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International Law Situations

With Solutions and Notes

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The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government, the U.S. Department of the Navy or the Naval War College.
Situation IV.

Coaling in Neutral Waters.

While there is war between States X and Y and other States are neutral, a war vessel of State X coals from a collier just off the coast within three miles of State Z. A month later the same war vessel enters a port of State Z and requests a reasonable supply of coal. This is refused on the ground that the vessel has taken coal within the waters of State Z within three months.

Is the contention of State Z correct?

Solution.

The contention of State Z is correct.

Notes on Situation IV.

Wording of the Hague Convention respecting the Rights and Duties of Neutral Powers in Naval War.—It has been suggested that the wording of this convention in articles 18, 19, and 20 gives rise to the opinion that what a belligerent may do within neutral waters will depend upon the nature of the control which the neutral may be exercising over the waters, i. e., that certain actions might be prohibited in the ports which would be permitted in the roadsteads; that certain actions would be prohibited in the roadsteads which would be allowed in outer territorial waters.

This opinion is based on the decreasing area of prohibition mentioned in the successive articles.

The prohibition in Article XVIII of this convention is comprehensive.

Belligerent war ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

The inclusion of the words "territorial waters" was at the suggestion of the British delegate in order to conform to the second rule of the treaty of Washington and shows that the prohibition was intended to be general.
The prohibition in Article XIX is less extended and extends to "neutral ports or roadsteads."

Art. XIX. Belligerent war ships may only revictual in neutral ports or roadsteads to complete their supplies up to amount usual in time of peace.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port of their country. They may, however, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral power, the ships are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

The prohibition in Article XX extends merely to such ships as have taken coal "in a port belonging to a neutral power."

Belligerent war ships which have shipped fuel in a port belonging to a neutral power may not within the succeeding three months replenish their supply in a port of the same power.

As M. Hagerup pointed out at the Second Hague Conference in 1907, there is a difference between the waters within the jurisdiction of a State and the ports of the state:

Ils existent entre les ports et les eaux territoriales des différences de fait et de droit.

Les différences de fait se font valoir et quant au contrôle et quant aux mesures de réaction qu’il est possible d’y employer.

Ils peuvent y avoir des pays qui ont un littoral très étendu, peu peuplé et entouré des îles et des rochers, comme la Norvège par exemple; il est évident que l’Etat ne pourra dans des eaux territoriales comme celles-ci exercer aucun contrôle efficace.

Les ports sont soumis entièrement à la juridiction et à la souveraineté de l’Etat qui peut en interdire l’entrée à tous les navires.

Pour les eaux territoriales, au contraire, le passage inoffensif des navires est permis même en temps de guerre.

L’étendue d’un port est bien définie; il n’y a aucun doute là-dessus; il n’est pas ainsi pour l’étendue des eaux territoriales, sur laquelle il n’y a pas d’accord général. Cette dernière incertitude existe du reste dans le droit et dans le fait.

Ces différences doivent nécessairement exercer en temps de guerre une influence sur le régime auquel doivent être soumis les ports et les eaux territoriales.

Cela est surtout évident pour ce qui concerne les devoirs des neutres. Si l’on peut prescrire pour les eaux territoriales également que pour
les ports neutres, que les belligérants ne doivent pas se servir d’eux pour ses opérations militaires, les conséquences pour les neutres d’une infraction à cette règle ne peuvent être les mêmes dans les deux cas. Si un neutre tolère qu’un des belligérants dispose de ses ports, ce sera une violation de la neutralité. Mais on ne saurait dire le même du seul fait que le neutre n’a pu empêcher le belligérant de se servir de ses eaux. D’abord le neutre qui veut protéger ses eaux se heurtera dans beaucoup de cas à l’incertitude de l’étendue des eaux territoriales.

Ensuite: Les moyens pour empêcher une telle violation de la mer territoriale sont beaucoup plus difficiles à trouver que pour les ports.

D’autres différences: Les règles sur la fixation d’un délai pour le séjour d’un navire de guerre dans un port neutre ne peuvent pas être établies pour les eaux territoriales. Il est bien difficile de fixer le moment où le navire entre dans les eaux territoriales ou en sort. (3e Commission, 2e sous-commission, 1er août 1907.)

Naval War College discussion, 1906.—The general subject of the supply of coal in neutral ports was considered in the conferences upon international law at this Naval War College in 1906. The summary of the discussions is as follows:

The proposition to limit the supply to the amount necessary to take the ship to the nearest port of her home country, which has been a form often used and was that approved by the Institute of International Law in 1898, leaves much to be desired. The nearest port may not be in the direction in which the vessel may be voyaging, or if it is it may not be a port suitable for the entrance of such a vessel. The gradual change in recent years has shown that this formula is not sufficient. Such words as the following have been added in certain proclamations: “Or to some nearer neutral destination,” “or to some nearer named neutral destination,” or that coal shall not be supplied to “a belligerent fleet proceeding either to the seat of war or to any position or positions on the line of route with the object of intercepting neutral ships on suspicion of carrying contraband of war.”

In most declarations there has been a provision against allowing a neutral port to become a base for equipping a belligerent’s vessel with coal, oil, or other supplies. By “base,” as thus used, is meant a place to which the vessel frequently returns. The idea of “frequent,” as thus used, is generally covered by the prohibition against taking a new supply of coal from the same neutral port till after the expiration of a period of three months. Some states, however, allow such supply within three months provided permission is obtained from the proper authority.

It would seem to be evident that while the supplying of coal to a belligerent is not prohibited by international law though it has been prohibited in many proclamations, yet the supplying of coal at such frequent intervals as would make the neutral port a base is generally
regarded as prohibited by international law, as is practically admitted in the reply of France to Japan in 1905.

It seems to be the general opinion that the supply of fuel, etc., to belligerents should be somewhat restricted in neutral ports.

There are differences of opinion as to the extent of necessary restrictions. Doubtless there would be need of special restriction in special cases. Some degree of freedom should remain to the neutral in making provisions for special conditions. It would seem reasonable that the neutral should not afford a greater supply of coal or oil even for lubricating purposes than an amount sufficient to carry the vessel to the home port. The purpose is to guard against the furnishing of supplies for hostile uses and at the same time not to intern a vessel of a belligerent which may enter a neutral port. It would probably be desirable to restrict the supply of oil for purposes of fuel which would be included under the general head of fuel and for lubricating purposes which makes necessary specific mention of oil.

Considering opinions, precedents, and practice, the following seems a reasonable conclusion: The supply of fuel or oil within a neutral port to vessels in belligerent service in no case shall exceed what is necessary to make the total amount on board sufficient to reach the nearest un-blockaded port of the belligerent vessel’s own state or some nearer named destination.

The supply may be subject to such other regulations as the neutral may deem expedient.

Neutrality proclamations.—The declaration of neutrality of the United States in the Russo-Japanese war of 1904 was in accord with the declaration in the Franco-Prussian war of 1870:

No ship of war or privateer of either belligerent shall be permitted, while in any port, harbor, roadstead, or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without any sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive, if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs. (U. S. Foreign Relations, 1904, p. 34.)

The proclamation of Sweden and Norway stated that the King had decided to accord war vessels of the belliger-
ents entrance to his ports provided they conformed to certain rules:

In regard to coal, they can only purchase the necessary quantity to reach the nearest nonblockaded national port, or with the consent of the authorities of the King, a neutral destination. Without special permission the same vessel will not be permitted to again purchase coal in a port or roadstead of Sweden or Norway within three months after the last purchase. (Foreign Relations U. S. 1904, p. 31.)

The rules for the maintenance of neutrality in the Netherlands Indies in 1904 restrict the taking in of fuel:

Sufficient provender may be shipped as is necessary for the maintenance of the crew, while the stock of fuel may not exceed an amount necessary for the vessel to reach the nearest harbor of the country to which the vessel belongs or of one of its allies in the war. The same vessel shall not be allowed to return a second time for fuel within a period of three months from the time of the first supply, except special authorization be given thereto.

In the case of privateers more stringent regulations were imposed:

They shall not take in more provisions than is required for them to reach the nearest harbor of the country to which they belong or that of one of their allies in the war, and not more coal than is necessary to provide for their requirements for a period of twenty-four hours, sailing at a maximum of three English miles an hour. Within a period of three months they shall not be provided with coal a second time. (Foreign Relations U. S. 1904, p. 28.)

The Danish neutrality proclamation issued in 1904 provided that:

So much coal only may be taken in as may be necessary to carry such vessels to the nearest nonblockaded home port; or, with permission from the proper Danish authorities, to some other neutral destination. No ship will be permitted, without special authorization, to coal in any Danish harbor or roadstead more than once in the course of three months. (Foreign Relations, U. S. 1904, p. 22.)

The proclamations, decrees, orders, etc., issued during the Spanish-American war in 1898 were in most instances similar to those issued in 1904. Those issued in 1898 varied somewhat in character. The range is shown in the following:

Bermuda, proclamation, May 6, 1898:

Rule C. No supplies will be allowed to any such ship beyond provisions and subsistence for crew necessary for immediate use and no
coal except for the specific purpose (to be satisfactorily shown) of enabling her to proceed direct to the nearest port of her own country or other named nearer neutral destination, nor will coal be supplied to the same ship in any British port twice within three months.

Brazil, circular, April 29, 1898:

X. The movements of the belligerent will be under the supervision of the customs authorities from the time of entrance until that of departure, for the purpose of verifying the proper character of the things put on board.

XI. The ships of belligerents shall take material for combustion only for the continuance of their voyage.

Furnishing coal to ships which sail the seas near Brazil for the purpose of making prizes of an enemy's vessels or prosecuting any other kind of hostile operations is prohibited.

A ship which shall have once received material for combustion in our ports shall not be allowed a new supply there, unless there shall have elapsed a reasonable interval which makes it probable that said ship has returned after having finished its voyage to a foreign port.

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

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

Italy, decree of April 6, 1864:

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

Japan, imperial ordinance, No. 87:

Art. 6. The men-of-war and other ships used for warlike purposes belonging to one or the other of the belligerent powers may get, in the ports of the Empire, supplies of articles necessary for their crews, also coal and other things indispensable to navigation, as well as of materials needed for repairs; but the quantity of such supplies should never exceed that which will be necessary for the purpose of taking such men-of-war and such other ships to the nearest port of their own country. Any of such men-of-war or such other ships which has once obtained a supply of coal shall not be permitted to get another supply until after the lapse of three full months.
Netherlands, Order No. 2, respecting neutrality:

**Article I.** * * * Provender may be shipped so far as is necessary for the wants of the crew, while the store of coal shall only be supplemented sufficiently to allow the ship or vessel to reach the nearest port of the country to which it belongs, or that of one of its allies in the war.

The same ship may not be provided a second time with coal, except after a lapse of three months from the first lading, unless special permission be given.

According to the British proclamation:

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

This rule was amended to read "nearer named neutral destination," in 1904.

Certain explanations of Rule 3 were later issued.

It must, however, be borne in mind that the reason for the practice of admitting belligerent vessels of war into neutral ports arises out of the exigencies of life at sea and the hospitality which it is customary to extend to vessels of friendly powers, and that this principle does not extend to enabling such vessels to utilize a neutral port directly for the purpose of hostile operations. The rule above quoted is not to be understood as having any application to the case of a belligerent fleet proceeding either to the seat of war, or to a position or positions on the line of route, with the object of intercepting neutral vessels on suspicion of carrying contraband of war. Such fleet cannot be permitted to make use in any way of a British port for the purpose of coaling, either directly from the shore, or from colliers accompanying the fleet, whether the vessels of the fleet present themselves at the port at the same time or successively. His Majesty's Government further direct that the same practice be pursued with reference to single belligerent war-vessels, if it be clear that they are proceeding for the purpose of belligerent operations as above defined. This is not to be applied to the case of a vessel putting in on account of actual distress at sea.

The amount of coal which might be supplied to a belligerent warship was defined as so much as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer named neutral destination—a formula which would, e. g., entitle a Russian ship of war to take on board, say at Aden, an amount of coal sufficient to carry her to
Vladivostok. The practice recognized under this rule, which is based upon considerations of hospitality, ought not, in the opinion of His Majesty's Government, to be extended so as to enable such vessels to make use of a neutral port directly for the purpose of hostile operations. Instructions had accordingly been given that the rule is not to be taken as applying to a belligerent fleet, or to vessels proceeding to the seat of war itself, or to stations from which operations connected with the war might be conducted. (Lord Lansdowne to Sir C. Hardinge, August 16, 1904.)

In the proclamation of the governor of Malta of August 12, 1904, there is a reference to and interpretation of the British rule No. 3, of the proclamation No. 1 of February 12, 1904—

Inasmuch as it refers to the extent of coal which may be supplied to belligerent ships of war in British ports during the present war, shall not be understood as having any application in case of a belligerent fleet proceeding either to the seat of war or to any position or positions on the line of route with the object of intercepting neutral ships on suspicion of carrying contraband of war, and that such fleet shall not be permitted to make use in any way of any port, roadstead, or waters subject to the jurisdiction of His Majesty for the purpose of coaling, either directly from the shore or from colliers accompanying such fleet, whether vessels of such fleet present themselves to any such port or roadstead or within the said waters at the same time or successively; and second, that the same practice shall be pursued with reference to single belligerent ships of war proceeding for purpose of belligerent operations as above defined; provided that this is not to be applied to the case of vessels putting in on account of actual distress at sea, in which case the provision of rule No. 3 as published by proclamation No. 1 of the 12th February, 1904, shall be applicable.

It will be observed that this proclamation specifically announces the principle "that belligerent ships of war are admitted into neutral ports in view of exigencies of life at sea and the hospitality which it is customary to extend to vessels of friendly powers;" and that "this principle does not extend to enable belligerent ships of war to utilize neutral ports directly for the purpose of hostile operations." It is not the intention to extend hospitality to belligerent vessels proceeding to the seat of war or advancing for the purpose of belligerent operations, whether against other belligerents or against neutrals carrying contraband or otherwise involved in the war. In short, the doctrine would seem to involve the privilege
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of coaling for navigation to a home port, but no such privilege in order to reach the area of warfare or for direct hostile operations. This position taken by Great Britain is an advanced one. As was said in the discussions of this Naval War College in 1905 (Topic IX, p. 158):

It can not reasonably be expected that a neutral power will permit its own ports to be used as sources of supplies and coal, using which the belligerent vessel or fleet may set forth to seize the same neutral's commerce or interrupt its trade.

Professor Holland raises the question of supply of coal to a belligerent ship, and briefly summarizes the British practice as follows:

May she also replenish her stock of coal? To ask this question may obviously, under modern conditions and under certain circumstances, be equivalent to asking whether belligerent ships may receive in neutral harbors what will enable them to seek out their enemy, and to maneuver while attacking him. It was first raised during the American civil war, in the first year of which the Duke of Newcastle instructed colonial governors that "with respect to the supplying in British jurisdiction of articles antipilis usus (such, for instance, as coal), there is no ground for any interference, whatever on the part of colonial authorities." But, by the following year, the question had been more maturely considered, and Lord John Russell directed, on January 31, 1862, that the ships of war of either belligerent should be supplied with "so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination." Identical language was employed by Great Britain in 1870, 1885, and 1898, but in the British instructions of February 10, 1904, the last phrase was strengthened so as to run: "Or to some nearer named neutral destination." The Egyptian proclamation of February 12, 1904, superadds the requirement of a written declaration by the belligerent commander as to the destination of his ship and the quantity of coal remaining on board of her, and Mr. Balfour, on July 11, informed the House of Commons that "directions had been given for requiring an engagement that any belligerent man-of-war, supplied with coal to carry her to the nearest port of her own nation, would in fact proceed to that port direct." Finally, a still stronger step was taken by the Government of this country, necessitated by the hostile advance toward eastern waters of the Russian Pacific squadron. Instructions were issued to all British ports, on August 8, which, reciting that "belligerent ships of war are admitted into neutral ports in view of the exigencies of life at sea, and the hospitality which is customary to extend to vessels of friendly powers; but the principle does not extend to enable belligerent ships of war to utilize neutral ports directly for the purpose of hostile operations," goes on to direct that the rule previously promulgated, "inasmuch as it refers
COALING IN NEUTRAL WATERS.

to the extent of coal which may be supplied to belligerent ships of war in British ports during the present war, shall not be understood as having any application to the case of a belligerent fleet proceeding either to the seat of war, or to any position or positions on the line of route, with the object of intercepting neutral ships on suspicion of carrying contraband of war, and that such fleets shall not be permitted to make use, in any way, of any port, roadstead, or waters, subject to the jurisdiction of His Majesty, for the purpose of coaling either directly from the shore or from colliers accompanying such fleet, whether vessels of such fleet present themselves to such port or roadstead, or within the said waters, at the same time or successively; and that the same practice shall be pursued with reference to single belligerent ships of war proceeding for the purpose of belligerent operations, as above defined, provided that this is not to be applied to the case of vessels putting in on account of actual distress at sea." (83 Fortnightly Review, 1905, p. 795.

Provisions of the Hague Convention, 1907.—Articles of the Hague Convention concerning the Rights and Duties of Neutral Powers in Naval War provide that—

Art. XVIII. Belligerent war ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

Art. XIX. Belligerent war ships may only refuel in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral power, the ships are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

Art. XX. Belligerent war ships which have shipped fuel in a port belonging to a neutral power may not within the succeeding three months replenish their supply in a port of the same power.

Certain articles of the Hague Convention concerning the Rights and Duties of Neutral Powers in Naval War extend their regulations in specific terms to "neutral ports, roadsteads, and territorial waters." This Article XIX regulating the supply of fuel mentions only "neutral ports and roadsteads."

Report of American delegation.—The report of the United States delegation to the Second International
Peace Conference at The Hague regards article 19 as "an extremely important one," and in commenting on articles 19 and 20 says:

The great powers of the world are susceptible of being grouped into two classes in the matter of neutral policy. England, having great naval power, supplemented by an extensive system of coaling stations and commercial ports, has always favored and practiced a policy of strict neutrality. France, less powerful at sea, having few naval stations and with few distant colonial possessions, has been more liberal in the enforcement of its neutral obligations, and has allowed considerable aid to be extended to belligerent vessels in its ports. As England has treated both belligerents with impartial strictness, France has treated them with impartial liberality. With this view Russia and, to some extent, Germany and Austria, are in sympathy. As has been seen, the policy of the United States has been in the main similar to that of Great Britain.

In the matter of coal, the English delegation proposed that the amount of coal which a belligerent vessel might obtain in a neutral port should be restricted to quarter bunkers. The substantial operation of this rule would be that any public armed vessel that entered a neutral port short of coal would have to be interned until the close of the war, as it would be impossible, in a majority of cases, to reach a home port with so meager an allowance of coal as quarter-bunker capacity. This proposition was rejected, as were a number of suggestions based upon bunker capacity, condition of bottoms, etc., which were so complicated as to be practically impossible in their application.

The result was to reach the compromise which is stated in article 19, as to which it may be said that the liberal States have yielded rather more than those whose policy is one of strict neutrality. The article represents, it would seem, the most satisfactory conclusion possible for the conference to reach.

Propositions and discussions at The Hague, 1907.—Two questions were before the second subcommission of the third commission of the Second Hague Conference in 1907, and to these questions certain states gave replies.

XII. Dans quelle mesure pourront-ils s'y approvisionner de vivres et de charbon?

ESPAGNE.

Art. 5. Les vaisseaux belligérants ne pourront, pendant leur séjour dans les ports ou les eaux neutres, charger du matériel de guerre, ni aucun approvisionnement de nature à augmenter leur force militaire. Ils pourront, toutefois, se pourvoir des vivres et du charbon nécessaires pour atteindre le port le plus rapproché de leur pays ou un port neutre plus proche encore.
(17) Une puissance neutre ne devra pas permettre sciemment à un navire de guerre d’un belligérant se trouvant dans sa juridiction de prendre à bord des munitions, vivres ou combustibles si ce n’est dans le cas où les munitions, vivres ou combustibles déjà à bord du navire ne lui suffiraient pas pour gagner le port le plus proche de son propre pays: la quantité de munitions, vivres ou combustibles chargés à bord du navire dans la juridiction neutre ne devra en aucun cas dépasser le complément nécessaire pour lui permettre de gagner le port le plus proche de son propre pays.

JAPON.

IV. Les navires belligérants ne pourront dans les ports ou les eaux neutres, ni augmenter leurs forces de guerre, ni faire de réparations sauf celles qui seront indispensables à la sécurité de leur navigation, ni charger aucun approvisionnement excepté du charbon et des provisions suffisant avec ce qui reste encore à bord pour les mettre à même d’atteindre à une vitesse économique le port le plus rapproché de leur pays ou une destination neutre plus proche encore.

RUSSIE.

VII. Il est interdit aux bâtiments de guerre des États belligérants, pendant leur séjour dans les ports et les eaux territoriales neutres, d’augmenter, à l’aide de ressources puisées à terre, leur matériel de guerre ou de renforcer leur équipage.

Toutefois les bâtiments susmentionnés pourront se pourvoir de vivres, denrées, approvisionnements, charbon et moyens de réparation nécessaires à la subsistance de leur équipage ou à la continuation de leur navigation.

Aucun pilote ne peut être fourni à ces bâtiments sans l’autorisation du Gouvernement neutre.

XIII. Un second approvisionnement dans le même pays neutre doit-il être permis sans qu’il y ait lieu de fixer un délai?

ESPAGNE.

Article 5, alinéa 2. Le vaisseau belligérant qui se serait approvisionné dans un port neutre, ne pourra plus le faire dans aucun port du même pays neutre qu’après un laps de temps de trois mois.

GRANDE-BRETAGNE.

(18) Une puissance neutre ne devra pas permettre sciemment à un navire de guerre d’un belligérant se trouvant dans sa juridiction de s’approvisionner de charbon, si le navire a déjà, dans les trois mois qui précèdent, fait du charbon dans les eaux de la dite puissance neutre.
Among the regulations tentatively proposed at the Second Hague Conference, 1907, in regard to belligerent vessels in time of war were:

**ESPAÑE.**

**ARTICLE 1.** Il ne sera pas permis aux vaisseaux de guerre d'entrer ou de séjourner dans les ports ou les eaux neutres, en les prenant comme base d'opérations de guerre, quelle que soit la nature de ces opérations.

**JAPON.**

I. Il est interdit aux navires belligérants de se servir des ports et des eaux neutres soit comme lieu d'observations ou de rendez-vous soit comme bases d'opérations de guerre ou de buts militaires de toute nature.

**RUSSIE.**

II. Tout acte d'hostilité est interdit aux bâtiments de guerre appartenant à un État belligérant pendant leur séjour dans les ports et les eaux territoriales neutres.

III. Est également interdit aux dits bâtiments de se servir des ports et des eaux territoriales neutres comme de bases d'opérations de guerre.

At the time of the discussion of the matter of rights and duties of neutrals in time of war at the Hague Conference in 1907 various propositions were submitted.

**Great Britain:**

(2) Tout belligérant est tenu de respecter les droits souverains d'un État neutre et de s'abstenir; dans le territoire ou les eaux territoriales d'un neutre, de tout acte qui, s'il était commis avec la permission expresse du Gouvernement neutre, constituerait un manquement de neutralité.

The Japanese *projet* in regard to ships of the belligerents in neutral waters submitted to the Hague Conference on July 2, 1907, provided that—

IV. Les navires belligérants ne pourront dans les ports ou les eaux neutres, ni augmenter leurs forces de guerre, ni faire de réparations sauf celles qui seront indispensables à la sécurité de leur navigation, ni charger aucun approvisionnement excepté du charbon et des provisions suffisant avec ce qui reste encore à bord pour les mettre à même d'atteindre à une vitesse économique le port le plus rapproché de leur pays ou une destination neutre plus proche encore.

V. Ni les navires belligérants se rendant sur le théâtre de la guerre ou se dirigeant vers cette même direction ou vers la zone des hostilités existantes, ni ceux dont la destination est douteuse ou inconnue, ne pourront faire de réparations ou d'acquisitions de charbon ou de provisions dans les ports ou les eaux neutres.
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VI. Les navires belligérants qui séjourneront dans les ports ou eaux neutres au-delà de la limite du délai admise par les règles ci-dessus, qui feront acquisition d'autres provisions que celles qui sont admises par l'administration desdites règles, ou qui violeront d'une façon ou d'une autre les limitations ou restrictions imposées par lesdites règles, seront désarmés et internés pendant le reste de la guerre par les Puissances neutres auxquelles appartiennent ces ports ou eaux.

Sir Ernest Satow, on August 1, formally placed before the subcommittee of the third commission at the Hague Conference of 1907 his opinion.

XII. Dans quelle mesure pourront-ils s'y approvisionner de vivres et du charbon?

L'examen des règlements adoptés par les différentes nations nous prouve qu'en tant qui concerne l'approvisionnement du charbon, on est maintenant disposé à permettre qu'une quantité soit mise à bord du navire belligérant qui lui permettra de gagner le port le plus proche de son propre pays, ou, dans certaines circonstances, le port le plus proche d'un État neutre. On y a ajouté aussi la règle que le navire belligérant ne devra pas s'approvisionner de charbon si, dans les trois mois qui précèdent, le dit navire aura fait du charbon dans un port de la dite Puissance neutre. Les Puissances qui ont adopté ce règlement sont : la Hollande, la Belgique, le Danemark, les États-Unis d'Amérique, la Grande-Bretagne, le Japon, la Norvège et la Suède.

L'Italie exige que l'approvisionnement du charbon ne se fasse qu'après un délai de 24 heures après l'arrivée du navire. L'usage adopté par le Brésil exige que le navire ne fasse pas du charbon au delà de ce qui est strictement nécessaire pour lui permettre de continuer son voyage ; l'approvisionnement de charbon est interdit à tout navire destiné à croiser dans les mers voisines dans le but de capturer les vaisseaux ennemis ou de se livrer à des opérations de guerre quelconques.

De plus il n'est permis au navire belligérant de faire du charbon une deuxième fois dans un port brésilien, que s'il s'est écoulé un laps de temps permettant de croire que le navire après s'être éloigné des côtes du Brésil, y est revenu après avoir exécuté le voyage auquel il se destinait.

Il est aussi interdit au navire belligérant de recevoir dans les ports de la République des aliments venus directement pour lui sur des navires de n'importe quelle nation ; la tolérance d'un tel abus équivaudrait, dans la pensée du Gouvernement brésilien, à permettre que ces ports servent aux belligérants de bases d'opérations.

La même doctrine s'appliquerait probablement au cas d'un navire qui se servirait d'un bateau charbonnier pour s'approvisionner de charbon.

Une autre restriction exercée par le Brésil consiste dans la prohibition d'envoyer, du territoire brésilien, des dépêches télégraphiques.
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pour annoncer le départ ou l’arrivée prochain d’un navire belligérant, navire de guerre ou navire marchand.

La quantité de vivres qui pourra être pris à bord est soumise dans presque tous les cas aux mêmes conditions que celles qui gouvernent l’approvisionnement du charbon.

Les observations que nous avons faites quant à la situation de ces pays à proximité des principales routes de navigation et quant à l’avantage à ce que des règles universelles sur la durée du séjour soient formulées, sont applicables également au cas où on donnerait à un navire de guerre la permission de s’approvisionner de charbon.

Pour résumer, nous pensons qu’il est préférable, afin d’éviter tout malentendu, que les Puissances s’entendent entre elles au sujet des conditions sous lesquelles il serait permis aux navires belligérants de s’approvisionner et de faire du charbon.

At the same session Captain Burlamaqui presented in the name of the Brazilian delegation certain observations.

Quelques-unes parmi les règles de la neutralité, en ce qui touche le séjour des vaisseaux belligérants dans les ports neutres, semblent être conçues et proposées au profit seulement des Puissances qui ont des ports et des dépôts maritimes dans les différentes parties du monde. Le belligérant qui ne serait pas dans ce cas, se trouverait condamné à une infériorité désastreuse vis-à-vis des autres, particulièrement en ce qui concerne la possibilité de s’approvisionner des combustibles nécessaires au voyage. Ces privilégiés ne font qu’un très petit nombre. Ce serait donc une inégalité flagrante envers la grande majorité des États maritimes.

Il nous paraît donc juste de convenir que dans les ports des pays neutres éloignés du théâtre des opérations, les bâtiments de guerre des belligérants soient admis pendant plus de vingt-quatre heures à recevoir du charbon pour des voyages plus longs que ceux consentis sous les règles en vigueur.

Le plus raisonnable serait, nous semble-t-il, de ne pas fixer un limite précis de temps en laissant à la prudence et à la loyauté des neutres d’élargir ou de rétrécir la durée du séjour d’après les circonstances qui sont susceptibles de varier extrêmement.


Nous espérons que la Conférence daignera accorder à la proposition que nous soumettons, l’attention qu’elle semble mériter.

There were two principles in regard to the supply of fuel to a belligerent war vessel in a neutral port which found adherents at the Second Hague Conference. One of these would limit the supply to the amount necessary to reach
COALING IN NEUTRAL WATERS.

the nearest home port, the other would permit the filling of the bunkers to the normal peace capacity.

Admiral Siegel, of the German delegation, said in the discussion of this matter before the subcommittee of the third commission:

Nous nous trouvons devant deux systèmes relatifs à la quantité du charbon que les ports neutres peuvent accorder aux navires de guerre belligérants dans leurs ports et avant de faire votre choix, je vous prie de bien vouloir me permettre de préciser en quelques paroles les différences de ces deux systèmes et leur signification pour les neutres.

Ce que nous voulons, comme neutres, ce qu’il nous faut, c’est de connaître aussi exactement que possible la quantité du charbon qu’on peut donner à un navire belligérant dans nos ports sans être obligé d’entrer dans des recherches inquisitoriales ou de nous mêler dans les affaires du navire qui ne nous regardent pas. Nous voulons une règle simple et facile à appliquer, qui nous permette de donner suite aux demandes d’un navire tout en nous épargnant des réclamations et des contestations.

Regardons de près les deux systèmes et voyons de quelle manière ils satisfont à ces conditions.

Si l’on acceptait la première règle qui dit qu’on ne peut accorder au navire belligérant plus de charbon qu’il ne lui est nécessaire pour gagner le port le plus proche de son pays, une série de questions se présentent qui doivent être tranchées par le neutre et qui le mettent dans un grand embarras.

On sera peut-être en mesure de préciser quel est le port le plus proche et de calculer la distance, mais alors vient la question du rayon d’action et de la vitesse avec laquelle le navire doit effectuer son voyage. On peut admettre que ce soit la vitesse la plus économique. Mais cette vitesse peut varier d’après la qualité du charbon, d’après l’état des chaudières et de la machine, d’après celui de la coque, d’après l'instruction et l’expérience du personnel, etc. Et encore cette vitesse n’est-elle possible qu’en des circonstances favorables. Si le navire trouve du gros temps, s’il est obligé de forcer sa route contre le vent et la mer, tous les calculs deviennent inexacts et le navire court tous les dangers. Comment serait-il donc possible de fixer la quantité nécessaire pour le voyage? On pourrait dire que le commandant donnera tous les renseignements qui peuvent servir de base pour évaluer la quantité de charbon. Mais lui-même ne pourra pas prévoir le temps qu’il trouvera en mer; et on ne peut exiger de lui qu’il mette son navire en péril, en demandant trop peu de charbon; le commandant demandera donc la plus grande quantité possible et il restera toujours à craindre qu’un conflit ne s’élève entre le commandant et les autorités de l’État neutre, conflit de nature à causer plus tard des réclamations.

D’ailleurs, dans le cas où le port le plus proche serait tellement éloigné qu’il serait impossible au navire d’atteindre ce port, sans renouveler sa provision de charbon, il serait toujours nécessaire de donner au navire la plus grande quantité du charbon possible. Enfin on doit considérer
le cas où le port le plus proche est bloqué, ce qui modifierait toutes les conditions du calcul.

Bref, la quantité du charbon accordée changerait d'après les différents cas, et le neutre serait toujours obligé de prendre sur lui la responsabilité de fixer le nombre de tonnes de combustible que le navire devrait recevoir.

La question serait tout autre et beaucoup plus facile à régler si une règle générale disposait que le neutre peut donner autant charbon qu'il est nécessaire pour remplir les soutes proprement dites. Dans ce cas, le neutre recevrait du commandant un certain chiffre indiquant la quantité du charbon qui lui manque. L'État neutre serait en état de se rendre compte que cette quantité n'a pas été dépassée, car il n'est pas difficile de constater que les soutes sont pleines; la livraison de charbon cesserait alors et toute contestation, toute réclamation serait ainsi évitée.

Les Délégués techniques de 15 pays ont discuté cette question pendant plus de deux heures et à la fin une majorité de 10 voix contre 5 s'est déclarée en faveur de la disposition disant que l'État neutre pourrait donner le charbon nécessaire pour remplir les soutes, parce que c'était la mesure la plus convenable et le meilleur moyen pratique d'éviter des malentendus.

Contre l'adoption de cette proposition on a allégué que le belligérant y trouverait un moyen facile de se procurer du charbon pour tenir la haute mer et pour entreprendre des actes hostiles pour un assez long temps, notamment dans le cas où il se trouverait à proximité d'un certain nombre d'États neutres.

Mais cette situation n'existe qu'en quelques parties du monde. Dans de vastes parties du globe, les ports où l'on peut recevoir du charbon sont assez éloignés l'un de l'autre. D'ailleurs le même état des choses se présenterait également dans le cas où la règle du propre port le plus prochain serait acceptée. Tous les États neutres dont les ports sont très éloignés du port le plus prochain du belligérant seraient obligés de donner non seulement le plein de soutes mais la plus grande quantité du charbon pour mettre le navire belligérant en état d'aller aussi loin que possible.

Une dernière considération est que le neutre est maître dans sa maison et qu'il peut défendre l'accès de ses ports à tout navire belligérant qui essaye d'en user comme base d'opérations. Au reste, le neutre n'a pas pour devoir de préjuger les intentions d'un navire belligérant qui visite une fois son port et qui appartient à une nation avec laquelle il vit en paix; il suffit qu'il traite les deux belligérants de la même manière.

Messieurs, telles sont les raisons qui nous ont déterminés à vous proposer d'accepter l'al philéa 2 de l'article 10 dans la forme suivante: "Ces navires ne peuvent de même prendre du combustible que pour compléter leur plein de soutes proprement dites."

**General survey of discussions at The Hague.**—The report of the United States delegation to the Second Hague Con-
ference, speaking of the question of limitation of the supply of coal in neutral ports, says:

The proposition advanced by England represented the strict views of neutral rights and duties which are held by States maintaining powerful naval establishments, supplemented by a widely distributed system of coaling stations and ports of call, in which their merchant vessels could find convenient refuge at the outbreak of war and which enable them to carry on operations at sea quite independently of a resort to neutral ports for the procurement of coal or other supplies or for purposes of repair. As the policy of the United States Government has generally been one of strict neutrality, the delegation found itself in sympathy with this policy in many, if not most, of its essential details. France for many years past has taken a somewhat different view of its neutral obligations, and has practiced a liberal, rather than a strict, neutrality. The views of France in that regard have received some support from the Russian delegation and were favored to some extent by Germany and Austria.

It was constantly borne in mind by the delegation, in all deliberations in committee, that the United States is, and always has been, a permanently neutral power, and has always endeavored to secure the greatest enlargement of neutral privileges and immunities. Not only are its interests permanently neutral, but it is so fortunately situated, in respect to its military and naval establishments, as to be able to enforce respect for such neutral rights and obligations as flow from its essential rights of sovereignty and independence.

With a view, therefore, to secure to neutral States the greatest possible exemption from the burdens and hardships of war, the delegation of the United States gave constant support to the view that stipulations having for that purpose the definition of the rights and duties of neutrals should, as a rule, take the form of restrictions and prohibitions upon the belligerents, and should not, save in case of necessity, charge neutrals with the performance of specific duties. This rule was only departed from by the delegation in cases where weak neutral powers demanded, and need, the support of treaty stipulations in furtherance of their neutral duties. It was also borne in mind that a State resorting to certain acts with a view to prevent violations of its neutrality derives power to act from the fact of its sovereignty, rather than from the stipulations of an international convention. (Senate Doc., 60th Cong., 1st sess., No. 444, p. 50.)

Résumé.—By Article I of the Convention concerning the Rights and Duties of Neutral Powers in Naval War:

Belligerents are bound to respect the sovereign rights of neutral powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any power, constitute a violation of neutrality.

Unrestrained or repeated coaling in neutral waters, if knowingly permitted by a neutral, would unquestionably
CONCLUSION.

constitute a violation of neutrality and is therefore an act from which the belligerent is bound to refrain. Further, Article XVIII of the same convention prohibits the use of territorial waters for "replenishing or increasing" supplies of "war material" or "armament." Coal destined for the belligerent forces has in recent years been regarded as war material. In Situation IV there has been within three months an actual increasing of the supply of war material within neutral jurisdiction. Under the spirit of Article XVIII, the taking on of coal would not be allowed to the war vessel of State X.

As is evident from the neutrality proclamations of recent years, it is the purpose of neutrals to strictly limit the use of neutral territorial waters by belligerents to such purposes as the neutrals may specifically enumerate. In most proclamations prohibitions have been extended to ports, roadsteads, and territorial waters.

The provisions of the Convention concerning the Rights and Duties of Neutral Powers were agreed upon to harmonize divergent views. The divergency of view in regard to coaling was in regard to the amount rather than in regard to the frequency and place of coaling. This convention also provides that "it is expedient to take into consideration the general principles of the law of nations."

From the general principles set forth in the convention, from the neutrality proclamations, from practice in recent wars, and from the general principles of the laws of nations it is evident that the contention of State Z is correct. Very wide freedom has been allowed to belligerents in matter of coaling. The use of any place within neutral jurisdiction, except under the terms of the convention regulating the supply of coal to belligerents, would be using such place as a base, which is prohibited. Certain propositions made by neutral States have not only prescribed the refusal of such supplies, but also the interning of a belligerent vessel which disregards such neutral regulations.

CONCLUSION.

The contention of State Z is correct.

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