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.
Topic V.

What position should be assumed in regard to the doctrine of continuous voyage?

Conclusion.

The actual destination of vessels or goods will determine their treatment on the seas outside of neutral jurisdiction.

Discussion and Notes.

Development of doctrine of continuous voyage. — It was a common practice of the eighteenth century to limit the carrying trade between mother country and the dependencies to domestic vessels. Many States still impose restrictions upon the coasting and domestic carrying trade. When in the war of 1756 France opened to the Dutch the trade with her colonies previously confined to her own vessels, the English maintained that the Dutch vessels thus engaged were practically in the commercial navy of France and liable to similar treatment. Dutch vessels were accordingly captured and condemned. There were, however, various treaties prior to 1756 by the provisions of which one of the parties to the treaty was to be permitted in time of war to trade at ports belonging to the enemy of the other party. This privilege was a matter of treaty provision between the United States and France in 1778. Article XXIII states:

It shall be lawful for all and singular the subjects of the Most Christian King, and the citizens, people, and inhabitants of the said United States, to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandises laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with the Most Christian King or the United States. It shall likewise be lawful for the subjects and inhabitants aforesaid to sail with the ships and merchandises aforementioned,

See also International Law Situations, 1901, Naval War College, pp. 41–84.
and to trade with the same liberty and security from the places, ports, and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforementioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same prince or under several. And it is hereby stipulated that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are soldiers and in actual service of the enemies.

This freedom of trade which had been a matter of treaty agreement was claimed by the armed neutrality of 1780 to be a general right. If trade is opened to all there can not be the same imputation of violation of neutrality as when in 1756 it was opened, to a single State which accepting the opportunity, becomes a quasi-ally of the belligerent.

Apparently to avoid such difficulties as arose in the war of 1756, France opened the trade to the West Indian colonies permanently just before the war in 1779. The rule did not therefore receive much attention till revived in the war against France in 1793, when England attempted to prohibit practically all neutral trade with French colonies and in general the carriage of goods between French ports by neutrals.

Lord Stowell, referring to colonial trade in the case of the Immanuel (2 Robinson’s Admiralty Reports, 197), gave a full statement of the relation of the neutral to trade with the enemy ports. He said:

Upon the outbreaking of a war it is the right of neutrals to carry on their accustomed trade, with an exception of the particular cases of a trade to blockaded places, or in contraband articles (in both which cases their property is liable to be condemned), and of their ships being liable to visitation and search; in which case, however, they are entitled to freight and expenses. I do not mean to say that in the accidents of a war the property of neutrals may not be variously entangled and endangered; in the nature of human connections it is
hardly possible that inconveniences of this kind should be altogether avoided. Some neutrals will be unjustly engaged in conveying the goods of the enemy, and others will be unjustly suspected of doing it. These inconveniences are more than fully balanced by the enlargement of their commerce; the trade of the belligerents is usually interrupted in a great degree, and falls in the same degree into the lap of neutrals. But without reference to accidents of the one kind or the other, the general rule is, that the neutral has a right to carry on, in time of war, his accustomed trade to the utmost extent of which that accustomed trade is capable. Very different is the case of a trade which the neutral has never possessed, which he holds by no title of use and habit in times of peace, and which, in fact, can obtain in war by no other title than by the success of one belligerent against the other, and at the expense of that very belligerent under whose success he sets up his title; and such I take to be the colonial trade, generally speaking.

In the same case, speaking further of colonies, he says:

Upon the interruption of a war, what are the rights of belligerents and neutrals, respectively, regarding such places? It is an indubitable right of the belligerent to possess himself of such places, as of any other possession of his enemy. This is his common right, but he has the certain means of carrying such a right into effect if he has a decided superiority at sea. Such colonies are dependent for their existence, as colonies, on foreign supplies; if they can not be supplied and defended, they must fall to the belligerent of course; and if the belligerent chooses to apply his means to such an object, what right has a third party, perfectly neutral, to step in and prevent the execution? No existing interest of his is affected by it; he can have no right to apply to his own use the beneficial consequences of the mere act of the belligerent; and to say, "True it is, you have, by force of arms, forced such places out of the exclusive possession of the enemy, but I will share the benefit of the conquest, and by sharing its benefits prevent its progress. You have in effect, and by lawful means, turned the enemy out of the possession which he had exclusively maintained against the whole world, and with whom we had never presumed to interfere, but we will interpose to prevent his absolute surrender by means of that very opening which the prevalence of your arms alone has effect'd, supplies shall be sent, and their products shall be exported; you have lawfully destroyed his monopoly, but you shall not be permitted to possess it yourself; we insist to share the fruits of your victories, and your blood and treasure have been expended, not for your own interest, but for the common benefit of others."

The British Order in Council issued June 8, 1793, and followed by others, aimed to restrict neutral commerce with the belligerent. It was conceded under interpreta-
tion of the Orders in Council that if goods were brought from the belligerent territory into a neutral country they might be free when transshipped.

Robinson (4 Admiralty Reports, Appendix) summarizes the course of the Orders in Council as affecting trade:

Soon after the commencement of the late war (November 6, 1793), the first set of instructions that issued were framed, not on the exception of the American war, but on the antecedent practice, and directed cruisers “to bring in, for lawful adjudication, all vessels laden with goods, the produce of any colony of France, or carrying provisions or supplies for the use of any such colony.” The relaxations that have since been adopted have originated chiefly in the change that has taken place in the trade of that part of the world, since the establishment of an independent government on the continent of America. In consequence of that event, American vessels had been admitted to trade in some articles, and on certain conditions, with the colonies both of this country and France. Such a permission had become a part of the general commercial arrangement, as the ordinary state of their trade in time of peace. The commerce of America was therefore abridged by the foregoing instructions, and debarred of the right generally ascribed to neutral trade in time of war, that it may be continued, with particular exceptions, on the basis of its ordinary establishment. In consequence of representations made by the American Government to this effect, new instructions to our cruisers were issued on the 8th January, 1794, apparently designed to exempt American ships trading between their own country and the colonies of France. The directions were “to bring in all vessels laden with goods, the produce of the French West India Islands, and coming directly from any port of the said islands to any port in Europe.”

In consequence of this relaxation of the general principle in favor of American vessels, a similar liberty of resorting to the colonial market for the supply of their own consumption was conceded to the neutral States of Europe. To this effect, a third set of public instructions was issued on the 25th January, 1798, which recited, as the special course of further alteration, the present state of the commerce of this country, as well as that of neutral countries, and directed cruisers “to bring in all vessels coming with cargoes, the produce of any island or settlement belonging to France, Spain, or Holland, and coming directly from any port of the said islands or settlements to any port of Europe, not being a port of this Kingdom, nor a port of the country to which such ships, being neutral ships, belonged.”

Neutral vessels were, by this relaxation, allowed to carry on a direct commerce between the colony of the enemy and their own country; a concession rendered more reasonable by the events of war, which, by annihilating the trade of France, Spain, and Holland had entirely deprived the States of Europe of the opportunity of supplying them-
selves with the articles of colonial produce in those markets. This is the sum of the general rule, and of the relaxations, in the order in which they have occurred.

Many protests came from the United States against the position assumed by Great Britain. It was claimed that neutrals had the right "to trade, with the exception of blockades and contrabands, to and between all ports of the enemy, and in all articles, although the trade should not have been opened to them in time of peace."

Naturally the concessions in regard to importation of goods from the colony gave rise to questions as to what constituted an actual importation of the goods and a completed voyage.

In the case of the William there is a full discussion of what constitutes a completed, in distinction from an interrupted, voyage:

What, with reference to this subject, is to be considered a direct voyage from one place to another? Nobody has ever supposed that a mere deviation from the straightest and a shortest course in which the voyage could be performed would change its destination and make it cease to be a direct one within the intendment of the instructions. Nothing can depend on the degree or the direction of the deviation, whether it be of more or fewer leagues, whether toward the coast of Africa or toward that of America. Neither will it be contended that the point from which the commencement of a voyage is to be reckoned changes as often as the ship stops in the course of it. Nor will it the more change because a party may choose arbitrarily, by the ship's papers or otherwise, to give the name of a distinct voyage to each stage of a ship's progress. The act of shifting the cargo from the ship to the shore and from the shore back again to the ship does not necessarily amount to the termination of one voyage and the commencement of another. It may be wholly unconnected with any purpose of importation into the place where it is done. Supposing the landing to be merely for the purpose of airing or drying the goods, or of repairing the ship, would any man think of describing the voyage as beginning at the place where it happened to become necessary to go through such a process? Again, let it be supposed that the party has a motive for desiring to make the voyage appear to begin at some other place than that of the original lading, and that he therefore lands the cargo purely and solely for the purpose of enabling himself to affirm that it was at such other place that the goods were taken on board, would this contrivance at all alter the truth of the fact? Would not the real voyage still be from the place of the original shipment, notwithstanding the attempt to give it the appearance of
CONTINUOUS VOYAGE.

having begun from a different place? The truth may not always be discernible, but when it is discovered it is according to the truth and not according to the fiction that we are to give to the transaction its character and denomination. If the voyage from the place of lading be not really ended, it matters not by what acts the party may have evinced his desire of making it appear to have ended. That those acts have been attended with trouble and expense, can not alter their quality or their effect. The trouble and expense may weigh as circumstances of evidence to show the purpose for which the acts were done, but if the evasive purpose be admitted or proved, we can never be bound to accept, as a substitute for the observance of the law, the means, however operose, which have been employed to cover a breach of it. Between the actual importation by which a voyage is really ended, and the colorable importation which is to give it the appearance of being ended, there must necessarily be a great resemblance. The acts to be done must be almost entirely the same; but there is this difference between them, the landing of the cargo, the entry at the custom-house, and the payment of such duties as the law of the place requires, are necessary ingredients in a genuine importation; the true purpose of the owner can not be effected without them. But in a fictitious importation, they are mere voluntary ceremonies which have no natural connection whatever with the purpose of sending on the cargo to another market, and which, therefore, would never be resorted to by a person entertaining that purpose, except with a view of giving to the voyage, which he has resolved to continue, the appearance of being broken by an importation which he has resolved not really to make.  

(5 Robinson’s Admiralty Reports, 387.)

Extension of the doctrine of continuous voyage.—The doctrine of continuous voyages as originally enunciated was intended to apply to comparatively slow-moving sailing vessels. The aim of the rule was to prevent the giving of aid to a belligerent by a neutral. It is undoubtedly proper for one belligerent to take measures which will prevent a neutral from aiding his opponent in his warlike undertaking. Therefore, it is generally held that he may capture and confiscate contraband having a belligerent destination or seize vessel and goods bound for a blockaded port. The question of destination becomes one of great importance. It is undeniable that neutral commerce in goods of whatever kind if bona fide commerce between neutral ports can not be interrupted.

The destination of the vessel is usually evident from the ship’s papers and should always be thus shown. If the port of ultimate destination and all intermediate ports of
call are neutral, there can be no question that the destination is neutral. If any port, an intermediate or ultimate port, is belligerent, the destination is considered belligerent.

As a general rule the destination of the cargo is held to follow the destination of the vessel. This might be said to be almost the sole rule for determining the destination of cargo before the American civil war. At that time new positions began to be taken. These positions referred back to English practice in the war with France for support. The doctrine now separates vessel and cargo and considers that a vessel may have a neutral destination, while the cargo may have a belligerent destination or that the cargo may be bound for a blockaded port while the vessel upon which it is for the time being has a neutral destination.

During the American civil war the Supreme Court, referring to the precedents in the opinions of Lord Stowell, gave new interpretations to the principles and a decided extension to the doctrine of continuous voyage. While Lord Stowell had applied the doctrine to vessels of one of the belligerents carrying on forbidden trade with the enemy, the United States courts extended the doctrine to neutral vessels and cargo sailing from neutral ports with intent to violate blockade even if a neutral port should be the immediate point toward which the vessel was bound with the intent of there interrupting the voyage. Under the ordinary rules of war the vessel and cargo would be liable to capture when bound directly for the blockaded port. The new interpretation extended the liability to the voyage between the port of departure and the port of call provided the intent could be proven in regard to the earlier stage of the voyage.

The law in regard to blockade runners shows effect of intent:

A vessel of this class is engaged ab initio in illegal traffic. From the hour she sails to the hour she returns to her home port she is taking part in existing war—she is assisting or endeavoring to assist one of the belligerents and to thwart the military plans and purposes of the other. It is not necessary that she be taken in the act of breaking the blockade to be in delicto—she is in delicto from first to last.
uratively speaking she has hauled down the neutral flag and run up the flag of the belligerents in whose behalf she is acting. Such a vessel is treated substantially as if she had actually changed her flag for the whole voyage. She is liable to capture and condemnation, not only on the outward voyage but on the return voyage, notwithstanding that her homeward bound cargo may be, and ordinarily is, innocent merchandise. Having sailed in the service of a belligerent power she is supposed to continue in that service until she makes her own port. After she has made her home port she is at liberty to resume her neutral flag, and when sailing under it her previous conduct is not open to inquiry. (The Galen, 37 U. S. Court of Claims, 89, Nott, C. J., Dec. 9, 1901.)

The French prize court in the case of the *Frau-Honvina* in 1855 affirmed that—

Contraband of war is liable to seizure under a neutral flag, when it belongs to the enemy, or when it is destined to the territory, the army or fleet of the enemy.

In the case of the *Circassian* decided in 1864 (2 Wallace, Supreme Court Reports, 135), Chief Justice Chase affirmed that—

It is a well-established principle of prize law, as administered by the courts, both of the United States and Great Britain, that sailing from a neutral port with intent to enter a blockaded port, and with knowledge of the existence of the blockade, subjects the vessel, and, in most cases, its cargo, to capture and condemnation. *Yeaton v. Fry*, 5 Cranch, 335; 1 Kent Com., 150; *The Frederick Molke*, 1 C. Rob., 72; *The Columbia*, 1 C. Rob., 154; *The Neptunus*, 2 C. Rob., 94. We are entirely satisfied with this rule. It was established, with some hesitation, when sailing vessels were the only vehicles of ocean commerce; but now, when steam and electricity have made all nations neighbors, and blockade running from neutral ports seems to have been organized as a business, and almost raised to a profession, it is clearly seen to be indispensable to the efficient exercise of belligerent rights. It is not likely to be abandoned until the nations, by treaty, shall consent to abolish capture of private property on the seas, and with it the whole law and practice of commercial blockade.

And further the decision states:

We agree that if the ship had been going to Havana with an honest intent to ascertain whether the blockade at New Orleans yet remained in force, and with no design to proceed farther if such should prove to be the case, neither ship nor cargo would have been subject to lawful seizure. But it is manifest that such was not the intent. The existence of the blockade was known at the inception of the voyage and its discontinuance was not expected. The vessel was
chartered and her cargo shipped with the purpose of forcing the blockade. The destination to Havana was merely colorable. It proves nothing beyond a mere purpose to touch at that port, perhaps and probably, with the expectation of getting information which would facilitate the success of the unlawful undertaking. It is quite possible that Havana, under the circumstances, would have turned out to be, as was insisted in argument, a locus penitentiae, but a place for repentance does not prove repentance before the place was reached. It is quite possible that the news which would have met the vessel at Havana would have induced the master and shippers to abandon their design to force the blockade by ascending the Mississippi, but future possibilities can not change present conditions. Nor is it at all certain that the purpose to break the blockade would have been abandoned. On the contrary, it is quite possible that the "ulterior destination" mentioned in the bills of lading would have been changed to some other blockaded port. But this is not important. Neither possibilities nor probabilities could change the actual intention one way or another. At the time of capture ship and cargo were on their way to New Orleans, under contract that the cargo should be discharged there and not elsewhere, and that the blockade should be forced in order to the fulfillment of that contract. This condition made ship and cargo then and there lawful prize.

In the same case the court also held that—

A vessel sailing from a neutral port with intent to violate a blockade is liable to capture and condemnation as a prize from the time of sailing, though she intend to call at another neutral port, not reached at time of capture, before proceeding to her ulterior destination.

The position here taken makes the vessel liable for intent of the voyage.

It may happen, however, that a neutral vessel is making a voyage between two neutral ports only, but that the cargo has a belligerent destination to which it is to be taken by another vessel. Could the doctrine of continuous voyages be extended to apply to ship and cargo in the first stage of the voyage between the neutral ports?

The doctrine of continuous voyage was further extended to cover such instances in the case of the Bermuda (3 Wallace U. S. Supreme Court Reports, p. 514) in 1865, in which Chief Justice Chase said:

The interposition of a neutral port between neutral departure and belligerent destination has always been a favorite resort of contraband carriers and blockade runners. But it never avails them when the ultimate destination is ascertained. A transportation from one point
to another remains continuous so long as intent remains unchanged, no matter what stoppages or transshipments intervene.

This was distinctly declared by this court in 1855 in Jecker v. Montgomery (18 How., 114), in reference to American shipments to Mexican ports during the war of this country with Mexico, as follows: "Attempts have been made to evade the rule of public law by the interposition of a neutral port between the shipment from the belligerent port and the ultimate destination in the enemy's country, but in all such cases the goods have been condemned as having been taken in a course of commerce rendering them liable to confiscation."

The same principle is equally applicable to the conveyance of contraband to belligerents and the vessel which with the consent of the owner is so employed in the first stage of a continuous transportation is equally liable to capture and confiscation with the vessel which is employed in the last if the employment is such as to make either so liable.

This rule of continuity is well established in respect to cargo.

At first, Sir William Scott held that the landing and warehousing of the goods and the payment of the duties on importation was a sufficient test of the termination of the original voyage, and that the subsequent exportation of them to a belligerent port was lawful. But in a later case, in an elaborate judgment, Sir William Grant reviewed all the cases, and established the rule, which has never been shaken, that even the landing of goods and payment of duties does not interrupt the continuity of the voyage of the cargo, unless there be an honest intention to bring them into the common stock of the country. If there be an intention, either formed at the time of original shipment or afterwards, to send the goods forward to an unlawful destination, the continuity of the voyage will not be broken, as to the cargo, by any transactions at the intermediate port.

There seems to be no reason why this reasonable and settled doctrine should not be applied to each ship where several are engaged successively in one transaction, namely, the conveyance of a contraband cargo to a belligerent. The question of liability must depend on the good or bad faith of the owners of the ships. If a port of the voyage is lawful, and the owners of the ship conveying the cargo in that port are ignorant of the ultimate destination and do not hire their ship with a view to it, the ship can not be liable; but if the ultimate destination is the known inducement to the partial voyage and the ship is engaged in the latter with a view to the former, then whatever liability may attach to the final voyage must attach to the earlier, undertaken with the same cargo and in continuity of its conveyance. Successive voyages, connected by a common plan and a common object, form a plural unit. They are links of the same chain, each identical in description with every other, and each essential to the continuous whole. The ships are planks of the same bridge, all of the same kind, and all necessary to the convenient passage of persons and property from one end to the other.
In affirming the decision of the district court in the case of the *Stephen Hart* in 1865 (3 Wallace, Supreme Court Reports, p. 559) Chief Justice Chase said:

Neutrals who place their vessels under belligerent control, and engage them in belligerent trade, or permit them to be sent with contraband cargoes under cover of false destination to neutral ports, while the real destination is to belligerent ports, impress upon them the character of the belligerent in whose service they are employed, and can not complain if they are seized and condemned as enemy property.

The case of the *Springbok*, decided in the United States Supreme Court in 1866, also gave full extension to the doctrine of continuous voyage. This vessel sailed from London December 8, 1862, on a voyage ostensibly for Nassau. The vessel was captured before reaching that port and brought into New York where she was libeled as prize. The district court condemned the vessel and cargo as prize of war. The case was appealed to the Supreme Court, which reversed the decree as to the vessel and affirmed the decree as to the cargo.

The summary of the case shows that when goods destined for a belligerent are in transit between neutral ports in a neutral ship the ship is liable to seizure in order to secure the condemnation of the goods, but itself may not be condemned as prize.

In regard to the cargo, Mr. Chief Justice Chase gave the opinion of the court that—

Upon the whole case we can not doubt that the cargo was originally shipped with the intent to violate the blockade; that the owners of the cargo intended that it should be transshipped at Nassau into some vessel more likely to succeed in reaching a blockaded port than the *Springbok*; that the voyage from London to the blockaded port was, as to the cargo, both in law and in intent of the parties, one voyage; and that the liability to condemnation, if captured during any part of the voyage, attached to the cargo from the time of sailing. (5 Wallace, 1.)

Travers Twiss, commenting on these cases in 1877, says:

In the case of the *Springbok* and her cargo the court released the ship and condemned the cargo. It released the ship, being satisfied that it was going no farther than to Nassau, a neutral port. It condemned the cargo, having no doubt that it was the intention of the
owners to tranship it at Nassau to some blockaded port. The judgment of the court was thus expressed: "On the whole, we can not doubt that the cargo was originally shipped with intent to violate the blockade; that the owners of the cargo intended that it should be transhipped at Nassau into some vessel more likely to succeed in reaching safely a blockaded port than the Springbok; that the voyage from London to the blockaded port was, as to cargo, both in law and in the intent of the parties, one voyage, and the liability of condemnation, if captured during any part of the voyage, attached to the cargo from the time of sailing." The Chief Justice had already illustrated the principle in the case of the Bermuda by a somewhat fanciful metaphor. "Successive voyages connected by a common plan and a common object form a plural unit. They are links of the same chain, each identical in description with every other and each essential to the continuous whole." Unfortunately, however, as regards the application of the metaphor to the case of the cargo of the Springbok, the last link, which was essential to complete the chain, was wanting, as a matter of fact, whilst in the English cases, from which the metaphor has been borrowed, the chain was in fact complete. (The Doctrine of Continuous Voyages, Law Magazine and Review, Nov., 1877, p. 24.)

Travers Twiss also protested against the extension of the idea of blockade through an attempt to introduce it as a factor in continuous voyage, as in the case of the Springbok. He said:

Whatever may be the correct interpretation of the Fourth Article of the Declaration of Paris, and whatever effect may be practically given to it by the powers who are parties to it, one thing may be affirmed for certain, that it was the intention of those who drew up that Declaration to mitigate and not to aggravate the restraint imposed upon the commerce of Neutrals by the blockade of an enemy's ports. Great Britain and the United States of America had until then been content to enforce against neutral merchants the confiscation of their property upon proof of some constructive attempt upon their part to violate blockade; it has remained for the younger sister, under her extraordinary difficulties, to initiate the doctrine of prospective intention, on the part of a neutral merchant, to violate blockade, and to subject him to the confiscation of his property, not upon the evidence of any present voyage of the ship and cargo, in which the ship and cargo have been intercepted, but upon the presumption of a future voyage of the cargo alone to a blockaded port, after it has been landed from the ship at a neutral port." He also contends against confiscation "upon the suspicion" that the cargo has an ulterior destination to enemy's uses. (Law Magazine and Review, Nov. 1877, p. 34.)
Speaking of the decision in the case of the *Springbok*, Walker says:

This decision, it is very evident, materially extends the risks of the neutral trader in the interests of the belligerent, and it has accordingly been the subject of severe and not unmerited adverse criticism at the hands of supporters of the freedom of neutral commerce. (Science of International Law, 1893, p. 516.)

Sir Robert Phillimore says:

It seems to me after much consideration, and with all respect for the high character of the tribunal, difficult to support the decision of the majority of the Supreme Court of the United States in the case of the *Springbok*, that a cargo shipped for a neutral port can be condemned on the ground that it was intended to tranship it at that port and forward it by another vessel to a blockaded port. (International Law, CCXCVIII.)

Hall also takes positive grounds in opposition to the doctrine of continuous voyage, as enunciated by the United States courts. He says:

By the American courts this idea of continuous voyage was seized upon and applied to cases of contraband and blockade. Vessels were captured while on their voyage from one neutral port to another and were then condemned as carriers of contraband or for intent to break blockade. They were thus condemned not for an act—for the act done was in itself innocent, and no previous act existed with which it could be connected so as to form a noxious whole—but on mere suspicion of intention to do an act. Between the grounds upon which these and the English cases were decided there was of course no analogy. The American decisions have been universally reprobated outside the United States, and would probably now find no defenders in their own country. (International Law, 5th ed., p. 669.)

Mr. Atlay, editing this edition of Hall’s work, thinks “that the destination of the cargo, not merely the destination of the vessel, will be the criterion” (Note, p. 672), would be the position which would be sustained by the British Government.

The case of the *Springbok* (1866) has been discussed most widely and seriously. The jurists on the Continent were uniformly opposed to the principles supposed to be enunciated in the decision. A formal statement was issued by some of the leading authorities on international law in 1882. The French text appears in the Revue de Droit In-
international et de Legislation Comparée (Tome xiv. 1882,
p. 329), and a translation is given in Wharton’s Interna-
tional Law Digest (Vol. III, sec. 362, p. 401) as follows:

Opinion delivered by Professor Arntz, professor of international
law in the University of Brussels and advocate; Asser, professor of inter-
national law in the University of Amsterdam and legal councilor of
the department of foreign affairs at The Hague, advocate, etc.; Bul-
merineq, privy councilor, professor of international law in the Uni-
versity of Heidelberg, etc.; Gessner, doctor of civil law, acting impe-
rial councilor of legation at Berlin; William Edward Hall, doctor of
laws of the University of Oxford; De Martens, professor of interna-
tional law in the University of St. Petersburg and councilor at the
minister of foreign affairs there, etc.; Pierantoni, professor of inter-
national law in the University of Rome and member of the council
of diplomatic controversy, etc.; Renaut, professor of international
law in the Faculty of Law and in the Free School of Political Science
at Paris; Alberic Rollin, professor of law in the University of Ghent
and advocate, and Sir Travers Twiss, Q. C., formerly professor of interna-
tional law in London and of civil law in Oxford, late Queen’s
advocate-general, etc.

"We, the undersigned members of the maritime prize commis-
nion, nominated by the Institute of International Law from amongst its
members to frame a scheme of international maritime prize law, hav-
ing been consulted as to the juridical soundness of the doctrine laid
down and applied by the Supreme Court of the United States of
America in the case of the Springbok, have unanimously given the
following opinion:

"That the theory of continuous voyages, as we find it enunciated
and applied in the judgment of the Supreme Court of the United
States of America, which condemned as good prize of war the entire
cargo of the British bark Springbok (1867), a neutral vessel on its way
to a neutral port, is subversive of an established rule of the law of
maritime warfare, according to which neutral property on board a
vessel under a neutral flag, whilst on its way to another neutral port,
is not liable to capture or confiscation by a belligerent as lawful prize
of war; that such trade when carried on between neutral ports has,
according to the law of nations, ever been held to be absolutely free,
and that the novel theory, as before propounded, whereby it is pre-
sumed that the cargo, after having been unladen in a neutral port,
will have an ulterior destination to some enemy port, would aggravate
the hindrances to which the trade of neutrals is already exposed, and
would, to use the words of Bluntschli, ‘annihilate’ such trade, by
subjecting their property to confiscation, not upon proof of an actual
voyage of the vessel and cargo to an enemy port, but upon suspicion
that the cargo, after having been unladen at the neutral port to which
the vessel is bound, may be transshipped into some other vessel and
carried to some effectively blockaded enemy port."
"That theory above propounded tends to contravene the efforts of the European powers to establish a uniform doctrine respecting the immunity from capture of all property under a neutral flag, contraband of war alone excepted.

"That the theory in question must be regarded as a serious inroad upon the rights of neutral nations, inasmuch as the fact of the destination of a neutral vessel to a neutral port would no longer suffice of itself to prevent the capture of goods noncontraband on board.

"That, furthermore, the result would be that, as regards blockade, every neutral port to which a neutral vessel might be carrying a neutral cargo would become constructively a blockaded port if there were the slightest ground for suspecting that the cargo, after being unladed in such neutral port was intended to be forwarded in some other vessel to some port actually blockaded.

"We, the undersigned, are accordingly of opinion that it is extremely desirable that the Government of the United States of America, which has been on several occasions the zealous promoter of important amendments of the rules of maritime warfare, in the interests of neutrals, should take an early opportunity of declaring, in such form as it may see fit, that it does not intend to incorporate the above-propounded theory into its system of maritime prize law, and that the condemnation of the cargo of the S rin y bok shall not be adopted as a precedent by its prize courts."

The Dolphin, ostensibly prosecuting a voyage from Liverpool to Nassau during the American civil war, was captured off Porto Rico. A claim to the vessel and cargo was made by the British owners on the ground that there was no intention to violate any neutral obligations. The court held that—

If we suppose the vessel and cargo to be owned as claimed, and that there was no intention on the part of the owner that the vessel should proceed with the cargo to a port of the enemy, then there would be no ground whatever to justify the capture or condemnation of either of them. Subject to the right of belligerent cruisers to visit and search merchant vessels, to ascertain their neutral or hostile characters and the character of their cargoes, and the legality of their voyages, neutrals possess an undisputed right to trade and carry on commerce among themselves in any kinds of merchandise they please, whether of the nature of contraband of war or not. Indeed, there can be no such thing as articles contraband of war in a strictly neutral trade. But if, on the other hand, it was the intention of the owner that the vessel should simply touch at Nassau, and should proceed thence to Charleston or some other port of the enemy, then the voyage was not a voyage prosecuted by a neutral from one neutral port to another, but was a voyage to a port of the enemy, begun and carried on in violation of the belligerent rights of the United States to blockade the
enemy's ports and prevent the introduction of munitions of war. The act of sailing for a blockaded port, with the knowledge of the existence of the blockade and with an intent to enter, is itself an attempt to break it, which subjects the vessel and cargo to capture in any part of its voyage. The Columbia, 1 C. Rob. Adm., 154; The Neptune, 2 C., Rob. Adm., 110. So, also, the offense of attempting to carry articles contraband of war to the enemy is complete and the vessel liable to capture the moment she enters upon her voyage. The Ilmina, 3 C., Rob. Adm., 167. The offense consists in the act of sailing, coupled with the illegal intent. The cutting up of a continuous voyage into several parts, by the intervention or proposed intervention of several intermediate ports, may render it the more difficult for cruisers and prize courts to determine where the ultimate terminus is intended to be; but it can not make a voyage which in its nature is one, to become two or more voyages, nor make any of the parts of one entire voyage to become legal which would be illegal if not so divided.

When the truth is discovered, it is according to the truth and not according to the fiction, that the question is to be determined. The Maria, 5 C., Rob. Adm., 365; The Wn., id., 385; The Richmond, id., 325; The Thymyris, Edw. Adm., 17.

It is argued that it was lawful for the vessel to go to Nassau, notwithstanding the existence of an intention that she should proceed thence to Charleston, for the reason that, until after she had entered on the last stage of her voyage, the whole matter rested in possibility merely—in intention only, and not in act—and that the intention to commit an offense in futuro is not tantamount in law to its actual commission in presenti. But this argument begs the whole question. It was not lawful for the vessel to go to Nassau, with an intention of continuing the voyage thence to Charleston in a direct course, without going to Nassau at all. The fallacy consists in supposing that there is something in the intention to stop at a neutral port, which, in itself, is innocent enough, that will extinguish the illegality of an additional guilty intention to proceed on, beyond such a port, to a blockaded port, and thus legitimize the first stage of the voyage. But the voyage is one, from the port of lading to the port of delivery, and, if unlawful in any part, is unlawful throughout.

It is also argued that a locus penitentiione existed until the vessel had departed from Nassau on her voyage to a blockaded port, and that the voyage might be ended there, or changed to a lawful port. But this argument will apply with equal force to a voyage in which no intermediate port is intended to be interposed. The owner or master may in any case, in port or in the middle of the ocean, abandon the illegal purpose and change the voyage. If this be done voluntarily, before capture, the original offense is extinguished, and the vessel will be restored; but if the illegal purpose exists at the time of capture, the vessel is taken in delicto, whether the voyage is prosecuted in a direct course or circuitously. If the illegal purpose is shown to exist at the inception of the voyage, it will be presumed to exist up to the time of
importance of destruction.

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capture, unless it is satisfactorily shown that the purpose had been abandoned and the voyage changed. (The *Dolphin*, Federal Cases, No. 3975.)

Of the above decision the solicitor of England (Sir Roundell Palmer) said in the House of Commons, June 29, 1863:

If the owners imagine that the mere fact of the vessel touching at Nassau when on such an expedition exonerated her, they were very much mistaken.

Later the principle applied in the case of the *Dolphin* was cited and made in some respects more definite in the case of the *Pearl*. The judge said:

I have already decided, in the case of the *Dolphin* (Case No. 3975), that a vessel bound on a voyage from Liverpool to Nassau, with an intention of touching only at the latter port and of proceeding thence to a blockaded port of the enemy, is engaged in an attempt to violate the blockade, which subjects her to capture in the antecedent as well as in the ultimate stage of the voyage—before arriving at Nassau as well as after having left that port. I think the law also is that if an owner sends his vessel to a neutral port with a settled intention to commence from such a port a series of voyages to a blockaded port he thereby commences to violate the blockade, and subjects his vessel to capture, notwithstanding he may also intend to unlade the vessel at the neutral port, discharge the crew, and give all other external manifestations of an intention to end the voyage at such port. Where a deliberate purpose exists to violate a blockade, and measures are actually taken to accomplish that object, the law couples the act and the intent together and declares the offense to be complete. The resorting, therefore, to a neutral port for the purpose of the better disguising the intention, or of procuring a pilot for the blockaded port, or of perfecting the arrangements so as to increase the chances of successful violation of the blockade, will not in the least extenuate the offense or avoid the penalty. These measures may increase the difficulty of discovering the true intention, but whenever it is discovered it will give to the transaction its true legal character. (Federal Cases, No. 10874.)

Importance of destination of vessel. —Dana in his note (231) to Wheaton's International Law says:

The examination into the continuous nature of voyages is or may be necessary in reference alike to blockade, trade with enemies, unneutral service, and carrying contraband, and indeed to all cases where the destination of the vessel or cargo is material. The right of the belligerent is to know the facts. The policy of the neutral is to conceal
CONTINUOUS VOYAGE.

them. If the destination is really to a hostile port—if that is the plan or scheme of the voyage—it is, of course, immaterial what formal acts intended to deceive are interposed (p. 667, sec. 508).

The Turkish declaration of May 12, 1877, contains the following:

3. Afin d'empêcher la contrebande de guerre, le Gouvernement Ottoman usera du droit de visite tant en haute mer que dans les eaux Ottomans et lors du passage par les Détroits des navires neutres en destination d'un port Russe ou d'un point de la côte occupé par l'ennemi, ou même, en cas de suspicion, en destination d'un port Ottoman ou neutre.

The subject of destination is quite fully treated in articles of the British Admiralty Manual of Naval Prize Law (Holland's edition, 1888), issued by authority of the Lords Commissioners of the Admiralty of Great Britain:

DESTINATION OF THE VESSEL.

67. If any of the Goods are fit for purposes either of War exclusively or of War as well as of Peace, the Commander of the Cruiser should proceed to ascertain the destination of the Vessel. This should be done by inspection of her Charter party, her Log book, and other documents, and by inquiries from her Master and Crew.

68. A Vessel's destination should be considered Neutral if both the port to which she is bound and every intermediate port at which she is to call in the course of her voyage be Neutral, and if in no part of her Voyage she is to go to the Enemy's Fleet at Sea.

69. A Vessel's destination should be considered Hostile if either the port to which she is bound, or any intermediate port at which she is to call in the course of her voyage, be Hostile, or if in any part of her Voyage she is to go to the Enemy's Fleet at Sea.

70. It frequently happens that a Vessel's destination is expressed in her papers to be dependent upon contingencies. In such case the destination should be presumed Hostile if any one of the ports which under any of the contingencies she may be intended to touch at or go to be Hostile; but this presumption may be rebutted by clear proof that the Master has definitively abandoned a Hostile destination and is pursuing a Neutral one.

71. The ostensible destination of the Vessel is sometimes a Neutral port, while she is in reality intended, after touching and even landing and colorably delivering over her cargo there, to proceed with the same cargo to an Enemy port. In such a case the voyage is held to be "Continuous," and the destination is held to be Hostile throughout.

72. The destination of the Vessel is conclusive as to the destination of the Goods on board. If, therefore, the destination of the Vessel be Hostile, then the destination of the Goods on board should be consid-
ered Hostile also, notwithstanding it may appear from the Papers or otherwise that the Goods themselves are not intended for the Hostile port, but are intended either to be forwarded beyond it to an ultimate neutral destination, or to be deposited at an intermediate Neutral port.

73. On the other hand, if the destination of the Vessel be Neutral, then the destination of the Goods on board should be considered Neutral, notwithstanding it may appear from the Papers or otherwise that the Goods themselves have an ultimate Hostile destination, to be attained by transshipment, overland conveyance, or otherwise.

**Question of destination of cargo in South African war.**—The British rules seem logical and it was expected that this manual expressed the British point of view. The attitude of Great Britain was, however, tested in the South African war in December, 1899. The States with which Great Britain found herself at war were inland States with no seaports. The port through which supplies could be most easily forwarded to the South African belligerents was the neutral Portuguese port of Lourenço Marquez on Delagoa Bay. This port was connected by rail with the South African Republic. Great Britain maintained the right to visit and search vessels.

During the South African war, in December, 1899, and January, 1900, three German vessels were seized by the British war vessels. These vessels were the *Herzog*, the *General*, and the *Bundesrath*. They were seized on suspicion of carrying contraband and enemy persons to the South African Republic. Of this action Germany took cognizance.

The German Government, on learning of the seizure of the *Bundesrath*, immediately protested and the German ambassador stated to the Marquis of Salisbury:

That the Imperial Government, after carefully examining the matter and considering the judicial aspects of the case, are of the opinion that proceedings before a Prize Court are not justified.

This view is grounded on the consideration that proceedings before a Prize Court are only justified in cases where the presence of contraband of war is proved, and that, whatever may have been on board the *Bundesrath*, there could have been no contraband of war, since, according to the recognized principles of international law, there can not be contraband of war in trade between neutral ports.

He also supported his opinion by reference to the British Admiralty Manual of Naval Prize Law which declared
that "a vessel's destination should be considered neutral, if both the port to which she is bound and every interme-
diate port at which she is to call in the course of her voy-
age be neutral," and "the destination of the vessel is con-
clusive as to the destination of the goods on board."

Lord Salisbury replied that the Admiralty Manual stated
"in a convenient form the general principles by which
Her Majesty's officers are guided in the exercise of their
duties" and

That it does not treat of questions which will ultimately have to be
disposed of by the Prize Court. * * * In the opinion of Her Maj-
esty's Government the passage cited from the manual "that the des-
tination of the vessel is conclusive as to the destination of the goods
on board," has no application to such circumstances as had now arisen.

It can not apply to contraband of war on board of a neutral vessel
if such contraband was at the time of seizure consigned or intended to
be delivered to an agent of the enemy at a neutral port, or, in fact,
destined for the enemy's country.

The true view in regard to the latter category of goods is, as Her Maj-
esty's Government believe, correctly stated in paragraph 813 of
Professor Bluntschli's "Droit International Codifié" (French transla-
tion of 1874, second edition of the work of this eminent German jurist): "Si les navires ou marchandises ne sont expédiés à destinati-
don un port neutre que pour mieux venir en aide à l'ennemi, il y
aura contrebande de guerre et la confiscation sera justifiée."

Her Majesty's Government are unable, therefore, to agree that
there are grounds for ordering the release of the Bundesrath without
examination by the Prize Court as to whether she was carrying con-
traband of war belonging to or destined for the South African Repub-
lics. But they fully recognize how desirable it is that this examination
should be carried through at the earliest possible moment, and
that all proper consideration should be shown for the owners and for
innocent passengers and merchandise on board of her. Repeated and
urgent instructions have been sent by telegraph for this purpose, and
arrangements have been made for the speedy transmission of the mails.
(Parliamentary Papers, Africa, No. 1, (1900)).

The British Government was placed in an uncomfortable
position: no contraband was found.

As we have seen, the examination proved futile, the compensation
was duly paid, and the incident closed. It is unlikely that the exact
circumstances of the Bundesrath and her consorts will ever be repeated
or that we shall find ourselves at war with a civilized power possess-
ing no seaboard. But should we in the future become involved in
hostilities with a maritime power it is certain that the interpretation of
the questions grouped generally under the term of "continuous
voyage" will assume grave importance. And I venture to think that the attitude of whatever British Government may be in office will tend rather to the views expressed by Lord Salisbury than to those enunciated by Mr. Hall, and that the destination of the cargo, not merely the destination of the vessel, will be the criterion. (Atlay's note to Hall's International Law, 5th ed., p. 671.)

Count von Bülow, in the German Reichstag, on January 19, 1900, discussing the seizure of certain German steamers by British war vessels, said:

I should like to lay down the following propositions, drawn up in conjunction with other competent departments, as a system of law which shall be operative in practice, and a disregard for which would, in our opinion, constitute a breach of international treaties and customs:

1. Neutral merchant ships on the high seas or in the territorial waters of the belligerent Powers (apart from the right of convoy, which does not arise in the case in point) are subject to the right of visit by the war ships of the belligerent parties. This undoubtedly applies to waters which are not too remote from the seat of war. No special agreement exists at present as regards mail steamers.

2. The right of visit is to be exercised with as much consideration as possible and without undue molestation.

3. The procedure in visiting a vessel consists of two or three acts, according to the circumstances of each case—stopping the ship, examining her papers, and searching her. The first two acts may be undertaken at any time and without other preliminary proceeding. If the neutral vessel resists the order to stop, or if irregularities are discovered in her papers, or if the presence of contraband is revealed, then the belligerent vessel may capture the neutral in order that the case may be investigated and decided upon by a competent prize Court.

4. By the term "contraband of war" only such articles or persons are to be understood as are suited for war and at the same time are destined for one of the belligerents. The class of articles to be included in this definition is a matter of dispute, and, with the exception of arms and ammunition, is determined, as a rule, with reference to the special circumstances of each case, unless one of the belligerents has expressly notified to the neutrals, in a regular manner, what articles it intends to treat as contraband, and has met with no opposition.

5. Discovered contraband is liable to confiscation, whether with or without compensation depends on the circumstances of each case.

6. If the seizure of the vessel was not justified, the belligerent State is bound to order the immediate release of ship and cargo, and to pay full compensation.

According to the above, and in view of the present practice of nations,
it would not have been possible to lodge a protest against the stopping on the high seas of the three steamers of the East African Line, or against the examination of their papers. On the other hand, by the same standard, the seizure and conveying to Durban of the Bundesrath and Herzog and the discharging of the cargoes of the Bundesrath and the General were undertaken upon insufficiently founded suspicion, and do not appear to have been justified.

I should wish to take this opportunity for observing that we strove from the outset to induce the English Government, in dealing with neutral vessels consigned to Delagoa Bay, to adhere to that theory of international law which guarantees the greatest security to commerce and industry and which finds expression in the principle that for ships consigned from neutral States to a neutral port the notion of contraband of war simply does not exist. To this the English Government demurred. We have reserved to ourselves the right of raising this question in the future—in the first place, because it was essential to us to arrive at an expeditious solution of the pending difficulty; and secondly, because, in point of fact, the principle here set up by us has not yet met with universal recognition in theory and practice.

(Quoted in Parliamentary Papers, Africa No. 1 (1900), p. 24.)

During the war in South Africa Lord Salisbury stated the position of the British Government on what constitutes hostile destination as follows:

**Lord Salisbury to Mr. Choate.**

FOREIGN OFFICE, January 10, 1900.

DEAR MR. CHOATE: Our view is that foodstuffs with a hostile destination can be considered contraband of war only if they are supplies for the enemy's forces. It is not sufficient that they are capable of being so used; it must be shown that this was in fact their destination at the time of the seizure.

Believe me, etc.

SALISBURY.

(U. S. Foreign Relations, 1900, p. 555.)

On February 24, 1900, Mr. Choate reported that—

Lord Salisbury suggested that an ultimate destination to citizens of the Transvaal, even of goods consigned to British ports on the way thither, might, if the transportation were viewed as one "continuous voyage," be held to constitute, in a British vessel, such a "trading with the enemy" as to bring the vessel within the provisions of the municipal law. (U. S. Foreign Relations, 1900, p. 596.)

To the suggestion made by Mr. Salisbury, Mr. Hay said:

The Department has not failed to observe the suggestion made to Mr. Choate by Lord Salisbury that an ultimate destination to citizens of the Transvaal, even of goods consigned to British ports on the way
thither, might, if transportation were viewed as one "continuous voyage," be held to constitute, in a British vessel, such a "trading with the enemy" as to bring the vessel within the provisions of the municipal law.

In view of the prospect of a practical solution of the question of the seizures along the lines arranged between Mr. Choate and Her Majesty's Government, it is not deemed necessary for the Department to express at present either its assent or dissent to the said suggestion; but it would regret to have such an issue actually raised by the British Government, and it does not seem probable that it will be done, either on account of the seizures made in the future or through the failure to consummate the settlement already arranged for the seizures which have been made. (U. S. Foreign Relations, 1900, p. 609.)

In referring to the doctrine of continuous voyage as applied by Great Britain during the South African war, Professor Despagnet gives the position which is maintained by many European writers. He says:

Pour nous, la théorie de la continuité de voyage est toujours inadmissible, même dans le cas où il s'agit de contrebande dirigée vers un pays neutre limitrophe de l'État ennemi qui n'a pas d'accès à la mer. Mais, objecte-t-on, la répression de la contrebande est alors impossible et le pays ennemi recevra impunément des armes et des munitions venant de l'étranger au détriment de son adversaire impuissant à s'y opposer? Nous répondons que ce résultat n'est pas plus fâcheux ni plus inique que la faculté laissée au belligérant, pays maritime, d'arrêter la contrebande au préjudice de son ennemi, tandis que celui-ci, faute de marine, ne pourrait entraver en rien l'arrivée de la contrebande dans les ports de l'autre. N'était-ce pas choquant de voir l'Angleterre acheter et recevoir, sans obstacle, de l'étranger, des canons, des obus, des chevaux, des mulets, etc., tandis que les croiseurs britanniques fermaient aisément la voie des ports de la Mozambique, la seule par laquelle la contrebande pouvait parvenir aux Boërs? Entre deux pays maritimes, la situation est égale au point de vue de la répression de la contrebande, ou du moins l'inégalité n'existe entre eux que par suite de la différence possible de leurs forces sur mer, tandis que, en cas de guerre entre un pays maritime et un autre qui ne l'est pas, si l'on autorise la saisie de la contrebande dirigée vers un pays neutre qui sépare ce dernier de la mer, on ne maintient la possibilité de la saisie que pour le pays maritime tandis qu'elle est impossible pour l'autre. Même en écartant la théorie du voyage continu en pareil cas, il n'en restera pas moins que le pays non maritime souffrira d'une inégalité fâcheuse, soit parce que les transports par terre sont plus onéreux et parfois plus longs, soit parce qu'il se heurtera souvent au mauvais vouloir ou aux scrupules des pays neutres dont le territoire le sépare de la mer et qui pourront entraver le passage à leur frontière des objets de contrebande; du moins cette inégalité
vient-elle d'un fait inéluctable, de la situation topographique du belligérant, et il est inadmissible qu'on l'aggrave par une prétendue fiction juridique, la continuité de voyage qui aboutit à une véritable injustice." (Revue Générale de Droit International Public, 1900, p. 810.)

Other cases involving destination of cargo.—The effect of destination on the liability of goods is very important, as is seen in the case of the Peterhoff, in 1866 (5 Wallace Supreme Court Reports, 28):

And contraband merchandise is subject to a different rule in respect to ulterior destination than that which applies to merchandise not contraband. The latter is liable to capture only when a violation of blockade is intended; the former when destined to the hostile country or to the actual military or naval use of the enemy, whether blockaded or not. The trade of neutrals with belligerents in articles not contraband is absolutely free unless interrupted by blockade; the conveyance by neutrals to belligerents of contraband articles is always unlawful, and such articles may always be seized during transit by sea. Hence, while articles not contraband might be sent to Matamoras, and beyond to the rebel region, where the communications were not interrupted by blockade, articles of a contraband character, destined in fact to a State in rebellion or for the use of the rebel military forces, were liable to capture though primarily destined to Matamoras.

The appeal of the shippers on the Springbok to the British Government led to an investigation. Earl Russell decided that there was not sufficient reason to interfere, as the evidence seemed to show—

That the cargo of the Springbok, containing a considerable portion of contraband, was never really and bona fide destined for Nassau, but was either destined merely to call there or to be immediately transshipped after its arrival there without breaking bulk and without any previous incorporation into the common stock of that colony, and then to proceed to its real destination, being a blockaded port. (Parliamentary Papers, Misc. No. 1 (1900).)

The case of the Dutch vessel Doelwyk has given rise to discussion. This case involves the application of the doctrine of continuous voyage to a vessel bound to a port in a neutral territory, which port was the natural port of entry to a country which had no seacoast.

The Doelwyk was captured on August 8, 1896, by the Italian cruiser Etna at a point in the Red Sea about 10 miles off the French port of Djibouti. There was a state
of war between Italy and Abyssinia. The cargo consisted mainly of arms and munitions of war. The seizure of the *Doelwyk* was upon the high seas. The immediate destination seemed to be a neutral port from which transportation to the belligerent territory would be easy. The cargo was mainly contraband.

The rule of the Italian code for the merchant marine in Article 215 provides that—

Neutral vessels having a cargo in part or wholly contraband bound for the enemy country shall be captured and brought into a home port, where the ship and contraband merchandise will be confiscated and the other merchandise be subject to the disposition of the owners.

Various technical questions in regard to the declaration of war and the conclusion of peace were raised, but the decision of the prize court condemned the vessel and contraband cargo; but the decision was not carried out because of the conclusion of peace. The decision, however, admits the doctrine of continuous voyage, even when land transportation over neutral territory must take place before the contraband reaches its hostile destination. (For text of decision see Gazetta ufficiale, December 15, 1896.)

The second stage of transportation, from the neutral port to the enemy, in the case of the *Springbok* was from a neutral port to the enemy by water, and in the case of the *Doelwyk* by land.

Both cases sustained the doctrine of continuous voyage. Both decisions have received much criticism.

The general principle is that contraband is liable to seizure when destined for the enemy. The question of destination therefore becomes a vital one. The doctrine of continuous voyage is an attempt to set up a real prospective destination in face of an immediate apparent destination. This doctrine may apply to both ship and cargo or to cargo alone.

As applied to the ship it is an attempt to bring by judi-

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*a* Art. 215. "Le navi neutrali crine in tutto od in parte di generi di contrabando di guerra dirette ad un paese nemico, saranno catturate e condotte in uno dei porti dello Stato dose la nave e la merce di contrabando saranno confiscate, e le altre mercanzie lasciate a disposizione dei proprietarii."
cial action the consequences of a voyage from a neutral to a belligerent port to bear on a voyage between neutral ports. The guilt attaching to the voyage to the belligerent port is cast back on the voyage to a neutral port. It is an attempt to punish an intent which is not always capable of proof.

The United States had in 1866 set forth principles which formed a precedent for some of these later cases. This case introduced also the question of destination by overland transportation from the port at which the goods were to be landed as a factor in determining the treatment of the goods before reaching the port. In the case of the Peterhoff mention was made of the application of the same principles set forth in the case of the Bermuda. Of this Chief Justice Chase, delivering the opinion of the Court, says:

There is an obvious and broad line of distinction between the cases. The Bermuda and her cargo were condemned because engaged in a voyage ostensibly for a neutral, but in reality, either directly or by substitution of another vessel, for a blockaded port. The Peterhoff was destined for a neutral port with no ulterior destination for the ship, or none by sea for the cargo to any blockaded place. In the case of the Bermuda, the cargo destined primarily for Nassau could not reach its ulterior destination without violating the blockade of the rebel ports, in the case before us the cargo, destined primarily for Matamoras, could reach an ulterior destination in Texas without violating any blockade at all.

We must say, therefore, that trade between London and Matamoras, even with intent to supply, from Matamoras, goods to Texas, violated no blockade, and can not be declared unlawful.

Trade with a neutral port in immediate proximity to the territory of one belligerent, is certainly very inconvenient to the other. Such trade, with unrestricted inland commerce between such a port and the enemy’s territory, impairs undoubtedly, and very seriously impairs, the value of a blockade of the enemy’s coast. But in cases such as that now in judgment, we administer the public law of nations and are not at liberty to inquire what is for the particular advantage or disadvantage of our own or another country. We must follow the lights of reason and the lessons of the masters of international jurisprudence.

Later in the same case, speaking of the contraband goods on board the Peterhoff, the Chief Justice says:

It is true that even these goods, if really intended for sale in the market of Matamoras, would be free of liability, for contraband may
be transported by neutrals to a neutral port, if intended to make part of its general stock in trade. But there is nothing in the case which tends to convince us that such was their real destination, while all the circumstances indicate that these articles, at least, were destined for the use of the rebel forces then occupying Brownsville, and other places in the vicinity. (5 Wallace, Supreme Court Reports, 28.)

Rules and regulations as to destination.—A committee of the Institute of International Law reported on the matter of continuous voyages in 1896. This committee included Lord Reay, Messrs. Barclay, Holland, and Westlake from England, who naturally represented the English point of view. While there was some opposition to the admission of the doctrine, and some desired that the status of contraband be admitted only when goods were bound for an immediate hostile destination, yet the vote of the Institute was for the recognition of the principle that the established final destination was the determining factor.

The rule is as follows:

La destination pour l'ennemi est présumée lorsque le transport va à l'un de ses ports, ou bien à un port neutre qui, d'après des preuves évidentes et de fait incontestable, n'est qu'une étape pour l'ennemi, comme but final de la même opération commerciale. (Annuaire de l'Institut de Droit International, 1896, p. 231.)

The Japanese regulations, of March 7, 1904, relating to capture at sea, provide:

Art. 15. The general rule shall be that the destination of a ship is the destination of her cargo.

Art. 16. In the case of a ship, the destination of which is not the enemy's territory, should an intermediate port at which she calls during her voyage be the enemy's territory, or should there be a presumption that she is sailing to meet a ship of war or other ship of the enemy, her destination shall be held to be the enemy's territory.

Art. 17. In the case of a ship, the destination of which is not the enemy's territory, whether she calls at that destination and discharges cargo or not, if there is reason to believe that the cargo in question is being conveyed to the enemy's territory, her voyage shall be regarded as a continuous voyage, and her destination shall be held to have been, from the commencement, the enemy's territory.

Conclusion.—The change in the means and methods of transportation has made new regulations necessary. With the increased opportunity for easy and quick intercourse between the enemy and neutral ports has come a corre-
sponding danger to the other belligerent. Against this danger he must have an increased ability to protect himself. There may be a case in which a maritime state is at war with a state having no seaport. The regular port of entrance to the inland state may be within neutral territory. With this state there is no war, therefore the port is not subject to blockade, and the transportation of supplies in this manner can not be interrupted by blockade. The supplies can not be classed as contraband if the destination of the vessel is to determine the destination of the cargo. Under the strict interpretation of the old rules no pressure could be put on the inland state by cutting off supplies of warlike material thus transported. It is obvious that such a condition would be unjust and would deprive the belligerent of the right to prevent trade in contraband destined for his enemy. The interposition of an ostensible neutral destination might be possible in many other instances, even when both belligerent states were maritime states. In the case of the war with the inland state, it is claimed there would be no more than the exercise of a war right in visiting and searching and sending in for adjudication by a prize court vessels carrying cargo in fact destined for the enemy if taken outside neutral jurisdiction. Similarly in cases where the hostilities might be between maritime states, it is only reasonable to look to the actual destination of the contraband goods. In such cases the proof of hostile destination should be reasonable and not simply a remote inference.

It may be said that the doctrine of continuous voyages, as set forth in the cases consequent upon the civil war, is a considerable extension of the doctrine as understood before that time. In some instances the decisions seem to have followed the lines of policy rather than legal precedent or reasoning.

As shown above, the American position has been widely criticised and condemned. Many of the best authorities have been thoroughly opposed to the American view. These authorities represent practically all states. It should be noted, however, that in some instances the criticism is not so much directed toward the principle in-
volved as toward the application of the principle without abundant proof. Even Gessner, while vigorously opposing the Springbok decision, admits that the question is really one of actual destination of the cargo for enemy use. He maintains that seizure is warranted in case hostile destination of the cargo is clearly established, even though the articles are in transit to a neutral port which may be merely an intermediate stopping place from which the contraband will be forwarded to a hostile destination. He also admits that a hostile destination might be evident if a belligerent fleet were in a neutral port.

It has sometimes been stated that the application of the doctrine of continuous voyage limits the freedom of neutral commerce. The trade in contraband is undertaken in time of war particularly because of the exceptional profits. The profits of successful trade in contraband articles at such a time are exceptional because the possession of such articles by the one belligerent gives him an advantage over the other belligerent which he would not otherwise have. For this advantage he is willing to pay a war price. The neutral furnishing him this advantage should not be permitted to act with impunity, nor is it reasonable that the other belligerent should be required to permit such action. The whole transaction would be contrary to the spirit of the laws of neutrality and would simply serve to mask an unneutral act as a formally legitimate transaction. There is no reason to regard a voyage as more legitimate because made more circuitously. The number of stopping places does not necessarily change the ultimate destination of a vessel nor the number of transshipments the destination of its cargo.

The name under which the various aspects of this matter have been usually treated has served to unduly obscure the essential questions. These are such as: Is the destination of the vessel a blockaded port, even though stopping at a neutral port on the voyage? Is the destination of the cargo a blockaded port? If the cargo is contraband is it destined for the enemy even though directed toward a neutral port? The destination of vessel or cargo is the fact that determines its treatment.
It seems hardly possible that valid objection can be raised against this position, which has become more and more recognized. It is not necessary to stretch the ancient opinions or practices to cover new conditions.

In reply to the question, "What position should be assumed on the doctrine of continuous voyage?" it may be properly maintained that the doctrine, when clearly defined, should prevail. This means that the vessel and cargo may be captured wherever such vessel and cargo may be found outside of neutral jurisdiction, in case there is ample evidence of destination to a blockaded port and that the interposition of a neutral port of call does not, whatever acts may there be performed, change the destination. This also means the treatment of the cargo is to be determined by its actual destination at the time of visit. It makes no difference whether a cargo destined for the enemy is carried on a final stage of its journey by overland or over-sea transportation, the destination of the cargo is the essential fact, not the means by which it may reach its destination. Of course, the belligerent is always liable for any seizures which may be made of vessels and cargoes having innocent destinations, and for improper seizures damages must be paid. Ample evidence would therefore be necessary to justify seizure.

Regulation.—As it has been shown from precedent, practice, regulations, and rules that the destination is the essential fact in determining the treatment of vessel and cargo, the regulation in regard to the doctrine of continuous voyage should particularly cover this point. A vessel and cargo is liable to capture if it has for its destination a blockaded port, a besieged place, the fleet of the enemy, or similar belligerent destination. Outside of neutral jurisdiction contraband goods belonging to or destined for the enemy's military forces are liable to capture even though the vessel carrying the goods may be bound for a neutral port.

The regulation may then be briefly stated as follows:

The actual destination of vessels or goods will determine their treatment on the seas outside of neutral jurisdiction.