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International Law Situations with Solutions and Notes  
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### SITUATION III.

While there is a war between States X and Y, and the United States neutral, a war vessel of State X captures a merchant vessel flying the flag of the United States, and while returning to the home port of State X brings the merchant vessel into a port of State Z, which is neutral, and in which port there is a war vessel of the United States. The commander of the war vessel of State X orders the merchant vessel to lower the flag of the United States. The captain of the merchant vessel refuses. The captain of the war vessel of State X orders the flag pulled down. The captain of the merchant vessel protests against this act to the commander of the war vessel of the United States.

Should the commander of the war vessel of the United States take any action?

### SOLUTION.

The commander of the United States war vessel should protest to the neutral authorities of State Z against the action of the captain of the war vessel of State X in forcibly hauling down the flag of a seized merchant vessel of the United States while in a neutral port of Z and before the decision of a prize court. He should also report the facts to his home government for further action.

### NOTES ON SITUATION III.

*Early opinion.*—Sir William Scott in 1799 announced as “principles of universal jurisprudence applicable to all courts” that—

In later times an additional formality has been required, that of a sentence of condemnation, in a competent court, decreeing the capture to have been rightly made, *jure belli*; it not being thought fit, in civilized society, that property of this sort should be converted without the sentence of a competent court pronouncing it to have been seized as the property of an enemy, and to

be now become *jure belli* the property of the captor. The purposes of justice required that such exercises of war should be placed under public inspection, and therefore the mere *deductio infra praesidia* has not been deemed sufficient. No man buys under that title; he requires a sentence of condemnation as the foundation of the title of the seller; and when the transfer is accepted he is liable to have that document called for, as the foundation of his own. From the moment that a sentence of condemnation becomes necessary it imposes an additional obligation for bringing the property, on which it is to pass, into the country of the captor; for a legal sentence must be the result of legal proceedings in a legitimate court, armed with competent authority upon the subject-matter and upon the parties concerned—a court which has the means of pursuing the proper inquiry and enforcing its decisions. (The *Henrick* and *Maria*, 4 C. Robinson's Admiralty Reports, p. 43.)

In his opinion on the *Vrow Elizabeth*, rendered in 1803, Sir William Scott says that, according to the established principles of law—

It has been decided that a vessel sailing under the colours and pass of a nation is to be considered as clothed with the national character of that country. (5 C. Robinson's Admiralty Reports, p. 4.)

*Later opinion.*—In 1862 Mr. Justice Davis delivered the opinion of the court in the case of the *Nassau* to the effect that—

It is the practice with civilized nations, when a vessel is captured at sea as a prize of war, to bring her into some convenient port of the captor for adjudication. The title is not transferred by the mere fact of capture, but it is the duty of the captor to send his prize home, in order that a judicial inquiry may be instituted to determine whether the capture was lawful, and if so to settle all intervening claims of property. Until there is a sentence of condemnation or restitution, the capture is held by the government in trust for those who, by the decree of the court, may have the ultimate right to it.

The fact of capture determines the jurisdiction, and not the filing of a libel. When captured as prize of war the property is in the custody of the law, and remains there to await the decision of a prize court, and, if condemned, all claims to the property are by it adjusted. Any other rule would work great hardship to captors and tend to cripple the operations of a government during time of war. (4 Wallace, U. S. Supreme Court Reports, 635.)

In a decision of 1902 it is stated that—

Until condemnation captors acquire no absolute right of property in a prize, though then the right attaches as of the time of the capture, and it is for the government to determine when the public interests require a different destination. (U. S. v. Dewey, 188 U. S. Supreme Court Reports, 254.)

*Case of the Malacca.*—Professor Lawrence sets forth the case of the *Malacca*, which involved the change of flag before adjudication by a prize court, as follows:

We are now in a position to consider the case of the *Malacca* and deal with the legal points which have arisen in connection with it. On July 4 the Russian volunteer fleet steamer *Peterburg* passed the Bosphorus and the Dardanelles, after having been detained by the Turkish authorities for some hours, in the course of which explanations were exchanged with the Russian ambassador at Constantinople. On July 6 she was followed by the *Smolensk*. Both flew the commercial flag. Each declared she was a commercial ship. Neither could have passed the straits in any other capacity. They maintained the same character when going through the Suez Canal. The *Peterburg* certainly, and possibly the *Smolensk* also, engaged pilots for the Red Sea as a vessel of commerce. But soon after leaving Suez she ran up the Russian naval ensign. Guns were brought out of her hold and mounted. Her armament was soon complete. She assumed the character of a war ship and proceeded to cruise against neutral commerce. On July 11, off Jeddah, she stopped and searched two British vessels, the *Mendlaus* and the *Crewe Hall*, but after being detained for some time they were allowed to proceed. On July 13 she captured the Peninsula and Oriental Company's steamer *Malacca* to the north of the island of Jebel-Zukkur and brought her to Suez on July 19. The *Malacca* was passed through the canal in the custody of a Russian prize crew and flying the Russian naval flag, though, in the absence of any sentence of a prize court condemning her, she was still in law a British vessel. She left Port Said on July 21, her destination being unknown, but it was understood that she would be taken to Libau for trial and adjudication on a charge of carrying contraband of war. (War and Neutrality in the Far East, 2d ed., p. 205.)

Sir Charles Harding, the British ambassador at St. Petersburg, made a strong protest. Later "a compromise" was made. Of this Professor Lawrence says:

It is satisfactory to know that the British remonstrance was not without effect. What Mr. Balfour described as "a compromise" was reached. It was agreed that the *Malacca* should be taken



to Algiers and there released after "a purely formal examination," and an assurance from the British consul that the military stores were the property of the British Government, and that the rest of the cargo was innocent. These formalities were gone through on July 27. At sunset the Russian flag, which ought never to have been hoisted, was hauled down, and at sunrise the next morning the British flag took its proper place at the mast-head. With regard to the *Peterburg* and the *Smolensk*, they "were no longer to act as cruisers," and any vessels captured by them were to be immediately released. This latter part of the agreement was carried out to the full by the liberation on July 27 of two British vessels, the *Ardova* and the *Formosa*, which had been seized in the Red Sea. No admission was made of the general principle that vessels of the volunteer fleet which had passed through the straits as merchantmen were legally incapable of acting as ships of war. Instead, it was asserted that the two steamers whose conduct was questioned had "received a special commission, the term of which had already expired;" and thus the cessation of their attacks on neutral commerce was accounted for without acceptance of the British contention.

We may admit that a compromise was necessary, while at the same time we regret some of the conditions which were agreed upon. The examination of the *Malacca* at Algiers was contrary to the fundamental principle for which we contended. The Russian Government published an official statement on August 2, representing it as "a fresh visit." It would be hard to argue that it was nothing of the kind, though, as it took place in a neutral port, it was absolutely irregular from beginning to end. The assurance of the British consul as to the innocence of the cargo implied that the arresting vessel had a right to inquire into the matter; whereas the head and front of our argument had been that the arrest, visit, and detention were wrongful acts, because the ship which performed them had no legal capacity to do so." (War and Neutrality in the Far East, 2d ed., p. 212.)

The attitude of the Russian Government on the seizure and release of the *Malacca* is indicated by a statement in the Official Messenger of August 2, 1904.

From the beginning of the Russo-Japanese war the Imperial Government took measures to prevent the transport of contraband of war to Japan by vessels of neutral countries. In the regulations sanctioned by the Czar on February 14, 1904, which Russia proposed to follow during the war, a list was given of articles regarded by us as contraband of war. It was also declared that the military and maritime authorities would reserve to themselves the right of rigidly executing the decision contained in the

regulations for naval prizes sanctioned by the Czar on March 27, 1895, and in the instructions confirmed by the Council of Admiralty on September 20, 1900, regarding the procedure for stopping, visiting, and seizing, as well as for carrying off and delivering over, vessels and cargoes seized.

The vessels *St. Petersburg* and *Smolensk*, of the volunteer fleet, having received a special command, the term of which has already expired, on proceeding to their destination, acted in accordance with the above decisions, and while passing through the Red Sea stopped and visited all suspected vessels they encountered in those waters. It was under these conditions that the commander of the *St. Petersburg* stopped, among others, the British ship *Malacca*, the captain of which refused to show the ship's papers relating to the cargo, a refusal which led to the seizure of the vessel and the decision to send it to Port Alexander III, Libau, with a view to throwing light on the matter.

Nevertheless, in view of an official statement of the British Government that the *Malacca* was carrying British state cargo, the Imperial Government, acting in agreement with the British Government, decided that a fresh visit should be paid to the seized vessel at the nearest port on its route in the presence of a British consul. The visit took place at Algiers. The British Consul-General officially certified that the military stores on board the *Malacca* continued to be the property of the British Government, and that the rest of the cargo was not contraband of war. Taking this attestation into consideration, the Imperial Government decided to liberate the cargo and vessel.

This decision must not, however, be interpreted as a renunciation by the Imperial Government of its intention to dispatch alike cruisers and war ships in general to prevent the carrying of contraband of war for our enemy.

*Seizure of enemy differs from seizure of neutral vessels.*—The seizure of an enemy private vessel is an act very different in character and intent from that of seizure of a neutral private vessel. The enemy vessel is brought before the court to determine its disposition. The act of seizure, if made according to the recognized rules of international law, is not in question. The burden of proof rests upon the seized vessel.

The neutral, however, should be freed from all interference in prosecution of proper neutral activities. The presumptions are in favor of the neutral. The burden of proof of guilt rests on the belligerent seizing the neutral.

The seizure of a vessel is in effect an act of war. In case the vessel is the property of a belligerent it is re-



garded as legitimate. In case the vessel is the property of a neutral such vessel must be involved in the war in order to justify the seizure, otherwise it is an act of war against a neutral, and being without sanction renders the belligerent making the seizure liable to damages. Seizure of a neutral is justified to prevent an act which would involve participation in the hostilities, as to prevent the delivery of contraband or to penalize the neutral for complicity in the hostilities, as in seizure of a neutral vessel returning from a violation of blockade.

There is a reference to the seizing of enemy property and the general immunity of neutral territory in the case of the *Vrow Anna Catharina*:

The right of seizing the property of the enemy is a right which extends, generally speaking, universally wherever that property is found. The protection of neutral territory is an exception to the general rule only; it is not therefore to be considered as disrespectful to any government that the fact on which such claims are founded should be accurately examined. (5 C. Robinson's Admiralty Reports, 15.)

The exemption of neutral territory from all acts involving hostility is now most firmly maintained.

The object of searching ostensible neutrals is to get evidence as to the fact of neutrality and if the cargo be not enemy's property; or, if neutral, whether they are carrying contraband; or whether the vessels are in the service of the enemy in the way of carrying military persons or dispatches or sailing in prosecution of an intent to break blockade. (*The Jane*, 37 U. S. Court of Claims, 24, Dec. 2, 1901.)

These opinions and precedents show that neutral vessels are seized by one belligerent in order to determine whether their action has aided or is evidently to aid the opposing belligerent. The action of the seizing belligerent is justified to the extent that it may be necessary to ascertain these facts. All neutrals concerned, the seized neutral and others affected by the seizure, are entitled to exemption from the effects of war in which they have no participation.

*Regulations as to seizure.*—The regulations of various states and action under these regulations show the general tendency.

The Russian Regulations on Maritime Prize give the following as the method of conducting detained vessels into port:

22. Detained vessels and cargoes are conducted by the detaining vessel into Russian ports, and if there are none such in the vicinity, then into the ports of an allied power or to the active Russian fleet (the fleet engaged in operations). In case of storm or other extreme necessity the detaining vessel may, together with the detained vessel, seek shelter in the port of a neutral power. Regarding the period and conditions of remaining in port, the commander of the detaining vessel is obliged to submit to the rules established on this subject by the local government.

In the "Instructions concerning stopping, examining, etc.":

42. An imperial vessel, while conducting away detained vessels, may enter the ports of a neutral power which has not forbidden in its declaration of neutrality (or other official document) the visitation of ports by war vessels of the belligerent parties with prizes.

Similarly an imperial cruiser may seek refuge in a port of a neutral power, together with captured vessels, in the case of a storm or other extreme necessity (for instance, a breakdown in the engines, insufficiency of supplies, or in case of pursuit by an enemy of superior strength), in which case the commander of the imperial vessel must submit to the rules established by the local government with regard to the period and other conditions of the sojourn in the neutral port. (U. S. Foreign Relations, 1904, pp. 738, 753.)

The Russian Regulations on Maritime Prizes enunciate the following doctrine in regard to the nationality of a vessel:

The nationality of a vessel is determined according to the laws of the nation under whose flag it sails or to whose navy it claims to belong. Merchant vessels acquired from a hostile power or its subjects by persons of neutral nationality are acknowledged to be hostile vessels unless it is proven that the acquisition must be considered, according to the laws of the nation to whom the purchaser belong, as having actually taken place before the purchasers received news of the declaration of war, or that the vessels acquired in the manner mentioned, although after the receipt of such news, were acquired quite conscientiously, and not for the purpose of covering hostile property.



In regard to the treatment of war vessels the Russian Regulations on Maritime Prizes provide:

27. The confiscation of detained war vessels and cargoes takes place by order of the proper naval authority. The confiscation of other vessels and cargoes subject to detention does not take place otherwise than by virtue of a decision of a prize court.

The instructions issued by Spain, April 24, 1898, prescribe that—

3. Seas subject to the sovereign jurisdiction of neutral powers are absolutely inviolable; right of visit may not, therefore, be resorted to within them, even if it be alleged that it was attempted to exercise such right in the open sea, and that, on chase being given, and without losing sight of the vessel pursued, the latter penetrated into neutral waters.

Neither may the violation of the rights attaching to such waters be justified under the pretext that the coast washed thereby was undefended and uninhabited.

9. The visit is not an act of jurisdiction of the part of the belligerent; it is a natural means of legitimate defense allowed by international law, lest fraud and bad faith should assist the enemy. The right should therefore be exercised with the greatest moderation by the belligerent, special care being taken to avoid causing the neutral any extortion, damage, or trouble that is not absolutely justifiable.

In consequence of this the detention of the ship visited should always be as short as possible, and the proceedings restricted as far as they can be, their exclusive object being, as explained, for the belligerent to ascertain the neutrality of the ship, and in case of neutrality (if bound for a port of the enemy) the in-offensive and neutral description of its cargo.

It is not necessary, therefore, to demand during the visit any other documents than those proving these two conditions, for what the belligerent requires is to prevent any damage, favoring or assisting the enemy; to prevent assistance and help being furnished to them now that may contribute directly to the prolongation of the war, and not to be assured that all ships belonging to neutral powers are provided with all the documents required by the laws of their country.

The British Admiralty Manual of Prize Law states that—

299. The Commander, however, must bear in mind that he cannot take the Vessel into a Neutral Port against the will of the Local authorities; and that under no circumstances can proceedings for Adjudication be instituted in a Neutral Country.

300. Both the Cruiser and, if admitted, her Prize are by the Comity of Nations exempt from the local jurisdiction. (Page 85.)

*Regulations in regard to use of flag.*—The French “Instructions contemporaires” of 1870, article 3, state:

Les prises naviguent avec le pavillon et la flamme, insignes des bâtiments de l'État.

Under certain circumstances the commander of a war vessel may, according to the British Manual of Naval Prize Law, require the vessel seized as probably good prize to lower her flag.

As soon as the Commander has come to the determination to detain the Vessel, he should give notice to the Master, and may state to him the ground on which the Detention is made. The Commander should then without any delay secure possession of the Vessel, by sending on board one of his Officers and some of his Crew. If by reason of rough weather or other circumstances this is impracticable, the Commander should require the Vessel to lower her flag, and to steer according to his orders. (Page 69.)

Article LXVII of the Japanese Regulations of 1904 follows in the main the British Manual.

ART. LXVII. If the captain of the man-of-war decides to capture a vessel he shall inform her master of the reason, and shall take possession of the vessel by sending one officer and the required number of petty officers and men. If on account of bad weather or any other reason it is impossible to dispatch these officers and men, the captain of the man-of-war shall order the vessel to haul down her colors and to steer according to his direction. If the vessel does not obey the orders of the captain of the man-of-war, he may take any measures required for the occasion.

Certain clauses of the Danish proclamation of neutrality of April 27, 1902, show the modern attitude on the treatment of prize:

The belligerents must not commit hostile acts in Danish harbors or waters or make use of the same as base for operations at sea against each other or for the purpose of facilitating such operations. Nor must they use such harbors or waters for augmenting or renewing military equipment or for recruiting purposes.

Prizes must not be brought into a Danish harbor or roadstead except in evident case of stress, nor must prizes be condemned or sold therein.

In the Notice from the Danish Ministry of Foreign Affairs is the following:

ARTICLE 1. When a Danish merchant vessel at sea is hailed by an armed ship belonging to either belligerent, she has, at the request of the officer in command, without opposition, to produce the ship's papers, i. e., the certificate of nationality and registry (or in default of such a one, a provisional certificate of nationality delivered by a Danish consul), the crew list, the clearance papers, and the manifest. It is forbidden to conceal, to destroy, or to throw overboard papers concerning the ship or her cargo as well before as during the search. No Danish ship is allowed to have double papers or to fly another flag than the Danish flag.

The United States Navy Regulations of 1876, chapter 20, state that—

14. A neutral vessel seized is to wear the flag of her own country until she is adjudged to be a lawful prize by a competent court. The flag of the United States, however, may be exhibited at the fore, to indicate that she is, for the time, in the possession of officers of the United States.

This does not appear, however, in subsequent issues of the Navy Regulations.

*Opinions as to use of flag.*—Dupuis says:

L'envoi du vaisseau capturé à un port belligérant, avec tous les éléments propres à faire juger si la capture est légitime, est, en principe, obligatoire. L'intervention des cours de prises constitue une garantie nécessaire contre les abus du droit de capture; or, cette garantie ne saurait être pleinement efficace qu'autant que les documents et les objets saisis se trouvent à la disposition des cours appelées à statuer. (Le droit de la guerre maritime, No. 260, p. 331.)

Kleen, writing of the procedure in case of seizure, says:

Le navire, gardant son pavillon jusqu'au jugement, sera conduit au port du tribunal par un commandant et un équipage délégués du capteur et suffisants pour diriger et manoeuvrer le navire sous sa responsabilité. Pendant le trajet, rien ne peut être touché sans permission du capitaine et sans urgence pour la conservation des objets. (2 La Neutralité, § 213, p. 522.)

The procedure in visit, search, and seizure is so carefully prescribed that in the exercise of such a delicate right there should be no action beyond that uniformly permitted and sanctioned by international law.



Oppenheim says in regard to the treatment of prize that—

As soon as a vessel is seized she must be conducted to a port where a prize court is sitting. As a rule the officers and crew sent on board the prize by the captor will navigate the prize to the port. This officer can ask the master and crew of the vessel to assist him, but if they refuse they can not be compelled thereto. The captor need not accompany the prize to port. In the exceptional case, however, where an officer and crew can not be sent on board and the captured vessel is ordered to lower her flag and steer according to orders, the captor must conduct the prize to port. (2 International Law, p. 198, § 193.)

In 1886 the flag of a fishing vessel was hauled down in a Canadian port on the ground that the fishing vessel had violated certain local regulations.

Mr. Bayard, in a letter to Mr. Phelps, says:

It seems hardly necessary to say that it is not until after condemnation by a prize court that the national flag of a vessel seized as a prize of war is hauled down by her captor. Under the fourteenth section of the twentieth chapter of the Navy Regulations of the United States the rule in such cases is laid down as follows:

“A neutral vessel, seized, is to wear the flag of her own country until she is adjudged to be a lawful prize by a competent court.”

But, *a fortiori*, is this principle to apply in cases of customs seizures, where fines only are imposed and where no belligerency whatever exists? In the port of New York, and other of the countless harbors of the United States, are merchant vessels flying the British flag which from time to time are liable to penalties for violations of customs laws and regulations. But I have yet to learn that any official, assuming, directly or indirectly, to represent the Government of the United States, would under such circumstances order down or forcibly haul down the British flag from a vessel charged with such irregularity; and I now assert that if such act were committed, this Government, after being informed of it, would not wait for a complaint from Great Britain, but would at once promptly reprimand the parties concerned in such misconduct and would cause proper expression of regret to be made. (For. Rel. U. S., 1886, p. 370.)

The principle that enemy goods and ships are liable to seizure being at present admitted, there can be little objection raised to placing the national flag of the capturing vessel over a seized vessel belonging to a belligerent. It does pass, if good prize, to the state of the captor upon capture. It is brought in for adjudication.

In regard to a neutral vessel, the principle is quite otherwise. The neutral is only seized and held pending the decision of the prize court.

The Austrian regulations seem, therefore, to be in accord with the best opinion. These are to the effect that if an enemy vessel is captured the imperial standard should be hoisted at once at the peak of the captured vessel.

If a neutral vessel is seized it should carry its own flag till it is declared good prize, although the Austrian colors may be hoisted at the fore to indicate that the vessel is under the direction of a war ship of Austria.

The position is similar to that in the United States Navy Regulations of 1876.

*Summary.*—In the situation under consideration there are several parties concerned: (1) The authorities of the neutral state into which the vessel has been brought; (2) the war vessel of the United States; (3) the seized merchant vessel of the United States, a neutral; (4) the war vessel making the seizure.

(1) *Relations of the neutral state.*—The authorities of neutral states have full right to forbid the entrance of vessels with prize. They have the full right to regulate the conditions of entrance and sojourn of any vessels admitted with prize during war. As neutrals they are under obligation to see that no acts of war take place within their jurisdiction. The capture within neutral jurisdiction of a vessel of which the pursuit was begun outside of neutral territory is not allowed. The neutral is entitled to claim that its territory should not be the scene of any proximate act of war. The forcible hauling down of the flag of the merchant vessel of the United States is an act approximating war. The transfer of flag is an indication of the transfer of sovereignty. A forcible transfer of this kind is of the nature of capture which is forbidden in neutral territory. As ships of war with prize are generally admitted to neutral ports only on sufferance, it is proper for the neutral authorities to demand that the status of the prize be not changed by the use or threat of force or in any manner other than of its



own volition during the sojourn within port. As the hauling down of a neutral flag and the raising of a belligerent flag in its place under orders of the belligerent within a neutral port would be in the nature of evidence of transfer of authority, such a transfer would properly be an act to which the neutral would object.

The neutral, therefore, has a right to protest if a belligerent entering its port with prize performs any such act in derogation of his sovereignty. The forcible hauling down of any neutral flag would be an act of such character. Therefore the neutral would have cause for protest.

(2) *Position of the war vessel of the United States.*—The war vessel of the United States is under the general restrictions as regards conduct in a foreign state. It may not take any action in derogation of the sovereignty of the neutral port of State Z. To use force to restore the flag of the merchantman of the United States would be an offense against State Z and would imply that State Z was unable to secure the enforcement of proper regulations in its ports. Both the war vessel of State X and its prize while in the neutral port of Z are within its jurisdiction, and any act of force would be an offense against the neutral state. Accordingly the commander of the United States war vessel would have no right to interfere other than by stating the facts and making protest against the action of the captain of the war vessel of State X. This protest should be made to the authorities of neutral State Z who have jurisdiction, and protest may be made also directly to the captain of the war vessel of State X by the captain of the United States war vessel, if he deems it expedient.

(3) *Right of captured neutral vessel to flag.*—The captured neutral merchant vessel of the United States has a right to carry its flag until condemned, and it is proper that it should do so in order that in case its captor should be attacked by the other belligerent the status of the prize may be known, or in case it is sent in under a prize crew that its status may similarly be evident. In flying the enemy's flag in place of its proper flag its status would be



that of an enemy vessel so far as the opposing belligerent was concerned. Until condemnation in a regular court its status is not changed and it should be made liable to the consequences of seizure only. Therefore it has the right to its own flag till condemned.

(4) *Rights of war vessel of State X.*—The war vessel of belligerent State X which made the capture has no rights except that of peaceable sojourn in a neutral port of State Z, which has admitted the war vessel with its prize. The forcible hauling down of the neutral flag is an act beyond those permitted in peaceful sojourn and is beyond the rights of the captain.

The neutral merchant vessel has a right to its flag as evidence of its nationality and for its protection till condemned. The merchant vessel is seized only in order that it may be brought before a court. It is regarded as innocent until condemned. Such use of force by the officers of State X against its flag would be an anticipation of the judgment of the prize tribunal. The captain of the merchant vessel is right in declining to haul down his flag.

As the neutral state is responsible for acts which take place within its jurisdiction, the proper authority to which the commander of the United States war vessel should look is that of the neutral state. As the neutral merchantman of the United States is entitled to her flag until condemned and as the hauling down of the United States flag by force would be an evidence of transfer of jurisdiction which should not take place in a neutral port, the commander of the United States war vessel would be justified in taking action.

*Conclusion.*—The commander of the United States war vessel should protest to the neutral authorities of State Z against the action of the captain of the war vessel of State X in forcibly hauling down the flag of a seized merchant vessel of the United States while in a neutral port of Z and before the decision of a prize court. He should also report the facts to his home government for further action.