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International Law Situations with Solutions and Notes

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SITUATION IV.

In the time of war between the United States and State Z, a merchant vessel of State Z is overtaken by a war vessel of the United States. The merchant vessel resists capture and tries to escape, but is captured and found to have on board certain goods which the captors wish for immediate use, but which are said by the captain and seem in fact to belong to neutral parties.

Should these goods be treated as hostile? What action could be taken?

SOLUTION.

The goods should not be treated as hostile. The goods should not be taken from the vessel except for better preservation thereof or unless such articles are absolutely needed for the use of vessels or armed forces of the United States. The appropriation of innocent neutral goods must be justified by military necessity, not by mere wish or desire.

NOTES ON SITUATION IV.

Status of merchant vessels as regards capture.—There is a wide difference between the capture of an enemy merchant vessel and the capture of a neutral merchant vessel. The enemy vessel is captured as a proper act in the conduct of the war. The presumption in the case of capture of an enemy vessel is that it is good prize and the burden of proof of exemption rests upon the enemy. The presumption in the case of the capture of a neutral vessel is that it is exempt until proved good prize by the proper authorities. The liability to capture is the deterrent which is present to the neutral to cause him to refrain from becoming involved in the hostilities. The neutral vessel is, if innocent, liable only to inconvenience. Resistance by force by a neutral vessel would be taken as evidence of guilt.
Resistance by force by an enemy vessel would be but a natural attempt to avoid certain penalties.

Resistance in general.—It is not easy to determine what kind of resistance constitutes a sufficient ground for seizure, and the courts have therefore held that they can not so differentiate, but that any resistance will render a vessel liable to seizure. In the case of the *Jane* it was decided that an American merchant vessel attempting flight from an unknown vessel but heaving to on discovering that it was a French cruiser that was firing upon her, was guilty of resistance to search. (*The Jane*, 37 Court of Claims, U. S., 24.) Not even grave apprehension of illegal condemnation will justify a neutral merchant vessel in resisting the right of search by a belligerent. (*The Rose*, 37 Court of Claims, U. S., 290.)

Regulations as to resistance.—The British regulations in regard to resistance in general are as follows:

RESISTANCE.

145. The Commander should detain any Vessel which forcibly resists Visit or Search.

146. A mere attempt at escape is, in itself, no ground for Detention, though the Commander will not be liable for injury which he may cause to the Vessel, or her Crew, in forcibly preventing her escape.

147. The Penalty for Resistance by the Master of a Neutral Vessel is the confiscation of the Vessel and the Neutral cargo. Resistance by the Master of an Enemy’s private ship does not forfeit a Neutral cargo, which will, however, be condemned if found on board an armed Ship of the Enemy.

RESISTANCE BY NEUTRAL CONVOY.

148. Any resistance made by a Neutral Convoying Ship to the lawful Visit and Search of a Vessel under her escort will justify the Detention both of the Convoying Ship and of all Vessels convoyed by her.

149. If, upon the Visit and Search of a Vessel under Neutral Convoy, it shall appear that the Master set sail with instructions to make an armed resistance to Search, the Vessel should be Detained.

ENEMY CONVOY.

150. Vessels under Enemy Convoy are, from that circumstance alone, liable to Detention. (Admiralty Manual Prize Law, 1888, p. 44.)
The Japanese Regulations of 1904 state:

Art. XXXVII. Any vessel that comes under one of the following categories shall be captured, no matter of what national character it is:

1. Vessels that carry persons, papers, or goods that are contraband of war.
2. Vessels that carry no ship’s papers, or have willfully mutilated or thrown them away, or hidden them, or that produce false papers.
3. Vessels that have violated a blockade.
4. Vessels that are deemed to have been fitted out for the enemy’s military service.
5. Vessels that engage in scouting or carrying information in the interest of the enemy, or are deemed clearly guilty of any other act to assist the enemy.
6. Vessels that oppose visitation or search.
7. Vessels voyaging under the convoy of an enemy’s man-of-war.

Art. XLVIII. Vessels that have opposed visit or search, and all the goods belonging to the owners of such vessels, shall be forfeited.

The instructions issued for the Spanish navy in 1898 provided:

In consequence of the visit the vessel is captured in the following cases:

* * * * * * * * if active resistance is offered to the visit, that is, if force is employed to escape it.

General Orders, No. 492, of the Navy Department, June 20, 1898, stated that—

A vessel under any circumstances resisting visit, destroying her papers, presenting fraudulent papers, or attempting to escape should be sent in for adjudication.

Neutral goods on armed vessels.—In the case of the Fanny, neutral Portuguese property was placed on board a British armed ship which was captured by an American schooner and afterwards was retaken by a British war vessel. It was decided by the British court that neutral property thus shipped was, if captured, liable to condemnation, and if recaptured, subject to salvage. (1 Dodson’s Admiralty Reports, 443.) An American decision of the same period (1815) maintained, though with strong dissent, that—
A neutral may lawfully employ an armed belligerent vessel to transport his goods, and such goods do not lose their neutral character by the armament, nor by the resistance made by such vessel, provided the neutral do not aid in such armament or resistance, although he charter the whole vessel, and be on board at the time of the resistance. (The Nereide, 9 Cranch, U. S. Supreme Court Reports, p. 388.)

This decision was affirmed in the case of the Atlanta in 1818. (3 Wheaton, U. S. Supreme Court Reports, 415.)

The British point of view, that neutral goods upon an armed vessel of a belligerent would be liable to confiscation, seems to be generally held at present, though such cases are little likely to arise.

Early British opinion as to merchant vessels.—The general subject of resistance to visit and search was considered quite fully in the case of the Maria. Sir William Scott mentions certain principles which he regards as incontrovertible. He maintains—that the right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestable right of the lawfully commissioned cruisers of a belligerent nation. I say, be the ships, the cargoes, the destinations what they may, because, till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists. The right is so clear in principle that no man can deny it who admits the legality of maritime capture; because if you are not at liberty to ascertain by sufficient inquiry whether there is property that can legally be captured it is impossible to capture. Even those who contend for the inadmissible rule that free ships make free goods must admit the exercise of this right, at least for the purpose of ascertaining whether the ships are free ships or not. The right is equally clear in practice, for practice is uniform and universal upon the subject. The many European treaties which refer to this right refer to it as preexisting, and merely regulate the exercise of it. All writers upon the law of nations universally acknowledge it, without the exception even of Hubner himself, the great champion of neutral privileges. In short, no man in the least degree conversant in subjects of this kind has ever, that I know of, breathed a doubt upon it. The right must unquestionably be exercised with as little of personal harshness and of vexation in the mode
as possible; but, soften it as much as you can, it is still a right of force, though of a lawful force—something in the nature of civil process where force is employed, but a lawful force which can not be lawfully resisted. For it is a wild conceit that wherever force is used it may be lawfully resisted. The only case where it can be so in matters of this nature is in a state of war and conflict between two countries, where one party has a perfect right to attack by force and the other has an equally perfect right to repel by force. But in the relative situation of two countries at peace with each other no such conflicting rights can possibly coexist.

Later in the same case he sets forth the penalty:

The penalty for the violent contravention of this right is the confiscation of the property so withheld from visitation and search. For proof of this I need only refer to Vattel, one of the most correct and certainly not the least indulgent of modern professors of public law. In Book III, c. vii, sect. 114, he expresses himself thus: "On ne peut empecher le transport des effets de contrebande, si l'on ne visite pas les vaisseaux neutres que l'on rencontre en mer. On est donc en droit de les visiter. Quelques nations puissantes ont refusé en différents temps de se soumettre à cette visite; aujourd'hui un vaisseau neutre, qui refuseroit de souffrir la visite, se feroit condamner par cela seul, comme étant bonne prise." Vattel is here to be considered not as a lawyer merely delivering an opinion, but as a witness asserting the fact—the fact that such is the existing practice of modern Europe. And to be sure, the only marvel in the case is that he should mention it as a law merely modern, when it is remembered that it is a principle not only of the civil law (on which great part of the law of nations is founded), but of the private jurisprudence of most countries in Europe, that a contumacious refusal to submit to fair inquiry infers all the penalties of convicted guilt. Conformably to this principle, we find in the celebrated French Ordinance of 1681, now in force, article 12, "That every vessel shall be good prize in case of resistance and combat;" and Valin in his smaller Commentary, p. 81, says expressly that although the expression is in the conjunctive, yet that the resistance alone is sufficient. He refers to the Spanish Ordinance, 1718, evidently copied from it, in which it is expressed in the disjunctive, "in case of resistance or combat." And recent instances are at hand and within view in which it appears that Spain continues to act upon this principle. The first time in which it occurs to my notice on the inquiries I have been able to make in the institutes of our own country respecting matters of this nature, excepting what occurs in the Black Book of the Admiralty, is the order of council, 1664, article 12, which directs,
"That when any ship met withal by the royal navy or other ship commissioned shall fight or make resistance, the said ship and goods shall be adjudged lawful prize," and, "deliberate and continued resistance to search on the part of a neutral vessel to a lawful cruiser is followed by the legal consequence of confiscation." (The Maria, 1 C. Robinson's Admiralty Reports, p. 340.)

If the ship resisting or attempting to rescue itself is a neutral the cargo would be liable to confiscation. If an enemy ship persists or attempts to escape the act is one against which the captor is supposed to be on his guard. In the case of the Catherine Elizabeth, in 1804, it was held of the attempt of an enemy master to rescue his vessel that—

It could only be the hostile act of a hostile person who was prisoner of war, and who, unless under parole, had a perfect right to attempt to emancipate himself by seizing his own vessel. If a neutral master attempts a rescue he violates a duty which is imposed upon him by the law of nations, to submit to come in for inquiry as to the property of the ship or cargo, and if he violates the obligation by a recurrence to force the consequence will undoubtedly reach the property of his owner, and it would, I think, extend also to the confiscation of the whole cargo entrusted to his care and thus fraudulently attempted to be withdrawn from the rights of war. With an enemy master the case is very different. No duty is violated by such an act on his part, lupum auribus teneo, and if he can withdraw himself, he has a right to do so. (5 C. Robinson's Admiralty Reports, p. 232.)

Opinions of text-writers.—Dupuis writes somewhat at length of resistance to visit and capture. He says:

Les neutres sont dans l'obligation de souffrir la visite, quelque préjudiciable qu'elle leur puisse être; mais ils peuvent être grandement tentés de s'y soustraire à cause des désagréments qu'elle entraîne, plus grandement encore lorsque leur conduite, n'étant pas irréprochable, les expose à la saisie.

Le procédé le plus simple pour y échapper consiste à fuir, au lieu d'obtempérer à la sommation du belligérant. Le belligérant peut alors employer la force sans encourir aucune responsabilité à raison des dommages que son artillerie peut causer au fugitif. Mais ces dommages sont considérés comme une peine suffisante de l'essai manqué. Les doctrines anglaises s'accordent sur ce point avec les doctrines françaises. "Une simple tentative de fuite, dit le Manuel des prises britannique, n'est pas en soi une cause de saisie, bienque le commandant ne soit point responsable
RESISTANCE TO CAPTURE.

des dommages qu'il peut causer au navire ou à son équipage, en empechant par la force cette fuite."

Semblable essai toutefois fournira toujours au belligérant des justes motifs de soupçon; la visite à laquelle il se livra n'en sera que plus minutieuse et telle circonstance qui, a elle seule ne l'aurait pas conduit à saisir, l'y décidera sans doute en devenant plus suspect après une telle conduite.

Tout autres sont les conséquences d'une résistance par la force. Cette résistance constitue un acte hostile; elle entraîne ipso facto confiscation du navire et de toute la cargaison.

La violation de neutralité commise par le capitaine compromet le chargement en même temps que le vaisseau; les propriétaires de marchandises neutres inoffensives sont ainsi punis d'avoir trop mal placé leur confiance. S'agit-il de navires neutres naviguant sous convoi, la résistance du navire convoyeur au droit de visite, prétendu par un vaisseau britannique dûment commissionné suffit, nous l'avons vu, à entraîner le capture de tout le convoi. Les Anglais regardent les convois avec une telle défiance et leur témoignent une telle hostilité que la seule découverte, au cours de la visite, d'instructions données à un des vaisseaux convoyés de s'opposer par la force à toute perquisition, suffirait à déterminer la saisie de ce vaisseau, bien qu'aucune résistance n'ait été faite. À plus forte raison, le navire neutre qui naviguerait sous convoi ennemi serait-il, pour ce seul fait, puni de confiscation, car la meilleur raison de sa présence en compagnie si compromettante ne pourrait être que la ferme intention de résister au droit de visite.

La cargaison neutre, au contraire, n'encourt pas toujours confiscation à bord d'un navire ennemi, par cela seul que le navire a fait résistance. Les Anglais distinguent selon que le vaisseau était armé ou non: était-il armé, le propriétaire du chargement neutre ne l'a évidemment choisi que dans le but de soustraire ses biens à la visite, et cela justifie la confiscation; n'était-il pas armé, le neutre a pu lui confier ses biens sans prévoir aucun acte de force; on ne saurait lui reprocher d'avoir voulu s'opposer au droit de visite. Si le navire ennemi a néanmoins résisté comme c'était son droit de le faire dans son propre intérêt et dans l'intérêt de sa cargaison ennemie, cette attitude licite ne doit pas préjudicier aux biens neutres à son bord. (Le droit de la guerre maritime, Nos. 254, 255; p. 223.)

Duboc gives his opinion as follows:

Si le navire suspect refuse de s'arrêter et manifeste par sa manoeuvre l'intention d'échapper à la visite, le croiseur est autorisé à tirer à boulet, sur son avant, mais sans l'atteindre. Si, enfin, cette seconde sommation reste sans effet, le croiseur a le droit de donner la chasse et d'employer la force, sans qu'on puisse le rendre responsable des avaries qui peuvent arriver au navire poursuivi. Si le neutre refuse par la force et engage un combat
à la suite duquel il est réduit, le navire est considéré comme de bonne prise. Nous partageons à cet égard l'avis de Hautefeuille qui assimile la résistance à l'exercice de la visite au fait de porter de la contrebande de guerre et de violer la neutralité. On ne peut nier dans tous les cas qu'il s'agit là d'une violation flagrante de droit international; et nous ajouterons que celui qui se met sciemment dans un cas semblable le fait à ses risques et périls.

Nous sommes, sur ce point, d'accord avec le jurisprudence anglaise, avec cette restriction que le navire doit être confisqué ainsi que la cargaison dans le seul cas où elle appartient au capitaine ou à l'armateur. Dans le cas contraire, la cargaison doit être rendue. Si le navire qui a tenté d'échapper à la visite est ennemi, chargé de marchandise neutre, celle-ci doit être également rendue. Nous ne saurions aller aussi loin que le juge de l'Amitauté William Scott (Lord Stowell) qui, dans le cas d'un navire neutre chargé par des neutres, confisque le tout. Il est évident que, seuls, le capitaine et l'armateur qu'il représente ont violé le droit, et que les chargeurs n'en sauraient rendre responsables. (Le droit de visite, p. 49.)

Hall states that—

The right of capture on the ground of resistance to visit, and that of subsequent confiscation, flow necessarily from the lawfulness of visit, and give rise to no question. If the belligerent when visiting is within the rights possessed by a state in amity with the country to which the neutral ship belongs, the neutral master is guilty of an unprovoked aggression in using force to prevent the visit from being accomplished, and the belligerent may consequently treat him as an enemy and confiscate his ship.

The only point arising out of this cause of seizure which requires to be noticed is the effect of resistance upon cargo when made by the master of the vessel, or upon vessel and cargo together when made by the officer commanding a convoy. The English and American courts, which alone seem to have had an opportunity of deciding in the matter, are agreed in looking upon the resistance of a neutral master as involving goods in the fate of the vessel in which they are loaded, and of an officer in charge as condemning the whole property placed under his protection. "I stand with confidence," said Lord Stowell, "upon all fair principles of reason, upon the distinct authority of Vattel, upon the institutes of other maritime countries, as well as those of our own country, when I venture to lay it down, that by the law of nations as now understood a deliberate and continued resistance to search, on the part of a neutral vessel to a lawful cruiser, is followed by the legal consequences of confiscation."

But the rules accepted in the two countries differ with regard to property placed in charge of a belligerent. Lord Stowell, in administering the law as understood in England, held that the
immunity of neutral goods on board a belligerent merchantman is not affected by the resistance of the master; for while on the one hand he has a full right to save from capture the belligerent property in his charge, on the other the neutral can not be assumed to have calculated or intended that visit should be resisted.

* * * * *

The American courts carry their application of the principle that neutral goods in enemy's vessels are free to a further point, and hold that the right of neutrals to carry on their trade in such vessels is not impaired by the fact that the latter are armed. (Hall, International Law, 5th ed., p. 729.)

Neutral property on enemy merchant vessel.—An enemy merchant vessel resisting search and endeavoring to escape, according to the opinion in the case of the Catharina Elizabeth and in other cases, is doing what it has a right to do. Of course there would be little question of the condemnation of all property belonging to the owner of the vessel which was on board the vessel resisting the search. The status of the neutral property would still be under the principles of the Declaration of Paris of 1856.

By the Declaration of Paris, regarded as generally binding, and binding by formal accession on the part of most states—

The neutral flag covers enemy's goods, with the exception of contraband of war.

Neutral goods, with the exception of contraband of war, are not liable to capture under any flag.

To the principles of this Declaration it may be safely said that the United States has adhered. Accordingly the neutral goods even on an enemy merchant vessel which had resisted search would not be liable to capture unless such goods were contraband. Ordinarily a war vessel would not wish "for immediate use" goods which would not be under the category of conditional contraband, but in order that goods of this kind be included in the list of conditional contraband they must have a belligerent destination. If the neutral goods on the enemy merchant vessel which resists search have a belligerent
destination the right of preemption as conditional contraband would be operative. The appropriation of the neutral goods would in general have to be based on need rather than on wish for immediate use, i.e., the wish for luxuries which might be on board and belong to the neutral would not be sufficient ground for appropriation, while the immediate need of flour might be a proper ground.

**Preemption.**—In the case of the *Haabet* in 1800, Sir William Scott states the general doctrine as to preemption as held at that time:

The right of taking possession of cargoes of this description, *Commeatus or Provisions*, going to the enemy's port, is no peculiar claim of this country; it belongs generally to belligerent nations. The ancient practice of Europe, or at least of several maritime states of Europe, was to confiscate them entirely; a century has not elapsed since this claim has been asserted by some of them. A more mitigated practice has prevailed in later times of holding such cargoes subject only to a right of preemption, that is, to a right of purchase upon a reasonable compensation, to the individual whose property is thus diverted. I have never understood that on the side of the belligerent this claim goes beyond the case of cargoes avowedly bound to the enemy's port, or suspected on just grounds to have a concealed destination of that kind, or that on the side of the neutral the same exact compensation is to be expected which he might have demanded from the enemy in his own port. The enemy may be distressed by famine, and may be driven by his necessities to pay a famine price for the commodity if it gets there; it does not follow that acting upon my rights of war in intercepting such supplies I am under the obligation of paying that price of distress. It is a mitigated exercise of war on which my purchase is made, and no rule has established that such a purchase shall be regulated exactly upon the same terms of profit which would have followed the adventure if no such exercise of war had intervened; it is a reasonable indemnification and a fair profit on the commodity that is due, reference being had to the original price actually paid by the exporter and the expenses which he has incurred. As to what is to be deemed a reasonable indemnification and profit, I hope and trust that this country will never be found backward in giving a liberal interpretation to these terms; but certainly the capturing nation does not always take these cargoes on the same terms on which an enemy would be content to purchase them; much less are cases of this kind to be considered as cases of costs
and damages, in which all loss of possible profit is to be laid upon unjust captors: for these are not unjust captures, but authorized exercises of the rights of war. (2 C. Robinson’s Admiralty Report, 174.)

In June, 1864, Great Britain adopted “An act for regulating naval prize of war” (27 and 28 Victoria, cap. 25). This act provides for preemption.

38. Where a Ship of a foreign nation passing the seas laden with naval or victualling stores intended to be carried to a port of any Enemy of Her Majesty is taken and brought into a port of the United Kingdom, and the purchase for the service of Her Majesty of the stores on board the Ship appears to the Lords of the Admiralty expedient without the condemnation thereof in a Prize Court, in that case the Lords of the Admiralty may purchase, on the account or for the service of Her Majesty, all or any of the stores on board the Ship; and the Commissioners of Customs may permit the stores purchased to be entered and landed within any port.

By the United States instructions issued June 20, 1898 (General Order 492), it was declared—

24. The title to property seized as prize changes only by the decision rendered by the prize court. But if the vessel itself, or its cargo, is needed for immediate public use, it may be converted to such use, a careful inventory and appraisal being made by impartial persons and certified to the prize court.

In the same instructions section 4615 of the Revised Statutes is cited to the effect that—

If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their report shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer of the United States most accessible to such court, and subject to its order in the cause.

Pradier-Fodéré says:

Dans des tout à fait exceptionnels, il est permis de prendre possession des provisions du navire saisi ou capturé; lorsque le croiseur, par exemple, a besoin de houille ou manque de vivres, et qu’il en trouve à bord du navire saisi, il est bien naturel qu’il s’en empare, mais on exige théoriquement que ce soit par préemp-
tion, et en prenant des mesures propres à offrir des garanties suffisantes contre des abus toujours possibles de la part de ceux qui, disposant de la force, ne sont que trop portés a s'en servir sans modération. (S Droit International Public, p. 653, § 3185.)

Perels maintains that an attempt to justify seizure, on payment of indemnity, of articles which may be of use for war, such as provisions, on the ground of preemption is an arbitrary extension of belligerent rights and should be absolutely discountenanced.

In case of urgent need, however, the belligerent may take on payment of ample indemnity neutral goods, particularly provisions bound toward the enemy state, even when their military destination is not clear. This is not based on the right of preemption, but flows from the right of self-preservation in case of urgent necessity, and is of the same character as the right of angary. (Öffentliche Seerecht der Gegenwart, sec. 46.)

The articles for the government of the Navy provide for the removal of goods from a prize under certain circumstances:

16. No person in the Navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereupon; and every person who offends against this article shall be punished as a court-martial may direct.

The appropriation of neutral goods which the commander of the war vessel wishes which are on an enemy merchant vessel not bound for any enemy destination would be an act of entirely different character from the appropriation of goods under similar conditions which were of the nature of conditional contraband and bound for an enemy destination. If the enemy merchant vessel which resists search is bound for a neutral port the right of preemption does not apply. The neutral goods on this enemy merchant vessel when not having enemy destination are simply liable to the inconvenience
consequent upon the sending in of the vessel for adjudication. The mere wish of the captors of the vessel that they may have these goods for immediate use is not sufficient to justify appropriation even if full compensation is made. Of course there is no opposition from the point of view of international law to the purchase by agreement in advance of any such goods, but the appropriation of innocent goods of a neutral is an act liable to give rise to serious complications.

Even in case of war on land, where the belligerent is in full control and exercising jurisdiction over property, the rules in regard to appropriation are strict.

Preemption in war on land.—In case of war on land it was provided at The Hague in 1899 that—

Art. 52. Neither requisition in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country.

These requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

The contributions in kind shall, as far as possible, be paid for in ready money; if not, their receipt shall be acknowledged. (Law and Customs of War on Land.)

American practice and opinion.—The American practice and opinion has generally been to allow the appropriation or destruction of neutral property within belligerent jurisdiction only on the ground of military necessity, and even then full compensation must be paid and, if possible, agreed upon in advance.

Where innocent neutral goods are in an enemy merchant vessel bound for a neutral port no guilt can attach to the goods because the merchant vessel attempts to escape. If course the goods would be liable to the consequences if it should be necessary to fire upon the enemy merchant vessel to bring her to. If the merchant vessel should be sunk in this way there would be no claim on the part of the neutral owner against the United States. These goods would be liable, as other goods within the
actual area of hostilities, to damages incident to legitimate military operations.

The goods are innocent when the capture as stated in Situation IV is made and the reason for the appropriation is simply the captain's wish for such goods for immediate use. As a general principle this wish would not be a sufficient ground for appropriation of the goods. A desire or wish, however ardent, is not the justification which sanctions the taking of innocent neutral property in the time of war any more than the taking of the same property in the time of peace. Unless the property under consideration is tainted with hostile character, it is as free as under a neutral flag though subject to the inconvenience due to the capture and adjudication of the vessel. The only justification for its appropriation, therefore, would not be the captain's wish for the property for immediate use, but a military necessity such as to demand its appropriation. The Articles for the Government of the Navy are in entire accord with the best practice in requiring absolute need for the use of any of the vessels or armed forces of the United States as justification for the removal of neutral goods from a seized vessel in advance of the decision of the prize court. Military necessity which would justify the appropriation of neutral goods must be of the nature of imperative need for self-preservation; mere convenience or desire is not a sufficient ground for such seizure or appropriation. Full compensation must in all cases be regarded as a sequence of such appropriation.

Conclusion.—The goods should not be treated as hostile.

The goods should not be taken from the vessel except for better preservation thereof or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States. The appropriation of innocent neutral goods must be justified by military necessity, not by mere wish or desire.