

International Law Studies—Volume 12

International Law Situations

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SITUATION IV.

STRATEGIC AREA ON HIGH SEAS.

There is war between States X and Y. Other States are neutral. A merchant vessel of the United States is proceeding to a port of State Z and is 10 miles from any land, though at that distance from the coast of State X. A cruiser of State X approaches and warns the master of the merchant vessel that he must keep farther off the coast as this water is within the strategic area which has been proclaimed by the Government of X and is closed to all vessels.

The master appeals to the commander of a cruiser of the United States to escort him through this area. The voyage would not bring the vessels within 5 miles of the coast of State X.

What should the commander do?

SOLUTION.

The commander should decline to escort the merchant vessel through the strategic area.

He should advise the master of the merchant vessel to keep clear of the strategic area.

NOTES.

Opinion of Grotius.—Grotius very early advocated some form of control by a fleet over the area which it commanded. The words of Grotius are translated by Whewell as follows:

The empire of a portion of the sea is, it would seem, acquired in the same way as other lordship; that is, as above stated, as belonging to a person, or as belonging to a territory: Belonging to a person, when he has a fleet which commands that part of the sea; belonging to a territory, in so far as those who sail in that part of the sea can be compelled from the shore as if they were on land. (De Jure Belli ac Pacis, L. II, c. III, sec. 2.)

Phillimore in a measure follows Grotius. He says:

The portion of sea actually occupied by a fleet riding at anchor is within the dominion of the nation to which the fleet belongs so long as it remains there; that is, for all purposes of jurisdiction over persons within the limits of the space so occupied. The like principle is applicable to the portion of territory occupied by an army, a fleet being considered as a maritime army.

This proposition is of course not to be considered without reference to the place of anchorage: A French fleet permitted to anchor in the Downs, or an English fleet at Cherbourg, would only have jurisdiction over the subjects of the respective countries which happen to be within the limits of their temporary occupation of the water. Both in the case of the fleet and the army there is, according to the theory of the law, a continuation or prorogation of the territory to which they belong. (International Law, CCIIL.)

Area of war.—The area of hostilities is generally regarded as limited to the belligerent jurisdiction and the open sea. On the open sea neutrals are liable to the consequences if they enter a field in which belligerent operations are at the moment going on, e. g., come into range during an actual battle between the fleets of the opposing belligerents. Otherwise, it has been generally supposed that the high seas were free to innocent neutral vessels in the time of war as in the time of peace, though in the time of war neutral vessels might be liable to visit and search.

Blockaded area.—One of the other restrictions upon the movements of neutral vessels is imposed in the establishment of blockade. The area of operations of the blockading force is under the provisions of the declaration of London of 1909, regarded as closed to neutral vessels under risk of seizure. It is not always possible to define the limits of this area. Formerly the area was not limited under American doctrine, but a seizure might be made at any point outside of neutral jurisdiction if a vessel were bound for a blockaded port. An attempt to explain and make more definite the area was made at the International Naval Conference in 1908–9.

ARTICLE 17. *Neutral vessels are not to be captured for breach of blockade except within the area of operations of the ships of war detailed to render the blockade effective.*

The other conditions of the liability of a vessel to capture is that she be found within the radius of action of the warships assigned to maintain the blockade effective; it is not enough that she should be on her way to the blockaded port.

As for what constitutes the *radius of action*, an explanation has been given which has been universally accepted, and which is reproduced here as furnishing the best commentary on the rule of article 17:

“When a Government decides to undertake blockading operations against some part of the enemy coast it assigns a certain number of warships to take part in the blockade, and intrusts the command of these to an officer whose duty is to insure by this means the effectiveness of the blockade. The commander of the naval force thus formed distributes the ships placed at his disposal according to the configuration of the coast and the geographical position of the blockaded places, and gives each ship instructions as to the part which she has to play, and especially as to the zone intrusted to her surveillance. It is all of the zones of surveillance together, organized in such manner that the blockade is effective, that form the radius of action of the blockading naval force.

“The radius of action so understood is closely connected with the effectiveness of the blockade, and also with the number of ships employed on it.

“Cases may occur in which a single ship will be enough to maintain a blockade effective—for instance, at the entrance of a port, or at the mouth of a river with a small estuary—on condition as circumstances allow the blockading ship to stay near enough to the entrance. In that case the radius of action is itself near the coast. But, on the contrary, if circumstances force her to remain far off, it may be that one ship would not be enough to secure effectiveness, and to maintain this it will then be necessary to add other ships. From this cause the radius of action becomes wider and more remote from the coast. It may therefore vary with circumstances and with the number of blockading ships, but it will always be limited by the condition that effectiveness must be assured.

“It does not seem possible to assign limits to the radius of action in definite and unvarying figures any more than it is possible to fix beforehand and invariably the number of ships necessary to assure the effectiveness of any blockade. These points must be determined according to circumstances in each particular case of a blockade; perhaps it would be possible to do this at the time of the declaration.

“It is evident that a blockade will not be established in the same way on a defenseless coast and on a coast possessing all modern means of defense. There would be no question in the

latter case of applying a rule such as that which formerly required that ships should be stationary and sufficiently close to the blockaded places. The position would be too dangerous for the ships of the blockading force, which besides now possess more powerful means enabling them to watch effectively a much wider zone than formerly.

“The radius of action of a blockading naval force may extend somewhat far, but as it depends on the number of ships contributing to the effectiveness of the blockade and is always limited by the condition of effectiveness, it will never reach remote seas upon which merchant vessels sail which are perhaps destined for the blockaded ports, but whose destination is contingent on the changes which circumstances may produce in the blockade during their voyage. To sum up, the idea of the radius of action joined to that of effectiveness as we have tried to define it—that is to say, including the zone of operations of the blockading forces—allows the belligerent to exercise in an effective manner the right of blockade which is admitted to be his, and, on the other hand, it saves neutrals from exposure to the inconvenience of blockade at a great distance, while it leaves them free to run the risks to which they knowingly expose themselves by approaching points to which access is forbidden by the belligerent.” (N. W. C. International Law Topics, 1909, pp. 49–53.)

The definition of the area of operations of a blockade even if in such manner as to include a large range of high sea is regarded as a legitimate act of war, and the belligerent right is respected. The principle which is recognized is that the belligerent has the right to put pressure upon his opponent without interference by neutrals. It is undoubtedly an inconvenience and may be a loss to neutral commerce to be excluded from the blockaded area, but it is a recognized consequence of war.

Mined areas.—Warlike operations in recent years have been extended through the use of new means of warfare. The introduction of submarine mines as a means of warfare immediately gave rise to the question of the area within which they might lawfully be used. The use of mines during the Russo-Japanese War in 1904–5 gave practical demonstration of the necessity of determining the regulation of the use of mines. Dr. Lawrence, then lecturer on international law at the British Royal Naval College, writing in 1904, when the events of the Russo-Japanese War were before the world, says:

A discussion on a moot point of neutral procedure when navigating the high seas, leads naturally to a further discussion of certain matters connected with belligerent procedure in the open waters which are part of the common highway of all nations. The question, or rather the group of questions, to which we refer grew out of the sinking of the Japanese battleship *Hatsuse* by a marine mine on May 15, when she was cruising 10 miles southeast of Port Arthur, and therefore out on the high seas a considerable distance beyond Russian territorial waters. A month before, on April 13, a Russian battleship, the *Petropavlovsk*, had been destroyed by a Japanese mine or mines. But as the catastrophe took place in the outer roadstead of Port Arthur, and at no very great distance from the shore, it was felt to be a legal, though terrible, incident of warfare. No one disputes the right of belligerents to lay mines in their own territorial waters or those of their foes as a means of strengthening the defenses of harbors or assisting attacks upon them. But when the area of destruction is extended to the high seas, questions of legality immediately arise. The sinking of the *Hatsuse* was discussed at once by the press of the civilized world. The general impression seems to have been that the Russians created a mine field in the open sea, or deliberately turned mechanical mines adrift in all the waters to which they had access. Under the impression that these views were correct, Russian methods were vehemently denounced and Russian officers charged with a gross violation of international law. In the United States the chorus of condemnation was especially loud; but the American Government wisely refrained from making representations before it was sure of the facts and instructed its naval attachés abroad to inquire into the matter.

After discussing the available information in regard to the use of these mines, Lawrence says:

We pass now from conjecture about fact to discussion about law. Immediately we find ourselves face to face with a difficulty which is serious in all legal systems, and specially serious in that which is called international law. There are no precedents. Mines are not new. They have been used on land since the introduction of gunpowder. But the first to employ them successfully at sea were the Confederates, who mined their harbors and blew up several of the attacking or blockading ships. This was in the American Civil War of 1861-1865; and since that time vast improvements have been introduced in the apparatus of submarine defense. But though mining as an art has been revolutionized, the practice of it has been confined to the ports and territorial waters of belligerent powers. The recent case is the first in which a mine acted far out at sea. How is an unprecedented situation to be met in international law? (War and Neutrality in the Far East, 2d ed., pp. 93-100.)

Prof. Holland in a letter to the Times May 23, 1904, said:

The question raised in your columns by Admiral de Horsey with reference to facts as to which we are as yet imperfectly informed well illustrates the perpetually recurring conflict between belligerent and neutral interests. They are, of course, irreconcilable, and the rights of the respective parties can be defined only by way of compromise. It is beyond doubt that the theoretically absolute right of neutral ships, whether public or private, to pursue their ordinary routes over the high seas in time of war is limited by the right of the belligerents to fight on those seas a naval battle, the scene of which can be approached by such ships only at their proper risk and peril. In such a case the neutral has ample warning of the danger to which he would be exposed did he not alter his intended course. It would, however, be an entirely different affair if he should find himself implicated in belligerent war risks, of the existence of which it was impossible for him to be informed, while pursuing his lawful business in waters over which no nation pretends to exercise jurisdiction.

It is certain that no international usage sanctions the employment by one belligerent against the other of mines or other secret contrivances which would, without notice, render dangerous the navigation of the high seas. (Letters on War and Neutrality, p. 131.)

These expressions of opinion were in accord with the ideas of the time, and it was natural that the subject of regulation of the use of mines should come before the Second Hague Conference of 1907.

That the danger to neutrals was very great is evident from a declaration of the Chinese delegate at this conference:

Le gouvernement chinois est encore aujourd'hui dans l'obligation de munir les vaisseaux de sa navigation côtière d'instruments spéciaux pour repêcher et détruire les mines flottantes qui encombrant non seulement la mer libre mais encore ses eaux territoriales. Malgré toutes les précautions prises, un nombre très considérable de navires de cabotage, de bateaux de pêche, de jonques, et de sampans a sombré par suite de rencontres avec ces mines automatiques sous-marines, et ces vaisseaux se sont perdus corps et biens sans que les détails de ces désastres soient parvenus au monde occidental. Il est calculé que de cinq à six cents de nos nationaux qui vaguaient à leurs occupations pacifiques ont ainsi trouvé une mort cruelle par suite de ces engins dangereux. (Deuxième Conférence Internationale de la Paix, Tome III, p. 663.)

The discussion at The Hague in 1907 was long continued and showed great differences of opinion. The conclusions reached were not unanimous. The convention relative to the laying of automatic contact submarine mines which was at length agreed upon at The Hague covered the subject only in part. The area in which such mines may be placed is not defined, though the belligerent is "to notify the danger zone as soon as military exigencies permit," and "every possible precaution must be taken for the security of peaceful navigation." The prohibition of mines off the coast of the enemy "with the sole object of intercepting commercial navigation" would have little effect.

The Institute of International Law at Paris in 1910 proposed the following rule:

ARTICLE 1. It is forbidden to place in the open sea automatic contact mines whether or not anchored, the question of mines controlled by electricity being reserved.

It is clear that, even though as shown by the vote of the Institute of International Law in 1910, the opinion seems to be drifting toward a limitation of the area within which mines may be used, yet there is up to the present no conventional limitation.

Straits in time of war.—There have been many contentions for the maintenance by the coast state of supremacy over straits. The Danish Sound was long regarded as within the control of Denmark. The Baltic Sea was by conventional agreement closed to hostilities by other States than those bordering upon its waters. Great Britain early in the nineteenth century denied that this sea was closed to hostilities. The passage of the Bosphorus and Dardanelles has been subject to regulation, and sometimes entirely closed. The question of using submarine mines in straits was raised at the Second Hague Conference. The Dutch delegate proposed "En tous cas les détroits, qui unissent deux mers libres ne peuvent pas être barrés." (Deuxième Conférence de la Paix, Tome III, p. 661.) After much discussion the committee decided to suppress provisions concerning straits

with the distinct understanding that their status was not affected by the convention relative to the laying of automatic contact submarine mines.

This convention is fully recognized as only a first step. The opinions of the delegations from some of the larger States were far from harmonious. Great Britain, generally in favor of restriction, was not averse to extending the mine field to a distance of 10 miles from the position of guns on land.

News-gathering agencies.—Another attempt to extend the area from which those not engaged in the hostilities may be excluded appears in the attempt to regulate news-gathering agencies. Correspondents were formerly taken with military expeditions as a matter of course. The dangers of such a course were not clearly evident till shown in the Spanish-American War of 1898. At that time the improved means of communication made it possible for the news of the movements of the forces, actual or contemplated, to become public in such manner as seriously to inconvenience those responsible for their success. During the Russo-Japanese War of 1904–5 the use of wireless telegraphy greatly increased the facility with which news could be sent from the area of operations or from the neighborhood. A corresponding control of the agencies for the diffusion of information is essential to the success of belligerent operations. A consideration of the physical possibilities, of the military necessities, and of the rights of the belligerents and neutrals would seem to support the conclusions of the Institute of International Law in 1906:

ART. 6. Sur la haute mer, dans la zone qui correspond à la sphère d'action de leurs opérations militaires, les belligérants peuvent empêcher les émissions d'ondes, même par un sujet neutre. (21 Annuaire de l'Institut, p. 327.)

Such a rule as the above, demanded by the necessities for effective conduct of the war, may bear heavily upon a neutral in a special case, but that the war be conducted effectively and be brought to a speedy close would be for the general advantage, and the conditions conducing to that end should prevail.

Japanese ordinance, 1904.—In accord with Imperial Ordinance No. 11, promulgated January 23, 1904, the Japanese minister of the navy, or in case of necessity a subordinate official, might designate a “defense sea area” or “strategical area” from which vessels might be excluded, even by force of arms, or within which the movements of vessels might be regulated.

IMPERIAL ORDINANCE No. 11, 1904.

[Promulgated Jan. 23, 1904.]

ORDINANCE REGARDING DEFENSE SEA AREAS.

ARTICLE 1. In case of war or emergency, the minister of the navy may, limiting an area, designate a defense sea area under this ordinance. The designation, or revocation, of such defense sea area shall be advertised by the minister of the navy.

ART. 2. In case of urgent necessity, the commander in chief of a naval station, or the commandant of a secondary naval station, may make the designation mentioned in the preceding article. In this case the designation or its revocation shall be advertised by the commander in chief or the commandant.

ART. 3. In the defense sea area, the ingress and egress and passage of any vessels other than those belonging to the army or navy are prohibited from sunset to sunrise.

ART. 4. Within the limits of naval and secondary naval ports included in a defense sea area the ingress and egress and passage of all vessels other than those belonging to the army or navy are prohibited.

ART. 5. All vessels which enter, leave, pass through, or anchor in a defense sea area shall obey the direction of the commander in chief of the naval station, or the commandant of the secondary naval station, concerned.

ART. 6. The commander in chief of a naval station, or the commandant of a secondary naval station, may, when he thinks necessary, forbid or limit within a defense sea area fishing, taking of seaweeds, or any other act considered to interfere with military operations.

ART. 7. The commander in chief of a naval station, or the commandant of a secondary naval station, may absolve vessels, which he thinks fit, from the whole or a part of the prohibitions or limitations mentioned in this ordinance.

ART. 8. Any vessel which has transgressed this ordinance, or orders issued under this ordinance, may be ordered to leave the defense sea area by a route which shall be designated.

Regarding vessels which do not obey the order mentioned in the preceding paragraph, armed force may be used when necessary.

ART. 9. The master of a vessel, or a person acting as such, which has violated any rules of articles 3 to 5, inclusive, will be punished with confinement at hard labor for not more than one year, or with a fine of not more than yen 200.

ART. 10. Persons who have violated the prohibition or limitation of article 6 will be punished with confinement at hard labor for not more than six months, or with a fine of not more than yen 100.

SUPPLEMENTARY RULE.

This ordinance takes effect from the date of promulgation.

Regulations, Japanese strategical areas, 1904-5.—The regulations governing movements of vessels within “strategical areas” varied according to the area which was under the regulation. The notification of the establishment of these areas was made in the Official Gazette. Twelve or more of such areas were established; about bays, as at Tokyo; about islands, as the Pescadores; in the neighborhood of naval stations, as Sasebo; or covering straits, as Taugaru Straits.

The minister of the United States to Japan forwarded the following on January 13, 1905, to the Secretary of State:

No. 168.

AMERICAN LEGATION,
Tokyo, January 13, 1905.

SIR: I have the honor to inclose herewith a copy of a translation of the notification issued by the commander of the naval station at Mokyū, in the Pescadores, relative to navigation through the defensive sea area at Kelung.

This notification was promulgated in the Formosan Official Gazette the 24th ultimo and has just reached this legation from the consulate at Daitotei.

I have, etc.,

LLOYD GRISCOM.

INSTRUCTIONS TO VESSELS TRAVERSING THE DEFENSIVE SEA AREA AT
KELUNG.

The commander of the naval station at Mokyū (Pescadores) has issued the following instructions to vessels traversing the defensive sea area at Kelung.

ARTICLE 1. Matters relating to the defensive sea area at Kelung are under the direction of the commander of the temporary Kelung submarine detachment.

ART. 2. Vessels other than those employed in the Government service or the regular mail steamers wishing to traverse the defensive sea area must first obtain permission from the commander of the temporary Kelung submarine detachment.

ART. 3. Vessels not in the service of the army or navy before passing or traversing the defensive sea area between the hours of sunset and sunrise must obtain permission from the commander of the temporary Kelung submarine detachment.

ART. 4. While passing through the defensive sea area vessels must not exceed a speed of 5 nautical miles per hour.

ART. 5. Excepting in the districts in which permission has been given by the commander of the temporary Kelung submarine detachment, fishing is prohibited within the defensive sea area.

ART. 6. In case it is deemed necessary the commander of the temporary Kelung submarine detachment may designate the anchorage for vessels or may limit or prohibit their passage or mooring for a time.

The rules governing the areas are shown by the following statements in regard to different areas:

[Inclosure 3—Translation.]

RULES TO BE OBSERVED BY VESSELS PASSING THE TOKYO BAY, HAKODATE, AND OTARU STRATEGICAL SEA AREAS—TOKYO BAY.

[Issued by the commander in chief of the Yokosuka naval station.]

ARTICLE 1. Vessels passing in or out of Tokyo Bay shall stop their course before they arrive, the former at the line connecting Chiyo-ga-saki on the south side of Uraga Harbor and Kokubohana of Awa Province, and the latter at the line connecting Natsushima and the sea fort No. 2, and shall signal their names, make the following signals, and wait the arrival of the guide boat:

1. Steamers shall hoist the signal "want pilot," and at the same time shall repeat whistles.

2. Sailing vessels shall hoist the signal "want pilot" and blow signal horn.

ART. 2. In response to the above signals the guide boat shall hoist the "response" flag of the international signal code.

When any vessel is to be allowed freedom of movement the guide boat shall haul down the "response" flag.

ART. 3. The guide boat shall carry at its masthead the pilot flag (white upper, red lower) of the special signals to be used for British vessels as mentioned in the international signal code.

ART. 4. In passing through the area vessels shall not proceed at a speed of more than 5 knots.

ART. 5. No vessels are allowed to cast anchor in any part of the area, except in Uruga Harbor.

ART. 6. Fishing and the taking of sea weeds within the area are prohibited.

ART. 7. When necessary, passage of vessels may for a time be prohibited within the area.

ART. 8. Vessels of less than 20 tons gross or less than 200 "koku," or boats or other craft solely or mainly propelled by oars, may traverse the area without observing the provisions of article 1, subject to such restriction as may at any time be necessary.

ART. 9. Vessels passing the area at night in violation of article 7, shall do so at the risk of being fired upon by torpedo boats or patrol boats.

N. B.—The regulations for the strategical sea areas of Hakodate and of Otaru are practically the same as above.

[Inclosure 4.—Translation.]

RULES GOVERNING THE STRATEGICAL AREA AT NAGASAKI.

[Issued by the commander in chief of Sasebo.]

ARTICLE 1. Vessels which pass in, out of, or anchor in the strategical sea area shall first stop at one of the two places mentioned below, and shall receive from the guard vessel stationed for the purpose directions concerning their movements, beacons, and signals, etc.

This rule shall not apply to vessels belonging to persons living on the coast of the sea area.

ART. 2. The places where vessels are required to stop are:

1. When entering the harbor, 1 mile north of Io-jima Light-house.

2. When leaving the harbor, one-half mile east of Takahokō-jima.

ART. 3. The guard vessel shall be stationed near the two above-mentioned places, and shall carry at its masthead the national flag by day and two white lights abreast at night.

ART. 4. The guide boat which shall pilot vessels passing the area shall carry at its masthead the pilot flag (white upper, red lower) of special signals to be used for British vessels as given in the international signal code.

ART. 5. Fishing and the taking of seaweeds within the area are forbidden, except with the permission of the commander in chief of the naval station.

ART. 6. The sea area is under the charge of the commanding officer of the Nagasaki mining corps.

[Inclosure 5.—Translation.]

RULES GOVERNING THE KI-TAN STRAIT SEA AREA AT KOBE.

ARTICLE 1. Vessels passing the Ki-Tan Strait strategical sea area shall hoist the national flag and signal their names given in the list of merchant marine, and at night shall carry lights, as required by the rules of the road.

ART. 2. Vessels other than those belonging to the navy or army and those that have obtained permission in accordance with these regulations are prohibited from passing the area.

ART. 3. Vessels passing the area shall stop at the examination station, and after examination and inspection by the guard vessel, shall proceed, hoisting the signal required.

ART. 4. When it is deemed unnecessary to examine any vessel, and she is to be allowed freedom of movement, the guard vessel will signal the fact by hoisting the "answering" and "A" signal of the international code, and at night by showing one blue light.

ART. 5. Sailing vessels of less than 20 tons, gross, or of less than 200 "koku," and other craft principally or solely propelled by oars need not stop at the examining station unless ordered to do so.

ART. 6. Small vessels mentioned in the preceding article may fish within the area by day; but the guard vessel may prohibit them when necessary.

ART. 7. Vessels passing the area shall stop during rain or mist, when the landmarks can not be seen, until weather clears.

ART. 8. Vessels permitted to pass Ki-Tan Straits between sunset and sunrise must take the channel between Awaji and Oki-no-Shima.

ART. 9. Vessels which are compelled to pass the area at night shall apply to the commander in chief of the Kure naval station for a permit, stating the reason, certified by the local authorities.

ART. 10. The examination station is about 5 miles south of the Oki-no-Shima Lighthouse.

In several areas the boundaries seem to have run outside the 3-mile limit and even 10 miles from land seems to have been included in some instances. The straits connecting open seas were also included. It is generally held that straits connecting open seas are not to be blockaded.

Case in Russo-Japanese War.—The entrance of a vessel flying the French flag, the *Quang-nam*, to the "protected sea area" about the Pescadores Islands during the Russo-Japanese War in 1905 gave rise to a reference to

that "area." The main statement of the attorney for the petitioner was:

The steamship *Quang-nam*, being the property of the China Coast Voyage Co., located at Paris, France, runs between Saigon, Manila, Philippine Islands, Iloilo, and Cebu. According to a charter entered into between the petitioners and the above company for the use of this ship in the transportation of goods she was loaded at Saigon in the fourth month of 1905 with a cargo consisting of cases of spirits and proceeded to Kamranh Bay, where she delivered her cargo. On her voyage from Kamranh Bay to Manila by way of Hongkong and Shanghai her engine was damaged, so she steamed into the Pescadore Channel with the object of finding harbor or some other ship to get assistance for repairs. She was, however, captured by the Japanese man-of-war on the 16th of the fifth month in the above channel. This ship is a neutral ship, and both the petitioners and the charterers are neutral subjects. Besides 130 tons of coal loaded at Shanghai she took on board no contraband person or goods or letter, and the master and others did not know that the vicinity of the Pescadore Islands was the zone over which the "protected sea area" had been proclaimed. Hence, this ship should not have been captured. The written opinion of the public procurator shows that he regarded this ship as employed by the Russian Government and reconnoitering the defenses of Japan and the movements of the Japanese fleet on behalf of the enemy. * * *

The main points of the opinion of the public procurator are:

The charter party procured by the petitioners being a private document which might be prepared at any time can not be trusted. Consequently the petitioners are not parties entitled to bring this action; therefore this petition should be rejected. On the other hand, it may be inferred that this ship was chartered by the Russian Government and was engaged in reconnoitering the defenses of Japan and the movements of the Japanese fleet for the benefit of the enemy. Hence she is liable to confiscation.

After reviewing and considering the evidence the court concludes as to the *Quang-nam*:

That she purposely took a difficult passage between Formosa and the Pescadores under the pretext of going to Manila, and ran into Hatto Channel, was evidently for the purpose of reconnoitering the defenses near those islands, and the movements of the Japanese Squadron. Moreover, the fact that she took on board, at Saigon, Cardiff coal which she never before consumed, that she sailed from Kamranh Bay to Shanghai by way of Hongkong without any cargo, and that, at Shanghai no cargo was loaded, but 130 tons of Cardiff coal were taken on board when

she had more than sufficient coal for her trip to Manila; all these facts must be regarded as means taken in order to accomplish the service of reconnoitering. When a ship, though neutral, has engaged in reconnoitering defenses and the movements of a squadron for the benefit of the enemy, as this ship did, her confiscation is allowed by International Law. For the above reasons this ship should be confiscated. (Takahashi, *International Law Russo-Japanese War*, pp. 736-738.)

The case was carried to the higher prize court, and the judgment was sustained on the same grounds. Takahashi regards this case as under the category of unneutral service. The court considers that the vessel ran into Hatto Channel "evidently for the purpose of reconnoitering the defenses near those islands, and the movements of the Japanese Squadron." The court said that reconnoitering of this character is just ground for confiscation.

As the area about the Pescadores Islands was a "strategical area" or a "defense sea area" the presence of the ship within the area seemed to be a circumstance that weighed against its release and an evidence of unneutral service.

Résumé.—The practice, nature of regulations, and drift of opinion seem to show that in time of war a belligerent is entitled to take measures for his protection which are not unreasonable. Certainly he is entitled to regulate the use of his territorial waters in such fashion as shall be necessary for his well-being. Similarly a belligerent may be obliged to assume in time of war for his own protection a measure of control over the waters which in time of peace would be outside of his jurisdiction. It is universally admitted that if a neutral vessel is carrying contraband to his opponent, a belligerent may take the vessel to a prize court for adjudication. For such an act the course of the vessel may be changed, and it may be subjected to long delay. Would it be reasonable to contend that the course of a vessel may be changed to keep it out of a specified area because it might there obtain information which would be of vastly

greater importance to the enemy than a cargo of contraband, however noxious that might be.

SOLUTION.

The commander should decline to escort the merchant vessel through the strategic area.

He should advise the master of the merchant vessel to keep clear of the strategic area.

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