

International Law Studies—Volume 3

International Law Discussions

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military accouterments and equipments of all sorts; horses and mules.

*Conditionally contraband.*—Coal, when destined for a naval station, a port of call, or a ship or ships of the enemy; materials for the construction of railways or telegraphs; and money, when such materials or money are destined for the enemy's forces; provisions, when actually destined for the enemy's military or naval forces.

(a) Should there be any change in Article 34?

There seems to be no present need for change in Article 34?

(b) Should there be any change in Article 35?

Article 35 is in accord with general practice and therefore seems to need no change.

(c) Should "vessels adapted for warlike uses" be included under Article 36? Should any changes be made in this article?

It is generally admitted that "vessels adapted for warlike uses," are included under Article 34 (1) as "military material" and there seems to be no necessity for inserting the words under 36, though there could be no particular harm in so doing.

There is no need of immediate change in the article as in accord with the introductory clause change can be made by simple announcement at any time.

(d) Under the clause in regard to "Conditionally contraband" in Article 36, should there be a comma after "ships?"

A comma should be inserted in order that "of the enemy" may more directly limit "naval station" and "port of call" also.

## SECTION VII.—BLOCKADE.

### *Article 37.*

Blockades, in order to be binding, must be effective; that is, they must be maintained by a force sufficient to render hazardous the ingress to or egress from a port.

If the blockading force be driven away by stress of weather and return without delay to its station, the continuity of the blockade is not thereby broken. If the blockading force leave its station voluntarily, except

for purposes of the blockade, or is driven away by the enemy, the blockade is abandoned or broken. The abandonment or forced suspension of a blockade requires a new notification of blockade.

*Article 38.*

Neutral vessels of war must obtain permission to pass the blockade, either from the government of the State whose forces are blockading the port, or from the officer in general or local charge of the blockade. If necessary, these vessels should establish their identity to the satisfaction of the commander of the local blockading force. If military operations or other reasons should so require, permission to enter a blockaded port can be restricted or denied.

*Article 39.*

The notification of a blockade must be made before neutral vessels can be seized for its violation. This notification may be general, by proclamation, and communicated to the neutral States through diplomatic channels; or it may be local, and announced to the authorities of the blockaded port and the neutral consular officials thereof. A special notification may be made to individual vessels, which is duly indorsed upon their papers as a warning. A notification to a neutral State is a sufficient notice to the citizens or subjects of such State. If it be established that a neutral vessel has knowledge or notification of the blockade from any source, she is subject to seizure upon a violation or attempted violation of the blockade.

The notification of blockade should declare not only the limits of the blockade, but the exact time of its commencement and the duration of time allowed a vessel to discharge, reload cargo, and leave port.

*Article 40.*

Vessels appearing before a blockaded port, having sailed before notification, are entitled to special notification by a blockading vessel. They should be boarded by an officer, who should enter upon the ship's log or upon its papers, over his official signature, the name of the notifying vessel, a notice of the fact and extent of the blockade, and of the date and place of the visit. After this notice, an attempt on the part of the vessel to violate the blockade makes her liable to capture.

*Article 41.*

Should it appear, from the papers of a vessel or otherwise, that the vessel had sailed for the blockaded port after the fact of the blockade had been communicated to the country of her port of departure, or after it had been commonly known at that port, she is liable to capture and detention as a prize. Due regard must be had in this matter to any treaties stipulating otherwise.

*Article 42.*

A neutral vessel may sail in good faith for a blockaded port, with an alternative destination to be decided upon by information as to the continuance of the blockade obtained at an intermediate port. In such case, she is not allowed to continue her voyage to the blockaded port in alleged quest of information as to the status of the blockade, but must obtain it and decide upon her course before she arrives in suspicious vicinity; and if the blockade has been formally established with due notification, sufficient doubt as to the good faith of the proceeding will subject her to capture.

*Article 43.*

Neutral vessels found in port at the time of the establishment of a blockade, unless otherwise specially ordered, will be allowed thirty days from the establishment of the blockade to load their cargoes and depart from such port.

*Article 44.*

The liability of a vessel, purposing to evade a blockade, to capture and condemnation begins with her departure from the home port and lasts until her return, unless in the meantime the blockade of the port is raised.

*Article 45.*

The crews of neutral vessels violating or attempting to violate a blockade are not to be treated as prisoners of war, but any of the officers or crew whose testimony may be desired before the prize court should be detained as witnesses.

Under Section VII, Blockade:

(a) Should a clause to the effect that "The United States regards blockade strictly as a measure of war and does not recognize the right of insurgents to establish a blockade," be inserted?

It would be wise to make Article 37 read, "Blockade is a measure of war between belligerents, and in order to be binding must be effective; that is, it must be maintained by a force sufficient to render hazardous the ingress to or egress from a port." This would eliminate both insurgent and pacific blockade from the rules under Section VII.

Some of these matters were quite fully discussed in the International Law Situations, 1902, Naval War College, Situations VI and VII, pages 57-97. Subsequently the United States in the case of the proposed "pacific blockade" of Venezuelan ports refused sanction to this form of constraint.

(b) Should a clause to the effect that the United States does not not recognize the right of any state or states to establish a pacific blockade which shall affect third powers, be inserted?

In making blockade a measure of war in (a) above, it is probably unnecessary to insert any further provision, particularly as the attitude of the United States is now known.

(c) Should Article 42 be stricken out?

Article 42 practically agrees with the sixth section of the instructions to blockading vessels issued by the Navy Department during the war of the United States with Spain.

This article is very liberal in its provisions. It has been maintained that such a vessel is not sailing for a blockaded port, but for a certain port, provided it is not blockaded when the vessel arrives at an intermediate port, otherwise for a specified unblockaded port. The vessel must, therefore, not sail direct to the blockaded port, but to the intermediate port for information. The court has ruled that "A vessel which has full knowledge of the existence of a blockade before she enters upon her voyage has no right to claim a warning or indorsement when taken in the act of attempting to enter. It would be an absurd construction of the President's proclamation to require a notice to be given to those who already had knowledge. A notification is for those

only who have sailed without a knowledge of the blockade and get the first information from the blockading vessel." (Manual of International Law, Naval War College, p. 152.) Nor has a vessel a right to expect leniency when it sails to a port publicly known to be blockaded, with the hope that the blockade may be raised before it arrives at the blockaded port. Such a vessel can not demand a warning from the blockading fleet, but is liable to capture, even though it may profess absence of intention to enter the port if found to be blockaded, but in such case to proceed to an alternative destination. In order to avoid liability under Article 44 of the Naval War Code, the vessel should sail directly for the intermediate port for the necessary information. (See Perels, *Seerecht der Gegenwart*, p. 273, sec. 51.)

By the change in Article 15 (see above under Article 15), Article 43 comes under consideration. It is stated in Snow's Manual of International Law issued in 1898, page 157, that "The time allowed for egress of a ship in a blockaded port is generally fifteen days after the establishment of the blockade."

It is customary to allow neutral vessels some time for exit and in general this may be said to be the law, but a "thirty-day" period can not be assumed as general. Therefore, insert in place of "thirty" the words "a specified number," and the words "unless otherwise specially ordered" should be omitted.

(d) How would Articles 42 and 44 lead to confusion in practice?

Article 44 if placed before Article 42 would make matters more clear. The two classes of vessels mentioned in these articles are very distinct when it is possible to apprehend the motives of those who are responsible for their movements.

## SECTION VIII.—THE SENDING IN OF PRIZES.

### *Article 46.*

Prizes should be sent in for adjudication, unless otherwise directed, to the nearest suitable port, within the territorial jurisdiction of the United States, in which a prize court may take action.