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International Law Situations with Solutions and Notes

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International Law Situations,
WITH SOLUTIONS AND NOTES.

SITUATION I.

COALING WITHIN NEUTRAL JURISDICTION.

There is war between States X and Y. Other States are neutral.

(a) A detachment of armed vessels of State X puts in to port B of State Z for the purpose of coaling from colliers accompanying the detachment.

Y protests against this coaling.

The authorities of State Z inform the commander of the detachment that he will be allowed to take from the colliers coal sufficient only to proceed to the nearest home port or to a port already passed en route to port B, and that any other course would render State Z liable for breach of neutrality.

What are the rights in this case?

(b) Would the solution be the same if the colliers had been sent to port B to meet the detachment?

(c) Would the solution be different if the coaling were not in a port, but merely within the three-mile limit off the coast of State Z?

SOLUTION.

(a) State Z is competent to make the regulation allowing within neutral jurisdiction coal sufficient only to proceed to the nearest home port or to a port already passed en route to port B. State Z might be at liberty to adopt the rule of full bunker supply.

(b) The same regulation would apply in case of colliers sent to meet the belligerent fleet at the neutral port of State Z.

(c) The same regulation would apply if the coaling were not in port but merely within the three-mile limit off the coast of State Z.
Introduction.—The introduction of steam power in vessels is comparatively recent. International law has not developed sufficiently to cover all circumstances under which the supply of fuel for vessels might come in question. The rules which had been developed to cover sailing ships are not in all cases sufficient to meet the new conditions. Coaling became from the middle of the nineteenth century an increasingly important question in maritime warfare. Confusion naturally arose in the attempt to stretch old rules evolved to regulate the conduct of sailing ships so that their provisions would apply to steam vessels. The transport of coal by neutrals was sometimes confused with the supplying of coal in a neutral port.

Coaling, the Geneva arbitration.—The first extended discussion in regard to the supply of coal arose before the Geneva arbitration. Moore summarizes this very important discussion as follows:

It was maintained in the case of the United States that an undue indulgence was shown to Confederate cruisers in the extent to which they were permitted to obtain supplies of coal in British ports, and that in this way they were enabled to use those ports as a base of hostile operations against the United States in violation of the duty defined in the second rule of the treaty. These allegations were denied in the British case.

The British supplemental argument declared that supplies of coal in British ports were afforded equally and impartially to both the contending parties; that they were obtained, on the whole, more largely by ships of war of the United States than by the Confederate cruisers; and that such supplies were lawful under the principles of international law.

Mr. Evarts, in his supplemental argument, and Mr. Waite, in another special argument, argued that the permission to take coal, unless properly restricted, amounted to permitting the belligerent to make use of the neutral ports as a base of naval operations, and that the Confederate cruisers were suffered to obtain supplies of coal in British ports to facilitate their belligerent operations.

On this subject Count Sclopis expressed the following opinion:

"I can only treat the question of the supply and shipment of coal as connected with the use of a base of naval operations directed against one of the belligerents, or as a flagrant case of contraband of war."
"I will not say that the simple fact of having allowed a greater amount of coal than was necessary to enable a vessel to reach the nearest port of its country constitutes in itself a sufficient grievance to call for an indemnity. As the Lord Chancellor of England said on the 12th of June, 1871, in the House of Lords, England and the United States equally hold the principle that it is no violation of international law to furnish arms to a belligerent. But if an excessive supply of coal is connected with other circumstances which show that it was used as a veritable res hostilis, then there is an infringement of the second rule of Article VI of the treaty. It is in this sense also that the same Lord Chancellor, in the speech before mentioned, explained the intention of the latter part of the said rule. Thus, when I see, for example, the *Florida* and the *Shenandoah* choose for their field of action, one, the stretch of sea between the Bahama Archipelago and Bermuda, to cruise there at its ease, and the other, Melbourne and Hobson's Bay, for the purposes, immediately carried out, of going to the Arctic seas, there to attack the whaling vessels, I can not but regard the supplies of coal in quantities sufficient for such purposes as infringements of the second rule of the sixth article."

Mr. Adams, in his opinion, said:

"This question of coals was little considered by writers on the law of nations, and by sovereign powers, until the present century. It has become one of the first importance, now that the motive power of all vessels is so greatly enhanced by it.

"The effect of this application of steam power has changed the character of war on the ocean, and invested with a greatly preponderant force those nations which possess most largely the best material for it within their own territories and the greatest number of maritime places over the globe where deposits may be conveniently provided for their use.

"It is needless to point out the superiority in this respect of the position of Great Britain. There seems no way of discussing the question other than through this example.

"Just in proportion to these advantages is the responsibility of that country when holding the situation of a neutral in time of war.

"The safest course in any critical emergency would be to deny altogether to supply the vessels of any of the belligerents, except perhaps when in positive distress.

"But such a policy would not fail to be regarded as selfish, illiberal, and unkind by all belligerents. It would inevitably lead to the acquisition and establishment of similar positions for themselves by other maritime powers, to be guarded with equal exclusiveness, and entailing upon them enormous and continual expenses to provide against rare emergencies.

"It is not therefore either just or in the interest of other powers, by exacting severe responsibilities of Great Britain in time of war, to force her either to deny all supplies, or, as a lighter risk, to engage herself in war."
It is in this sense that I approach the arguments that have been presented in regard to the supply of coals given by great Britain to the insurgent American steamers as forming a base of operations.

It must be noted that throughout the war of four years supplies of coal were furnished liberally at first, and more scantily afterwards, but still indiscriminately to both belligerents.

The difficulty is obvious how to distinguish those cases of coals given to either of the parties as helping them impartially to other ports from those furnished as a base of hostile operations.

Unquestionably, Commodore Wilkes, in the Vanderbilt, was very much aided in continuing his cruise at sea by the supplies obtained from British sources. Is this to be construed as getting a base of operations?

It is plain that a line must be drawn somewhere, or else no neutral power will consent to furnish supplies to any belligerent whatever in time of war.

So far as I am able to find my way out of this dilemma, it is in this wise:

The supply of coals to a belligerent involves no responsibility to the neutral when it is made in response to a demand presented in good faith, with a single object of satisfying a legitimate purpose openly assigned.

On the other hand, the same supply does involve a responsibility if it shall in any way be made to appear that the concession was made, either tacitly or by agreement, with a view to promote or complete the execution of a hostile act.

Hence I perceive no other way to determine the degree of the responsibility of a neutral in these cases than by an examination of the evidence to show the intent of the grant in any specific case. Fraud or falsehood in such a case poisons everything it touches. Even indifference may degenerate into willful negligence, and that will impose a burden of proof to excuse it before responsibility can be relieved.

This is the rule I have endeavored to apply in judging the nature of the cases complained of in the course of this arbitration.

Sir Alexander Cockburn contended that the term "base of naval operations" had no relation to the case of a vessel which, while cruising against an enemy's ships, puts into a port, and after obtaining necessary supplies again pursues her course, but that it referred to the use of a port or water as a place from which a fleet or a ship might watch an enemy and sally forth to attack him, with the possibility of falling back upon the port or water in question for fresh supplies, or shelter, or a renewal of operations. The term signified "a local position which serves as a point of departure and return in military operations, and with which a constant connection and communication can be kept up, and which may be fallen back upon whenever necessary."

Mr. Staempfli, in his opinion in the case of the Sumter, said:

The permission given to the Sumter to remain and to take in coal at Trinidad does not in itself constitute a sufficient basis for accusing the
DISCUSSION OF COALING, 1906.

British authorities of having failed in the observance of their duties as neutrals, because this fact can not be considered by itself, since the Sumter, both before and after that time, was admitted into the ports of many other States, where it stayed and took in coal, and it is proved that the last supply she obtained to cross the Atlantic did not take place in a British port; so that it can not be held that the port of Trinidad served as a base of operations for the Sumter."

The tribunal of arbitration, in its award, said:

"In order to impart to supplies of coal a character inconsistent with the second rule, prohibiting the use of neutral ports or waters as a base of naval operations for a belligerent, it is necessary that the said supplies should be connected with special circumstances of time, of persons, or of place, which may combine to give them such character."

In signing the award, Viscount d’Itajubá made the following statement:

"Viscount d’Itajubá, while signing the decision, remarks, with regard to the recital concerning the supply of coals, that he is of opinion that every Government is free to furnish to the belligerents more or less of that article."

It did not appear that in any case Great Britain was held responsible for the acts of a vessel in consequence of supplies of coal. (4 Moore, International Arbitrations, p. 4097.)

Discussion of 1906.—Under Topic IV of the Naval War College International Law Topics and Discussions of 1906 (p. 66) the subject of supplying fuel and oil in a neutral port was considered. The development of the recognition of neutral obligations was set forth at that time in considerable detail. The proclamations of various States in recent wars are also shown, and the policy and practice of some of the more important States is discovered to be divergent. A regulation was proposed in 1906 as follows:

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 unblockaded port of the belligerent vessel’s own State or some nearer named destination.

The supply may be subject to such other regulation as the neutral may deem expedient. (International Law Topics and Discussions, Naval War College, 1906, p. 87.)

The reasons for this conclusion in 1906 were based upon the general drift of policy and practice toward restriction, as shown in recent wars and in opinions of writers. In the way of a general statement as to the reasons for the regulation proposed in 1906 in answer to the question,
"What regulations should be made in regard to the supplying of fuel or oil to belligerent vessels in neutral ports?" it was said—

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 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. (Ibid., p. 86.)
International Law Situations, 1908.—The Naval War College in 1908 again considered the question of supply of coal in neutral waters after the Second Hague Peace Conference, 1907. The résumé of the reasoning upon which the conclusion of International Law Situation IV of 1908 was based is as follows:

By Article 1 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 all acts which would constitute on the part of the neutral Powers which knowingly permitted them, a nonfulfilment of their neutrality."

Unrestrained or repeated coaling in neutral waters, if knowingly permitted by a neutral, would unquestionably constitute a nonfulfilment of neutrality, and is therefore an act from which the belligerent is bound to refrain. Further, Article 18 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 18, 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 (in Situation IV of 1908) 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. (International Law Situations, Naval War College, 1908, p. 96.)
As cited in the notes upon this Situation IV of 1908, the United States delegation to the Second Hague Conference reported in regard to the matter of limitation of the supply of coal in neutral ports as follows:

*Report of American delegation.*—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.)

The solution of Situation IV of 1908 was to the effect that coaling by a vessel of war from a collier within the three-mile limit of the coast of a neutral State would be a just ground upon which the neutral could deny that
vessel of war the right to take coal within its ports till after three months had elapsed.

The amount of coal.—Situation I (a) of 1910 raises the question of the regulation of the amount of coal to be allowed to a belligerent in a neutral port or waters. The regulations suggested in the Naval War College conclusion in 1906 are not the same as those adopted at The Hague in 1907. The Hague regulations would be regarded as binding in most cases. The Hague Convention concerning the Rights and Duties of Neutral Powers in Naval War provides—

Article 19. Belligerent war ships may only revictual 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.

Proclamations as to amount of coal.—The proclamations issued in recent years as to the amount of coal to be allowed, in general not more often than once in three months, to a belligerent within a neutral port show the tendency toward regulation. The following are examples of regulations:

Denmark, 1904:

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.
(U. S. Foreign Relations, 1904, p. 22.)

Netherlands Indies, 1904:

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.
And in case of privateers it was provided that—

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. (Ibid., p. 28.)

Sweden-Norway, 1904:

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. (Ibid., p. 31.)

United States, 1904:

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. (Ibid., p. 34.)

Bermuda, 1898:

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. (U. S. Foreign Relations, 1898, p. 844.)

Brazil, 1898:

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. (Ibid., p. 848.)

China, 1898:

In coal only sufficient must be allowed to take it (the belligerent ship) to its nearest port. (Ibid., p. 853.)

Denmark, 1898:

Nor to take coal in greater quantity than is necessary to enable the vessel to arrive at the nearest port of its own country, or to some other destination nearer by. (Ibid., p. 857.)

Governor of Curaçao, 1898:

Nor more coal than is needed for their consumption for twenty-four hours at a maximum speed of 10 English miles per hour. (Ibid., p. 861.)
NEUTRALITY PROCLAMATIONS ON COAL.

Great Britain, 1898:
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. (Ibid., p. 869.)

Japan, 1898:
Coal necessary for the purpose of taking such men-of-war and such other ships to the nearest port of their own countries. (Ibid., p. 880.)

Netherlands, 1898:
Not more coal than is necessary to provide for their wants for twenty-four hours, sailing at a maximum pace of 10 English miles per hour. (Ibid., p. 889.)

These regulations of 1898 were in general reissued at the time of the Russo-Japanese war in 1904.

Many States would allow no coal to ships in possession of prizes. Some States required that a belligerent ship should obtain permission before coaling at all. Some made special provisions owing to the geographical situation of certain ports.

Naturally Great Britain would from the number and position of her ports be called upon to make definite rules. These were mentioned in the International Law Situations of the Naval War College of 1908.

According to the British proclamation of 1898:

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 vessel 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 can not 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 directs 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.)

Malta proclamation of 1904.—In the proclamation of the Governor of Malta of August 12, 1904, there is a reference to and interpretation of the British rule—

We, therefore, in the name of His Majesty, order and direct that the above-quoted rule No. 3, published by proclamation No. 1 of the 12th February, 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
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 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 the Naval War College in 1905, "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." (International Law Topics and Discussions, 1905, p. 158.)

Prof. 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 ancipitis 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 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. (Strong Fortnightly Review, 1905, p. 795.)

These neutrality regulations of 1898 and 1904 were issued by the States named, but France, Germany, and Austria-Hungary did not issue similarly detailed regulations. The policy of France has not been the same as that of those States whose proclamations have been cited. Germany has usually been content with a more or less definite utterance to the effect that she would remain neutral.
Opinion of Dr. Lawrence.—Speaking in regard to coaling in May, 1904, during the Russo-Japanese war, Dr. Lawrence, at that time lecturer on international law at the British Royal Naval College, stated the British position:

The case of coal is peculiar and unsatisfactory. There is great need of a further advance in the rules which deal with it. Before the application of steam to navigation no one gave it a thought in connection with warlike purposes. Belligerent ships were as little likely to ask for it as they are to-day to demand granite or sand. But when, in the middle of the last century, the navies of the world changed from sailing vessels to steamships, it suddenly became immensely important. Yet the law of nations, based upon the practice of nations, still regarded it as an innocent article which might be supplied without restraint to any belligerent ship whose commander was so curiously constituted as to want it. But in 1862 Great Britain led the way in an attempt to put it on a more satisfactory footing. Taking advantage of the power possessed by neutrals to make reasonable regulations for their own protection, she issued in the midst of the great American Civil War a number of rules which dealt, among other matters, with supplies of coal. They were limited almost exactly as they are in the present war. We have kept to our rules ever since, when neutral in a maritime struggle; and several powers, notably the United States, have adopted them. Meanwhile coal has become much more important for warlike purposes than it was in 1862. Without it a ship of war is a useless log. It is as essential for fighting purposes as ammunition, and much more essential for chasing or escaping. Moreover, the great increase in the size, or speed, or both, of modern vessels causes them to consume it in much greater quantities than before. A belligerent which can obtain full supplies of it in neutral harbors gains thereby an enormous advantage. The neutral may be perfectly willing to grant similar supplies to the other side, but its wants may never be so great, and consequently the assistance given to it may never be so effective. Besides it is of the essence of neutrality that no aid should be given to the belligerents, and this is by no means the same thing as giving aid to both equally. Is it not time we went further and prohibited all supplies of coal to belligerent vessels in our ports? Probably some powers would follow our example, as happened when we strengthened our rules in 1862. Certainly some would not. France, who has not yet come up to our standard of 40 years ago, and whose policy with regard to coal in warfare is to place no restrictions upon the trade in it, could hardly be expected to come into line with us at first. But if she persisted in granting supplies when most other countries refused them, she might lay herself open to awkward remonstrances and demands on the part of a belligerent who had suffered severely in consequence of her liberality. An experience like our own in the matter
of the Alabama claims might convert her to our views. But even if she remained unconverted, we could go on acting as we deem best. We have more to gain than most States by the changes I suggest. Their first result would be to make warships dependent upon the coal they obtained in their own ports, or from colliers sent out by their Government. We are better off for coaling stations than any other power, and we have greater facilities for keeping our fleets supplied by colliers. On the other hand, we have more to lose than most States by the present system, for our sea-borne trade is so enormous and so important that an enemy could do vast damage by means of two or three swift commerce destroyers, which might for a time obtain coal in neutral ports, though we had closed all their own against them. The Egyptian neutrality order of February 12, 1904, lays down that before the commander of a belligerent ship of war is allowed to obtain coal in any port of Egypt he must obtain an authorization from the authorities of the port specifying the amount which he may take, and such authorization is to be granted only after the receipt from him of a written statement setting forth his destination, and stating the amount of coal he has in his bunkers. Probably this is as far as it is possible to go at present. (Problems of Neutrality, Journal of the Royal United Service Institution, vol. 48, pt. 2, p. 922.)

Elsewhere Dr. Lawrence speaks of the absolute refusal of coal to belligerent ships of war in a neutral port:

No doubt we should be told that if such ships are no longer to be allowed to buy coal in our ports we can hardly claim for our merchants the right to carry it to their ports unmolested, as long as they are not ports of naval equipment. And yet this argument does not seem conclusive. An article of commerce may be so essential for hostile purposes that no warship ought to be supplied with it in neutral waters, and yet so essential for the ordinary purposes of civil life that it ought not to be prevented from reaching the peaceful inhabitants of belligerent countries. The two propositions are not inconsistent. If both are upheld in reference to coal, we can work for the abolition of the present liberty to supply it to combatant vessels when visiting neutral ports and harbors, and at the same time maintain that when it is sent abroad in the way of ordinary trade belligerents must treat it as conditionally and not absolutely contraband. But at present, as we have seen (see pp. 129-132), there can be no question of complete prohibition. All we can hope to gain is a rule which will deny coal in future to war vessels when they have broken the conditions on which neutrals allowed them to take a supply. Such an advance in strictness would in no way conflict with our existing doctrine that coal is properly placed among goods conditionally contraband. (War and Neutrality in the Far East, 2d ed., p. 161.)

Opinion of Prof. Westlake.—The principles enumerated in the British proclamations of 1862 were reaffirmed in
the proclamations of 1870 during the Franco-Prussian War and during the Spanish-American War of 1898. The regulations during the Russo-Japanese War of 1904–5 were more detailed and imposed greater restraint upon the belligerents particularly as regards the supply of coal.

Of these stricter rules Prof. Westlake says:

It is understood that the coal supplied under such a rule shall be used in proceeding to the destination which the commander of the ship named as being that of which the distance authorized the supply, and it may fairly be argued that in proceeding to that destination she shall make no captures, since her making any during a voyage which she had been expressly coaled for would constitute the neutral port her base of operations for the specific operation of war constituted by them; only if she is attacked during that voyage she may of course defend herself. But the legitimation by international practice, however faulty in principle, of the mere receipt of supplies without a specification of the use to which they are to be put, must imply the legitimation of any use to which they may be put. (International Law, Part II, War, p. 211.)

Hall's opinion.—Hall states the conditions under which neutral territory is sometimes used by belligerents:

Much the larger number of cases in which the conduct of a neutral forms the subject of complaint is when a belligerent uses the safety of neutral territory to prepare the means of ultimate hostility against his enemy, as by fitting out expeditions in it against a distant objective point, or by rendering it a general base of operations. In many such cases the limits of permissible action on the part of the belligerent, and of permissible indifference on the part of the neutral, have not yet been settled. Generally the neutral sovereignty is only violated constructively. The acts done by the offending belligerent do not involve force, and need not entail any interference with the supreme rights of the State in which they are performed. They may be, and often are, innocent as regards the neutral except in so far as they endanger the quiescence of his attitude toward the injured belligerent; and their true quality may be, and often is, perceptible only by their results. (International Law, 5th ed., p. 603.)

Speaking of the limitation to the amount necessary to reach the nearest home port and of refusal of a second supply till after three months he says:

There can be little doubt that no neutral States would now venture to fall below this measure of care; and there can be as little doubt that their conduct will be as right as it will be prudent. When vessels were at the mercy of the winds it was not possible to measure with accuracy the supplies which might be furnished to them, and as blockades were seldom continuously effective, and the nations which carried on distant
naval operations were all provided with colonies, questions could hardly spring from the use of foreign possessions as a source of supplies. Under the altered conditions of warfare matters are changed. When supplies can be meted out in accordance with the necessities of the case, to permit more to be obtained than can, in a reasonably liberal sense of the word, be called necessary for reaching a place of safety, is to provide the belligerent with means of aggressive action; and consequently to violate the essential principles of neutrality. (Ibid., p. 606.)

The States of the world represented at the Hague Conference in 1907 did not at that time, however, come up to Hall's standard in regard to limitation upon the supply of coal.

Opinions of continental writers.—Certain continental writers, inclining to less restriction upon the supply of coal than that proposed in the British and some other declarations, and particularly in the declaration of the Governor of Malta, have criticized these.

Such writers maintain that, while coal is essential for aggressive fighting on the part of a vessel of war, for a neutral to furnish coal is analogous to the furnishing of sails, masts, tar, and similar supplies to a ship of war before the days of steam navigation; that such supplies afforded to the belligerents whenever sought did not imply any violation of neutrality, as they were for purposes of navigation rather than for purposes of hostile combat. It is also maintained that, since the navigation of the seas is free to all, acts making navigation possible are not violations of neutrality but legitimate.

The claim is also made that coal is merely one form of supply. This is essential food for the engines while other supplies are essential for the personnel. Some say it would be as reasonable to limit one as the other; that to permit the repair of an engine and to forbid the supply of coal to run the engine is a manifest absurdity; that while it may be and is generally forbidden to sell arms for the crew of a ship of war, food and drink may be procured in a neutral port; similarly while a ship of war may not purchase armament and war materials, she may properly obtain such supply of coal as is necessary.

The fact that the belligerents may not reap equal advantages from the possibility of taking coal in a neutral
port is not due to any act of the neutral, but due to conditions which both belligerents might fully understand before entering upon the hostilities. To offer as a reason for refusing coal the argument that one belligerent might use the neutral port more for coaling would be equally applicable to most other permitted actions.

M. de Lapradelle who has particularly written upon this side of the question, says:

La neutralité ne doit pas faire à l'un des belligérants une autre condition qu'à l'autre. Mais la nature peut faire qu'entre eux les possibilités d'user de ces mêmes conditions soient différentes. Si les neutres devaient modifier leur droit toutes les fois que ces conditions changent, il n'y aurait plus de droit de la neutralité. Tel, que l'ennemi pense affamer, peut avoir plus besoin de vivres: est-ce une raison pour les déclarer contrebande de guerre? Tel peut avoir plus besoin que l'autre de s'arrêter dans les ports neutres; est-ce une raison pour les fermer? Tel peut avoir plus besoin de charbon; est-ce une raison pour le refuser? Là encore, dans le raisonnement adverse, il existe une confusion entre l'inégalité des conditions géographiques et l'inégalité des conditions militaires. Les unes et les autres ne doivent, en aucune manière, être modifiées, soit par l'action, soit par l'omission des États neutres. Les conditions militaires comprennent les unités de combat, l'armement, l'équipement; il n'est pas possible aux États neutres, ni d'en changer, ni d'en laisser, dans leur souveraineté, changer le rapport. Les conditions géographiques comprennent la proximité de tel point, l'éloignement de tel autre, la nécessité de passer de tel ou tel point, par tel ou tel autre. La faculté de relâcher dans les ports neutres et celle de prendre du charbon s'y incorporent (1).

Opinion of Prof. Hershey.—Prof. Hershey, writing of the coaling of the Russian fleet during the Russo-Japanese War, says:

Without the facilities for coal afforded it in neutral ports and waters (mainly French), it could not possibly have succeeded in circumnavigating the greater part of Europe, Asia, and Africa, with the avowed purpose of attacking the Japanese fleet. Not only have the French
"instructions" proven lamentably insufficient for the purpose of maintaining a real neutrality, but even a strict observance of the British and American rules would not have prevented that fleet from advancing from one neutral port to another by means of coal obtained at a previous port, or from using neutral coasts and waters as bases of supply, or as channels of transportation, even though the fleet itself had remained outside the three-mile limit. Nothing short of the total prohibitions contained in the proclamation of the Governor of Malta would seem to be sufficient for the maintenance of a strict or real neutrality. (International Law and Diplomacy of the Russo-Japanese War, p. 202.)

State Department opinion.—The following memorandum was given to the minister of the Netherlands by Secretary Hay in 1904:

[Memorandum.]

DEPARTMENT OF STATE,
Washington, February 16, 1904.

The minister of the Netherlands inquires whether the declaration of Japan that coal is contraband of war entails any restrictions of the rule that coal may be supplied to a man-of-war of a belligerent (in a neutral port) in sufficient quantity to reach the belligerent's nearest home port.

By the general rule of international law neutrals are free to sell contraband of war, even arms and ammunition, to a belligerent, subject always to the risk of seizure by the other belligerent. The recently issued neutrality proclamation of the President merely limits the right of citizens of the United States to sell coal within the jurisdiction of the United States to a belligerent war ship to a certain amount, namely, enough to take the vessel to its nearest home port.

As the United States Government understands the matter, the Japanese proclamation merely declares that coal is contraband of war, the effect being to serve notice that where Japan finds coal being carried to her enemy by neutrals she will seize it. This does not appear to conflict with the declaration in the President's proclamation, which has application within the territorial jurisdiction of the United States.

The receipt was acknowledged as follows:

WASHINGTON, May 3, 1904.

MR. SECRETARY OF STATE: The royal legation has not failed to forward to the Government of the Queen the memorandum relating to the Japanese declaration about the sale of coal during the actual war in the far Orient which accompanied the note which your excellency kindly addressed to it on February 16 last.
I have been instructed to transmit to the Government of the United States the thanks of the Royal Government for the memorandum of which it has taken notice with great interest and in which it fully concurs.

I take this occasion, etc.,

Van Swinderen.

(U. S. Foreign Relations, 1904, p. 523.)

The Hague Convention of 1907.—The amount of coal which can be taken on board by a belligerent vessel in a neutral port is specified in the Hague Convention of 1907 concerning the Rights and Duties of Neutral Powers in Naval War. Of this provision the United States delegation in its report says:

Article 19 is an extremely important one. It provides that:

"Art. 19. Belligerent vessels of war can not revictual in neutral ports and roads except to complete their normal supplies in time of peace.

"Neither can these vessels take on board fuel except to reach the nearest port of their own country. They may, however, take on the fuel necessary to fill their bunkers, properly so called, when they are in the waters of neutral countries which have adopted this method of determining the amount of fuel to be furnished.

"If, according to the rules of the neutral Power, vessels can only receive coal 24 hours after their arrival, the lawful duration of their sojourn shall be prolonged 24 hours.

"Art. 20. Belligerent vessels of war which have taken on board coal in the port of a neutral Power, can not renew their supply within three months in a port of the same Power."

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 meagre 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. (Senate Doc. No. 444, 60th Cong., 1st Sess., p. 52.)

Discussion at The Hague in 1907.—The discussion at The Hague in 1907 showed that there were two distinct points of view in regard to belligerent coaling in a neutral port. One party claims that the determination of the amount on any such basis as the estimate of the number of tons necessary to reach the nearest home port is from the nature of the case impossible because of variations due to the conditions of ship, boilers, weather, quality of coal, etc. The other party claims that to allow the belligerent to take coal sufficient to fill the bunkers built to carry fuel would practically make the neutral coaling port a base for the belligerent.

Sir Ernest Satow, representing Great Britain, proposed to insert the following article:

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 pour aller à la rencontre de l'ennemi ou pour se livrer à des opérations de guerre. (Deuxième Conférence Internationale de la Paix, Tome III, p. 636.)

The representatives of Spain and Japan approved. Germany, United States, Denmark, France, Norway, Netherlands, Russia, and Sweden disapproved. Brazil, Italy, and Turkey refrained from voting. This vote was taken to show the attitude of the committee upon this restriction. It is evident that it was not favorable to placing upon the neutral any responsibility for determining for what end the ship may be taking supplies or coal and that the determination of the amount of coal within the allowed period is the main matter for the neutral.
DISCUSSION AT THE HAGUE, 1907.

The rejection of this British proposition gave evidence of the disposition on the part of several leading naval powers. They were not inclined to impose such restrictions as would make it necessary for the naval forces of a belligerent to be practically independent of neutral ports of call.

It was fully recognized at The Hague in 1907 that the interests of the several powers in time of war might be very diverse and that it might be difficult, if not impossible, to reconcile these interests in all respects.

M. Renault reviewed the difficulties upon this subject as follows:

La nécessité d'une réglementation précise ayant pour but d'écarter des difficultés et même des conflits dans cette partie du droit de la neutralité a été affirmée de tous les côtés. Ce n'étaient pas seulement des considérations théoriques, mais des expériences récentes qui la faisaient ressortir de la manière la plus saisissante.

La guerre continentale se poursuit en règle sur le territoire des deux belligérants. Sauf dans des circonstances exceptionnelles, il n'y a pas contact direct entre les forces armées des belligérants et les autorités des pays neutres; quand ce contact se produit, quand des troupes doivent se réfugier sur un territoire neutre, la situation est relativement simple, le droit positif coutumier ou écrit l'a réglée d'une manière précise. Les choses vont autrement dans la guerre maritime. Les vaisseaux de guerre des belligérants ne peuvent toujours rester sur le théâtre des hostilités, ils ont besoin d'aller dans des ports et ils ne trouvent pas toujours à proximité des ports de leur pays. La situation géographique influe forcément ici sur la guerre, parce que les navires des belligérants n'auront pas un égal besoin de se rendre dans des ports neutres.

Résulte-t-il de là qu'ils aient droit d'y trouver et que les neutres puissent leur accorder un asile sans restriction? C'est ce qui est contesté. La différence qui vient d'être indiquée est la suite naturelle de ce qui se passe en temps de paix. Les forces armées d'un pays ne pénètrent jamais pendant la paix sur le territoire d'un autre État, de sorte qu'il n'y a rien de changé quand la guerre éclate; les forces armées doivent continuer à respecter le territoire neutre comme elles le faisaient auparavant. Il en est autrement pour les forces maritimes qui sont admises, en général, à fréquenter pendant la paix les ports des autres États. Si la guerre survient, les États neutres doivent-ils interrompre brusquement cette pratique du temps de paix? Peuvent-ils agir à leur guise ou la neutralité restreint-elle leur liberté d'action? Si le désarmement se conçoit quand une troupe belligérante pénètre sur le territoire neutre, parce qu'il s'agit d'un fait qui ne serait pas toléré en temps de paix, la situation est autre
pour le navire de guerre d’un belligérant qui arrive dans un port où il aurait pu régulièrement pénétrer en temps de paix et d’où il aurait pu librement partir.

Quel accueil ce navire va-t-il donc y recevoir? Que lui laissera-t-on faire? Il s’agit pour l’État neutre de concilier son droit de l’hospitalité avec le devoir de s’abstenir de toute participation aux hostilités. Cette conciliation qu’il appartient au neutre de faire dans le plein exercice de sa souveraineté n’est pas toujours aisée et ce qui le prouve, c’est la diversité des règles et des pratiques. Suivant les pays, le traitement qui doit être fait aux navires de guerre des belligérants dans un port neutre résulte de la législation permanents (Code italien de la marine marchande par exemple) ou des règles édictées à propos d’une guerre déterminée (Déclaration de neutralité). Non seulement les règles promulguées dans les divers pays diffèrent entre elles, mais un même pays ne prescrit pas des règles identiques à des époques rapprochées l’une de l’autre; de plus, parfois, les règles se modifient au cours de la guerre.

La chose essentielle, c’est que tous sachent à quoi s’en tenir et qu’il n’y ait pas de surprise. Les États neutres demandent avec instance des règles précises dont l’observation les nette à l’abri des récriminations de l’un et de l’autre des belligérants. Ils déclinent des obligations qui seraient souvent en disproportion avec leurs moyens et leurs ressources ou dont l’accomplissement supposerait de leur part de véritables mesures inquisitoriales.

Ce qui doit être le point de départ d’une réglementation, c’est la souveraineté de l’État neutre, qui ne peut être altérée par le seul fait d’une guerre à laquelle il entend demeurer étranger. Cette souveraineté doit être respectée par les belligérants qui ne peuvent l’implier dans la guerre ou le troubler par des actes d’hostilité.

Toutefois les neutres ne peuvent pas user de leur liberté comme en temps de paix, ils ne doivent pas faire abstraction de l’état de guerre. Aucun acte ou aucune tolérance de leur part ne peuvent licitement constituer une immixtion dans les opérations de guerre. Ils doivent de plus être impartiaux.

Il semble inutile de développer des considérations générales qui pourraient donner lieu à de longues discussions, la neutralité n’étant pas envisagée de la même façon par tout le monde. Il vaut mieux se borner à l’étude de propositions visant des cas déterminés que l’on règle naturellement en tenant compte des principes, mais qui se présentent d’une manière concrète et précise. (Deuxième Conférence Internationale de la Paix, Tome III, p. 466.)

Résumé of propositions at The Hague in 1907.—The propositions made by the representatives of the States at The Hague in 1907 resolved into two:

1. A belligerent ship of war may take in a neutral port fuel sufficient only to enable her to reach her nearest home port or some nearer neutral destination.
2. A belligerent ship of war may take in a neutral port fuel sufficient to fill her coal bunkers to the normal peace standard.

These propositions were somewhat differently stated by the representatives of the several States.

Spain:

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. (Deuxième Conférence Internationale de la Paix, Tome III, p. 701.)

Great Britain:

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. (Ibid., p. 697.)

Japan:

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. (Ibid., p. 700.)

Russia:

Il est interdit aux bâtiments de guerre des Etats belligérants, pendant leur séjour dans les ports et les eaux territoriales neutres, d’augmenter, à l’aide des 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. (Ibid., p. 702.)

The report of the third commission, to which the consideration of the rights and duties of neutrals in case
of maritime war was intrusted, in presenting Article 19, says:

Nous arrivons à la question qui est, avec celle de la durée de séjour la plus important de la matière. Dans quelle mesure les navires de guerre des belligérants peuvent-ils s'approvisionner de vivres et de charbon dans les ports neutres?

La proposition russe (article 7) (Vol. III, Trois. Com. Annexe 48) dit que ces bâtiments 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 voyage. La proposition britannique (article 17) (Vol. III, Trois. Com. Annexe 44) dit que 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. D’après la proposition japonaise (article 4) (Vol. III, Trois. Com. Annexe 46), les navires ne peuvent charger aucun approvisionnement, à l’exception 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. Enfin, sans parler de ce qui pourrait être à bord, la proposition espagnole (article 5) (Vol. III, Trois. Com. Annexe 47) permet aux navires belligérants de 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.

Il faut, tout d’abord, mettre à part le ravitaillement en dehors du combustible. La première règle de l’article 19, d’après laquelle les navires belligérants ne peuvent se ravitailler que pour compléter leur approvisionnement normal du temps de paix, a été acceptée sans difficulté.

Le débat n’a porté que sur le charbon, ou mieux sur le combustible, puisque le charbon n’est plus le seul combustible employé.

C’est depuis une quarantaine d’années que cette question a surgi et on en comprend toute l’importance, si l’on songe que, suivant une expression saisissante de S. Exc. M. Tcharykow, si un homme sans vivres est un cadavre, un navire sans charbon est une épave. Les efforts les plus grands ont été faits dans le Comité pour arriver à un système acceptable par les intéressés, qui sont les neutres et les belligérants éventuels. Pour ceux-ci, ils tiennent naturellement compte de leur situation géographique, qui leur rend plus ou moins nécessaire la faculté de se ravitailler dans des ports neutres; pour les premiers, ils peuvent demander une règle précise, qu’ils soient en mesure d’appliquer sans s’exposer à des récriminations des deux parts.

Des arguments ont été abondamment fournis en faveur de diverses solutions. Si on n’admet pas la règle britannique, qui est de nature, comme on l’a fait remarquer, à soulever diverses difficultés d’ordre pratique, et si, d’autre part, on ne veut pas du système de liberté
absolue, on peut concevoir et on a présenté des systèmes très divers pour déterminer la quantité de combustible qui pourra être chargée par le navire belligérant: la dotation normale, une quantité proportionnelle au déplacement ou au nombre des chevaux-vapeur, la quantité nécessaire pour parcourir une certaine distance, etc. Un comité technique chargé d'étudier la question n'a pu arriver à une solution unanime. La proposition allemande d'accorder aux belligérants la permission de compléter leurs soutes entières y a réuni 9 voix (Allemagne, Brésil, Danemark, France, Italie, Pays-Bas, Russie, Suède, Turquie) contre 5 (États-Unis d'Amérique, Espagne, Grande-Bretagne, Japon, Chine).

C'est dans ces conditions que la question a été soumise en seconde lecture au Comité d'Examen.

Il y avait en présence deux propositions:

1. La proposition britannique (Vol. III, Trois. Com. Annexe 44): Les navires ne peuvent prendre du combustible que pour gagner le port le plus proche de leur propre pays. Le sens de cette proposition a été nettement précisé par Sir Ernest Satow, en réponse à une question de M. Hagerup. La règle constitue un simple mode de calcul et ne crée pour le neutre aucune obligation d'avoir à surveiller la destination du navire requérant. Nous nous permettons d'ajouter qu'elle n'implique non plus aucune obligation pour le navire de se rendre à une destination quelconque. Ainsi seraient supprimées des contestations parfois soulevées.

2. Une proposition ainsi conçue: Ces navires ne peuvent prendre du combustible que pour compléter leur plein normal du temps de paix.

S. Exc. M. Tcharykow a présenté, à titre transactionnel, la formule suivante: "Ces navires ne peuvent, de même, prendre du combustible que pour gagner le port le plus proche de leur propre pays. Ils peuvent, d'ailleurs, prendre le combustible nécessaire pour compléter leur plein des soutes proprement dites, quand ils se trouvent dans les pays neutres qui ont adopté ce mode de détermination du combustible à fournir."


Le ravitaillement ne peut suffire pour justifier la prolongation de la durée normale du séjour. Il faut toutefois tenir compte de la circonstance que, dans certains pays, un navire belligérant ne peut obtenir de charbon que 24 heures après son arrivée. (Article 249, alinéa 2, du Code italien de la marine marchande.)

Article 19. Les navires de guerre belligérants ne peuvent se ravitailler dans les ports et rades neutres que pour compléter leur approvisionnement normal du temps de paix.
COALING WITHIN NEUTRAL JURISDICTION.

Ces navires ne peuvent, de même, prendre du combustible que pour gagner le port le plus proche de leur propre pays. Ils peuvent, d'ailleurs, prendre le combustible nécessaire pour compléter le plein de leurs soutes proprement dites, quand ils se trouvent dans les pays neutres qui ont adopté ce mode de détermination du combustible à fournir.

Le ravitaillement et la prise de combustible ne donnent pas droit à prolonger la durée légale du séjour. Toutefois, si, d'après la loi de la Puissance neutre, ces navires reçoivent du charbon que 24 heures après leur arrivée, cette durée est prolongée de 24 heures.

(Deuxième Conférence Internationale de la Paix, Tome III, p. 505.)

The last paragraph of Article 19 was after discussion amended as follows:

Si, d'après la loi de la Puissance neutre, les navires ne reçoivent du charbon que vingt-quatre heures après leur arrivée, la durée legal de leur séjour est prolongée de vingt-quatre heures.

Report of American délegation.—It is proper to reprint here the clauses of the report of the United States delegation to the Second Hague Conference so far as this report bears upon the subject under consideration.

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. (Senate Doc. No. 444, 60th Cong., 1st sess., p. 50.)
Coaling in the Spanish-American War.—In a telegram from Mr. Hay, the American ambassador in London, of June 29, 1898, when the Spanish fleet was supposed to be bound for the East, it was said:

British Government concludes Camara can not remain at Port Said more than 24 hours, except in case of necessity, and can not coal there if he has coal enough to take him back to Cadiz, which appears to be the case. (U. S. Foreign Relations, 1898, p. 983.)

It was said of the Spanish fleet bound westward that it also might find it difficult to obtain coal.

When, in the latter part of May, 1898, it was rumored that the Spanish armored squadron had sailed or was about to sail to the United States and might stop at the Azores for coal, the minister of the United States at Lisbon was instructed to protest against its coaling at those islands, on the ground that, as they lay entirely outside the route from Spain to the Spanish West Indies, such an act would convert the Portuguese territory into a base of hostile operations against the United States. (7 Moore, Int. Law Digest, 945.)

Prof. Moore quotes from a letter of the Secretary of State to the Secretary of the Navy of August 5, 1898, in regard to coaling of United States ships of war in Mexican waters:

Before the outbreak of hostilities the Pacific Mail Steamship Co. was permitted, under its agreement with the Mexican Government, to furnish supplies of coal to United States men-of-war at Acapulco. During the war the Mexican Government placed limitations on the supply of coal to belligerent vessels in its ports and made no exception as to United States vessels at Acapulco. The Department of State abstained from addressing any representation to Mexico on the subject, on the ground that as it had “on numerous recent occasions asked of Mexico the strict execution of its neutral duties,” it was “not disposed, upon the strength of an agreement between the Pacific Mail Steamship Co. and the Mexican Government, made before the war, to insist that public ships of the United States may now be allowed to take coal without limit in a Mexican port.” (7 Moore, Int. Law Digest, p. 946.)

Coaling in the Russo-Japanese War.—The proclamation of the Governor of Malta of August 12, 1904, declares that the provisions in regard to coaling—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. (Naval War College, International Law Situations, 1906, p. 78; also the London Times, Aug. 23, 1904.)

The notes issued by the Egyptian Minister of Foreign Affairs February 10 and 12, 1904, provide that coal shall be granted to belligerent ships of war only on written authorization from the port authorities specifying the amount, and that the port authorities shall grant such authorization "only after a written statement from the ship's commander shall have been obtained, stating the destination of his vessel and the quantity of coal already on board."

The royal ordinance of Sweden and Norway of April 30, 1904, interdicts "to war vessels of the belligerents entry to the territorial waters within the fixed submarine defenses, as well as to the following ports" (4 Swedish, 6 Norwegian). Entrance is accorded to vessels of war to other ports under the following rules:

They are forbidden to obtain any supplies except stores, provisions, and means for repairs necessary for the subsistence of the crew or for the security of navigation. 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. (U. S. Foreign Relations, 1904, p. 31.)

The range of proclamations is from almost unlimited freedom of entrance to prohibition of entrance except under force majeure.

Coaling outside of port, but within neutral waters.—Situation IV of the Naval War College International Law Situations of 1908 was as follows:

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.

The conclusion as a result of the conferences and of the consideration of the principles involved was that the contention of State Z under the circumstances was correct.

The Hague Convention on maritime jurisdiction.—The Hague Convention of 1907, respecting the Rights and Duties of Neutral Powers in Maritime War, provides:

Art. 1. Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from all acts which would constitute on the part of the neutral Powers which knowingly permitted them, a nonfulfilment of their neutrality.

Art. 5. Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries.

It is evident that the aim of these regulations is to prevent the use of neutral waters as a base of operations.

It is also evident from Article 19 of the above Convention that a State may allow coal sufficient only to reach the nearest home port, or, if it adopts the alternative method, then sufficient to fill the coal bunkers.

It is unquestionably within the power of a State to adopt either method.

Coaling within a port, whether from an accompanying collier or from a collier sent to the port to meet a fleet, would be acts of like nature, because taking place within the area clearly under the immediate jurisdiction of the port authorities.

Dr. Higgins on amount of coal.—Dr. A. Pearce Higgins, at present lecturer on international law at the British Royal Naval War College, summarizes the discussion at The Hague upon Article 19 of the Convention respecting the Rights and Duties of Neutral Powers in Maritime War so far as it relates to the amount of coal to be supplied in a neutral port as follows:

The second paragraph deals with the supply of fuel and gave rise to lengthy discussions. The British proposal (Article 17) said that the
quantity of provisions or fuel (munitions, vivres ou combustibles) taken on board in neutral jurisdiction should in no case exceed that which was necessary to enable it to reach the nearest port of its own country; the Japanese proposal added "or some nearer neutral destination;" the Spanish proposal was to the same effect. On the other hand it was contended by Germany, France, and Russia that belligerents should be allowed to take in enough fuel to complete their normal supply in time of peace. These two alternatives were considered by the examining committee on the 11th and 12th of September, 1907, and again at the full meeting of the third committee on the 4th of October, 1907. Admiral Siegel (Germany) contended that there was a great difficulty in arriving at the quantity of fuel necessary to take a ship to its nearest home port. It was necessary to ascertain what was the nearest port, what was its distance, the most economical speed, which would necessarily vary with the quality of the coal supplied, the state of the boilers, etc., the condition of the weather and a consequent lengthening of the voyage. These were burdens which should not be placed on neutrals. In support of the British proposal, Sir Ernest Satow argued that a neutral had no right to give assistance to a belligerent to reach his adversary; that the only reason why coal should be given to a belligerent ship was to prevent it from becoming a helpless derelict on the ocean; sufficient should therefore be given to enable it to preserve its existence, and this was the origin of the rule of the nearest home port, a rule which had been accepted by nearly all States which had issued rules on the subject. The Japanese delegate preferred the suppression of the provisions relating to coal in the Article to the acceptance of the German proposal but this was rejected by 10 to 4. The Russian proposal combined both tests as alternatives as stated in the second paragraph and this was carried in the examining committee by 11 votes, with 3 abstentions. (The Hague Peace Conferences, p. 475.)

Prof. Oppenheim's opinion.—Oppenheim maintains that—

A neutral must prevent belligerent men-of-war admitted to his ports or maritime belt from taking in more provisions and coal than are necessary to bring them safely to the nearest port of their home State, for otherwise he would enable them to cruise on the open sea near his maritime belt for the purpose of attacking enemy vessels. And it must be specially observed that it matters not whether the man-of-war concerned intends to buy provisions and coal on land or to take them in from transport vessels which accompany or meet her in neutral waters. (2 International Law, p. 355.)

Application of discussion to Situation I.—(a) Right to regulate supply of fuel.—It is evident from practice and it is in accord with the Hague Convention that neutral powers "should issue specific enactments regulating the consequences of the status of neutrality whenever
adopted by them." It is an obligation resting on neutrals to apply these enactments impartially.

When, in time of war between States X and Y, the authorities of neutral State Z inform the commander of a detachment of armed vessels of State X, entering port B of State Z for the purpose of coaling from colliers accompanying the detachment, that he will be allowed to take from the colliers coal sufficient only to proceed to the nearest home port or to a port already passed en route to port B, the authorities are acting within their rights. A State has the right to make such regulations as it may regard necessary for the protection of its neutrality provided these do not violate conventions to which the State is a party. Such a restriction as State Z announces is in accord with the clause of Article 19 of the Hague Convention respecting the Rights and Duties of Neutral Powers in Maritime War, which provides that belligerent ships of war "may only ship sufficient fuel to enable them to reach the nearest port in their own country." The addition of the provision allowing the detachment to ship fuel sufficient to reach "a port already passed en route" does not deprive the belligerent of any right, but may enlarge his privileges.

The provision of the Hague Convention leaves to the neutral State the determination of the amount of fuel necessary, if the neutral State adopts as the standard the amount necessary to take the ships of war to the nearest home port. To deny this amount in a port which ships of war were permitted to enter would result practically in the internment of such ships. The protest of State Y against any coaling within port B of neutral State Z would not be valid. It has been recognized in recent years that coaling from colliers in a neutral port, if not in violation of the amount allowed and if not within the period during which coaling is prohibited because of previous coaling in a port of the same State, is not a breach of neutrality. Indeed it is considered that coaling from colliers accompanying a fleet, if under proper regulations, may be less in contravention of neutrality than taking a supply of coal from the merchants of a neutral State, since the
reserve coal supply of the belligerent would be by that amount reduced.

The protest of State Y is not valid. The rules established by State Z must, of course, be impartially applied.

State Z is competent to make the regulation mentioned in Situation I (a). The enforcement of the rule in case of the detachment of the fleet of State X is justified.

Certain aspects of the question as regards coaling in a neutral port or roadstead and coaling in neutral waters outside of these limits were discussed in Situation IV of the International Law Situations of 1908. It was stated (p. 97) that—

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.

There is a difference in the actual degree of control which a neutral exercises over a port or roadstead and that which the neutral exercises over the territorial waters along the open coast. The Hague Convention of 1907, respecting the Rights and Duties of Neutral Powers in Maritime War, provides in Article 10 that—

*The neutrality of a Power is not affected by the mere passage through its territorial waters of ships of war or of prizes belonging to belligerents.*

Prizes belonging to belligerents are in general not to be brought into neutral ports except under stress of weather or other *force majeure*. Thus the status of a prize is not the same in a neutral port as in passage through neutral waters outside a port. The obligation of the neutral power to exercise jurisdiction does not extend in the same manner to the marine league along the coast as within its ports.

The United States declaration of neutrality in 1904, regulating the taking of coal by the belligerents during the Russo-Japanese war, extended to "any port, harbor, roadstead, or waters within the jurisdiction of the United States." The British wording is similar. Most of the other proclamations mention coaling in "neutral ports" only.
(b) Colliers sent to meet fleet.—In a neutral port coaling from the shore, from colliers accompanying the fleet, or from colliers sent to meet the fleet would be analogous. The acts would in each case be performed within jurisdiction of the authorities of the neutral port B. As explained above under (a), the neutral State Z has a right to make regulations for the protection of its neutrality and for the use of its ports by belligerents in time of war. The neutral State has, according to the Hague Convention respecting the Rights and Duties of Neutral Powers in Maritime War, Article 26, the right to enforce the regulations:

The exercise by a neutral Power of the rights laid down in the present Convention can never be considered as an unfriendly act by either belligerent who has accepted the Articles relating thereto.

This is simply an enunciation of the general principle that a neutral may protect its neutrality. Each neutral must judge what is necessary for such protection. If it is neglectful one belligerent may claim that it has not used "due diligence;" if it is too rigorous in the regulations and in their enforcement the other belligerent may feel aggrieved. It is, however, for the neutral to determine where the line shall be drawn.

In the situation under consideration there would be no difference in the solution owing to the fact that the colliers had been sent to the neutral port B, to meet the detachment of the fleet instead of accompanying the fleet. The explanation given of the British rule met with little objection when Lord Lansdowne wrote to Sir C. Hardinge on August 16, 1904, in regard to belligerent vessels that "Such fleet can not 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."

(c) General control of waters.—From all points of view it is evident that a neutral State can not exercise the same effective jurisdiction over remote waters along the coast as over the waters of the ports and roadsteads. The
time of arrival, the amount of coal taken, and other data necessary for the determination of the treatment of the belligerent fleet might not and probably would not be available.

While the obligation of the neutral according to article 25 of the Hague Convention concerning the Rights and Duties of Neutral Powers in Naval War is that "A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above Article occurring in its ports or roadsteads or in its waters," the belligerent is bound "to abstain, in neutral territory or neutral waters, from all acts which would constitute on the part of the neutral Powers which knowing permitted them, a non-fulfilment of their neutrality." (Art. 1.) Such acts would be, if no provisions were announced to the contrary, sojourn for more than 24 hours (Art. 18), taking in more than coal sufficient to reach nearest home port (Art. 19).

Conclusion.—The obligation upon the belligerent is to observe the regulations prescribed by the neutral under penalty of denial of the use of neutral waters or such other measures as the neutral may be able to take (Art. 25). The neutral would be justified in regulating the supply of coal as specified in (a); the only difference would be in the fact that the neutral would not be under equal obligation to exercise surveillance over all coast waters.

SOLUTION.

(a) State Z is competent to make the regulation allowing within neutral jurisdiction coal sufficient only to proceed to the nearest home port or to a port already passed en route to port B. State Z might be at liberty to adopt the rule of full bunker supply.

(b) The same rule would apply in case of colliers sent to meet the belligerent fleet at the neutral port of State Z.

(c) The same rule would apply if the coaling were not in port but merely within the three-mile limit off the coast of State Z.