

International Law Studies—Volume 12

International Law Situations

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

International Law Situations.

WITH SOLUTIONS AND NOTES.

SITUATION I.

MERCHANT VESSELS AND INSURGENTS.

There is an insurrection in State X and the "free party" is attempting to overthrow by force the established government of State X. The "free party" has not been recognized as belligerent.

(a) An armed vessel of the "free party" is about to visit and search a United States merchant vessel on the high sea when a United States cruiser comes near. The master of the merchant vessel asks the United States commander for protection from visit and search.

(b) During the same insurrection a merchant vessel of the United States is about to enter a port which the insurgents have declared blockaded. The merchant vessel is seized within 3 miles of the coast of the insurgents at the line of blockade and while being taken into an insurgent port is met within 3 miles of the coast of State X by a United States cruiser. The master of the merchant vessel requests the commander of the United States cruiser to intervene to procure the release of his vessel.

(c) A merchant vessel of the United States is anchored in a harbor of State X and has on board some war material. The "free party" is about to take this war material by force. The master of the merchant vessel appeals to the commander of the United States cruiser for protection.

What action should the commander take in each case?

SOLUTION.

(a) The commander of the cruiser of the United States should if possible afford the merchant vessel the necessary protection from visit and search.

(b) If the only reason for the seizure of the merchant vessel is that it was about to enter a port which the insurgents have declared blockaded, the commander should grant the master's request, though the commander might require that the merchant vessel proceed to some other port.

(c) The commander of the cruiser of the United States should inform the master of the merchant vessel that, while he would endeavor to prevent wanton seizure of his cargo, he would not interfere with proper action which the insurgents might take to prevent the war material from reaching their opponents.

NOTES.

General.—The Government of the United States has been forced to give attention to the problems arising from what has come to be termed a state of insurrection. The many uprisings in the States of Central and South America and the recent disturbed conditions in Mexico and China in 1911 and 1912 afford examples of the complications which may arise.

In time of insurrection there may be ample reason why a state of belligerency should not be recognized. The recognition of belligerency would place the party recognized and the established State upon the same plane as regards the rights of war. This might be of great advantage as regards the party desiring to overthrow or to break away from the established State. Such recognition might be a decided disadvantage to the established State. As the established State has the power to indicate its will in regard to the recognition of the belligerency of its revolting subjects by itself acknowledging their belligerency, it is natural that foreign States should refrain from such recognition unless there be special reason demanding action. At the same time interests of a foreign State and the rights of its subjects may be involved to such a degree as to make necessary some cognizance of the disturbed conditions. As many existing States have come into being through revolutions which have overthrown previously existing Governments, it can not be anticipated that such movements will be disregarded or

will be entirely disapproved. The United States Supreme Court has therefore pointed out that in order that injustice may not be done to any party, there may be a necessity which will compel a State to acknowledge that there exists a war *de facto* while not recognizing any state of war *de jure*. (The *Three Friends*, 166 U S. Sup. Ct. Repts., p. 1.) If, therefore, there exist in fact hostilities of the nature of war, it will be necessary for foreign States to accommodate their action to such a condition. If the established State is dissatisfied with the conduct of foreign States, there is always in its competence the power to recognize the revolting party as belligerent. The revolting party naturally desires the exercise of many war powers. The established State often claims that every act of the revolting party is an act of outlawry and should be punished by the State injured. If the party in revolt is successful, its acts may, however, be regarded as legal from the beginning.

From the recognition of the facts which accompany revolutionary movements, and in an attempt to adapt State action to the facts, there has grown up since the latter years of the nineteenth century a somewhat well-established body of precedent and practice, which has been called the law of insurgency. The law upon all phases of insurrectionary conflict is not clear, and many new situations have arisen for which precedent does not exist. There has been an attempt, however, to make clear, so far as possible, the rights of all parties during the period when an armed and organized force is struggling for political ends and before belligerency has been recognized.

Why important for United States.—History shows that a large number of insurrectionary movements have taken place on the Western Hemisphere, in the countries to the south of the United States. Geographical proximity has necessarily brought the United States into contact with these movements. American precedents are therefore most numerous. The events of the twentieth century seem to indicate that insurrectionary movements

are not at an end and that new problems may continually arise.

Development of acknowledgment in United States.—It is evident from such cases that the parent State may prefer to admit the existence of an insurrection while not acknowledging the existence of belligerency. Policy may also influence a foreign State to prefer to admit the existence of an insurrection rather than to recognize belligerency. President McKinley, in his message of December 6, 1897, thus summarizes the matter as regards Cuba:

Turning to the practical aspects of a recognition of belligerency and reviewing its inconveniences and positive dangers, still further pertinent considerations appear. In the code of nations there is no such thing as a naked recognition of belligerency unaccompanied by the assumption of international neutrality. Such recognition without more will not confer upon either party to a domestic conflict a status not therefore actually possessed or affect the relation of either party to other States. The act of recognition usually takes the form of a solemn proclamation of neutrality which recites the *de facto* condition of belligerency as its motive. It announces a domestic law of neutrality in the declaring State. It assumes the international obligations of a neutral in the presence of a public state of war. It warns all the citizens and others within the jurisdiction of the proclaimant that they violate those rigorous obligations at their own peril and can not expect to be shielded from the consequences. The rights of visit and search on the seas and seizure of vessels and cargoes and contraband of war and good prize under admiralty law must under international law be admitted as a legitimate consequence of a proclamation of belligerency. While according to the equal belligerent rights defined by public law to each party in our ports disfavors would be imposed on both, which while nominally equal would weigh heavily in behalf of Spain herself. Possessing a navy and controlling the ports of Cuba her maritime rights could be asserted not only for the military investment of the island but up to the margin of our own territorial waters, and a condition of things would exist for which the Cubans within their own domain could not hope to create a parallel; while its creation through aid or sympathy from within our domain would be even more impossible than now, with the additional obligations of international neutrality we would perforce assume.

Or, as summarized by Prof. John Bassett Moore at that time:

Moreover, the Cuban insurgents can at the present time purchase arms and munitions of war; they and their friends and

sympathizers can go and come, unarmed and unorganized, to take part in the conflict; they can sell their securities to anyone who will buy them. More than this they could not do, if their belligerency were recognized, unless they had ships on the ocean. They could neither employ persons in the United States to serve in their forces, nor fit out and arm vessels in our ports, nor set on foot hostile expeditions from our territory. On the other hand, Spain would be immediately invested by international law, as well as by the treaty of 1795, with the international rights of belligerency, which she has so far not claimed, including the right of visitation and search on the high seas, and the capture and condemnation of our vessels for violations of neutrality. It would enable Spain practically to put an end to the transportation of munitions of war for the insurgents. It would place under Spanish supervision all that vast commerce which passes through the waters adjacent to Cuba. (21 Forum, 297.)

In other words, a foreign State which recognizes the belligerency of a party to a domestic conflict thereby changes the status of the parties concerned, giving to the parties in the conflict a war status with its obligations and duties and assuming for itself the rights and obligations of neutrality. Prior to such recognition, if the parent State does not recognize the existence of war, the foreign State is largely judge of its relations to and conduct toward the parties to the domestic conflict. There may be political, commercial, geographical, or other conditions which make it inexpedient for a foreign State to recognize an insurgent party as a belligerent.

It is evident that there may be many reasons why a foreign State would be disinclined to recognize insurgents as belligerents, while at the same time the foreign States might be obliged to take cognizance of the existence of the insurrection. It is the fact that this status of insurrection brings new obligations to States and in some cases advantages.

There may also be reasons which make the parent State reluctant to recognize its insurgent subjects as belligerents, thus giving them full war status at home and abroad. Sometimes the parent State has endeavored before any recognition of belligerency to prescribe the attitude of foreign States toward its rebellious subjects. This has been a common procedure on the part of the

States where revolutions have been frequent. Many questions were raised in 1885 during the insurrection in the United States of Colombia. The President of Colombia decreed:

That as the vessels of the opposing party in the port of Cartagena were flying the Colombian flag, it was in violation of right and placed that party beyond the pale of international law.

The United States refused to recognize the validity of the decree as affecting the relations of its officers to the insurgent party, and Great Britain took a similar stand. Hall has well said:

It is impossible to pretend that acts which are done for the purpose of setting up a legal state of things, and which may in fact have already succeeded in setting it up, are piratical for want of external recognition of their validity, when the grant of that recognition is properly dependent in the main upon the existence of such a condition of affairs as can only be produced by the very acts in question.

Action of the United States, 1912.—The United States by a formal act of Congress and by a presidential proclamation in accordance therewith in 1912 gave a more definite status to a condition of insurrection.

JOINT RESOLUTION To amend the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States, approved April twenty-second, eighteen hundred and ninety-eight, be, and hereby is, amended to read as follows:

“That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or Congress.

“SEC. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both.”

Approved, March 14, 1912.

A proclamation by the President was immediately issued in accordance with the above resolution.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION.

Whereas a joint resolution of Congress, approved March 14, 1912, reads and provides as follows: "That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress";

And whereas it is provided by section 2 of the said joint resolution, "That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both":

Now, therefore, I, William Howard Taft, President of the United States of America, acting under and by virtue of the authority conferred in me by the said joint resolution of Congress, do hereby declare and proclaim that I have found that there exist in Mexico such conditions of domestic violence promoted by the use of arms or munitions of war procured from the United States as contemplated by the said joint resolution; and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of the joint resolution above set forth, hereby made applicable to Mexico, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted. And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourteenth day of March in the year of our Lord one thousand nine-hundred and twelve and of the independence of the United States of America the one hundred and thirty-sixth.

[SEAL.]

WM. H. TAFT.

By the President:

HUNTINGTON WILSON,

Acting Secretary of State.

Consideration at Naval War College.—The Naval War College has from time to time given attention to the subject of insurgency. Lectures upon the general subject of insurgency were given by the present lecturer at the conference of 1900. Prof. John Bassett Moore discussed "Insurgents and contraband" as Situation V in 1901. The present lecturer considered "Interference by insurgents with commerce" as Situation VII in 1902; "Insurgency—(a) Asylum for insurgent troops on war vessels; (b) Seizure of United States merchant vessel by insurgents; (c) Transport service of United States merchant vessel in time of insurrection; (d) Return, during its continuance, of foreigners implicated in insurrection" as Situation III in 1904; and "Insurgency and commerce" as Situation VII in 1907.

Insurgents as pirates.—While insurrections in the States to the south of the United States have given rise to many questions in regard to the rights of vessels of the insurrectionary party, frequent requests of the established Government that such vessels be treated as pirates have not met with a favorable response from the United States. The statement of Secretary Fish in 1869 in regard to Haitian insurgents is typical.

I acknowledge the receipt of your dispatch (No. 13) of the 13th ultimo, in which you inclose a copy of a note addressed by the secretary for foreign affairs of Haiti to the several members of the diplomatic corps accredited to his Government and relating to the armed steamers formerly called the *Quaker City* and the *Florida* now in the service of insurgents against the Government of Haiti. The secretary for foreign affairs, after reciting the fact that those insurgents have not been recognized by this or any other Government as entitled to belligerent rights, declares that the vessels which form the subject of his communication can not be considered according to the spirit of international maritime law otherwise than real pirates, which it is the duty of every regular navigator to pursue for the purpose of sinking or capturing them. He further states it to be an object of his communication to obtain from each one of the vessels of the respective nations to whose representatives it was addressed an adequate and efficacious cooperation in maintaining for the marine of the civilized world the security of the seas and to guarantee the protection of private property.

The good understanding which this Government earnestly desires to maintain with that of Haiti requires that this communication should receive a frank and explicit reply.

You will, therefore, say to the secretary for foreign affairs:

1. That we do not dispute the right of the Government of Haiti to treat the officers and crew of the *Quaker City* and the *Florida* (vessels in the service of insurgents against Haiti) as pirates for all intents and purposes. How they are to be regarded by their own legitimate Government is a question of municipal law, into which we have no occasion, if we had the right, to enter.

2. That this Government is not aware of any reason which would require or justify it in looking upon the vessels named in a different light from any other vessels employed in the service of the insurgents.

3. That regarding them simply as armed cruisers of insurgents not yet acknowledged by this Government to have attained belligerent rights, it is competent to the United States to deny and resist the exercise by those vessels or any other agents of the rebellion of the privileges which attend maritime war, in respect to our citizens or their property entitled to our protection. We may or may not, at our option, as justice and policy may require, treat them as pirates in the absolute and unqualified sense, or we may, as the circumstances of any actual case shall suggest, waive the extreme right and recognize, where facts warrant it, an actual intent on the part of the individual offenders, not to depredate in a criminal sense and for private gain but to capture and destroy *jure belli*. It is sufficient for the present purpose that the United States will not admit any commission or authority proceeding from rebels as a justification or excuse for injury to persons or property entitled to the protection of this Government. They will not tolerate the search or stopping by cruisers in the rebel service of vessels of the United States, nor any other act which is only privileged by recognized belligerency.

4. While asserting the right to capture and destroy the vessels in question, and others of similar character, if any aggression upon persons or property entitled to the protection of this Government shall recommend such action, we can not admit the existence of any obligation to do so in the interest of Haiti or of the general security of commerce.

No facts have been presented to this Government to create a belief that the operations of the vessels in question have been with a view to plunder or had any other than a political object. That object is hostile to a Government with which the United States have maintained a friendship that it requires no fresh manifestation to evince. We deem it most decorous to leave it to that Government to deal with the hostile vessels as it

may find expedient, reserving the consideration of our action in respect to them till some offense, actual or apprehended, to the United States shall render it imperative.

You may read this dispatch to the secretary of foreign affairs and leave a copy of it with him if he desires it. (2 Moore, International Law Digest, p. 1085.)

In Situation III (*b*) of 1904 (International Law Situations, Naval War College, 1904, p. 35) the question of treatment of insurgents as pirates was discussed. The situation under consideration in 1904 was as follows:

SITUATION III (*b*).

There is an insurrection in State X.

(*b*) The insurgents seize the *Robin*, a United States merchant vessel in the harbor, and, promising to recompense the owners, sail away with the vessel. The owners request the commander of the United States war vessel to recover the *Robin* in case he meets the vessel. The commander meets the *Robin* on the high sea.

What, if anything, should the commander do?

The solution offered and supported by reference to precedents was:

SOLUTION.

The commander of the United States war vessel is justified in using such force as is necessary to recover the vessel which has been seized by the insurgents.

It was shown that piracy in the sense of international law is an act implying an *animus furandi*, an act undertaken with the purpose of robbery and usually accompanied by violence, and not a political act aimed at a particular State or at the citizens of a particular State.

The situation proposed as III (*b*) in 1904 involved a merchant vessel which had been taken by the insurgents from the American owners. The solution justified an American commander in using force to recover the vessel when met on the high sea.

Status of the "free party."—A party organized for political ends and in armed hostility against an established Government ceases to be a mob and becomes an insurrectionary body. The existence of such a status may, and sometimes must, be admitted. President Cleveland, on June 12, 1895, announced by formal proclamation that the island of Cuba was the "seat of serious civil

disturbances accompanied by armed resistance to the authority of the established Government of Spain." In his message of December 2, 1895, he mentions the status as that of an "insurrection." The Supreme Court in various decisions has since that time recognized "the distinction between recognition of belligerency and recognition of a condition of political revolt, between recognition of the existence of war in a material sense and of war in a legal sense," regarding a body of men "as associated together in a common political enterprise and carrying on hostilities against the parent country" as insurgents. (*The Three Friends*, 166 U. S. Sup. Ct. Repts., p. 1.)

The use of the word "recognition" with both insurgency and belligerency may be misleading. The recognition of belligerency is an act of a State which may have other grounds than the simple existence of a disturbed condition and may be delayed or hastened by political or other reasons. The recognition of belligerency gives an international status to the belligerents. Recognition of belligerency in general gives to the recognized belligerent, so far as the recognizing State is concerned, the same war rights as are possessed by the established State.

Insurrection implies the existence of war in the material sense. It may be necessary for a State to inform its citizens of the existence of this condition by simply announcing the fact. The nature of the act is rather one of admitting a fact in regard to which there is abundant evidence than the recognition of a status in regard to which there may be doubt and which brings new obligations upon the recognizing State. It would seem expedient that the difference should be indicated as perhaps by the use of the phraseology, "recognition of belligerency" and "admission of insurgency." Such a distinction would be consistent with the argument of the Supreme Court in the case cited above in which it is said of the President's proclamations:

We are thus judicially informed of the existence of an actual conflict of arms in resistance of a Government with which the United States are on terms of peace and amity, although acknowledgment of the insurgents as belligerents by the political department has not taken place.

Secretary Hay, in 1899, admitted the necessity which might arise for dealing with insurgents in a letter to Mr. Bridgman, Minister to Bolivia:

You will understand that you can have no diplomatic relations with the insurgents implying their recognition by the United States as the legitimate Government of Bolivia, but that, short of such recognition, you are entitled to deal with them as the responsible parties in local possession, to the extent of demanding for yourself and for all Americans within reach of insurgent authority within the territory controlled by them fullest protection for life and property. (U. S. Foreign Relations, 1899, p. 105.)

The "free party" might, by the statement of the situation, be regarded as insurgents, and insurgency might be admitted to exist in the neighborhood of the port.

Situation I (a).—In the situation now under consideration an armed vessel of the "free party," an insurgent party of State X, is about to visit and search a merchant vessel of the United States on the high sea, when a United States cruiser comes near, and the master of the merchant vessel asks the commander of the United States cruiser for protection from visit and search.

Visit and search.—Visit and search, as usually understood, is a form of interference with merchant vessels on the high sea or in belligerent waters, which is tolerated in time of war, in order that a belligerent may learn the nationality and relation of the vessels visited to the war.

Visit and search does not, like the seizure discussed in Situation III (b) of 1904, necessarily involve the loss or possible loss of property. The delay and inconvenience occasioned by visit and search may be insignificant. The existence of insurrection may interfere to some extent with freedom of commerce, and some interference is usually tolerated. The question which arises under this situation is whether the interference may extend to the visit and search of vessels of foreign States on the high sea.

Visit and search in the time of war is one of the rights of war which has existed from the early days of war

upon the sea. It is stated clearly by Lord Stowell in 1799 in the case of the *Maria*:

The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destination, is an incontestable right of lawfully commissioned cruisers of a belligerent nation. (C. Robinson's Admiralty Reports, p. 340.)

The courts of the United States have repeatedly affirmed that "the right of search is a strictly belligerent right." (The *Antelope*, 10 Wheat., U. S. Sup. Ct. Repts., p. 66; the *Marianna Flora*, 11 *ibid.*, p. 1.)

Visit and search of vessels suspected of slave trade has been allowed in time of peace by treaty, and in some instances the enforcement of customs and similar regulations has in practice extended to interference with vessels on the high seas. When a vessel is suspected of piracy measures may be taken to ascertain its character. Such measures must be taken with care, as States are jealous of the rights of their ships on the high seas.

(a) *Visit by established State*.—The right of visit and search for special reasons has been claimed at times by various States. The policy of the United States has been uniformly opposed to the admission of any such right except in time of war. The claim of certain States to a right to visit and search for the suppression of slave trade even was denied by the United States except when it was in accord with treaty stipulations.

The right of cruisers of an established State to visit and search in time of insurrection foreign vessels near the coast or suspected of aiding the insurrection has often been claimed. Of the exercise of visit and search by a Spanish cruiser upon the American steamer *El Dorado* in 1855 the Secretary of the Navy, in a communication to Capt. Crabbe, said:

This act is regarded as an exercise of power which the United States have ever firmly refused to recognize, and to which they will never submit. In the absence of a declaration of war, which alone belongs to Congress, our officers in command of ships of war would have no right to pursue and retaliate for such an act. But, if present when the offense is perpetrated upon a vessel

rightfully bearing the flag of our country, the officer would be regarded as derelict in his duty if he did not promptly interpose, relieve the arrested American ships, prevent the exercise of this assumed right of visitation or search, and repel the interference by force. (S. Ex. Doc. No. 1, 35th Cong., special session.)

Spanish authorities claimed the right of visit and search in 1869 during the uprising in Cuba. Moore states the history of the case briefly, as follows:

On the 24th of March Capt. Gen. Dulce issued another decree, in which it was declared that vessels captured in Spanish waters or on the high seas near the island of Cuba having on board men, arms, and munitions of war, or articles that could in any manner contribute to promote or foment the insurrection, whatever their derivation and destination, should, after examination of their papers and register, de facto be considered as enemies of the integrity of the territory and be treated as pirates in accordance with the ordinances of the navy, and that all persons captured in such vessels would, without regard to numbers, immediately be executed. Referring to this decree, Mr. Fish, who was then Secretary of State, said that the captain general of Cuba seemed to have "overlooked the obligations of his Government pursuant to the law of nations, and especially its promises in the treaty between the United States and Spain of 1795." Under "that law and treaty," said Mr. Fish, the United States expected "for their citizens and vessels the privilege of carrying to the enemies of Spain, whether those enemies were 'Spanish subjects or citizens of other countries,' subject only to the requirements of a legal blockade, all merchandise not contraband of war." Articles contraband of war "when destined for the enemies of Spain" were "liable to seizure on the high seas," but the right of seizure was "limited to such articles only, and no claim for its extension to other merchandise, or to persons not in the civil, military, or naval service of the enemies of Spain," would be "acquiesced in by the United States." The United States could not, Mr. Fish declared, "assent to the punishment by Spanish authorities of any citizen of the United States for the exercise of a privilege" to which he might be "entitled under public law and treaties," and in conclusion he expressed the hope that the decree would be recalled or that such instructions would be given as would prevent "its illegal application to citizens of the United States or their property." (2 Moore, *International Arbitration*, p. 1021.)

Other cases involving the principle of visit and search or detention arose between Spain and the United States during the periods of insurrections in Cuba the latter half of the nineteenth century. The position of the

United States was consistently maintained that there could be no visit and search of merchant vessels of the United States by the cruisers of a foreign State except in time of war, and that the existence of insurrection did not bring into operation the rules of war which permitted such interference with commerce.

(b) *Visit and search by insurgent cruisers.*—A body of insurgents may obtain sufficient control of the sea to be able to exercise some degree of supervision of commerce with ports of the State with which they are striving. They may even proclaim that they are an organized political unity capable of declaring war, and that after such declaration they are entitled to claim the rights of belligerents, and as one of these rights the right of visit and search. It is, however, recognized as a principle of international law that full belligerent rights are obtained by an insurrectionary body, either through recognition of belligerency by the parent State which gives general belligerent rights or through recognition of belligerency by a foreign State which gives belligerent rights as far as the recognizing State is concerned. Certain acts are now tolerated by foreign States during an insurrection even when there is no thought of recognizing belligerency. It is admitted that when the insurgents are in actual control of a region many administrative acts are valid.

Mr. Chief Justice Fuller, in the case of *Underhill v. Hernandez*, November 29, 1897, says:

Revolutions or insurrections may inconvenience other nations, but by accommodation to the facts the application of settled rules is readily reached. And where the fact of the existence of war is in issue in the instance of complaint of acts committed within foreign territory it is not an absolute prerequisite that that fact should be made out by any acknowledgment of belligerency, as other official recognition of its existence may be sufficient proof thereof. (168 U. S. Sup. Ct. Repts., p. 250.)

English, American, and other courts have recognized that the existence of an insurrection changes the status of certain persons and may bring new rights and duties. The United States courts have decided that the admis-

sion of the existence of insurgency brings into operation the neutrality laws, and the English courts have made similar decisions in regard to the foreign enlistment act.

The right of visit and search has been claimed by insurgents from time to time, as well as by the established State during insurrection. The United States has opposed these claims when advanced by the established State, and even more positively when advanced by the insurgents.

Section 4295 of the United States Revised Statutes made it lawful for a private vessel to resist the aggression of an insurgent not yet recognized as a belligerent. This statute provides :

The commander and crew of any merchant vessel of the United States, owned wholly or in part by the citizens thereof, may oppose and defend against any aggression, search, restraint, depredation, or seizure which shall be attempted upon such vessel, or upon any other vessel so owned, by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States, and may subdue and capture the same; and may also retake any vessel so owned which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of the United States.

Instructions.—Instructions were sent by the Navy Department to Capt. J. R. Jarvis at the time of the Mexican insurrection, 1858–1860, as follows :

NAVY DEPARTMENT, *July 27, 1858.*

* * * You will at all times afford protection to the citizens of the United States and their property, and should occasion arise, protect any vessel of the United States from search or detention on the high seas by the armed ships of any other power. (Vol. 9, S. Ex. Doc. No. 29, p. 2, 1st sess. 26th Cong., 1859–60.)

At the time of the Chilean insurrection the Secretary of the Navy, Mr. Tracy, on March 26, 1891, gave to Admiral Brown, who was sent to relieve Admiral McCann, quite full instructions.

On the 4th of March the department sent to Rear Admiral McCann, by telegraph, the following instructions in cipher :

“Insurgent vessels, although outlawed by Chilean Government, are not pirates unless committing acts of piracy. Observe strict

neutrality. Take no part in troubles further than to protect American interests. Take whatever measures are necessary to prevent injury by insurgent vessels to lives or property of American citizens, including American telegraph cables. Endeavor to delay bombardment by insurgents until American citizens and property are removed, using force, if necessary, only as a last resort, and when serious injury is threatened. American vessels seized by the insurgents without satisfactory compensation are liable to be recovered forcibly, but you should investigate matter fully before taking extreme measures, and use every precaution to avoid such measures if possible."

As a further and more explicit guide for your action you are directed :

(1) To abstain from any proceedings which shall be in the nature of assistance to either party in the present disturbance, or from which sympathy with either party could be inferred.

(2) In reference to the ships which have been declared outlawed by the Chilean Government, if such ships attempt to commit injuries or depredations upon the person or property of Americans, you are authorized and directed to interfere in whatever way may be deemed necessary to prevent such acts; but you are not to interfere except for the protection of the lives or property of American citizens.

(3) Vessels or other property belonging to our citizens which may have been seized by the insurgents upon the high seas and for which no just settlement or compensation has been made are liable to forcible recovery; but the facts should be ascertained before proceeding to extreme measures and all effort should be made to avoid such measures.

(4) Should bombardment of any place, by which the lives or property of Americans may be endangered, be attempted or threatened by such ships, you will, if and when your force is sufficient for the purpose, require them to refrain from bombarding the place until sufficient time has been allowed for placing American life and property in safety.

You will enforce this demand if it is refused, and if it is granted, proceed to give effect to the measures necessary for the security of such life or property.

(5) In reference to the granting of asylum, your ships will not, of course, be made a refuge for criminals. In the case of persons other than criminals, they will afford shelter wherever it may be needed, to Americans first of all, and to others, including political refugees, as far as the claims of humanity may require and the service upon which you are engaged permit.

The obligation to receive political refugees and to afford them an asylum is, in general, one of pure humanity. It should not be continued beyond the urgent necessities of the situation, and should in no case become the means whereby the plans of contend-

ing factions or their leaders are facilitated. You are not to invite or encourage such refugees to come on board your ship, but, should they apply to you, your action will be governed by considerations of humanity and the exigencies of the service upon which you are engaged. When, however, a political refugee has embarked, in the territory of a third power, on board an American ship as a passenger for purposes of innocent transit, and it appears upon the entry of such ship into the territorial waters that his life is in danger, it is your duty to extend to him an offer of asylum.

(6) Referring to paragraph 18, page 137, of the Navy Regulations of 1876, which is as follows:

“If any vessel shall be taken acting as a vessel of war or a privateer without having proper commission so to act, the officers and crew shall be considered as pirates and treated accordingly.”

You are informed that this paragraph does not refer to vessels acting in the interests of insurgents and directing their hostilities solely against the State whose authority they have disputed. It is only when such vessels commit piratical acts that they are to be treated as pirates, and, unless their acts are of such a character or are directed against the persons or property of Americans you are not authorized to interfere with them.

(7) In all cases where it becomes necessary to take forcible measures, force will only be used as a last resort, and then only to the extent which is necessary to effect the object in view. (H. Ex. Doc. No. 91, 52d Cong., 1st sess., p. 245.)

In a telegram of May 16, 1891, in regard to the insurgent steamer *Itata* which had left the United States without clearance papers and contrary to instructions of port officials, the Secretary of the Navy said to Admiral Brown:

If *Itata* is found in the territorial waters of any government except Chile do not seize, but watch and telegraph department. Answer. (H. Ex. Doc. No. 91, 52d Cong., 1st sess., p. 256)

Navy regulations.—In time of peace lawful commerce on the high sea in vessels under the flag which they are entitled to fly is free from interference by foreign cruisers. Any such interference would be regarded as a breach of unquestionable rights.

United States Navy Regulations, 1909, regarding intercourse with foreigners, provide as to the duties of the commander in chief:

340. (1) He shall exercise great care that all under his command scrupulously respect the territorial authority of foreign civilized nations in amity with the United States.

342. The use of force against a foreign and friendly State, or against anyone within the territories thereof, is illegal. The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation can not be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required. It can never be exercised with a view to inflicting punishment for acts already committed.

345. So far as lies within their power, commanders in chief and captains of ships shall protect all merchant vessels of the United States in lawful occupations and advance the commercial interests of this country, always acting in accordance with international law and treaty obligations.

Conclusion.—It is evident that the right of visit and search is regarded as a right which may be lawfully exercised only in time of war. Whatever other measures as regards foreign vessels the parent State or insurgents may take in time of insurrection, they may not resort to visit and search on the high sea. Orders issued by the authorities of the United States have enjoined resistance to the exercise of visit and search under such circumstances. The law sanctions such resistance even by private vessels. The Navy regulations enjoin upon naval commanders the protection of merchant vessels of the United States from visit and search except by lawfully authorized vessels in time of war.

Solution I (a).—The commander of the United States cruiser should, if possible, afford the merchant vessel the necessary protection from visit and search.

Situation I (b).—*Insurgency and blockade.*—In lectures on “Insurgency,” delivered by the present lecturer before the Naval War College in 1900, it was said:

Finally, insurgency may be regarded as a fact which is generally accepted in international practice. The admission of this

fact is by such domestic means as may seem expedient. This admission is made with the object of bringing to the knowledge of citizens, subjects, and officers of the State such facts and conditions as may enable them to act properly. In the parent State the method of conducting the hostilities may be a sufficient act of admission and in a foreign State the enforcement of a neutrality law. The admission of insurgency by a foreign State is a domestic act which can give no offense to the parent State as might be the case in the recognition of belligerency. Insurgency is not a crime from the point of view of international law. A status of insurgency may entitle the insurgents to freedom of action in lines of hostile conflict which would not otherwise be accorded, as was seen in Brazil in 1894 and in Chile in 1891. It is a status of potential belligerency which a State, for the purpose of domestic order, is obliged to cognize. The admission of insurgency does not place the foreign State under new international obligations as would the recognition of belligerency, though it may make the execution of its domestic laws more burdensome. It admits the fact of hostilities without any intimation as to their extent, issue, righteousness, etc. * * * The admission of insurgency is the admission of an easily discovered fact. The recognition of belligerency involves not only a recognition of a fact, but also questions of policy touching many other considerations than those consequent upon the simple existence of hostilities. (Wilson, Lectures on Insurgency, 1900, pp. 16, 17.)

Blockade in Chilean insurrection, 1891.—Prof. Moore, lecturing before the Naval War College in 1901, also considered the matter of insurgency and commerce under Situation V, and gave a brief statement of the action of the insurgent vessels in Chilean waters in 1891, as follows:

When the revolution was announced the British naval forces in Chile were instructed by the Admiralty to "take no part except protection of British interests." Early in the conflict the congressional deputation on the insurgent fleet notified the Government authorities and the foreign representatives that Iquique and Valparaiso would be blockaded on February 1, 1891. The Government declared that the blockade would be illegal, and urged the diplomatic corps to protest against it. At the request of the minister for foreign affairs, the diplomatic representatives of France, Germany, Great Britain, and the United States met at the foreign office to discuss the subject. On consulting they agreed that the blockade would be illegal, but that they could not directly protest against it, as this would involve a recognition of the insurgent fleet, which the Government had declared to be piratical. As a compromise they instructed the consuls to protest

at their respective ports. A protest was made by the consular body at Iquique, January 18, 1891, to the captain of the *Almirante Cochrane* as follows: "The consular body being of opinion that the blockade notified to them will cause considerable damage to the persons and property of neutrals represented by them, protest against the act, and reserve the right to claim compensation for losses incurred." A similar protest was made by the consular corps at Valparaiso.

At the same time Mr. Kennedy, then British minister at Santiago, telegraphed for instructions as to the course which should be pursued in the event of a blockade being established. The views of the foreign office on the subject may be found in a telegram to a firm in Glasgow, January 24, 1891, as follows: "Assuming effective blockade to exist, escort through it can not be given." (International Law Situations with Solutions and Notes, 1901, p. 133.)

Prof. Moore, after full discussion, concludes:

By this review it appears—

1. That the British Government admitted the right of the insurgents to establish a blockade on the usual condition of effectiveness.

2. That the British naval officers recognized the right of the insurgents to intercept contraband of war, and allowed them to a limited extent, but not as of right, to obtain coal and supplies for their fleet from neutral vessels.

3. That the right to collect duties was acknowledged to belong to the insurgents wherever they maintained complete and effective possession of the place. (Ibid., p. 118.)

Discussion in 1902.—The matter of attempt of insurgents to establish blockades was again considered in 1902, and the present lecturer was requested to put the results of the discussion in form for presentation to the Navy Department, and thence it was transmitted to the State Department for an opinion. Secretary Hay gave a carefully written opinion conforming in almost every respect to that expressed at the War College, though a little less definite in regard to the matter of admission of insurgent status. The letter is of such importance that even though printed 10 years ago the essential parts may well be printed again. Secretary Hay said:

Blockade of enemy ports is, in its strict sense, conceived to be a definite act of internationally responsible sovereign in the

exercise of a right of belligerency. Its exercise involves the successive stages of, first, proclamation by a sovereign State of the purpose to enforce a blockade from an announced date. Such proclamation is entitled to respect by other sovereigns conditionally on the blockade proving effective. Second, warning of vessels approaching the blockaded port under circumstances preventing their having previous actual or presumptive knowledge of the international proclamation of blockade. Third, seizure of a vessel attempting to run the blockade. Fourth, adjudication of the question of good prize by a competent court of admiralty of the blockading sovereign.

Insurgent "blockade," on the other hand, is exceptional, being a function of hostility alone, and the right it involves is that of closure of avenues by which aid may reach the enemy.

In the case of an unrecognized insurgent, the foregoing conditions do not join. An insurgent power is not a sovereign maintaining equal relations with other sovereigns, so that an insurgent proclamation of blockade does not rest on the same footing as one issued by a recognized sovereign power. The seizure of a vessel attempting to run an insurgent blockade is not generally followed by admiralty proceedings for condemnation as good prize, and if such proceedings were nominally resorted to a degree of the condemning court would lack the title to that international respect which is due from sovereign States to the judicial act of a sovereign. The judicial power being a coordinate branch of government, recognition of the government itself is a condition precedent to the recognition of the competency of its courts and the acceptance of their judgments as internationally valid.

To found a general right of insurgent blockade upon the recognition of belligerency of an insurgent by one or a few foreign powers would introduce an element of uncertainty. The scale on which hostilities are conducted by the insurgents must be considered. In point of fact, the insurgents may be in a physical position to make war against the titular authority as effectively as one sovereign could against another. Belligerency is a more or less notorious fact of which another government, whose commercial interests are affected by its existence, may take cognizance by proclaiming neutrality toward the contending parties, but such action does not of itself alter the relations of other governments which have not taken cognizance of the existence of hostilities. Recognition of insurgent belligerency could merely imply the acquiescence by the recognizing Government in the insurgent seizure of shipping flying the flag of the recognizing State. It could certainly not create a right on the part of the insurgents to seize the shipping of a State which has not recognized their belligerency.

It seems important to discriminate between the claim of a belligerent to exercise quasi sovereign rights in accordance with the tenets of international law and the conduct of hostilities by an insurgent against the titular government.

The formal right of the sovereign extends to acts on the high seas, while an insurgent's right to cripple his enemy by any usual hostile means is essentially domestic within the territory of the titular sovereign whose authority is contested. To deny to an insurgent the right to prevent the enemy from receiving material aid can not well be justified without denying the right of revolution. If foreign vessels carrying aid to the enemies of the insurgents are interfered with within the territorial limits, that is apparently a purely military act incident to the conduct of hostilities, and, like any other insurgent interference with foreign property within the theater of insurrection, is effected at the insurgent's risk.

To apply these observations to the four points presented in Prof. Wilson's memorandum, I may remark:

1. Insurgents not yet recognized as possessing the attributes of full belligerency can not establish a blockade according to the definition of international law.

2. Insurgents actually having before the port of the State against which they are in insurrection a force sufficient, if belligerency had been recognized, to maintain an international law blockade, may not be materially able to enforce the conditions of a true blockade upon foreign vessels upon the high seas, even though they be approaching the port. Within the territorial limits of the country, their right to prevent the access of supplies to their enemy is practically the same on water as on land—a defensive act in the line of hostility to the enemy.

3. There is no call for the Government of the United States to admit in advance the ability of the insurgents to close, within the territorial limits, avenues of access to their enemy. That is a question of fact to be dealt with as it arises. But in no case would the insurgents be justified in treating as an enemy a neutral vessel navigating the internal waters—their only right being, as hostiles, to prevent the access of supplies to their domestic enemy. The exercise of this power is restricted to the precise end to be accomplished. No right of confiscation or destruction of foreign property in such circumstances could well be recognized, and any act of injury so committed against foreigners would necessarily be at the risk of the insurgents. The question of the nature and mode of the redress which may be open to the Government of the injured foreigners in such a case hardly comes within the purview of your inquiry, but I may refer to the precedents heretofore established by this Government in enunciation of the right to recapture American vessels seized by insurgents. (*International Law Situations—Naval War College, 1902, p. 80.*)

Opinion in 1860.—The present tendency is therefore more liberal than in some earlier cases.

At the time of the Mexican insurrection of 1858–1860 the Navy Department instructed Capt. Jarvis as follows:

NAVY DEPARTMENT, *March 13, 1860.*

* * * Statements having been made which lead to the belief that arrangements are making by what is known as the Miramon government of Mexico to establish a blockade of Vera Cruz and other ports on the Gulf of Mexico, the President has decided that no such blockade will be recognized by the United States. You are, therefore, directed to employ the naval force under your command to afford American vessels free ingress and egress at all Mexican ports and fully to protect them. (Vol. 9, S. Ex. Doc. No. 29, p. 3, 1st sess. 35th Cong., 1859–60.)

Summary.—As the opinions of publicists and the practice of the United States and other States are set forth in Situation V of 1901, Situation VI of 1902, Situation III of 1904, and Situation VII of 1907, reference for certain aspects of insurgency may be made to these volumes. Prof. Moore in 1901, referring more particularly to the attempts of insurgents to interfere with contraband, says:

From what has been shown it may be argued that, without regard to the recognition or non-recognition of belligerency, a party to a civil conflict who seeks to prevent, within the national jurisdiction and at the scene of hostilities, the supply of arms and munitions of war to his adversary commits not an act of injury, but an act of self-defense, authorized by the state of hostilities; that, the right to carry on hostilities being admitted, it seems to follow that each party possesses, incidentally, the right to prevent the other from being supplied with the weapons of war; and that any aid or protection given by a foreign government to an individual to enable him with impunity to supply either party with such articles is to that extent an act of intervention in the contest. (International Law Situations, 1901, p. 137.)

The practice toward the end of the nineteenth century was to refrain so far as possible from interference with the actual conflict in a foreign State while protecting the property and rights of nationals. The claims of nationals have often been for protection which would involve interference with the conflict and a participation favorable to one or the other party. Mr. Hay stated

that when the contest had assumed the character of an insurrection—

in no case would the insurgents be justified in treating as an enemy a neutral vessel navigating the internal waters—their only right being, as hostiles, to prevent the access of supplies to their domestic enemy. The exercise of this power is restricted to the precise end to be accomplished. No right of confiscation or destruction of foreign property in such circumstances could well be recognized, and any act of injury so committed against foreigners would necessarily be at the risk of the insurgents.

In the situation under consideration the insurgents having a sufficient force before the port to effectively prevent ingress are acting within their rights in preventing the entrance of the merchant vessel of the United States, as they have this right “to prevent the access of supplies to their domestic enemy.” Insurgents do not possess the right to condemn vessels as prize, which is strictly a war right. Insurgents have not a responsible government, and their conduct may be out of accord with that obligatory among States. The authorities of a foreign State may, therefore, protect the rights and property of their nationals so long as the protection does not extend to interference in the contest. To interfere to obtain the release of the merchant vessel which the insurgents have in their possession, in order that the vessel may proceed to the other party with its cargo, if of the nature of contraband, would not be justifiable unless on condition that the cargo would not be carried to the opposing party. If the cargo and vessel were innocent, release could be demanded.

Solution I (b).—If the only reason for the seizure of the merchant vessel is that it was about to enter a port which the insurgents have declared blockaded, the commander should grant the master’s request, though the commander might require that the merchant vessel proceed to some other port.

Situation I (c)—*Interference with foreign property.*—Interference with foreign property has often taken place within recent years and the treatment of the insurgents has varied. In general there has been a tendency to

allow the parties to carry on their operations so long as there was not an undue interference with recognized rights of foreigners. The examples which show the practice of the period since the middle of the nineteenth century are illustrative.

Peru, 1858.—Prof. Moore cites Secretary Cass, who in a letter to Mr. Osma, the Peruvian minister, on May 22, 1858, says:

It is the duty of foreigners to avoid all interference under such circumstances (in cases of civil war), and to submit to the power which exercises jurisdiction over the places where they resort, and, while thus acting, they have a right to protection, and also to be exempted from all vexatious interruption, when the ascendancy of the parties is temporarily changed by the events of the contest. Undoubtedly the considerations you urge respecting the true character of an armed opposition to a government are entitled to much weight. There may be local insurrections, armed opposition to the laws, which carry with them none of the just consequences recognized by the law of nations as growing out of a state of civil war. No fixed principle can be established upon this subject, because much depends upon existing circumstances. Cases, as they arise, must be determined by the facts which they present; and the avowed objects of the parties, their relative strength, the progress they respectively make, and the extent of the movement, as well as other circumstances, must be taken into view.

While contending parties are carrying on a civil war those portions of the country in the possession of either of them become subject to its jurisdiction, and the persons residing there owe to it temporary obedience. But when such possession is changed by the events of the war and the other party expels its opponents, the occupation it acquires carries with it legitimate authority, and the right to assume and exercise the functions of the government. But it carries with it no right, so far, at any rate, as foreigners are concerned, to give a retroactive effect to its measures and expose them to penalties and punishments and their property to forfeiture for acts which were lawful and approved by the existing government when done. (1 Moore, *International Law Digest*, sec. 20, p. 43.)

Case of the "Haytien Republic," 1888.—In a letter to Mr. Bayard, Secretary of State, October 27, 1888, the agents for the steamship *Haytien Republic* said:

SIR: We are informed that the consul of the Haitian Government in New York has received a cablegram from Port au Prince

stating that the steamship *Haytien Republic*, of Boston, has been seized at St. Marc, Haiti, and that ship and crew have been taken to Port au Prince and there detained.

The steamship *Haytien Republic* is owned and manned by citizens of the United States, and is regularly employed in carrying United States mails, passengers, and general freight between the United States and Haiti. Said steamship cleared and sailed from New York on the 4th instant, with United States mails, several passengers, and general cargo for various ports in Haiti, having no arms, ammunition, or unlawful merchandise on board.

We have no information from the master of the vessel whatever as to the seizure, and fear that he has been prevented from communicating with us.

The detention of the steamer causes great pecuniary loss to the owners of the steamer and cargo.

We therefore respectfully ask that the case may be investigated, and that a Government vessel be sent to Port au Prince at once to secure the liberty of the crew and to protect the interests of all concerned.

We remain, etc.,

B. C. MORSE & Co.,

Agents for Steamship "Haytien Republic."

(U. S. S. Ex. Doc. No. 69, 50th Cong., 2d sess., p. 69.)

The Haitian authorities, under whose orders the *Haytien Republic* was taken into port, expressed their ideas of the action in the summons to the captain of the *Haytien Republic* and the local agent as follows:

Whereas during the existence of a state of war it is the duty of neutrals to abstain from all participation in the contest that is going on;

Whereas the American steamer *Haytien Republic* has violated those principles of neutrality by transporting troops, arms, and emissaries for the account of the insurrection;

Whereas those acts furnish sufficient reason to consider that vessel as being hostile;

Whereas on the 16th day of October the provisional government declared the ports of the Cape, St. Marc, and Gonaives to be blockaded; whereas due notice thereof was given to the representatives of the neutral powers, and the decree announcing the blockade was published in all the towns of the Republic; whereas when the steamer *Haytien Republic* appeared off the port of St. Marc, that port was blockaded;

Whereas the blockade was effective, since the Haitian advice vessel *Dessalines* guarded the entrance; and whereas the *Haytien Republic* must have eluded the vigilance of the blockading forces

and have taken advantage of its superior speed so as not to be sunk ;

Whereas signals were made to it, and six cannon shots, with ball, were fired at it for the purpose of stopping it, which acts constitute a sufficient special notice of a blockade ;

Whereas the vessel was captured just as it was sailing out of the port of St. Marc, into which it had forced an entrance and to which it had borne dispatches ;

Whereas numerous evidences confirm its illegal participation in the acts of the insurrection of the north ; whereas the captain refused to show his papers or to allow his vessel to be searched by the examining judges, which he did in order to conceal the papers that were likely to compromise him ; and whereas he also refused to allow seals to be placed upon his vessel ;

Whereas a delegation consisting of leaders of the insurrectionary movements is still on board of his vessel, and was there at the time when the capture took place ;

Whereas the violation of a blockade is an offense which is provided for and made punishable by international law ;

To hear sentence pronounced upon them, the one to be condemned to the forfeiture and relinquishment of the vessel under his command, which is to be awarded to the Haitian Government, to which it has occasioned great injury, and the cargo thereof to be confiscated. (*Ibid*, p. 116.)

In the Haytian statement of the law which governed this case was the following :

Considering that in case of war between two States, and, therefore, in case of insurrection of a portion of a country against the established Government, neutral States and their subjects are bound not to interfere in the struggle, whether it be to aid one of the belligerents or to aid the rebels.

That the neutrals who break this obligation render themselves liable to be treated as enemies, and that this rule applies to ships as to individuals.

That it is generally admitted that the neutral ship which transports either troops, arms, correspondence, or emissaries, who enters in any manner whatsoever into the service of one of the belligerents, or in that of the insurgents, places itself beyond the protection given to neutral property, and can be lawfully condemned and confiscated. (*Ibid*, p. 129.)

Many other specific considerations were enumerated, and finally the decision was rendered on October 31 confiscating the steamer, contraband, and goods belonging to the enemy, making the captain and crew liable to

further proceedings, and condemning the owners to pay 50,000 piasters.

On November 2, 1888, the minister of the United States sent a letter protesting against the action:

LEGATION OF THE UNITED STATES,
Port au Prince, Haiti, November 2, 1888.

SIR: The undersigned has been informed authoritatively that a tribunal has rendered a verdict that the American steamship *Haytien Republic* be delivered to the authorities at Port au Prince, and in consequence that all of the crew on board leave the ship. Now I, the undersigned, minister resident of the United States, protest in the name of the Government of the United States against:

- (1) The seizure of such vessel.
- (2) Against the irregular tribunal that has rendered the decision.
- (3) Against the verdict.
- (4) Against any action being taken by the authorities until I can receive instructions from my Government.

And do by the present hold the authorities of Port au Prince responsible for all damages in the premises, declaring most solemnly, at the same time, that the crew of the above-mentioned steamer are under the protection of my flag, the ensign of the United States of America.

The undersigned has the honor to be, sir, with assurance of distinguished consideration,

Your obedient servant,

JOHN E. W. THOMPSON.

Hon. OSMAN PIQUANT,

Secretary of State of Foreign Relations ad interim,

Port au Prince.

(Ibid, p. 163.)

In a long review and opinion on the case Secretary Bayard on November 28, 1888, said:

On the 26th instant the department received a full report upon the case by the captain of the United States steamer *Boston*, who had just returned from Port au Prince to the port of New York.

Upon examinations of the record and proceedings in the case, the department is led to the conclusion that the seizure and detention of the vessel and the imprisonment of her officers have, from the beginning, been irregular and wrongful; that she should, without delay, be restored to her American owners, and her officers released from all detention; and that adequate compensa-

tion should be made to them and to the owners of the vessel for the loss and injuries they have suffered by reason of the proceedings in question.

It is unnecessary to discuss the charge of attempting to run a blockade, upon which allegation it is understood that the seizure of the vessel was originally made. Whether any valid blockade did or did not exist, it is clear that the *Haytien Republic* had and could have had no notice of it. (Ibid., p. 171.)

Then after mentioning other matters the irregularity of the proceedings are referred to and the treaty provisions cited:

From the above stipulations it is manifest that so far as the proceedings against the *Haytien Republic* rest upon a charge of attempting to run a blockade, they were in clear violation of the express terms of the treaty, and wholly improper and inadmissible.

Nor can the tribunal by which the charges against the *Haytien Republic* and her officers were examined be recognized by this Government as competent for that purpose. By the twenty-eighth article of the treaty above referred to it is provided that in matters of prize "in all cases the established courts for prize causes in the country to which the prizes may be conducted shall alone take cognizance of them."

The tribunal before which the *Haytien Republic* and her officers were brought was hastily improvised for the occasion and consisted of two commissioners specially appointed on the 21st of October, 1888, to examine the case of the *Haytien Republic*. It was in no sense "an established court for prize causes," as stipulated in the treaty, but had for its special and only authority the order of the provisional president, *Légitime*. Its proceedings had scarcely a feature of formality and regularity. (Ibid., p. 173.)

Reviewing the conditions in Haiti, Secretary Bayard further says:

Local supremacy in Haiti thus shifts from week to week, and from hand to hand, so rapidly and unexpectedly that it would be wholly unreasonable and impossible to subject the merchant marine and citizens of other countries, who find themselves so surrounded by factions contending violently for mastery, to extreme penalties, because of their alleged favor to either side, or because of their necessary and enforced acquiescence in the demands of factions locally and temporarily in power.

The rights of person and property of American citizens engaged in business in Haiti can not be permitted to become the football

of contesting factions and their evanescent authority; and the protecting arm of the United States will be interposed for their security. By this it is not intended to include cases of deliberate intermeddling in local conflicts, but merely to rescue our citizens who may be caught in the eddies of local sanguinary émentes.

The defects and misfortunes of the Republic of Haiti must not be visited upon the citizens of a friendly country, who have contributed in no way to the unhappy condition of affairs with which they find themselves unexpectedly confronted. * * * In view, therefore, of what I have herein fully laid before you I desire to express, under the direction of the President, his confident expectation that without delay the steamer *Haytien Republic* will be released by the authorities at Port au Prince and returned to the custody of her officers and crew, and that investigation may be at once commenced to ascertain the injuries inflicted upon the owners of the vessel, and also upon the captain, officers, and crew in the course of this illegal and most regrettable interference with their rights. (Ibid., p. 175.)

There was much further correspondence and considerable delay. At length, on December 20, 1888, Rear Admiral Luce sent to the minister of the United States in Haiti the following communication:

U. S. FLAGSHIP "GALENA,"

Port au Prince, Haiti, December 20, 1888.

SIR: The President of the United States having decided that the seizure and detention of the American steamer *Haytien Republic* by the Haitian authorities "have from the beginning been irregular and wrongful," I am here to cooperate with you in obtaining her prompt restoration.

As my stay at Port au Prince is very limited, I must ask that you will, at the earliest practicable moment, represent to the Haitian authorities the necessity of the immediate withdrawal of the guard from the steamer *Haytien Republic*, in order to avoid the possibility of a collision between it and the officer I shall shortly send to her. The guard having been withdrawn, the formalities attending the transfer of the vessel to her owners or their agents can readily be arranged.

To prevent misunderstanding and the untoward results that might follow, I beg you will inform the authorities that an officer of this command will be ready to receive the *Haytien Republic* at 3 o'clock this p. m., by which time it is hoped the guard will have been withdrawn.

As it is my intention to take the steamer to the anchorage in the outer harbor this afternoon before sunset, I doubt not that the feeling of friendship which has always so happily existed between

the two countries will prompt the authorities to render every facility for carrying that intention into execution.

Very respectfully, etc.,

S. B. LUCE,

*Rear Admiral, United States Navy, Commanding
United States Naval Forces, North Atlantic Squadron.*

JOHN E. W. THOMPSON,

United States Minister to Haiti.

(*Ibid.*, p. 242.)

A letter of December 26, 1888, to the minister, says:

DEAR SIR: In our very informal conversation yesterday afternoon with President Légitime and secretary of foreign affairs, Mr. Margron, I noticed that the latter had a totally erroneous impression of the proceedings of the 20th instant in connection with the American steamer *Haytien Republic*.

That vessel was not taken by force, as Mr. Margron seems to think. As this misconception of the whole transaction may be shared by President Légitime and his cabinet, it seems to me that no time should be lost in representing the transaction in its true character.

On our arrival here it was only reasonable on our part to suppose that the Haitian Government would accept in good faith the decision of the President of the United States in the case of the steamer and be ready to restore her promptly on that decision being made known. I went in the *Yantic* to the inner harbor that I might be on the spot myself to see that all due and proper forms should be complied with.

In my letter to you of the 20th it was stated that I was here to cooperate with you in obtaining the release of the vessel; and further on I say "to prevent misunderstanding * * * I beg you will inform the authorities that an officer of this command will be ready to receive the *Haytien Republic* at 3 o'clock, at which time it is hoped the guard will have been withdrawn." Not a soul of the *Yantic's* crew was allowed to go on board the *Haytien Republic* until the receipt of Mr. Margron's letter to you giving up the vessel. As the *Yantic* had scant room to turn, a small line was attached to the cable of the *Haytien Republic* and another to the Norwegian bark, those two vessels being most convenient for the purpose. This was done to steady the *Yantic* and keep her from swinging about.

The object of taking the *Yantic* to the inner harbor were twofold—first, that I might be on the spot to complete the arrangements and, secondly, that a ship might be there to tow the *Haytien Republic* out. This latter duty was saved us through the courtesy of the Haitian authorities, who placed the *Grande Riviere* at our service for that purpose.

It was my particular care to abstain from any hasty action and to receive the vessel at the hands of the Haitian Government in accordance with the terms of the decision arrived at by the President of the United States.

This places the affair in a totally different light from that represented by Mr. Margron yesterday, and it is due to all concerned that he should be set right in the matter.

Respectfully,

S. B. LUCE,
*Rear Admiral, United States Navy,
Commanding North Atlantic Squadron.*

(Ibid., p. 263.)

Later the Secretary of State wrote to the Secretary of the Navy:

DEPARTMENT OF STATE,
Washington, January 3, 1889.

SIR: I have the honor to acknowledge the receipt of your letter of 31st ultimo, and of a copy of a communication from Admiral Luce of the 21st ultimo, in which he conveys a clear and conclusive report of his action in executing the duty assigned him of receiving the steamer *Haytien Republic* from her captors at Port au Prince and restoring her to the possession of her owners or their agents.

The vigor, tempered with high and intelligent discretion, which has characterized the action of Admiral Luce in the execution of this national duty to American citizens wrongfully deprived of their property in the turmoil of political disorder in foreign waters is most satisfactory to this department, and it is now hoped that the presence of our national vessels in Haitian waters may soon be rendered unnecessary.

I have, etc.,

T. F. BAYARD.

The SECRETARY OF THE NAVY.

(Ibid., p. 249.)

Brazil, 1894.—In 1894, during the insurrection in Brazil, American commerce in the harbor of Rio de Janeiro was interrupted and lives and property were endangered. Admiral Benham notified the insurgents that he proposed, while not interfering with legitimate military operations, to protect by force, if necessary, American interests. Minister Thompson reported:

The insurgents are denied the right to search neutral vessels or to seize any part of their cargoes, even though such cargoes should comprise such articles as would in the case of war between two independent governments come within the class of

merchandise defined as contraband of war. The insurgents in their present status would commit an act of piracy by forcibly seizing such merchandise.

He adds that to the best of his information all the foreign commanders agree with Admiral Benham and that the effective action of last Monday has restored complete tranquillity, broken the attempted blockade of commerce and trade, and placed everything in even motion. (U. S. Foreign Relations, 1893, p. 117.)

To this Secretary Gresham replied, February 1, 1894:

Mr. Gresham states that Admiral Benham has acted within his instructions, and that it is therefore hoped that Mr. Thompson, whose telegram is satisfactory, is in accord with the admiral. (Ibid., p. 117.)

The letter of Admiral Benham to Admiral da Gama on January 30, 1894, assumes a more extreme position in the second paragraph than that which is now assumed in regard to insurgents.

U. S. FLAGSHIP "SAN FRANCISCO" (SECOND RATE),
Rio de Janeiro, Brazil, January 30, 1894.

SIR: In reply to your communication of yesterday, which I had the honor to receive, asking if my action of the 29th "means positive interference in our domestic trouble, or if it only refers to the protection of commerce under the American flag," permit me to say that a careful perusal of the letters which I have had the honor of addressing you would, I think, make this question unnecessary, as they all refer to acts of violence and interference committed by your orders against American vessels, and of my intention to protect these vessels. However, that there may be no misunderstanding, I have to say, that in no case have I interfered in the slightest way with the military operations of either side in the contest now going on, nor is it my intention to do so. That is not my mission. My duty is to protect Americans and American commerce, and this I intend to do to the fullest extent. American vessels must not be interfered with in any way in their movements in going to the wharves or about the harbor; it being understood, however, that they must take the consequences of getting in the line of fire where legitimate hostilities are actually in progress. I am not laying down any new principle of action. My course rests upon well-established principles of international law.

There is another point which it may be well to speak of now: Until belligerent rights are accorded you, you have no right to exercise any authority whatever over American ships or property of any kind. You can not search neutral vessels or seize any portion of their cargoes, even though they be within the class

which may be clearly defined as contraband of war during hostilities between two independent Governments. The forcible seizure of any such articles by those under your command would be, in your present status, an act of piracy. Regretting that I am forced to speak thus plainly,

I have, etc.,

A. E. K. BENHAM,
*Commanding United States Naval Force
on South Atlantic Station.*

(U. S. Foreign Relations, 1893, p. 122.)

Cuban insurrections.—In 1895 three naturalized citizens of the United States residing in and doing business in Cuba requested information as to the protection of their property. They addressed the following letter to the American consul general at Habana.

SANCTI SPIRITUS, *June 13, 1895.*

SIR: We, the undersigned American citizens and property holders in several municipal districts of this island, having received intelligence that the insurgents have forbidden the extraction of cattle from the farms; and, furthermore, seeing through the newspapers the wanton destruction of property throughout the island, with marked tendencies to anarchy, apply to you for information on the following points, viz:

Have we the right to apply to the Spanish authorities for such forces as would be required to safely conduct our cattle to the nearest market?

Should the Spanish authorities deny our request, what shall we do?

In what form are we to protest, and under what circumstances can we make good our claims to damages?

We furthermore understand that in certain cases the insurgents have threatened to destroy property unless a certain bounty is paid. What are we to do in case such a threat is made to us?

We would be thankful for full information, if possible, through the Department of State, on these subjects, and with much respect, etc.,

JOSE RAFAEL REYES Y GARCIA.
ANTONIO M. YZNAGA.
EDUARDO ALVAREZ CERICE.

(U. S. Foreign Relations, 1895, Part. II, p. 1215.)

The Acting Secretary of State made the following reply:

DEPARTMENT OF STATE,
Washington, July 1, 1895.

SIR: Your dispatch, No. 2517, of the 19th instant, has been received. You therewith forward copy of a letter received by

you from three Cuban landowners, American citizens, and residents of Sancti Spiritus, making inquiries concerning the protection of their property from seizure or destruction by insurgents. In particular the writers state that they have learned that the insurgents have forbidden the removal of cattle from the farms, and ask if they have the right to apply to the Spanish authorities for the protection of their property, in conducting their cattle to the nearest market, and, in case of refusal, under what circumstances and in what form they can make protest for damages.

It is a generally accepted principle of international law that a sovereign government is not ordinarily responsible to alien residents for injuries that they may receive within its territories from insurgents whose conduct it can not control. Within the limits of usual effective control law-abiding residents have a right to be protected in the ordinary affairs of life and intercourse, subject, of course, to military necessities, should their property be situated within the zone of active operations. The Spanish authorities are reported to be using strenuous endeavors to prevent the class of spoliations which the writers apprehend, and notification of any particularly apprehended danger from the insurgents would probably be followed by the adoption of special safeguards by the authorities. In the event, however, of injury, a claim would necessarily have to be founded upon averment and reasonable proof that the responsible officers of the Spanish Government, being in a position to prevent such injury, have failed to use due diligence to do so.

It is impossible to give more precise instructions upon the hypothetical case presented. Should injury be actually suffered, and the facts be fully represented, this department would be in a position to determine its duty, if anything, in the premises.

I am, etc.,

EDWIN F. UHL,
Acting Secretary.

(Ibid., 1216.)

The claim of Rosa Gelbtrunk.—

In November, 1898, there was a revolution in Salvador and a revolutionary force occupied the city of Sensuntepeque, where a quantity of merchandise of the value (in silver) of \$22,000 and upward, belonging to the firm of Gelbtrunk & Co., was stored. There is no dispute as to the value of these goods or as to the fact of their being the property of Gelbtrunk & Co. The soldiers of the revolutionary army possessed themselves of the goods—looted them, in short—and sold, appropriated, or destroyed them. It does not appear that this was done in carrying out the orders of any officer in authority or as an act of military necessity, but,

so far as it appears, it was an act of lawless violence on the part of the soldiery. The firm of Maurice Gelbtrunk & Co. having assigned their claim against the Republic of Salvador to the present claimant, Rosa Gelbtrunk, the wife of Isidore Gelbtrunk, Mrs. Gelbtrunk (who, following the status as regards nationality of her husband, was also an American citizen) appealed to the Government of the United States to intervene on her behalf in claiming indemnity for the property lost. (U. S. Foreign Relations, 1902, p. 877.)

In deciding on this case, referred to arbitration, the arbitrators, Henry Strong, chief justice of the Dominion of Canada, Don M. Dickinson, of Michigan, David Castro, chief justice of Salvador, were unanimous. The opinion prepared by Mr. Justice Strong stated:

The principle which I hold to be applicable to the present case may be thus stated: A citizen or subject of one nation who, in the pursuit of commercial enterprise, carries on trade within the territory and under the protection of the sovereignty of a nation other than his own is to be considered as having cast in his lot with the subjects or citizens of the State in which he resides and carries on business. Whilst on the one hand he enjoys the protection of that State, so far as the police regulations and other advantages are concerned, on the other hand he becomes liable to the political vicissitudes of the country in which he thus has a commercial domicile in the same manner as the subjects or citizens of that State are liable to the same. The State to which he owes national allegiance has no right to claim for him as against the nation in which he is resident any other or different treatment in case of loss by war—either foreign or civil—revolution, insurrection, or other internal disturbance caused by organized military force or by soldiers, than that which the latter country metes out to its own subjects or citizens.

This I conceive to be now the well-established doctrine of international law. The authorities on which it has been so established consist of the writings of publicists and diplomats, the decisions of arbitrators—especially those of mixed commissions—and the text of writers on international law.

It is, however, not to be assumed that this rule would apply in a case of mob violence which might, if due diligence had been used, have been prevented by civil authorities alone or by such authorities aided by an available military force. In such a case of spoliation by a mob, especially where the disorder has arisen in hostility to foreigners, a different rule may prevail. It would, however, be irrelevant to the present case now to discuss such a question. It therefore appears that all we have to do now is

to inquire whether citizens of the United States, in the matter of losses incurred by military force or by irregular acts of the soldiery in the revolution of November, 1898, in Salvador, were treated less favorably or otherwise than the citizens of Salvador.

To this inquiry there can be but one answer: They were not in any way discriminated against, for the legislature of the Republic in providing indemnity for such losses applied the same as well to foreigners as to the citizens of Salvador.

For these reasons I am of opinion that we have no alternative but to reject this claim. (Ibid., pp. 877, 878.)

Bolivia, 1900.—In December, 1900, a body of revolutionists, organized in opposition to the Bolivian Government, seized goods on board the steamship *Labrea*, which was sailing with goods for the Bolivian Government to places on the river Acre. The insurance company was sued in order to recover the insurance on these goods, which in the policy were “warranted free of capture, seizure, and detention * * * piracy excepted.” The court decided in 1909 that as the goods were not seized for private but in “furtherance of a political adventure” that the act was not piratical. (Republic of Bolivia *v.* Indemnity Mutual Assurance Co. (Ltd.), Law Reports, 1909, 1 Kings Bench, p. 785.)

Haiti, 1902.—A brief statement of action in time of insurrection in a case which involved a somewhat extended correspondence and considerable exercise of discretion on the part of the naval officer in command is as follows:

EMBASSY OF FRANCE,

Manchester, Mass., August 7, 1902.

I received from the manager of the French Cable Co. at New York a telegram saying that the Haitian vessel *Crête à Pierrot* intends to cut the cables of the company. The superintendent of the station of the French Cable Co. at Port au Prince has informed the commander of the American cruiser *Machias* of this danger.

Commander McCrea seems to be disposed to protect the cable which lands in Haiti, but he would be glad to receive instructions from the Navy Department at Washington on the subject. I should be very grateful to you, if you see no objection, if you would request the Navy Department to send at once, by cable, to the commander of the *Machias* the necessary instructions to

protect the French cable in Haiti from any attempt at destruction, all nations being equally interested in the working of this cable.

PIERRE DE MARGERIE,
Chargé d'Affaires.

DEPARTMENT OF STATE,
Washington, August 11, 1902.

SIR: I have the honor to inform you that your telegram of the 7th instant was at once sent to the Navy Department, and that that department has instructed the commanding officer of the *Machias* to act in his discretion to prevent any destructive or injurious act against foreign interests or property in Haiti not in the line of hostilities.

Accept, etc.,

ALVEY A. ADEE,
Acting Secretary.

(U. S. Foreign Relations, 1902, p. 417.)

Colombia, 1902.—In a telegram from Acting Secretary of State in 1902 to the United States representative in Colombia it was said:

DEPARTMENT OF STATE,
Washington, August 27, 1902.

Replying to Mr. Hart's telegram of August 21, Mr. Adee states that article 8 of the treaty of 1846 stipulates equitable and sufficient indemnification; that the treaty does not stipulate when compensation shall be made, but, according to general principles of international law, private property is subject to seizure only by way of military necessity, and the military commander must cause receipts to be given which will serve owner to obtain indemnification guaranteed by treaty, unless compensation is made at the time of seizure.

(U. S. Foreign Relations, 1902, p. 310.)

United States, 1903.—The United States in 1903 rejected certain claims of British subjects for loss of property by insurgent action in the Philippines in 1899.

Secretary Hay, in replying to the letter of the British ambassador, says:

DEPARTMENT OF STATE,
Washington, January 27, 1903.

MY DEAR MR. AMBASSADOR: I have received your personal note of the 31st ultimo, with inclosure, relating to certain claims of British subjects which have been brought to this Government's attention from time to time, and which arose out of the operations during the recent War with Spain.

The department concurs in the expression contained in your note that "not the least of the calamities resulting from a state of war is the loss caused thereby to the subjects or citizens of neutral powers possessing property or engaged in business in the affected area." The losses sustained by His Majesty's subjects mentioned in the memorandum accompanying your note come within the category of cases above described, in which, as you say, "It often happens that the destruction of that property or damage to that business is a matter of military necessity to one of the belligerents." And such destruction may sometimes be wantonly inflicted by insurgents, which, though equally deplorable, does not create liability on the part of the titular government in the circumstances existing in connection with said claims.

These claims appear to the department to be quite different in legal character from those which arose in behalf of American citizens expelled by the British authorities from South Africa, and for which His Majesty's Government graciously made compensation. However much I might be personally disposed to recommend a compensation in these cases as a matter of grace and favor, as is suggested in your note, I am persuaded that such recommendation to Congress would be fruitless, in view of the adverse report of the Senate Committee on Foreign Relations in the mentioned claim of William Hardman, and in view of the further fact that the Government of the United States would probably be reluctant to set a precedent for the making of compensation for the losses of property caused by the action of insurgents beyond the control of the military authorities of the United States, and for whose action the latter was not morally culpable. Such a precedent, if set, would doubtless be followed by the presentation of numerous other large claims for compensation for property destroyed by acts of insurgents.

The claim of Mr. J. Walter Higgin, now presented for the first time, is of the same essential legal character as those which have already been rejected by the department.

I am, etc.,

JOHN HAY.

(U. S. Foreign Relations, 1903, p. 482.)

Disturbances in Santo Domingo, 1905.—In the latter part of the year 1905 there was an active opposition to the established Government of Santo Domingo. The authorities of Santo Domingo, fearing that the revolutionists might be successful to such an extent that they would attack the customhouse, requested the American minister to ask that a ship of war be sent. Accordingly the American minister cabled for the warship and received reply:

WASHINGTON, *November 7, 1905.*

DAWSON, *American Legation, Santo Domingo:*

Warship ordered to Macoris. If marines required to restore order, there should be first an express and clear request from the Dominican Government that they be landed for temporary protection of life of American citizens, which Dominican Government declares itself for time being unable to protect. Upon such request necessary force will be landed. Naval officers will be instructed to act upon notice from you that such assistance has been requested. An immediate understanding on this subject with the Dominican Government seems important.

Root.

Minister Dawson says of his further conduct:

Upon receiving this telegram I called upon the minister of foreign affairs and told him of its contents. He said that he had always understood that the primary duty of protecting American citizens in the Republic, including those who are employed by his Government to collect its customhouse revenues, falls upon the Dominican Government. In view of that duty and of your telegram to me, it remained clearly understood that the American Government would not land armed forces unless the Dominican Government, finding itself unable to protect the lives of American citizens employed in its customhouses, or elsewhere, should request such landing. Up to the present time the Dominican Government has maintained order, and its authority in the city of Macoris and its immediate vicinity, and at all the other ports of entry, with the exception, perhaps, of Monte Christi, and he hoped would continue to be able so to do. He had suggested, not the present landing of marines, but only the presence of a ship in the neighborhood, so as to be prepared for prompt action in the contingency of a sudden reverse to the Government forces.

I thereupon telegraphed you as follows:

SANTO DOMINGO, *November 8, 1905.*

SECRETARY OF STATE, *Washington:*

I have reached perfect understanding with the Dominican Government in accordance with instruction your cipher telegram of this morning. Macoris quiet in the city. No further news from the interior. Mere presence of a United States vessel probably will be sufficient.

DAWSON.

On the 10th the U. S. S. *Denver* reached Macoris, and on the same day the *Olympia*, with Admiral Bradford on board, anchored at this port. Since that time matters have outwardly continued in statu quo in the cities of Macoris and Santo Domingo. (U. S. Foreign Relations, 1905, p. 405.)

On December 6, 1905, the American Secretary of State sent further instructions:

Dispatches received here by Navy Department from Bradford and by Joubert from Vasquez represent serious disturbance. The President wishes you to urge amicable settlement of differences in Government. There is good reason to expect early action on treaty here. We can not take any part in differences between factions or officers of Dominion Government. No troops are to be landed except when absolutely necessary to protect life and property of American citizens, and if landed they must confine themselves strictly to such protection, which will extend to the peaceable performance of duty by the Americans who are collecting revenue in the customhouses so long as the Dominican Government desires them to continue that service. If Dominican Government determines to end the *modus vivendi* and the collection of duties by Americans nominated by President of the United States, protection will extend to their safe withdrawal with their property.

Notice of such termination should be given formally. We are about to withdraw several of our ships, which will return to United States with Admiral Bradford.

Root.

(*Ibid.*, p. 408.)

Cuba, 1906.—The following telegram sent by Mr. Sleeper, *chargé d'affaires* in Cuba, to the Secretary of State of the United States and the reply of the Secretary show the attitude of the United States toward protection of property of nationals:

HABANA, *August 28, 1906.*

In all cases of damage, destruction, or seizure of property against the will of the owner by agents of the Government or other parties, a complaint stating the facts and containing a list of the property so damaged, destroyed, or seized should be made to the court having jurisdiction, a copy of said complaint being forwarded at the same time to this legation. Wherever possible a statement in case property is damaged or destroyed and a receipt in case property is appropriated, subscribed to by the person or persons responsible for such damage or destruction or making such appropriation should be procured. (U. S. Foreign Relations, 1906, Pt. I, p. 457.)

The Secretary approved Mr. Sleeper's action in a telegram of August 29, 1906:

DEPARTMENT OF STATE,
Washington, August 29, 1906.

Mr. Adee informs the legation that the proposed advice to parties despoiled by insurgents has the department's approval. Action *Mercedita* case also approved. (*Ibid.*, p. 460.)

Colombia, 1907.—In a report upon the claim of Mr. Deeb, the American chargé at Bogota showed that Colombia still maintained that “there are no grounds for any recognition whatsoever on account of levies caused by the revolutionaries.” The letter from the chargé and the judicial decision are as follows:

AMERICAN LEGATION,
Bogota, September 2, 1907.

SIR: Referring to my No. 139, of December 29, 1906, relative to the claim of Richard A. Deeb, an American citizen, against the Government of Colombia for horses, mules, cattle, and merchandise taken from him by federal and insurgent troops during the revolution that existed in Colombia in the years of 1901 and 1902, in which dispatch I stated that I had taken up with the foreign office the settlement of that claim, I have the honor and pleasure to report that through my persistent efforts the Government has now issued a resolution allowing the claim of Mr. Deeb in the sum of \$25,069 gold, payable in foreign bonds, in accordance with the judicial decision pronounced by the examiner of the second section of the department of foreign affairs and with the concurrence of the council of ministers, a copy of which, clipped from the *Diario Oficial* of this city of to-day, I inclose in duplicate, as well as a translation of the same, also in duplicate.

Mr. Deeb claimed indemnity in the sum of \$72,471.12 gold, \$42,000 of which being, as was alleged, for levies caused by revolutionaries, and was disallowed, the Government holding that it did not recognize claims for damages caused by the insurgent forces; and of the remainder, namely, \$30,471.12, the sum of \$5,402.12 was disallowed for lack of proper evidence, resulting in a balance in Mr. Deeb's favor of \$25,069, which that gentleman has accepted in full settlement of his claim against the Government of Colombia.

It is gratifying to me to add that, as with the two other claims against the Government of Colombia recently reported to the department (in dispatches Nos. 213, 217, and 225), and which I have had the satisfaction of bringing up to the point of settlement, the payment of the claim of Mr. Deeb was arranged by me with perfect harmony and attended by the exhibition of the greatest courtesy on the part of the officers of the Government.

Mr. Deeb, a Syrian by birth, although an American citizen by naturalization, whom I found to be a man of superior intelligence and exceptional refinement, informed me that it is his intention to return within a few months to the United States, where he would again take up his permanent residence.

I have, etc.,

WM. HEIMKE.

(U. S. Foreign Relations, 1907, Pt. I, p. 290.)

[Inclosure—Translation.]

[Extract of the judicial decision in the claim of Richard A. Deeb, an American.]

Under date of the 28th of October, 1901, Mr. Richard A. Deeb presented to the ministry of war a memorial introducing his claim. Subsequently, on the 27th of July, 1906, it was passed to this department for its examination and decision.

He claimed \$72,471.12 gold.

In this amount there are included \$42,000 for levies caused by the revolutionists.

The record having been examined, the ministry found it in conformity with law 27 of 1903 and its organic decree, and proceeded to pronounce its decision on the 10th of August, 1907, which, in its determinate quality and with the concurrence of the council of ministers, says:

“First. There are no grounds for any recognition whatsoever on account of levies caused by revolutionaries, as defined in article 3 of law 27 of 1903.

“Second. The only and definitive indemnification adjudged to Mr. Richard A. Deeb, American citizen, as the sum total of the present claim, is the amount of twenty-five thousand and sixty-nine dollars (\$25,069), payable in foreign bonds.

“Ordered to be entered in the register and published in the Daily Official Gazette; and if the result is accepted, an authentic copy hereof is to be sent to the ministry of the treasury for its action, and the record is to be filed.

“For the minister, the subsecretary,

“FRANCISCO JOSE URRUTIA.”

China, 1911.—The following correspondence in regard to the troubles in China in consequence of the change in the form of government is a recent example of protection afforded to foreign trade.

THE UNITED PROVINCES OF CHINA,
PROVISIONAL GOVERNMENT, FOREIGN OFFICE,

Shanghai, November 27, 1911.

SIR: It has been reported to this Government that munitions of war and other contraband goods are now frequently conveyed by foreign and other vessels, and at the request of the military commander, Mr. Chen, I have the honor to inform you that this Government will send gunboats to cruise the waterways at or about Woosung and Kiang-yin Forts for the purpose of boarding suspected foreign and native merchant steamers for contraband of war, and that if any should be discovered and seized they will be taken to the prize court for trial before confiscation.

As occasion may arise when it may be found necessary to fire upon the warships of our enemies from the Woosung Forts, we

would request that foreign vessels, as well as all foreign merchant ships, should no longer anchor within the range of firing from these forts, and that at night they should not pass the Woosung Forts, but if they should be compelled to do so in case of necessity, a few hours' notice in advance should be given to the officer in charge of the forts. I shall feel obliged if you will request your colleagues to communicate with their admirals about the matter.

Sir, your obedient servant,

WU TING FANG.

S. SIFFERT, Esq.,

Consul General for Belgium and Senior Consul, Shanghai.

AMERICAN CONSULAR SERVICE,
Shanghai, China, December 7, 1911.

Rear Admiral J. B. MURDOCK,

Commander in Chief, United States Asiatic Fleet, Shanghai.

SIR: I have the honor to append a letter addressed to the Senior Consul by Mr. Wu Ting Fang under head, "The United Provinces of China, Provisional Government, Foreign Office, dated December 4, 1911:

SIR: With reference to my letter of November 27, I beg to say that this Government finds it necessary to send officers to board suspected foreign and native merchant vessels for contraband of war when passing through their territory.

I have the honor to be, your obedient servant,

WU TING FANG.

I may add that at a meeting of the consular body December 6 the decision was merely to acknowledge the receipt of Mr. Wu Ting Fang's letter of November 27, noting that in taking such action as he indicates, he and his associates proceed at their own risk.

I further inform you that I have personally sent copy of your letter of December 2 to me to Mr. Wu Ting Fang.

I have the honor to be, sir, your obedient servant,

AMOS P. WILDER,

Consul General.

UNITED STATES ASIATIC FLEET,
U. S. S. "RAINBOW," TEMPORARY FLAGSHIP,
Shanghai, China, December 2, 1911.

SIR: Referring to the letter from Mr. Wu Ting Fang, forwarded by you, I beg to state that as the United States has not accorded belligerent rights to the revolutionists in China, I should be unable to acquiesce in the seizure by them of American vessels under any pretext whatever.

In view of the recognized position of Shanghai as a great center of international commerce, and of the right to trade there secured by treaties with the titular Government, the request of Mr. Wu Ting Fang, that foreign vessels should not anchor in the usual anchorage on account of being in the line of fire of the forts, appears to needlessly entail inconvenience on American shipping. In the case of actual hostile operations every precaution would of course be taken to prevent any inconvenience to the combatants, but at other times United States vessels should be allowed to enter and leave Shanghai, and carry on their trade in the usual manner. The fact that, to the best of my knowledge, there are no men-of-war in China bearing the flag of the titular Government, effectually removes the necessity of the Woosung Forts having its line of fire cleared for hostilities against nonexistent foes.

Very respectfully,

J. B. MURDOCK,
Rear Admiral, U. S. Navy,
Commander in Chief, U. S. Asiatic Fleet.

AMERICAN CONSUL GENERAL,
American Consulate General, Shanghai, China.

Conclusions.—From the orders, precedents, and opinions it is evident that foreign States should refrain from interference in domestic political struggles. It is, however, incumbent upon the naval forces to afford such protection to the property and persons of nationals of their own country as may be possible without intervening in the insurrection. They are properly authorized to prevent wanton destruction of the property of nationals or other unnecessarily severe treatment which is not incident to the actual conduct of the hostilities.

Action by insurgents in the line of restraint of the freedom or restriction of the right to exercise ordinary privileges possessed by foreigners must be confined to immediate requirements. Such action can not be taken on the basis of some contingent danger which may or may not materialize.

As the merchant vessel of the United States has on board war material, the insurgents would, under the accepted principles, have the right to keep it from reaching their domestic enemy. This is a right of prevention and not a right which would authorize the insurgents to seize the war material for themselves. As Mr. Hay said in 1902:

No right of confiscation or destruction of foreign property in such circumstances could well be recognized, and any act of injury so committed against foreigners would necessarily be at the risk of the insurgents.

There is, therefore, a question as to where the line of right would run. It certainly would not allow wanton destruction or seizure. It would permit the insurgents to take the action necessary to protect themselves within the area over which they have authority.

The commander of the cruiser of the United States should endeavor to protect the rights of nationals of the United States. At the same time the interests of the United States may be more important than those of an individual. If the war material is brought to the port simply as a commercial venture, it may be easy to sell the material to the insurgents. If it is brought with view to aid the other party, the insurgents may properly demand that it be taken away or turned over to them on payment of adequate compensation.

Solution I (c).—The commander of the cruiser of the United States should inform the master of the merchant vessel that, while he would endeavor to prevent any wanton seizure of his cargo, he would not interfere with proper action which the insurgents might take to prevent the war material from reaching their opponents.

SOLUTION.

(a) The commander of the cruiser of the United States should, if possible, afford the merchant vessel the necessary protection from visit and search.

(b) If the only reason for the seizure of the merchant vessel is that it was about to enter a port which the insurgents have declared blockaded, the commander should grant the master's request, though the commander might require that the merchant vessel proceed to some other port.

(c) The commander of the cruiser of the United States should inform the master of the merchant vessel that, while he would endeavor to prevent wanton seizure of his cargo, he would not interfere with proper action which the insurgents might take to prevent the war material from reaching their opponents.