting him to the authority of a foreign power; and this consideration furnishes an additional argument, which completely establishes the independency of a public minister. If it can not be reasonably presumed that his sovereign means to subject him to the authority of a prince to whom he is sent, the latter, in receiving the minister, consents to admit him on the footing of independency; and thus there exists between the two princes a tacit convention, which gives a new force to the natural obligation."

Equally impossible is it to conceive, whatever may be the construction as to private ships, that a prince who stipulates a passage for his troops, or an asylum for his ships of war in distress, should mean to subject his army or his navy to the jurisdiction of a foreign sovereign. And if this can not be presumed, the sovereign of the port must be considered as having conceded the privilege to the extent in which it must have been understood to be asked.

To the court it appears that where, without treaty, the ports of the nation are open to the public and private ships of a friendly power, whose subjects have also liberty without special license, to enter the country for business or amusement, a clear distinction is to be drawn between the rights accorded to private individuals or private trading vessels and those accorded to public armed ships which constitute a part of the military force of the nation.

The preceding reasoning has maintained the propositions that all exemptions from territorial jurisdictions must be derived from the consent of the sovereign of the territory; that this consent may be implied or expressed; and that when implied its extent must be regulated by the nature of the case and the views under which the parties requiring and conceding it must be supposed to act.
After mentioning the treatment of private ships, Mr. Chief Justice Marshall further says:

But in all respects different is the situation of a public armed ship. She constitutes a part of the military force of her nation; acts under the immediate and direct command of her sovereign; is employed by him in national objects. He has many and powerful motives for preventing those motives from being defeated by the interference of a foreign state. Such interference can not take place without affecting his power and his dignity. The implied license, therefore, under which such vessel enters a friendly port may reasonably be construed, and it seems to the court, ought to be construed, as containing an exemption from the jurisdiction of the sovereign within whose territory she claims the rights of hospitality.

Upon these principles, by the unanimous consent of nations, a foreigner is amenable to the laws of the place: but certainly in practice nations have not yet asserted their jurisdiction over the public armed ships of a foreign sovereign entering a port open for their reception. * * *

It seems, then, to the court, to be a principle of public law that national ships of war entering the port of a friendly power open for their reception are to be considered as exempted by the consent of that power from its jurisdiction. (U. S Supreme Court Reports, 7 Cranch, 116, Exchange v. M'Fadden.)

Later opinions of the court.—This opinion of Chief Justice Marshall has been most widely and approvingly quoted as showing the fundamental grounds for the exemption of war vessels of one state from the jurisdiction of another state even when in the ports of the second state.

The Supreme Court has also frequently referred to this opinion.

In a subsequent case (The Santissima Trinidad, 7 Wheaton, 283) the United States Supreme Court says:

In the case of the Exchange (7 Cranch, 116) the grounds of the exemption of public ships were fully discussed and expounded. It was there shown that it was not founded upon any notion that a foreign sovereign had an absolute right, in virtue of his sovereignty, to an exemption of his property from the local jurisdiction of another sovereign, when it came within his territory; for that would be to give him sovereign power beyond the limits of his own empire. But it stands upon principles of public comity and convenience, and arises from the presumed consent or license of nations, that foreign public ships coming into their ports, and demeaning themselves according to law and in a friendly manner, shall be exempt from the local jurisdiction. But as such consent and license is implied only from the general usage of nations, it may be withdrawn upon notice at any time, without just offense, and if afterwards such public ships come into our ports they
are amenable to our laws in the same manner as other vessels. To be sure, a foreign sovereign can not be compelled to appear in our courts, or be made liable to their judgment, so long as he remains in his own dominions, for the sovereignty of each is bounded by territorial limits.

If, however, he comes personally within our limits, although he generally enjoy a personal immunity, he may become liable to judicial process in the same way and under the same circumstances as the ships of his nation. But there is nothing in the law of nations which forbids a foreign sovereign, either on account of the dignity of his station, or the nature of his prerogative, from voluntarily becoming a party to a suit in the tribunals of another country, or from asserting there any personal, or proprietary, or sovereign rights, which may be properly recognized and enforced by such tribunals. It is a mere matter of his own good will and pleasure: and if he happens to hold a private domain within another territory, it may be that he can not obtain full redress for any injury to it, except through the instrumentality of its courts of justice. It may therefore be justly laid down as a general proposition, that all persons and property within the territorial jurisdiction of a sovereign are amenable to the jurisdiction of himself or his courts; and that the exceptions to this rule are such only as by common usage and public policy have been allowed, in order to preserve the peace and harmony of nations and to regulate their intercourse in a manner best suited to their dignity and rights. It would indeed be strange if a license implied by law from the general practice of nations, for the purposes of peace, should be construed as a license to do wrong to the nation itself, and justify the breach of all those obligations which good faith and friendship, by the same implication, impose upon those who seek an asylum in our ports. (U. S. Supreme Court Reports, 7 Wheaton, 283, p. 473.)

Proclamation, 1870.—The proclamation by President Grant on October 8, 1870, gives a very full statement of belligerent rights in neutral ports.

By the President of the United States of America.

A PROCLAMATION

Regulating the conduct of vessels of war of either belligerent in the waters within the territorial jurisdiction of the United States.

Whereas on the 22d day of August, 1870, my proclamation was issued, enjoining neutrality in the present war between France and the North German Confederation and its allies and declaring, so far as then seemed to be necessary, the respective rights and obligations of the belligerent parties and of the citizens of the United States; and

Whereas subsequent information gives reason to apprehend that armed cruisers of the belligerents may be tempted to abuse the hospitality accorded to them in the ports, harbors, roadsteads, and other waters of the United States, by making such waters subservient to the purposes of war:

Now, therefore, I, Ulysses S. Grant, President of the United States of America, do hereby proclaim and declare that any frequenting and use of
the waters within the territorial jurisdiction of the United States by the armed vessels of either belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of the other belligerent lying within or being about to enter the jurisdiction of the United States, must be regarded as unfriendly and offensive and in violation of that neutrality which it is the determination of this Government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that, from and after the 12th day of October instant, and during the continuance of the present hostilities between France and the North German Confederation and its allies, no ship of war or privateer of either belligerent shall be permitted to make use of any port, harbor, roadstead, or other waters within the jurisdiction of the United States as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment: and no ship of war or privateer of either belligerent shall be permitted to sail out of or leave any port, harbor, or roadstead or waters subject to the jurisdiction of the United States from which a vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States.

If any ship of war or privateer of either belligerent shall, after the time this notification takes effect, enter any port, harbor, roadstead, or waters of the United States, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, harbor, 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 for 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 permitted to remain within the waters of the United States for the purpose of repair shall continue within such port, harbor, roadstead, or waters for a longer period than twenty-four hours after her necessary repair shall have been completed, unless within such twenty-four hours a vessel, whether ship of war, privateer, or merchant ship of the other belligerent, shall have departed therefrom, in which case the time limited for the departure of such ship of war or privateer shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure, and that of any ship of war, privateer, or merchant ship of the other belligerent which may have previously quit the same port, harbor, roadstead, or waters.

No ship of war or privateer of either belligerent shall be detained in any port, harbor, roadstead, or waters of the United States more than twenty-four hours, by reason of the successive departures from such port, harbor, roadstead, or waters, of more than one vessel of the other belligerent. But if there be several vessels of each or either of the two belligerents in the same
port, harbor, roadstead, or waters, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the respective belligerents, and to cause the least detention consistent with the objects of this proclamation. No ship of war or privateer of either belligerent shall be permitted, while in any port, harbor, roadstead, or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without sail power, to the nearest European port of her own country: or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive if dependent upon steam alone; and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war, or privateer shall, since last thus supplied, have entered a European port of the government to which she belongs.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 8th day of October, in the year of our Lord 1870, and of the independence of the United States of America the ninety-fifth.

[seal.]

By the President:

HAMILTON FISH,

Secretary of State.

(Foreign Relations U. S. 1870, p. 48.)

**Domestic law.**—The position of the Government of the United States, so far as domestic law is concerned, is set forth in the following statute:

**Sec. 5285.** Every person who, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, curiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war or curiser or armed vessel in the service of any foreign prince or state or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state or of any colony, district, or people with whom the United States are at peace, by adding to the number of the guns of such vessel or by changing those on board of her for guns of a larger caliber or by adding thereto any equipment solely applicable to war, shall be deemed guilty of a high misdemeanor and shall be fined not more than one thousand dollars and be imprisoned not more than one year.

(U. S. Revised Statutes.)
British regulations.—The British regulations show the position of a great maritime power toward the control of the general conduct of war vessels in a foreign port by the authorities of that port.

Queen's Regulations and Admiralty Instructions, 1899, provide for Great Britain as follows:

592. Subject to any limit which the neutral authorities may place upon the number of belligerent cruisers to be admitted to any one of their ports at the same time, the captain, by the comity of nations, may enter a neutral port with his ship for the purpose of taking shelter from the enemy or from the weather or for obtaining provisions or repairs that may be pressingly necessary.

593. He is bound to submit to any regulations which the local authorities may make respecting the place of anchorage, the limitation of the length of stay in the port, the interval after a hostile cruiser has left the port before his ship may leave in pursuit, etc.

594. He must abstain from any acts of hostility toward the subjects, cruisers, vessels, or other property of the enemy which he may find in the neutral port.

595. He must also abstain from increasing the number of his guns, from procuring military stores, and from augmenting his crew even by the enrollment of British subjects.

Thus it is seen that the decision of the courts, proclamations, domestic laws, and regulations alike agree upon the growing tendency to prescribe more and more definitely the exact range of action which may be permitted to a belligerent war vessel in a neutral port. In no case is there a doubt that the neutral state has a right to make regulations upon this subject. The proclamations of neutrality issued in recent wars also show a tendency to become explicit in outlining belligerent rights in neutral ports. This has been particularly the case since the civil war in the United States and the adjustment of the Alabama claims.

Neutrality proclamations.—The neutrality proclamations issued by various governments during the Spanish-American war of 1898 show the tendency toward specific restriction of belligerent action so far as it affects neutrals. The proclamations issued during the Russo-Japanese war in 1904 are even more specific in many instances than those issued in 1898.
The British neutrality proclamation of April 23, 1898, following the treaty of May 8, 1871, provides that—

A neutral government is bound—

* * * * *

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms or the recruitment of men.

The circular letter from the foreign office of February 10, 1904, gives the full and latest statement of the British position upon this subject:

RULE 3. No ship of war of either belligerent shall hereafter be permitted, while in any such port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country or to some nearer named neutral destination, and no coal shall again be supplied to any such ship of war in the same or in any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid. (The London Gazette Extraordinary, February 11, 1904.)

Articles IX and X of the decree of April 6, 1864, revised in 1895, provided that for Italy—

In no case can a belligerent ship make use of an Italian port for purpose of warfare or to supply itself with arms or ammunition. It can not, under pretext of repairs, execute works in any way adapted to increase its warlike force.

Nothing shall be supplied to belligerent ships of war or cruisers excepting provisions, commodities, and things for repairs simply necessary for their crews and the safety of their voyage. Such belligerent ships of war or cruisers as wish to resupply themselves with coal shall not receive that supply until twenty-four hours after their arrival.

The mercantile marine code of Italy also makes provision on this matter:

ART. 248. In no case can a belligerent ship make use of an Italian port for war purposes or to provision itself with arms or munitions. No work can be executed under the pretext of repairs which in any way could add to the fighting strength of the vessel.

The circular letter of the Brazilian ministry of foreign affairs of April 29, 1898, is even more explicit in its terms
upon the subject of supplying belligerent vessels in its ports. Section XII of this letter reads:

It will not be permitted to either of the belligerents to receive in the ports of the Republic goods coming directly for them in the ships of any nation whatever.

This means that the belligerents may not seek ports en route and on account of an unforeseen necessity while having the intention of remaining in the vicinity of the coasts of Brazil, taking thus beforehand the necessary precautions to furnish themselves with the means of continuing their enterprises. The tolerance of such an abuse would be equivalent to allowing our ports to serve as a base of operation for the belligerents.

The Netherlands proclamation of neutrality in the Russo-Japanese war, issued in February, 1904, enters even more into details in prescribing the treatment of belligerent ships in its port than was the case at the time of the Spanish-American war of 1898. This may be in part due to the nearness of some of its colonial possessions to the seat of hostilities.

Such provisions as the following occur:

**ARTICLE IV.** It is prohibited within the Kingdom to provide ammunition or arms to war ships or either of the belligerent parties to assist them in any way toward the increase of their men, arms, or equipment and to the making of repairs, as also toward the providing of the material or implements necessary thereto.

The same prohibition is made in regard to every vessel that is evidently destined for the direct conveyance to a war ship of either of the belligerent parties of the assistance or goods above mentioned in the first clause.

**ARTICLE V.** It is prohibited without the previous sanction thereto from the proper authority to afford within the territory of the Kingdom to any war ship of the belligerent parties provisions or fuel.

**Rights of vessels in port.**—From various points of view it is evident that belligerent war vessels in neutral ports in time of war have, aside from the customary right of entrance in case of stress of weather or other absolute necessity, no rights beyond such as the neutral state may concede.

Entrance for purposes having no bearing upon the conduct of hostilities is generally conceded to war vessels. This is, however, in most instances now denied to privateers and to armed vessels with prizes and to vessels captured as prize.
Risley says:

A neutral government must prevent its ports from being used as a base of operations and supplies by the ships of either belligerent.

In time of war, as in time of peace, public vessels may freely enter a foreign port in the absence of prohibition by the state to whom the port belongs. But if a neutral power chooses to close its ports to the public vessels of both belligerents, the latter can only enter under stress of weather or in case of absolute necessity. This practice has been already adopted by many states with reference to one class of belligerent public vessels, namely, prizes taken from the enemy, and it is possible that, having regard to the strict impartiality expected from neutrals, it may be eventually extended to belligerent public vessels of every kind. The British regulations of 1862, described below, go far in this direction. At present, however, the rule is that, in the absence of prohibition, a belligerent man-of-war may enter a neutral port and make such repairs and take in such coal and provisions as may be necessary to enable it to navigate safely. Hospitality is lawful, but anything over and above this, amounting to an augmentation of force, is not. To permit a belligerent ship of war to receive such an illegal augmentation of force is a breach of neutrality and vitiates all captures subsequently made by the ship which has received it. (See La Santissima Trinidad, footnote, p. 197.)

Owing to the very modern development of steam, international law does not as yet contain an authoritative rule as to the purchase of coal by a belligerent in neutral ports. During the American civil war Great Britain allowed ships of war to take in only so much coal in British ports as would suffice to carry them to the nearest port of their own country, and refused any second supply to the same vessel, without special permission, until after the expiration of three months.

These regulations enable a belligerent ship to navigate safely without adding to its fighting power and prevent it from making the neutral port a base of operations by coaling there at frequent intervals.

The United States adopted similar regulations during the Franco-Prussian war, and the usage of the two countries is not unlikely to become general in the future. (J. S. Risley, Law of War, p. 205.)

Lawrence (Principles of International Law, page 503) says:

The rule of abstention from active hostility in neutral waters or on neutral land has received in comparatively recent times an obvious and reasonable extension. It is now the duty of belligerents—

To abstain from making on neutral territory direct preparations for acts of hostility.

Warlike expeditions may not be fitted out within neutral borders, nor may neutral land or waters be made the base of operations against an enemy. The fighting forces of a belligerent may not be reinforced or recruited in neutral territory, and supplies of arms and warlike stores or other equipments of direct use for war may not be obtained therein. But these prohibitions do not extend to remote uses and the supplies and equip-
ments that are useful for such purposes as sustaining life or carrying on navigation. Provisions may be purchased by belligerent ships lying in neutral ports, and they may take on board masts, spars, and cordage, and even undergo repairs, but nothing beyond what is necessary to make them seaworthy must be done to them. Any structural changes that increase their efficiency as instruments of attack and defense are strictly forbidden, as well as any augmentation of their warlike force.

A neutral state may, if it chooses, restrict the amount of innocent supplies allowed to belligerent ships who take advantage of the hospitality of its ports and waters, and a usage is springing up of permitting such vessels to take on board only a limited quantity of coal. A distinction must, however, be drawn between prohibitions which depend entirely upon the will of the neutral and prohibitions which are imposed by international law. The former can be made or unmade, strengthened or relaxed at pleasure, and as long as they are reasonable in themselves and applied with absolute impartiality to both sides in the struggle no power has any reason to complain. The latter are fixed and constant, and if a belligerent ignores them or a neutral suffers them to be ignored the aggrieved parties, whether neutral or belligerent, can demand reparation and take means to prevent a repetition of the offense.

We have seen that a belligerent is bound not to use neutral territory as a base of operations or as a convenient place for the organization of warlike expeditions which may proceed from thence to attack the enemy or prey upon his commerce.

But it is impossible to understand the nature and extent of these obligations without an examination of the exact sense to be attached to the two phrases, "base of operations" and "warlike expedition." The former is a technical term of the military art, and was introduced into international law when the growing sense of state duty rendered it necessary to define with accuracy the limits of belligerent liberty and neutral forbearance. It is to be found in the second of the three rules of the treaty of Washington of 1871, but the Geneva arbitrators did not attempt to explain it in their award. Hall quotes from Jomini, the great French writer on the art of war, a definition of a base of operations as a place or station "from which an army draws its resources and reinforcements, that from which it sets forth on an offensive expedition, and in which it finds a refuge at need." He goes on to contend that "continued use is above all things the crucial test of a base," and it is difficult to resist the arguments in favor of this view, which applies to a fleet or a single ship as well as to an army or a detachment of troops. The drawing of supplies once or twice from a given point in the course of long-continued hostilities will not make it into a base.

The general position may be said to be well established. With changed conditions, more definite rules are necessary.

Even during the American civil war ships of war were only permitted to be furnished with so much coal in English ports as might be sufficient to take them to the nearest port of their own country, and were not allowed to
receive a second supply in the same or any other port, without special permission, until after the expiration of three months from the date of receiving such coal. The regulations of the United States in 1870 were similar, no second supply being permitted for three months unless the vessel requesting it had put into a European port in the interval.

There can be little doubt that no neutral states would now venture to fall below this measure of care; and there can be as little doubt that their conduct will be as right as it will be prudent. When vessels were at the mercy of the winds it was not possible to measure with accuracy the supplies which might be furnished to them, and as blockades were seldom continuously effective, and the nations which carried on distant naval operations were all provided with colonies, questions could hardly spring from the use of foreign possessions as a source of supplies. Under the altered conditions of warfare matters are changed. When supplies can be meted out in accordance with the necessities of the case, to permit more to be obtained than can, in a reasonably liberal sense of the word, be called necessary for reaching a place of safety is to provide the belligerent with means of aggressive action, and consequently to violate the essential principles of neutrality. (Hall, International Law, 5th ed., p. 106.)

Woolsey says:

The same spirit of humanity, as well as respect for a friendly power, imposes on neutrals the duty of opening their ports to armed vessels of both belligerents for purposes having no direct relation to the war and equally likely to exist in the time of peace. Cruisers may sail into neutral harbors for any of the purposes for which merchant vessels of either party frequent the same places, except that merchant vessels are suffered to take military stores on board, which is forbidden generally, and ought to be forbidden, to ships of war. (International Law, section 167.)

Conclusions.—The rapid changes in the means and methods of conducting maritime hostilities has made necessary the development of new regulations in regard to the treatment of belligerent vessels in neutral ports. These regulations will naturally change with further development in means and methods of warfare.

It may be safely said that belligerent vessels in neutral ports in time of war can scarcely be said to have rights, but only such privileges as the neutral state may grant, which are generally of entrance for purposes which are not warlike in character, in intent, or in effect.

In other words, the neutral state must maintain its neutrality, even though it grants belligerent war vessels certain privileges within its ports.

Kleen clearly presents the case:
Il appartient à tout État souverain de décider lui-même dans quelle mesure il veut permettre aux étrangers l'usage de ses ports et rades, comme de ses eaux territoriales en général; et ce droit de décision est indépendant du but et de la nature de l'emploi. Juridiquement, un navire de guerre ne peut pas exiger plus d'hospitalité pour ses visites d'exercice, qu'un navire de commerce pour son trafic, un pleasure-yacht pour ses excursions. La seule priorité juridique des navires de guerre consiste dans leur extraterritorialité, l'accès une fois admis. Mais quant à l'accès lui-même, ils n'y ont pas plus de droit que d'autres navires; et ils sont soumis, autant que ceux-ci, au devoir d'obéir à l'ordre prescrit par le souverain et les autorités des lieux.

Un état de guerre n'apporte en général à l'application de cette règle pas d'autres modifications que celles qui découlent des devoirs d'un État neutre, particulièrement de son devoir de faire valoir son inviolabilité territoriale contre les abus éventuels de l'hospitalité commis par les belligérants en vue de renforts ou d'autres buts de guerre, et de protéger contre toute hostilité tant les belligérants eux-mêmes que d'autres étrangers admis soit à l'asile soit à l'accès simple, l'expérience ayant démontré combien la présence de navires de guerre des belligérants en port neutre peut devenir dangereuse à ces deux égards. Mais, à ces restrictions apportées par le devoir, pour garantir la neutralité de l'État et les droits de chacun, le souverain du territoire est naturellement libre d'ajouter les ordonnances qu'il lui plait et qu'il trouve convenables, pour sauvegarder l'ordre chez lui, en considérant, par exemple, sa situation géographique, les circonstances spécialement difficiles, des intérêts particuliers etc.,—bien entendu sans favoriser ou défavoriser l'une des parties belligérantes comme telle plus que l'autre.

(Ho Lete, 1, p. 530.)

Halleck's International Law, Baker's ed., II, p. 166, maintains that,

Moreover, the extent of a nation's sovereign rights depends, in some measure, upon its municipal laws, and other powers are bound not only to abstain from violating such laws, but to respect the policy of them. The municipal laws of a state for the protection of the integrity of its soil and the sanctity of its neutrality are sometimes more stringent than the general laws of war. The right of a sovereign state to impose such restrictions and prohibitions, consistent with the general policy of neutrality, as it may see fit is undeniable. And all acts of the officers of a belligerent power against the municipal law of a neutral state or in violation of its policy involve that government in responsibility for their conduct.

In the situation as proposed, State Y, a neutral, has protested against the taking of coal, oil, etc., by a war vessel of the United States, a belligerent, from one of its supply vessels lying in the neutral port of State Y. State Y claims that to permit such an act would be equivalent to allowing the port to be used as a place for fitting out a hostile expedition.
From the nature of the supply ship, a United States vessel, State Y would not care to exercise any jurisdiction over it beyond the ordinary port jurisdiction.

The intent of the sending of such a vessel is with a view of fitting out the war vessel for more effective and extended service. Naturally, as the neutral state could not determine the amount or kind of supplies which the war vessel might take from the supply ship, it could not guard its neutrality. To allow this action to proceed would be much like transforming its port into a coaling station, at which the war vessel might take on supplies even with more safety than at one of its own ports, as it would be under the protection of the neutrality of the port and not liable to attack from the enemy. Such a transfer of supplies would not be a commercial transaction, but an actual part of the military operations of the United States.

To permit such action would be equivalent to allowing the port to be used as a base for military operations.

The neutrality regulations of Brazil in 1898 distinctly stated, "It will not be permitted to either of the belligerents to receive in the ports of the Republic goods coming directly for them in the ships of any nation whatever."

This position of Brazil goes a step further than the case under consideration, as this involves receiving supplies from a United States supply ship, while the Brazilian regulation forbids such action in case of "ships of any nation whatever."

(a) The protest of State Y is valid and fully justified; indeed to maintain her neutrality State Y must use due diligence to prevent such action.

(b) Owing to the reasons as set forth already, the commander must conform to the just demands of the authorities of State Y.

(c) The only difference in case there was a fleet of war vessels with supply ships in the port would be one of degree. The evidence of an intent to use the port of Y as a base for hostile operations would be more clear even, and the duty of State Y would be more plain.