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TOPIC IX.

What limitations should be placed on the entrance and sojourn of belligerent vessels within neutral ports?

(a) Of vessels of one belligerent when vessel of other is within the port?

(b) Of entrance and sojourn for repairs and of entrance and sojourn for supplies?

(c) Of entrance and sojourn to escape capture and of entrance and sojourn when defeated and damaged by the enemy?

CONCLUSION.

(a) The twenty-four-hour rule should be observed.

(b) When not entering to escape the enemy or repair damages caused by act of war, a belligerent vessel may make repairs necessary to continue the voyage in safety, and may take on such supplies as are necessary to reach the nearest port of her home country or some nearer neutral destination.

(c) Belligerent vessels entering a neutral port for the purpose of escaping capture or repairing damages caused by act of war, if remaining beyond twenty-four hours, are liable to be interned.

DISCUSSION AND NOTES.^a

(a) *Sojourn of vessel of one belligerent when vessel of other belligerent is within the port.*—The discussion and solution at this Naval War College in 1904 of Situation V seemed to show the propriety of a regulation embodying the following principles: When vessels (whether ships of

^aIt is understood that the term "belligerent vessels" does not apply to strictly private vessels of the belligerent.

war or merchant vessels) of both belligerents are within the same port waters or roadstead in the territorial jurisdiction of a neutral, there shall be an interval of not less than twenty-four hours between the departure therefrom of any ship of one belligerent and a ship of war of the other belligerent. (See *International Law Situations*, Naval War College, 1904, p. 79.)

(b) *Entrance and sojourn for repairs and entrance and sojourn for supplies.*—The neutrality proclamation of the United States, issued February 11, 1904, in regard to the Russo-Japanese war, gives certain specific statements concerning the sojourn of belligerent vessels in ports of the United States:

And I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the armed vessels of either belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations or as posts of observations upon the ships of war or privateers or merchant vessels of the other belligerent lying within or about to enter the jurisdiction of the United States must be regarded as unfriendly and offensive and in violation of that neutrality which it is the determination of this Government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided I further proclaim and declare that from and after the 15th day of February instant, and during the continuance of the present hostilities between Japan and Russia, no ship of war or privateer of either belligerent shall be permitted to make use of any port, harbor, roadstead, or waters subject to the jurisdiction of the United States from which a vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship) shall have previously departed until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States. If any ship of war or privateer of either belligerent shall, after the time this notification takes effect, enter any port, harbor, roadstead, or waters, except in case of stress of weather or of her requiring provisions or things necessary for the subsistence of her crew, or for repairs; in either of which cases the authorities of the port or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been permitted to remain within the waters of the United States for the purpose of repair shall continue within such port, harbor, roadstead, or waters for a longer period than twenty-

four hours after her necessary repairs shall have been completed unless within such twenty-four hours a vessel, whether ship of war, privateer, or merchant ship, of the other belligerent shall have departed therefrom, in which case the time limited for the departure of such ship of war or privateer shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any ship of war, privateer, or merchant ship of the other belligerent which may have previously quit the same port, harbor, roadstead, or waters.

The explicit British provisions are as follows:

RULE 1. During the continuance of the present state of war all ships of war of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of His Majesty's colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities for warlike equipment; and no ship of war of either belligerent shall hereafter be permitted to leave any such port, roadstead, or waters from which any vessel of the other belligerent (whether the same shall be a ship of war or a merchant ship) shall have previously departed until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of His Majesty.

RULE 2. If there is now in any such port, roadstead, or waters subject to the territorial jurisdiction of the British Crown any ship of war of either belligerent, such ship of war shall leave such port, roadstead, or waters within such time, not less than twenty-four hours, as shall be reasonable, having regard to all the circumstances and the condition of such ship as to repairs, provisions, or things necessary for the subsistence of her crew; and if after the date hereof any ship of war of either belligerent shall enter any such port, roadstead, or waters subject to the territorial jurisdiction of the British Crown, such ship shall depart and put to sea within twenty-four hours after her entrance into any such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed; provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war or merchant ships) of both the said belligerent parties in the same

port, roadstead, or waters within the territorial jurisdiction of His Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war or merchant ship) of the one belligerent and the subsequent departure therefrom of any ship of war of the other belligerent; and the time hereby limited for the departure of such ships of war, respectively, shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but no further or otherwise.

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

RULE 4. Armed ships of either belligerent are interdicted from carrying prizes made by them into the ports, harbors, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of His Majesty's colonies or possessions abroad.

Rule 3 of this British proclamation received further interpretation in the proclamation of the governor of Malta of August 12, 1904. This proclamation states that—

Whereas in giving the said order we were guided by the principle that belligerent ships of war are admitted into neutral ports in view of exigencies of life at sea and the hospitality which it is customary to extend to vessels of friendly powers;

And whereas this principle does not extend to enable belligerent ships of war to utilize neutral ports directly for the purpose of hostile operations:

We therefore, in the name of His Majesty, order and direct that the above-quoted rule No. 3, published by proclamation No. 1 of the 12th February, 1904, inasmuch as it refers to the extent of coal which may be supplied to belligerent ships of war in British ports during the present war, shall not be understood as having any application in case of belligerent fleet proceeding either to the seat of war or to any position or positions on the line of route with the object of intercepting neutral ships on suspicion of carrying contraband of war, and that such fleet shall not be permitted to make use in any way of any port, roadstead, or waters subject to the jurisdiction of His Majesty for the purpose of coaling, either directly from the shore or from colliers ac-

companying such fleet, whether vessels of such fleet present themselves to any such port or roadstead or within the said waters at the same time or successively, and, second, that the same practice shall be pursued with reference to single belligerent ships of war proceeding for purpose of belligerent operations as above defined; provided that this is not to be applied to the case of vessels putting in on account of actual distress at sea, in which case the provision of rule No. 3, as published by proclamation No. 1 of the 12th February, 1904, shall be applicable.

This interpretation of the rule No. 3 would prohibit the use of British ports for coaling for vessels proceeding to the seat of war or to any position on the line of route for intercepting neutral ships on suspicion of carrying contraband. Such a provision tends to emphasize the necessity of making a fleet self-sufficient. It can not reasonably be expected that a neutral power will permit its own ports to be used as sources of supplies and coal, using which the belligerent vessel or fleet may set forth to seize the same neutral's commerce or interrupt its trade.

The French declaration of neutrality of April 27, 1898, as follows, provided only for the limitation of the sojourn of ships of war with prizes, but did not limit the sojourn of war vessels unaccompanied by prize:

The Government decides in addition that no ship of war of either belligerent will be permitted to enter and to remain with her prizes in the harbors and anchorages of France, its colonies, and protectorates for more than twenty-four hours, except in case of forced delay or justifiable necessity.

Identical provisions were contained in instructions of the French minister of marine, issued in February, 1904, and referring to the Russo-Japanese war. There were added, however, certain explanatory clauses, as follows:

“Je crois devoir ajouter à ces règles principales quelques observations complémentaires résumant les traditions du gouvernement français: 1°. En aucun cas, un belligérant ne peut faire usage d'un port français ou appartenant à un État protégé, dans un but de guerre, ou pour s'y approvisionner d'armes ou de munitions de guerre, ou pour y exécuter, sous prétexte de réparations, des travaux ayant pour but d'augmenter sa puissance militaire: 2°. La durée du séjour dans nos ports de belligérants non accompagnés d'une prise n'a été limitée par aucune disposition spéciale. Mais pour être autorisés à y séjourner, ils sont tenus de se conformer aux conditions ordinaires de la neutralité, qui peuvent se résumer ainsi qu'il suit: a) Les bâtiments admis au

bénéfice de l'asile doivent entretenir des relations pacifiques avec tous les navires mouillés dans le même port, et, en particulier, avec les bâtiments appartenant à leurs ennemis; b) Lesdits navires ne peuvent, à l'aide de ressources puisées à terre, augmenter leur matériel de guerre, renforcer leurs équipages, ni faire des enrôlements volontaires, même parmi leurs nationaux; c) Ils doivent s'abstenir de toute enquête sur les forces, l'emplacement ou les ressources de leurs ennemis, ne pas appareiller brusquement pour poursuivre ceux qui leur seraient signalés, en un mot, s'abstenir de faire du lieu de leur résidence la base d'une opération quelconque contre l'ennemi; de n'employer la force ni la ruse pour recousser les prises faites par l'ennemi, ou pour délivrer des prisonniers de leur nation; 3°. Il ne peut être fourni à un belligérant que les vivres, denrées approvisionnements et moyens de réparations nécessaires à la subsistance de son équipage et à la sécurité de sa navigation; 4°. Lorsque des belligérants ou des navires de commerce des deux parties belligérantes se trouveront ensemble dans un port français, il y aura un intervalle qui ne pourra être moindre de vingt-quatre heures entre le départ de tout navire de l'un des belligérants et le départ subséquent de tout bâtiment de l'autre belligérant. Ce délai sera étendu, en cas de besoin, sur l'ordre de l'autorité maritime, autant que cela pourra être nécessaire; 5°. il est interdit aux belligérants de se livrer à aucun acte d'hostilité dans toute l'étendue des eaux territoriales. Si une violation de cette règle venait à votre connaissance, sans que vous ayez pu la prévenir, vous auriez à m'en rendre compte immédiatement, afin que le gouvernement puisse faire entendre, auprès de qui de droit, les protestations et réclamations nécessaires. Il en sera de même si des navires de commerce portant le pavillon français ou celui d'un des États protégés par la France venaient à être molestés dans l'exercice du droit de visite qui appartient aux belligérants.

The above may properly be regarded as setting forth officially the French position.

The latest statement of the French point of view as to the use of neutral waters by belligerents in time of war is given in an article by Charles Dupuis on "Maritime Responsibilities in Time of War." He says:

Whilst any act of war is forbidden in territorial waters, free passage through them is allowed, even to the belligerent war ships, as in time of peace. The area of territorial waters is not absolutely fixed for all states by international law; France admits that this area is one of three sea miles from low-water mark. Sovereign jurisdiction is exercised more strictly in ports. They are not a part of the sea routes; they are only the points of departure and arrival, the necessary intermediaries between sea and land, and, occasionally, an indispensable refuge from the perils of the sea. The riparian state should, in principle, keep its ports open in time of peace; it should always allow

access thereto to ships in time of distress. The neutral state is equally bound to give shelter to belligerent war ships which are prevented by the state of the sea, the damages they have sustained, or their want of provisions, from pursuing their journey; it may, without being bound to do so, give them shelter in any other event. France throws her ports wide open to belligerent war ships; she does not limit the length of their stay; she only limits it to twenty-four hours when they have entered the port with prizes taken from the enemy. War ships which have sought refuge in a neutral port to escape the enemy's pursuit are free to stay or to leave. If the enemy wishes to reduce them to a state of impotence, it is for him to take the necessary measures to make it dangerous for them to leave.

Belligerent war ships which have entered a French port may effect repairs there, or take in stores necessary for navigation or for the subsistence of their crews; they may not, on the other hand, recruit combatants, or provide themselves with arms, munitions, or articles for use in action. Their stay in a neutral port may, therefore, allow them to leave it with fresh means of navigation, but not with any increase of fighting strength. Nevertheless, the enjoyment of facilities of taking in stores or coal might degenerate into an abuse. If a war ship were free to return periodically to the same port in search of articles which, whilst not instruments of warfare, were yet resources indispensable to carrying on her campaign, she would be turning this harbor into an actual base of operations. Continuous resort to the same place with the object of taking in stores, thanks to the resources of the place, is the characteristic of a base of operations—that is to say, of the “point d'appui” for renewing and multiplying the most varied enterprises against the enemy.

Still, in certain cases, a neutral harbor, or a station within neutral waters, might happen to become not a base of operations but the base of a deliberate operation of a hostile character. This would be the case where a ship or squadron claimed the right to lie in wait, within the shelter of neutral waters, for the passage of a hostile force in order to attack it unexpectedly at the limits of such neutral waters. French orders issued in 1904 by the minister of marine forbid any preparation of hostile acts or operations, even of an isolated nature, being made within French waters. (North American Review, August, 1905, vol. 181, p. 182.)

A neutral may properly limit or prohibit the sojourn within its ports of a belligerent vessel which seeks to repair damages caused by war. It may properly admit a vessel seeking to repair damages caused by action of the elements. Such repairs should be confined to making the vessel seaworthy.

A belligerent vessel may take on supplies necessary to reach her nearest home port or some nearer destination.

She may not, however, take on military stores or ammunition. This may be held to apply, according to the British interpretation, to the restriction of the supply of coal to that which is to be used for the purpose of navigation only and not for action against belligerents or for pursuit of contraband.

(c) Of entrance and sojourn to escape capture and of entrance and sojourn when defeated and damaged by the enemy?

Situation V, considered by this Naval War College in the summer of 1904, bore upon this subject.

The situation as proposed was as follows:

While war exists between the United States and State X a number of the war vessels of State X are pursued by a United States fleet and seek refuge in a port of State Y, a neutral. The commander of the United States fleet, after waiting outside the port for twenty-four hours, protests to the authorities of State Y, claiming that as the vessels of the enemy have entered the neutral port to escape his fleet they may not justly be sheltered longer.

(a) Is the position taken by the United States commander correct?

(b) What should the authorities of State Y do?

The conclusion was as follows:

(a) From the point of view of both theory and practice it would seem that the United States commander, under the circumstances as stated in the situation, would be justified in claiming that belligerent vessels entering and remaining in the neutral port in order to escape capture by his vessels, should be interned for the remaining period of the war.

(b) The authorities of State Y would also be under obligations to intern the vessels of State X thus seeking neutral protection.

Speaking of asylum to naval forces, Hall says:

Marine warfare so far differs from hostilities on land that the forces of a belligerent may enter neutral territory without being under stress from their enemy. Partly as a consequence of the habit of freely admitting foreign public ships of war belonging to friendly powers to the ports of a State as a matter of courtesy, partly because of the inevitable conditions of navigation, it is not the custom to apply the same rigor of precaution to naval as to military forces. A vessel of war may enter and stay in a neutral harbor without special reasons; she is not disarmed on taking refuge after defeat; she may obtain such repair as will enable her to continue her voyage in safety; she may take in such provisions as she needs, and, if a steamer, she may fill up

with enough coal to enable her to reach the nearest port of her own country; nor is there anything to prevent her from enjoying the security of neutral waters for so long as may seem good to her. To disable a vessel, or to render her permanently immovable, is to assist her enemy; to put her in a condition to undertake offensive operations is to aid her country in its war. The principle is obvious; its application is susceptible of much variation; and in the treatment of ships, as in all other matters in which the neutral holds his delicate scale between two belligerents, a tendency toward the enforcement of a harsher rule becomes more defined with each successive war. (International Law, 5th ed., p. 626.)

The tendency toward the establishment of a definite rule has certainly become evident. The practice of dismantling and internment has been clearly established during the Russo-Japanese war.

The first instance was a subject of much discussion. The Russian vessel *Mandjur*, which entered the port of Shanghai about the middle of February in 1904, was, after considerable exchange of notes, interned to the satisfaction of Japan at the end of March. Parts of the machinery were removed and the vessel was disarmed. In August, 1904, the Russian vessels *Askold* and *Grosvoi*, which had sought refuge in the same port, were dismantled and the crew interned. About the same time the *Tsarevitch* and some smaller vessels sought refuge in the German jurisdiction at Kiaochow. These vessels were similarly treated. The Russian cruiser *Diana*, which had escaped in the same battle, sought refuge in the French port of Saigon, and was dismantled and the crew interned on September 10, 1904.

The transport *Lena*, arriving at San Francisco on September 13, 1904, was likewise interned. The negotiations between the United States and Russia in regard to the conditions of the internment of the *Lena* are set forth in the following correspondence:

Count Cassini to Mr. Adee.

[Telegram.—Translation.]

RUSSIAN EMBASSY,

Bar Harbor, Me., September 13, 1904.

Our consul at San Francisco informs me that the Russian transport *Lena* has entered that port, the condition of her boilers and other

damages not permitting her to continue her voyage. Under these circumstances I doubt not that the *Lena* will receive from the authorities of San Francisco, and in conformity with the prescriptions of international law to which a vessel in her condition is entitled, all aid compatible with the neutrality proclaimed by the Federal Government.

I am sending Mr. Hansen to Washington to see you, and come to an understanding with you.

CASSINI.

Mr. Adee to Count Cassini.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 13, 1904.

The matter of the *Lena* at San Francisco is having the instant attention of this Department. Precise information is being sought as to the condition of the boilers, machinery, and hull of the ship and the extent and duration of the repairs needed to enable her to put to sea. It appears, so far, that very extensive repairs are asked, amounting to virtual renovation.

ALVEY A. ADEE,
Acting Secretary.

Mr. Adee to Count Cassini.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 14, 1904.

Referring to my telegram of yesterday, I have the honor to advise you that the President feels constrained to reach an immediate solution of the question whether the *Lena* shall be repaired immediately so as to put to sea or be disarmed and laid up until the close of the war. If repaired, only such bare repairs can be allowed as may be necessary for seaworthiness and for taking her back to nearest home port, and even such repairs can be permitted only on condition that they do not prove to be too extensive. If disarmed, she will be laid up at the Mare Island Navy-Yard. Inspection made by United States officers at San Francisco discloses that the repairs asked for include complete outfit of new boilers and reconstruction of engines, consuming at least four or five months, or, according to the captain's estimate, eight months, and amounting to renovation of the vessel. This can not be allowed with due regard to neutrality. An immediate answer is desired, as the matter is urgent. A decision between the two alternatives should be made, so that this Government may close the incident not later than to-morrow,

ALVEY A. ADEE,
Acting Secretary of State,

Count Cassini to Mr. Adee.

[Telegram.—Translation.]

RUSSIAN EMBASSY,
Bar Harbor, Me., September 15, 1904.

I receive this very moment your telegram of the 14th. It is materially impossible to receive an answer from St. Petersburg to-day. I beg the President to allow a delay of forty-eight hours to permit me to receive instructions from my Government.

CASSINI.

Mr. Adee to Count Cassini.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 15, 1904.

The admiral at San Francisco advises me this morning that the captain of the *Lena* writes him that the ship being unseaworthy must disarm, and asks to be allowed to make needed repairs. When the President shall have approved the conditions necessary to insure the neutralization of the *Lena* and her officers and crew until the end of the war, and to permit necessary repairs, the admiral will be instructed to cause the disarmament to be effected, whereupon I shall have pleasure in advising you further.

ALVEY A. ADEE,
Acting Secretary of State.

Mr. Adee to Count Cassini.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 15, 1904.

Referring to my telegram of this morning, I have the honor to advise you that the President has this afternoon issued an order directing that the Russian armed transport *Lena*, now at San Francisco, be taken in custody by the naval authorities of the United States and disarmed, under the following conditions:

First. Vessel to be taken to Mare Island Navy-Yard and there disarmed by removal of small guns, breechblocks of large guns, small arms, ammunition and ordnance stores, and such other dismantlement as may be prescribed by the commandant of the navy-yard.

Second. Written guarantee that *Lena* shall not leave San Francisco until peace shall have been concluded. Officers and crew to be paroled, not to leave San Francisco until some other understanding as to their disposal may be reached between this Government and both belligerents.

Third. After disarmament, vessel may be removed to private dock for such reasonable repairs as will make her seaworthy and preserve her in good condition during detention, or be so repaired at the navy-yard, should the Russian commander so elect. While at private dock the commandant of the navy-yard at Mare Island shall have custody of the ship, and the repairs shall be overseen by an engineer officer to be detailed by commandant of navy-yard.

Fourth. The cost of repairs, of private docking, and of maintenance of the ship and her officers and crew while in custody to be borne by the Russian Government, but the berthing at Mare Island and the custody and surveillance of the vessel to be borne by the United States.

Fifth. When repaired, if peace shall not then have been concluded, the vessel to be taken back to Mare Island and there held in custody until the end of the war.

ALVEY A. ADEE,
Acting Secretary of State.

Mr. Adee to Count Cassini.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 16, 1904.

DEAR MR. AMBASSADOR: Your telegram of yesterday reached me in the evening. As I explained to Mr. Hansen, the request of my telegram of the 14th for a decision between the alternatives in the *Lena* case was superseded by the formal application of Captain Berlinsky and by my telegram to you of yesterday morning apprising you of the decision to disarm. I am glad the incident has been so satisfactorily closed.

ALVEY A. ADEE.

Count Cassini to Mr. Adee.

[Translation.]

BAR HARBOR, *September 20, 1904.*

MR. ASSISTANT SECRETARY OF STATE: The Imperial Government has just advised me, and charges me to acquaint the Federal Government with the fact that it adheres to the provisions taken by the President concerning the disarmament and the other measures and provisions of the transport *Lena*, which entered the port of San Francisco on the 11th instant, and whose boilers and other machinery demand urgent repairs.

There remains to settle the question of the repatriation of the crew of the transport *Lena*. The Imperial Government expresses the firm assurance that the Federal authorities will facilitate the passage of the officers and seamen of the *Lena* across the territory of the United

States, according them all the assistance compatible with the duties of neutrality and the amicable relations existing between the two countries. Captain Berlinsky, commander of the *Lena*, has expressed to me a desire that five officers and 100 seamen shall remain in San Francisco for necessary (intérieur) service on the transport. I do not doubt, Mr. Assistant Secretary of State, that these requests, which I have the honor to communicate to you, will be received by the Federal Government in the spirit of justice and impartiality which distinguishes it.

Be pleased to accept, Mr. Assistant Secretary of State, etc.,

CASSINI.

Mr. Loomis to Count Cassini.

DEPARTMENT OF STATE,
Washington, September 24, 1904.

MY DEAR MR. AMBASSADOR: Your note of the 20th instant, addressed to Mr. Adee, has been received, and as I have returned to my post, the agreeable duty of replying to it devolves upon me.

I have shown it to the President, who is glad that the Imperial Government appreciates the course which, in the exercise of his executive prerogative and in consonance with international law, he found it incumbent upon him to pursue in respect to the disarmament of the *Lena* in execution of the policy of strict neutrality adopted by this Government.

The President, however, directs me to say that he would not find it consistent with the neutral course it behooves him to follow to act upon a request for the repatriation of any of the officers or crew of the *Lena* unless he were advised that the two belligerent powers were in accord as to doing so. Without their agreement to that end he regards the position of these men as being identical in principle with that of a military force entering neutral territory and there necessarily to be held by the neutral. He could not take upon himself the function of repatriating the men under parole to return to Russia for that would be the prerogative of the belligerent and not of the neutral.

If it should be the wish of your Government to have the request brought to the attention of the Japanese Government it may be timely for me to say that we have an intimation to the effect that if overtures in this sense were made by us the consent of Japan would not be given.

I have pleasure in assuring you, however, that every effort will be made to render the detention of the officers and crew of the *Lena*, as well as of Captain Günther, who is stated to have been a passenger, as little irksome as is consistent with the President's determination to carry out to the full the neutrality he has proclaimed.

I am, etc.,

FRANCIS B. LOOMIS.

Count Cassini to Mr. Hay.

[Translation.]

IMPERIAL EMBASSY OF RUSSIA,
Washington, December 10, 1904.

MR. SECRETARY OF STATE: Russia and all the Russians residing abroad will on the 6th/19th December celebrate the name day of His Majesty the Emperor, my august master.

Captain Berlinsky, commanding officer of the transport ship *Lena*, which, as your excellency knows, lies disarmed at San Francisco until the end of the present war, would like to celebrate that day, which all Russians hold so dear, by hoisting on that solemn occasion, and for that day only, the national flag, dressing his ship, and firing the imperial salute. I cherish the hope, Mr. Secretary of State, that the Federal Government will see no objection to yielding to Captain Berlinsky's request and will thus afford him the opportunity of paying the homage of his respect and veneration to his august sovereign.

While transmitting this request of Captain Berlinsky's, and most especially commending it to your customary courtesy, I beg your excellency, etc.,

CASSINI.

Mr. Hay to Count Cassini.

No. 252.]

DEPARTMENT OF STATE,
Washington, December 14, 1904.

EXCELLENCY: I have received your valued note of the 10th of December, in which you inform me that Captain Berlinsky, commanding officer of the transport ship *Lena*, which lies disarmed at San Francisco until the end of the present war, would like to celebrate the name day of His Majesty the Emperor, which all Russians hold so dear, by hoisting on that solemn occasion, and for that day only, the national flag, dressing his ship, and firing the imperial salute.

I have considered the matter with care and with the earnest desire to meet in all things your excellency's wishes. It seems, however, that the *Lena*, not being at this time a ship in active commission, lying in a friendly open port, but being held in the Mare Island Navy-Yard completely disarmed, in the custody of the United States until the end of the existing war, her character as a war ship, including the function of saluting and the right to receive salutes, is in abeyance.

Under these circumstances the anomaly and inconvenience of firing the suggested salute in an American navy-yard without being competent to salute the American flag and without being entitled to a salute in return, lead me to the conclusion that it is not practicable to acquiesce in that feature of Captain Berlinsky's programme. While

regretting this decision touching the salute, it affords me much pleasure to say that as to the display of the national standard and dressing the ship no inconvenience is seen in the appropriate commemoration of the name day of his Imperial Majesty on board the *Lena* in all suitable ways consistent with the present status of the vessel. We have so informed the American admiral on that station.

I beg, etc.,

JOHN HAY.

(U. S. Foreign Relations, 1904, pp. 785-790.)

The squadron of Admiral Enquist was interned at Manila early in June, 1905, after the battle of the Sea of Japan (May 27, 1905). On June 5, 1905, the President directed the Secretary of War to send the following telegram to the governor of the Philippine Islands:

Advise Russian admiral that as his ships are suffering from damages due to battle, and our policy is to restrict all operations of belligerents in neutral ports, the President can not consent to any repairs unless the ships are interned at Manila until the close of hostilities. You are directed, after notifying the Russian admiral of this conclusion, to turn over the execution of this order to Admiral Train, who has been advised accordingly by the Secretary of the Navy.

The President directed that a strict enforcement of the twenty-four-hour rule be applied in view of the fact that the damage to the ships was due to acts of the enemy in battle and not to the action of the elements or accidents. It was maintained that to allow vessels injured in battle to refit in a neutral port would practically make the neutral port a naval base for the belligerent.

The action of the Government of the United States was publicly stated, as follows, in an announcement of June 6, 1905:

The Secretary of War is in receipt of a cablegram from Governor Wright announcing that Secretary Taft's instructions of yesterday had been formally transmitted to the Russian admiral, and at the same time inquiry was made whether he would be required to put to sea within twenty-four hours after taking on coal and provisions sufficient to take them to nearest port. That up to this time only enough coal and sufficient food supplies for use in harbor to last from day to day had been given, as they arrived in Manila with practically no coal or provisions. Governor Wright submitted the question as to whether they were entitled to take on coal and provisions to carry them to nearest port. Governor Wright was advised that the President directed that the twenty-

four hours' limit must be strictly enforced; that necessary supplies and coal must be taken on within that time, these instructions being consistent with those of June 5, stating that as the Russian admiral's ships were suffering from damages due to battle the American policy was to restrict all operations of belligerents at neutral ports—in other words, that time should not be given for repairs of damages suffered in battle.

Commander Von Uslar, of the German navy, thinks that the United States exceeded its measure of duty in the treatment of Admiral Enquist's squadron in the Philippines. He says:

The old rules of neutrality do not restrict the stay of the ships of belligerents in any respect more than in times of peace. They permit all articles of equipment to be supplied, and any repairs to be made that do not immediately contribute to enhance the fighting capabilities. The new principle advanced by England in 1861, and accepted first by the United States and later by many other countries, limits the duration of the stay to twenty-four hours, and permits sufficient coal to be taken on board to enable the vessel to reach the nearest port of her own country or some nearer destination and repairs to restore seaworthiness.

It can not be denied that the new rules, even if the old principle remains in force, are better adapted to certain cases of neutrality. A compromise between the two, therefore, will best suit the actual conditions created by war, if the French rules are applied in the case of ports and waters which are at a distance from the sphere of operation of the hostile fleets and the English remain valid for ports and waters within or near the sphere of operations. The neutrals must have the right but be under no obligation to close completely certain ports and bays. The difficulty of this distinction lies in the conception of the sphere of operations. It will have to be taken to mean that portion of the sea on which the opposing forces permanently maneuver for the purpose of warlike operations. Ships which directly seek refuge from the enemy in neutral waters, and prizes, would have to be treated without regard to the distance from the chief theater of war.

The extent and duration of the repairs necessary to restore seaworthiness must be fixed by the neutral government. The latter must make no distinction between damages sustained on the voyage or by the action of the enemy's guns, as it would act in the interests of the other belligerent if it made the repairs dependent on this distinction. The action of the United States Government toward the ships of Admiral Enquist undoubtedly exceeded the measure of duty. The German Government also did more at Tsingtau than duty demanded. Ships which do not leave the ports and waters after the expiry of the fixed term render themselves liable to disarmament. (North American Review, Aug., 1905, vol. 181, p. 188.)

Conclusion.—The precedents of the Russo-Japanese war have led to the definite acknowledgment of the correctness of the doctrine of internment by neutral states of belligerent vessels seeking refuge from the force of the enemy in neutral ports. This principle has been acknowledged or definitely acted upon by China, France, Great Britain, Germany, Japan, United States, and Russia. These include nearly all the states with considerable navies. Rarely has any principle received such general recognition within so short a period.

It may be safely said that the entrance and sojourn for a period of more than twenty-four hours in a neutral port will render a belligerent vessel which is pursued by the enemy or damaged in battle liable to internment.

As a neutral has full jurisdiction over his own ports and as entry of the ports is a privilege granted to foreign war ships, the neutral has full rights to enforce by any means within his power the regulations which may have been prescribed for entrance and sojourn within his ports.