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

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## SITUATION VII.

The commander of a war vessel of the United States while cruising off the coast of State X is requested by a duly authorized agent of State X to prevent a merchant vessel of the United States from taking contraband into a port of State X which happens to be near and to be in the hands of insurgents. The agent of State X claims that the merchant vessel has sailed from the United States in violation of neutrality laws.

What action should the commander take?

### SOLUTION.

The commander of the United States war vessel should decline to interfere to prevent the carriage of goods by a merchant vessel of the United States even though the goods are bound to a port in the hands of an insurgent and he is requested to interfere by the authorities of the parent state.

### NOTES ON SITUATION VII.

*The United States law.*—The attempt has frequently been made to bring the sale and carriage of contraband under the neutrality laws of the United States; particularly has been cited section 5283 of the Revised Statutes:

Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty

of a high misdemeanor, and shall be fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer and the other half to the use of the United States.

*Opinions of Mr. Bayard.*—In 1885, a period of numerous insurrections, Mr. Bayard, in a communication to the Colombian minister, who protested against certain shipments of arms from the United States, said:

DEPARTMENT OF STATE,

*Washington, March 25, 1885.*

SIR: On the receipt of your note of the 17th instant complaining that certain ordinary merchant vessels have sailed, or are about to sail, from the port of New York having on board as part of their cargoes boxes of arms and ammunition intended for the purpose of assisting armed rebels who are now resisting on the Atlantic coast of Colombia the authority of that Republic, I did not fail to communicate the subject of its contents to the proper authorities.

I now have the honor to inform you that it appears from a recent communication from my colleague, the Attorney-General, that the United States attorney at the port of New York has been directed to be vigilant in enforcing those statutory provisions which apply to the circumstances in which Colombia is unhappily involved.

In this connection I deem it proper to invite your attention to the fact that the existence of a rebellion in Colombia does not authorize the public officials of the United States to obstruct ordinary commerce in arms between citizens of this country and the rebellious or other parts of the territory of the Republic of Colombia. It is a well-established rule of international law that the allowance of such commerce is no breach of duty toward the friendly government whose enemies may thus be supplied with arms.

As no charge is made that the vessels in question are armed vessels intended for the use of the rebels mentioned, or that military expeditions are being set on foot in this country against the Republic of Colombia, the duties of this Government are limited to the enforcement of the statutory provisions which apply to such cases.

Accept, etc.,

T. F. BAYARD.

In another communication two days later Mr. Bayard says:

It has not as yet been possible to ascertain whether these articles are intended to be used in expeditions hostile to the Colombian Government, but even should this prove to be the case, this Government, however much it may regret the encouragement in any manner from this country of the revolt against the constitutional authorities of its sister Republic, must maintain the right of its citizens to carry on without a violation of the neutrality laws the ordinary traffic in arms with the rebellious or other parts of that Republic, as more particularly set forth in my note to you of the 25th instant. (U. S. Foreign Relations, 1885, pp. 238, 239.)

Mr. Bayard, in 1885, writing of certain attempts of the Government of Colombia to close by decree ports held by the Colombian insurgents, said:

After careful examination of the authorities and precedents bearing upon this important question, I am bound to conclude, as a general principle, that a decree by a sovereign power closing to neutral commerce ports held by its enemies, whether foreign or domestic, can have no international validity and no extra-territorial effect in the direction of imposing any obligation upon the governments of neutral powers to recognize it or to contribute toward its enforcement by any domestic action on their part. Such a decree may indeed be necessary as a municipal enactment of the state which proclaims it, in order to clothe the Executive with authority to proceed to the institution of a formal and effective blockade, but when that purpose is attained its power is exhausted. If the sovereign decreeing such closure have a naval force sufficient to maintain a blockade, and if he duly proclaim such a blockade, then he may seize, and subject to the adjudication of a prize court, vessels which may attempt to run the blockade. If he lay an embargo, then vessels attempting to evade such embargo may be forcibly repelled by him if he be in possession of the port so closed. But his decree closing ports which are held adversely to him is, by itself, entitled to no international respect. Were it otherwise the *de facto* and titular sovereigns of any determinate country or region might between them exclude all merchant ships whatever from their ports, and in this way not only ruin those engaged in trade with such states, but cause much discomfort to the nations of the world by the exclusion of necessary products found in no other market.

The decree of closure of certain named ports of Colombia contains no information of an ulterior purpose to resort to a pro-



claimed and effective blockade. It may, therefore, be premature to treat your announcement as importing such ulterior measures; but it gives me pleasure to declare that the Government of the United States will recognize any effective blockade instituted by the United States of Colombia with respect to its domestic ports not actually subject to its authority. This Government will also submit to the forcible repulsion of vessels of the United States by any embargo which Colombia may lay upon ports of which it has possession when it has power to effect such repulsion; but the Government of the United States must regard as utterly nugatory proclamations closing ports, which the United States of Colombia do not possess, under color of a naval force which is not even pretended to be competent to constitute a blockade. (Foreign Relations U. S., 1885, p. 256.)

In the year 1886 Mr. Bayard sent the following communication to Mr. Hall, United States diplomatic representative in Central America:

DEPARTMENT OF STATE.

*Washington, February 6, 1886.*

SIR: I transmit, for your information, copies of the correspondence exchanged between Mr. Jacob Baiz, consul-general of Honduras at New York, and this Department touching the movements of the American steamer *City of Mexico* outside of the jurisdiction of the United States. It will be seen from the letters of Mr. Baiz that he labors under the impression that to prevent a violation of our neutrality laws this Government should instruct its vessels of war to keep a watch on the *City of Mexico*, having, as is alleged, an unlawful purpose against the peace of Honduras.

I have not thought it necessary to discuss the matter with Mr. Baiz. I have therefore confined myself to the statement that the acts complained of were committed, if at all, against the sovereign neutrality of Great Britain and should be dealt with according to British law, and that this Government had already given abundant proof of its desire to prevent any violation of its neutrality within the jurisdiction of the United States.

With these prefatory remarks it appears not inappropriate to add a few general observations upon the subject.

It is usual, when application is made to this Department to take action to prevent what are supposed to be impending breaches of neutrality, to base such application on affidavits, or on statements of proof susceptible of being reduced to affidavits, on which the interposition of the Department is asked. This requisite has not been insisted upon in the present instance, for, supposing the case presented by the letter of Mr. Baiz to be fully verified, it is not one on which any present action of the Department could be based.

Breaches of neutrality may be viewed by this Government in two aspects: First, in relation to our particular statutes, and secondly, in respect of the general principles of international law. Our own statutes bind only our own Government and citizens. If they impose on us a larger duty than is imposed on us by international law, they do not correspondingly increase our duty to foreign nations, nor do they abridge our duties if they establish for our municipal regulation a standard less stringent than that established by international law.

The complaint that Mr. Baiz makes is, that the steamship *City of Mexico*, a passenger and freight vessel, claimed to be entitled to carry the flag of the United States, took on board at Belize, January 12 last, when on her ordinary coasting route, some political refugees who it is supposed were meditating hostile action against the Government of Honduras.

It will scarcely be contended that such an act as this, even supposing it would be regarded as a breach of neutrality if committed within the jurisdiction of the United States, can be imputed to the United States when committed in a foreign port; nor can it justly be urged that, because the vessel in question sails under the flag of the United States, it is the duty of this Government to send cruisers to watch her to prevent her from committing breaches of neutrality when on her passage from one foreign port to another. For this Government to send armed vessels to such ports to control the actions of the *City of Mexico* would be to invade the territorial waters of a foreign sovereign. For this Government to watch its merchant and passenger vessels on the high seas, to stop them if they carry contraband articles or passengers meditating a breach of neutrality, would impose on the United States a burden which would be in itself intolerable, which no other nation has undertaken to carry, and which the law of nations does not impose.

In what has been stated I have referred exclusively to the international obligations imposed on the United States by the general principles of international law, which are the only standards measuring our duty to the Government of Honduras. Whether the *City of Mexico*, when she returns to her home port, or those concerned in her or in this particular voyage, may be subject to adverse procedure under our neutrality statutes, I have not deemed it necessary here to discuss or decide.

I am, etc.,

T. F. BAYARD.

(U. S. Foreign Relations, 1886, p. 51.)

*Opinion of Mr. Blaine.*—It has quite often happened that during insurrections the established government has tried to obtain the rights of war without admitting its existence. Sometimes, as in 1891 in the case of Chile, pro-

hibitions are issued against the importation of certain articles. At this time the Secretary of State of the United States replied to the Chilean minister as follows:

DEPARTMENT OF STATE,

Washington, March 13, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 10th instant, in which you inform me that your Government has prohibited, until further orders, the importation into the Republic of arms and munitions of war of all kinds.

In conveying this information you request me, if possible, to communicate this decree to the custom-houses of the United States in order that the shipment of such articles to Chile may be prevented; and in this relation you state that an agent of the insurgents in Chile has arrived in the city of New York for the purpose of purchasing arms and munitions of war.

The laws of the United States on neutrality, which may be found under Title LXVII of the Revised Statutes, while forbidding many acts to be done in this country which may affect the relations of hostile forces in foreign countries, do not forbid the manufacture and sale of arms or munitions of war. I am therefore at a loss to find any authority for attempting to forbid the sale and shipment of arms and munitions of war in this country, since such sale and shipment are permitted by our law. In this relation it is proper to say that our statutes on this subject are understood to be in conformity with the law of nations, by which the traffic in arms and munitions of war is permitted, subject to the belligerent right of capture and condemnation.

Since your note has directed attention to the subject of neutrality, it should be stated that our laws on that subject are put in force upon application to the courts, which are invested with the power to enforce them and to inflict the penalties prescribed for their violation. Our statutes not only forbid the infringement in this country of the rules of neutrality, but also impose grave penalties for their infraction.

I will inclose a copy of your note to the Secretary of the Treasury and the Attorney-General.

Accept, etc.,

JAMES G. BLAINE.

(Foreign Relations U. S., 1891, p. 314.)

*Opinion of Mr. Sherman.*—In a long dispatch to United States Minister Woodford in Spain, November 20, 1897, Secretary of State John Sherman says, among other remarks upon duties of the United States in time of insurrection—

It is to be borne in mind that Spain insists that a state of war does not exist between that Government and the people of Cuba;



that it is engaged in suppressing domestic insurrection that does not give it the right, which it so strenuously denies itself, to insist that a third nation shall award to either party to the struggle the rights of a belligerent or exact from either party the obligations attaching to a condition of belligerency. It can not be denied that the United States Government, whenever there has been brought to its attention the fact or allegation that a suspected military expedition has been set on foot or is about to start from our territories in aid of the insurgents, has promptly used its civil, judicial, and naval forces in prevention and suppression thereof. So far has this extended and so efficient has the United States been in this regard that, acting upon information from the Spanish minister or from the various agencies in the employ of the Spanish legation, vessels have been seized and detained in some instances when investigations showed that they were engaged in a wholly innocent and legitimate traffic. By using its naval and revenue marine in repeated instances to suppress such expeditions, the United States has fulfilled every obligation of a friendly nation. Inasmuch as Spain does not concede, and never has conceded, that a state of war exists in Cuba, the rights and duties of the United States are such as devolve upon a friendly nation toward another in case of an insurrection which does not rise to the dignity of recognized war.

As you are aware, these duties have been the subject of not infrequent diplomatic discussion between the two Governments, and of adjudications in the courts of the United States, as well during the previous ten years' struggle as in the course of the present conflict. The position of the United States was very fully presented by Mr. Fish in his note of April 18, 1874, to Admiral Polo de Bernabe (Foreign Relations of the United States, 1875, pp. 1178 et seq.) :

“What one power in such case may not knowingly permit to be done to another power, without violating its international duties, is defined with sufficient accuracy in the statute of 1818, known as the neutrality law of the United States.

“It may not consent to the enlistment within its territorial jurisdiction of naval and military forces intended for the service of the insurrection.

“It may not knowingly permit the fitting out and arming or the increasing or augmenting the force of any ship or vessel within its territorial jurisdiction, with intent that such ship or vessel shall be employed in the service of the insurrection.

“It may not knowingly permit the setting on foot of military expeditions or enterprises to be carried on from its territory against the power with which the insurrection is contending.”

Except in the single instance to be hereafter noticed, his excellency the minister of state does not undertake to point out any infractions of these tenets of international obligation so clearly



stated by Mr. Fish. Did any further instance exist the attention of this Government would have been called to it.

With equal clearness, Mr. Fish has stated in the same note the things which a friendly government may do and permit under the circumstances set forth.

“But a friendly government violates no duty of good neighborhood in allowing the free sale of arms and munitions of war to all persons, to insurgents as well as to the regularly constituted authorities, and such arms and munitions, by whichever party purchased, may be carried in its vessels on the high seas without liability to question by any other party. In like manner its vessels may freely carry unarmed passengers, even though known to be insurgents, without thereby rendering the government which permits it liable to a charge of violating its international duties. But if such passengers, on the contrary, should be armed and proceed to the scene of insurrection as an organized body, which might be capable of levying war, they would constitute a hostile expedition which may not be knowingly permitted without a violation of international obligation.”

Little can be added to this succinct statement of Mr. Fish. It has been repeatedly affirmed by decisions of our courts, notably by the Supreme Court of the United States. In the case of *Wilborg v. The United States*, 163 U. S. Reports, p. 632, Mr. Chief Justice Fuller repeats, with approval, the charge of the trial court, in which it was said (p. 653):

“It was not a crime or offense against the United States under the neutrality laws of this country for individuals to leave the country with intent to enlist in foreign military service, nor was it an offense against the United States to transport persons out of this country and to land them in foreign countries, when such persons had an intent to enlist in foreign armies; that it was not an offense against the laws of the United States to transport arms, ammunition, and munitions of war from this country to any foreign country, whether they were to be used in war or not, and that it was not an offense against the laws of the United States to transport persons intending to enlist in foreign armies and munitions of war on the same trip. But (he said) that if the persons referred to had combined and organized in this country to go to Cuba and there make war on the Government, and intended when they reached Cuba to join the insurgent army and thus enlist in its service, and the arms were taken along for their use, that would constitute a military expedition, and the transporting of such a body from this country for such a purpose would be an offense against the statute.”

These principles sufficiently define the neutral duties of the United States, which have been faithfully observed at great expense and with much care by this Government. (U. S. Foreign Relations, 1898, p. 609.)

*Case of the South Portland.*—There are many cases in which United States authorities have been asked by states to prevent the sale, carriage, or other dealings in war material when insurrections existed in certain states. Requests have come from both the parent states and the insurgents.

Such reports as the following are not uncommon :

LEGATION OF THE UNITED STATES.

*Caracas, September 24, 1892.*

(Received September 24.)

Mr. Scruggs reports that the situation remains unchanged, nothing new having occurred, and transmits a request of the Government of Venezuela that the steamer *South Portland*, laden with munitions of war in New York, be prevented from entering Puerto Cabello by the naval forces of the United States.

Replying to the request that the United States naval force interfere to prevent the entrance to a Venezuelan port during insurrection of a private vessel of the United States with contraband, Minister Scruggs reports :

I pointed out that the mere exportation of arms and munitions of war from the United States had never been held an offense against our neutrality laws; that as all the belligerents in Venezuela enjoyed this right equally, none of them could justly complain; that his Government had the right, under the law of nations, to seize contraband of war on its transit to the enemy, and we would not be likely to complain, should this right be exercised in a legitimate and proper manner; but that, as neutrals, we could hardly be expected to employ our naval force to make the blockade of Puerto Cabello effective, nor to police the high seas in the interest of one belligerent against another. (U. S. Foreign Relations, 1892, p. 626.)

*English opinion.*—The court maintained in the case of the *Helen*, commerce which was lawful for the neutral with either belligerent country before the war is not made by the war unlawful or capable of being prohibited by both or either of the belligerents. (13 Law Times Reports, 305.) What is lawful trade in times of war would certainly be lawful when no war existed and insurgency only existed.

Such opinions do not imply that the foreign state should aid or protect those who engage in such commerce

with a party to a civil conflict. Such trade is liable to be prevented by force within the jurisdiction of the disturbed state.

*Belgian opinion.*—Regarding the trade in arms and ammunition and other contraband objects, the Government of the King, looking to the strict observance of the duties prescribed by neutrality, does not intervene either to protect or prohibit it. No law prohibiting the exportation of these products of national industry, the trade in question is carried on freely in the country, but outside the territory, at the risks and perils of those who carry it on. (Belgian minister of foreign affairs to Mr. Storer, September 6, 1898; 7 Moore International Law Digest, p. 747.)

*Professor Moore's Opinion.*—The right of foreigners to supply war materials to those engaged in civil conflict is limited, as Professor Moore states:

From what has been shown it may be argued that, without regard to the recognition or nonrecognition of belligerency, a party to a civil conflict who seeks to prevent, within the national jurisdiction and at the scene of hostilities, the supply of arms and munitions of war to his adversary commits not an act of injury, but an act of self-defense, authorized by the state of hostilities; that, the right to carry on hostilities being admitted, it seems to follow that each party possesses, incidentally, the right to prevent the other from being supplied with the weapons of war; and that any aid or protection given by a foreign government to an individual to enable him with impunity to supply either party with such articles is to that extent an act of intervention in the contest. (7 International Law Digest, p. 752.)

*Trade in contraband.*—While in time of recognized belligerency either belligerent has a right to seize on the high seas contraband bound for the enemy, this right does not exist in time of an insurrection which has not yet been recognized as a state of war. Yet the nonrecognition of belligerency does not change the character of the act. Citizens of foreign states engaged in the carriage of articles which would be regarded as contraband if belligerency was recognized are liable to the consequences of their act if taken within the jurisdiction of the state where the insurrection exists. In time of recognized belligerency a state is not under obligation to prevent its subjects from engaging in contraband trade. No more would it be under obligation to prevent such



trade at a time when no recognition of belligerency had been granted.

It is equally well established that trade in arms and munitions of war in the time of actual hostilities is at the risk of the one engaged in the trade and may be prevented by either party within national jurisdiction.

Any aid to a revolting party in the carrying out of domestic hostilities would be an unfriendly act to the parent state which the parent state could oppose by such means as were within its power.

Under the circumstances, as presented in Situation VII, a port of State X is in the hand of insurgents.

Strictly speaking, there is no contraband until there is war, but the United States has often put into operation its neutrality laws during a period of insurrection in a foreign state and has admitted its obligation to restrain certain actions on the part of its citizens. The carriage of contraband has never been regarded as a violation of neutrality in the sense that a neutral state must prevent such action, as it is evident that a neutral state could not prevent such action in all instances even if it should regard it as expedient. The penalty for the carriage of contraband is the seizure of the goods by the belligerent. The naval forces of a neutral are under no obligation to assist in enforcing this penalty.

In the case under consideration the authorities of State X may take such action within their own jurisdiction as may be necessary to prevent the entrance of the merchant vessel of the United States.

*Conclusion.*—The commander of the United States war vessel should decline to interfere to prevent the carriage of goods by a merchant vessel of the United States even though the goods are bound to a port in the hands of an insurgent and he is requested to interfere by the authorities of the parent state.