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International Law Topics

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TOPIC IV.

What regulations should be made in regard to the supplying of fuel or oil to belligerent vessels in neutral ports?

CONCLUSION.

The supply of fuel or oil within a neutral port to vessels in belligerent service in no case shall exceed what is necessary to make the total amount on board sufficient to reach the nearest unblockaded port of the belligerent vessel's own state or some nearer named destination.

The supply may be subject to such other regulations as the neutral may deem expedient.

DISCUSSION AND NOTES.

Early ideas of neutral obligations.—Grotius, writing in 1625, in his brief reference to neutrality, lays down the principle that—

It is the duty of those who have no part in the war to do nothing which may favor the party having an unjust cause, or which may hinder the action of the one waging a just war, * * * and in a case of doubt to treat both belligerents alike, in permitting transit, in furnishing provisions to the troops, in refraining from assisting the besieged. (De Jure Belli ac Pacis, Lib. III, C. XVI, iii, 1.)

Gustavus Adolphus said to George Frederick, Elector of Brandenburg:

What sort of a thing is that—neutrality? I do not understand it. There is no such thing.

This shows only the beginning of the idea of neutrality, which was hardly regarded as a theoretical possibility in the seventeenth century. Gradually the idea became clear. In 1737 Bynkershoek gave the clue to the correct principle when he departed from the idea of impartiality and enunciated the principle of absence of participation by the neutral in the hostilities. He said:

I call those *non hostes* who are of neither party.

In 1793 the attempt of M. Genêt to fit out privateers in the United States, supposed to be neutral in the war between France and Great Britain, showed the United States the folly of a treaty which might place the state in a doubtful position in time of war.

Neutrality in the sense in which it is now understood is largely a doctrine of the nineteenth century, and many of the ideas now commonly advanced date from about the middle of that century. Ortolan, writing at about this time, says:

In default of treaty stipulations neutral ports and waters are an asylum open to the ships of the belligerent, especially if they appear in limited numbers; they are admitted to procure necessary provisions, and to make repairs which are essential to enable them again to put to sea and resume the operations of war, without any violations of its duties on the part of the neutral state.

Growing recognition of neutral obligations.—The declaration of Paris of 1856 did not clear up such points as are involved in supplying fuel to a belligerent vessel in a neutral port. Gradually circumstances, particularly the introduction of steam vessels, forced neutral states to make regulations in regard to the use of their ports by belligerent vessels. Neutral states had come to recognize that they had the right of control over belligerent vessels in their ports, and if they had the right they were beginning to realize that it carried a corresponding obligation. During the civil war in the United States the foreign nations began to emphasize the rule of twenty-four hour sojourn for belligerent ships in neutral ports. The proclamation of President Grant during the Franco-Prussian war in 1870 speaks of the “respective rights and obligations of the belligerent parties and of the citizens of the United States,” and of the possibility “that armed cruisers of the belligerents may be tempted to abuse the hospitality accorded to them in the ports” of the United States. It then prescribes with much detail what may not be done by a belligerent vessel in United States ports. (This proclamation and references to precedents and opinions may be found in International Law Situations. Naval War College, 1904, pp. 63-78.) The decision and award on the

Alabama claims still further defined neutral rights and obligations. After citing decisions, etc., in regard to control of belligerent vessels in neutral ports, it is said in the Discussions of International Law Situations in 1904 that—

Thus it is seen that the decision of the courts, proclamations, domestic laws, and regulations alike agree upon the growing tendency to prescribe more and more definitely the exact range of action which may be permitted to a belligerent war vessel in a neutral port. In no case is there a doubt that the neutral state has a right to make regulations upon this subject. The proclamations of neutrality issued in recent wars also show a tendency to become explicit in outlining belligerent rights in neutral ports. This has been particularly the case since the civil war in the United States and the adjustment of the *Alabama* claims. (P. 71.)

In the first year of the United States civil war the tendency was toward a somewhat liberal policy in regard to the supply of coal. In 1862, however, Lord John Russell limited the amount of coal to be supplied to belligerent vessels in British ports to so much only "as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination." The British proclamations of 1870, 1885, and 1898 were in the same words. That of February 10, 1904, made the last clause to read "or to some nearer named neutral destination."

In the case of the *Burton and Pinkerton* (Court of Exchequer, June 4, 1867, 2 Law Reports, 340) the headnote states that—

To serve on board a vessel used as a storeship in aid of a belligerent, the fitting out of which to be so used is an offense within the 59 Geo. 3, c. 69, is a serving on board a vessel for a warlike purpose in aid of a foreign state within s. 2 of that act.

The United States proclamation of 1870 stated that the authorities were to require belligerent vessels 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." The same words were used in the proclamation of February 11, 1904.

Recognition of neutral obligations in the Geneva arbitration.—The decision of the Geneva tribunal maintained that—

in order to impart to any supplies of coal a character inconsistent with the second rule, prohibiting the use of neutral ports or waters, as a base of naval operations for a belligerent, it is necessary that the said supplies should be connected with special circumstances of time, of persons, or of place, which may combine to give them such character. (4 Papers Relating to the Treaty of Washington, p. 50.)

In the opinion of Count Sclopis before the Geneva arbitration the question of the supply of coal was raised. He said:

I can only treat the question of the supply and shipment of coal as connected with the use of a base of naval operations directed against one of the belligerents, or a flagrant case of contraband of war.

I will not say that the simple fact of having allowed a greater amount of coal than was necessary to enable a vessel to reach the nearest port of its country constitutes in itself a sufficient grievance to call for an indemnity. As the Lord Chancellor of England said on the 12th of June, 1871, in the House of Lords, England and the United States equally hold the principle that it is no violation of international law to furnish arms to a belligerent. But if an excessive supply of coal is connected with other circumstances which show that it was used as a veritable *res hostilis* then there is an infringement on the second rule of Article VI of the treaty. (4 Papers Relating to the Treaty of Washington, p. 74.)

Mr. Adams argues as follows:

This question of coals was little considered by writers on the law of nations and by sovereign powers until the present century. It has become one of the first importance, now that the motive power of all vessels is so greatly enhanced by it.

The effect of this application of steam power has changed the character of war on the ocean, and invested with a greatly preponderant force those nations which possess most largely the best material for it within their own territories and the greatest number of maritime places over the globe where deposits may be conveniently provided for their use.

It is needless to point out the superiority in this respect of the position of Great Britain. There seems no way of discussing the question other than through this example.

Just in proportion to these advantages is the responsibility of that country when holding the situation of a neutral in time of war.

The safest course in any critical emergency would be to deny altogether to supply the vessels of any of the belligerents, except perhaps in positive distress.

But such a policy would not fail to be regarded as selfish, illiberal, and unkind by all belligerents. It would inevitably lead to the acquisition and establishment of similar positions for themselves by other maritime powers, to be guarded with equal exclusiveness, and entailing upon them enormous and continual expenses to provide against rare emergencies.

It is not therefore either just or in the interest of other powers, by exacting severe responsibilities of Great Britain in time of war, to force her either to deny all supplies or, as a lighter risk, to engage herself in war.

It is in this sense that I approach the arguments that have been presented in regard to the supply of coals given by Great Britain to the insurgent American steamers as forming a base of operations.

It must be noted that, throughout the war of four years, supplies of coal were furnished liberally at first and more scantily afterwards, but still indiscriminately, to both belligerents.

The difficulty is obvious how to distinguish those cases of coals, given to either of the parties as helping them impartially to other ports, from those furnished as a base of hostile operations.

Unquestionably, Commodore Wilkes, in the Vanderbilt, was very much aided in continuing his cruise at sea by the supplies obtained from British sources. Is this to be construed as getting a base of operations? X

It is plain that a line must be drawn somewhere, or else no neutral power will consent to furnish supplies to any belligerent whatever in time of war.

So far as I am able to find my way out of this dilemma, it is in this wise:

The supply of coals to a belligerent involves no responsibility to the neutral, when it is made in response to a demand presented in good faith, with a single object of satisfying a legitimate purpose openly assigned.

On the other hand, the same supply does involve a responsibility if it shall in any way be made to appear that the concession was made, either tacitly or by agreement, with a view to promote or complete the execution of a hostile act.

Hence I perceive no other way to determine the degree of the responsibility of a neutral in these cases than by an examination of the evidence to show the intent of the grant in any specific case. Fraud or falsehood in such a case poisons everything it touches. Even indifference may degenerate into willful negligence, and that will impose a burden of proof to excuse it before responsibility can be relieved.

This is the rule I have endeavored to apply in judging the nature of the cases complained of in the course of arbitration. (Ibid, p. 148.)

Sir Alexander Cockburn presented the British views, as follows:

But a novel and, to my mind, most extraordinary proposition is now put forward, namely, that if a belligerent ship is allowed to take coal, and then to go on its business as a ship of war, this is to make the port from which the coal is procured "a base of naval operations," so as to come within the prohibition of the second rule of the treaty of Washington.

We have here another instance of an attempt to force the words of the treaty to a meaning which they were never—at least so far as one of the contracting parties is concerned—intended to bear. It would be absurd to suppose that the British Government, in assenting to the rule as laid down, intended to admit that whenever a ship of war had taken in coal at a British port, and then gone to sea again as a war vessel, a liability for all the mischief done by her should ensue. Nor can I believe the United States Government had any such *arrière pensée* in framing the rule; as, if such had been the case, it is impossible to suppose that they would not have distinctly informed the British Government of the extended application they propose to give to the rule.

The rule of international law, that a belligerent shall not make neutral territory the base of hostile operations, is founded on the principle that the neutral territory is inviolable by the belligerent, and that it is the duty of the neutral not to allow his territory to be used by one belligerent as a starting point for operations against the other. This is nowhere better explained, as regards ships of war, than by M. Ortolan, in the following passage:

"Le principe général de l'inviolabilité du territoire neutre exige aussi que l'emploi de ce territoire reste franc de toute mesure ou moyen de guerre de l'un des belligérants contre l'autre. C'est une obligation pour chacun des belligérants de s'en abstenir; c'est aussi un devoir pour l'état neutre d'exiger cette abstention; et c'est aussi pour lui un devoir d'y veiller et d'en maintenir l'observation à l'encontre de qui que ce soit. Ainsi il appartient à l'autorité qui commande dans les lieux neutres, où des navires belligérants, soit de guerre, soit de commerce, ont été reçus de prendre des mesures nécessaires pour que l'asile accordé ne tourne pas en machination hostile contre l'un des belligérants; pour empêcher spécialement qu'il ne devienne un lieu d'où les bâtiments de guerre ou les corsaires surveillent les navires ennemis pour les poursuivre et les combattre, et les capturer lorsqu'ils seront parvenus au-delà de la mer territoriale. Une de ces

mesures consiste à empêcher la sortie simultanée des navires appartenant à des puissances ennemies l'une de l'autre."

It must be, I think, plain that the words "base of operations" must be accepted in their ordinary and accustomed sense, as they have hitherto been understood, both in common parlance and among authors who have written on international law. Now, the term "base of warlike operations" is a military term, and has a well-known sense. It signifies a local position which serves as a point of departure and return in military operations, and with which a constant connection and communication can be kept up, and which may be fallen back upon whenever necessary. In naval warfare it would mean something analogous—a port or water from which a fleet or a ship of war might watch the enemy and sally forth to attack him, with the possibility of falling back upon the port or water in question, for fresh supplies, or shelter, or a renewal of operations. (Ibid, p. 422.)

Proclamations in regard to use of neutral ports.—The Russian declaration of April 20 (May 2), 1898, during the Spanish-American war stated—

The Imperial Government further declares that the ships of war of the two belligerent powers may only enter Russian ports for twenty-four hours. In case of stress of weather, absence of goods or provisions necessary to the maintenance of the crew, or for indispensable repairs, the prolongation of the above-mentioned time can only be accorded by special authorization of the Imperial Government. (Foreign Relations, U. S., 1898, p. 897.)

One of the most detailed prescriptions in regard to the treatment of belligerent ships in neutral ports is contained in the Brazilian proclamation of April 29, 1898, which was reaffirmed in 1904:

VII.

Privateers, although they do not conduct prizes, shall not be admitted to the ports of the Republic for more than twenty-four hours, except in cases indicated in the preceding section.

VIII.

No ship with the flag of one of the belligerents, employed in the war, or destined for the same, may be provisioned, equipped, or armed in the ports of the Republic, the furnishing of victuals and naval stores which it may absolutely need and the things indispensable for the continuation of its voyage not being included in the prohibition.

IX.

The last provision of the preceding section presupposes that the ship is bound for a certain port, and that it is only *en route*

and puts into a port of the Republic through stress of circumstances. This, moreover, will not be considered as verified if the same ship tries the same port repeated times, or after having been relieved in one port should subsequently enter another, under the same pretext, except in proven cases of compelling circumstances. Therefore, repeated visits without a sufficiently justified motive would authorize the suspicion that the ship is not really *en route*, but is frequenting the seas near Brazil in order to make prizes of hostile ships. In such cases asylum or succor given to a ship would be characterized as assistance or favor against the other belligerent, being thus a breach of neutrality.

Therefore, a ship which shall once have entered one of our ports shall not be received in that or another shortly after having left the first, in order to take victuals, naval stores, or make repairs, except in a duly proved case of compelling circumstances, unless after a reasonable interval which would make it seem probable that the ship had left the coast of Brazil and had returned after having finished the voyage she was undertaking.

X.

The movements of the belligerent will be under the supervision of the custom authorities from the time of entrance until the departure, for the purpose of verifying the proper character of the things put on board.

XI.

The ships of belligerents shall take material for combustion only for the continuance of their voyage.

Furnishing coal to ships which sail the seas near Brazil for the purpose of making prizes of an enemy's vessels or prosecuting any other kind of hostile operations is prohibited.

A ship which shall have once received material for combustion in our ports shall not be allowed a new supply there, unless there shall have elapsed a reasonable interval which makes it probable that said ship has returned after having finished its voyage to a foreign port.

XII.

It will not be permitted to either of the belligerents to receive in the ports of the Republic goods coming directly for them in the ships of any nation whatever.

This means that the belligerents may not seek ports *en route* and on account of an unforeseen necessity, while having the intention of remaining in the vicinity of the coasts of Brazil, taking thus beforehand the necessary precautions to furnish themselves with the means of continuing their enterprises. The tolerance of such an abuse would be equivalent to allowing

our ports to serve as a base of operations for the belligerents. (Foreign Relations, U. S., 1898, p. 847.)

The Belgian royal decree of February 18, 1901, gives quite full statement of its policy:

ART. XIII. In no case shall vessels of war or privateers of a nation engaged in a maritime war be furnished with supplies or means of repairs in excess of what is indispensable to reach the nearest port of their country, or of a nation allied to theirs in the war. The same vessel may not, unless specially authorized, be provided with coal a second time until the expiration of three months after a first coaling in a Belgian port.

ART. XIV. The vessels specified in the preceding article may not, with the aid of supplies taken in Belgian territory, increase in any way their war material nor strengthen their crews, nor make enlistments even among their own countrymen, nor execute, under the pretext of repairs, works of a nature to augment their military efficiency, nor land for the purpose of forwarding to their homes, by land routes, men, sailors, or soldiers happening to be on board.

ART. XV. They must abstain from any act intended to convert their place of refuge into a base of operation in any way whatever against their enemies, and also from any investigation into the resources, forces, or location of their enemies.

Other proclamations vary in stringency. The Danish proclamation of April 27, 1904, states:

So much coal only may be taken in as may be necessary to carry such vessels to the nearest nonblockaded home port, or, with permission from the proper Danish authorities, to some other neutral destination. No ship will be permitted, without special authorization, to coal in any Danish harbor or roadstead more than once in the course of three months. (Foreign Relations, U. S., 1904, par. 2, sec. 2, p. 22.)

The Danish proclamation of April 27, 1904, also provides:

The belligerents are not permitted to maintain coal depots on Danish territory. It is forbidden to clear from Danish harbors cargoes of coal directly destined for the fleets of the belligerents. This injunction does not, however, apply to coal brought from a harbor to the outlying roadstead intended to be used in compliance with the above provisions of paragraph 2, section 2. (Par. 5.)

The Norwegian neutrality decree of April 30, 1904, contains practically the same provisions in regard to coaling.

The Egyptian proclamation of February 12, 1904, requires from the commander a written statement of the destination of the ship and of the amount of coal on board.

The United States proclamation of February 11, 1904, prescribes that—

No ship of war or privateer of either belligerent shall be permitted, while in any port, harbor, roadstead, or waters within the jurisdiction of the United States, 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, if without any sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive, if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs. (Foreign Relations, U. S., 1904, p. 34.)

The proclamation of Sweden and Norway, April 30, 1904, provides as to belligerent vessels, that—

They are forbidden to obtain any supplies except stores, provisions, and means for repairs necessary for the subsistence of the crew or for the security of navigation. In regard to coal, they can only purchase the necessary quantity to reach the nearest nonblockaded national port, or, with the consent of the authorities of the King, a neutral destination. Without special permission the same vessel will not be permitted to again purchase coal in a port or roadstead of Sweden or Norway within three months after the last purchase. (Foreign Relations, U. S., 1904, p. 31.)

It is also forbidden “the belligerent powers to establish coal depots on Swedish or Norwegian soil.”

Policy and practice of Great Britain.—Hall says:

Even during the American civil war ships of war were only permitted to be furnished with so much coal in English ports as might be sufficient to take them to the nearest port of their own country, and were not allowed to receive a second supply in the same or any other port, without special permission, until after the expiration of three months from the date of receiving such

coal. The regulations of the United States in 1870 were similar; no second supply being permitted for three months unless the vessel requesting it had put into a European port in the interval. There can be little doubt that no neutral states would now venture to fall below this measure of care; and there can be as little doubt that their conduct will be as right as it will be prudent. When vessels were at the mercy of the winds it was not possible to measure with accuracy the supplies which might be furnished to them, and as blockades were seldom continuously effective, and the nations which carried on distant naval operations were all provided with colonies, questions could hardly spring from the use of foreign possessions as a source of supplies. Under the altered conditions of warfare matters are changed. When supplies can be meted out in accordance with the necessities of the case, to permit more to be obtained than can, in a reasonably liberal sense of the word, be called necessary for reaching a place of safety, is to provide the belligerent with means of aggressive action; and consequently to violate the essential principles of neutrality. (International Law, 5th ed., p. 606.)

In the time of war it is generally accepted that merchants of a neutral state will sell to the belligerents articles that are regarded as contraband and that neutral vessels will carry such goods. The goods are of course liable to seizure and the vessels may suffer consequences in proportion to their guilt if they come within the power of the belligerent. Of late years there has been a growing attempt on the part of the neutral states to prevent subjects from engaging in contraband trade. The regulations in regard to this matter are not all equally stringent. The British neutrality proclamation of February 11, 1904, says:

And we hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to our protection, to observe toward each of the aforesaid powers, their subjects, citizens, and territories, and toward all belligerents whatsoever with whom we are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of belligerent rights.

And we hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral power in a war between other powers, or in violation or contravention of the law of nations in that behalf, as more especially by breaking or endeavoring to break any blockade lawfully and actually established by or on behalf of

either of the said powers, or by carrying officers, soldiers, dispatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war according to the law or modern usages of nations, for the use or service of either of the said powers, that all persons so offending, together with their ships and goods, will rightfully incur and be justly liable to hostile capture and to the penalties denounced by the law of nations in that behalf.

And we do hereby give notice that all our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril, and of their own wrong; and they will in nowise obtain any protection from us against such capture or such penalties as aforesaid, but will, on the contrary, incur our high displeasure by such misconduct.

The British proclamation of neutrality in 1904 further prohibits the use by the belligerents 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.

Provision is also made that a belligerent vessel may not "take in supplies beyond what may be necessary for her immediate use." A belligerent vessel is not permitted within British waters "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 named neutral destination." No further supply of coal within British jurisdiction is allowed till after three months without special permission.

The full statement in regard to the supply of coal is contained in Rule 3 of the proclamation, and is as follows:

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 named neutral 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.

This rule received a new interpretation by the proclamation of the governor of Malta issued on 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 a 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 accompanying 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.

It will be observed that this proclamation specifically announces 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 that "this principle does not extend to enable belligerent ships of war to utilize neutral ports directly for the purpose of hostile operations." It is not the intention to extend hospitality to belligerent vessels proceeding to the seat of war or advancing for the purpose of belligerent operations, whether against other belligerents or against neu-

trals carrying contraband or otherwise involved in the war. In short, the doctrine would seem to involve the privilege of coaling for navigation to a home port, but no such privilege in order to reach the area of warfare or for direct hostile operations. This position taken by Great Britain is an advanced one. As was said in the discussions of this Naval War College in 1905 (Topic IX, p. 158):

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.

Professor Holland raises the question of supply of coal to a belligerent ship and briefly summarizes the British practice as follows:

May she also replenish her stock of coal? To ask this question may obviously, under modern conditions and under certain circumstances, be equivalent to asking whether belligerent ships may receive in neutral harbors what will enable them to seek out their enemy, and to maneuver while attacking him. It was first raised during the American civil war, in the first year of which the Duke of Newcastle instructed colonial governors that "with respect to the supplying in British jurisdiction of articles *ancipitis usus* (such, for instance, as coal), there is no ground for any interference whatever on the part of colonial authorities." But, by the following year, the question had been more maturely considered, and Lord John Russell directed, on January 31, 1862, that the ships of war of either belligerent should be supplied with "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." Identical language was employed by Great Britain in 1870, 1885, and 1898, but in the British instructions of February 10, 1904, the last phrase was strengthened so as to run: "Or to some nearer *named neutral destination*." The Egyptian proclamation of February 12, 1904, superadds the requirement of a written declaration by the belligerent commander as to the destination of his ship and the quantity of coal remaining on board of her, and Mr. Balfour, on July 11, informed the House of Commons that "directions had been given for requiring an engagement that any belligerent man-of-war, supplied with coal to carry her to the nearest port of her own nation, would in fact proceed to that port direct." Finally, a still stronger step was taken by the Government of this country, necessitated by the hostile advance toward eastern waters of the Russian Pacific squadron. Instructions were issued to all Brit-

ish ports, on August 8, which, reciting that "belligerent ships of war are admitted into neutral ports in view of the exigencies of life at sea, and the hospitality which is customary to extend to vessels of friendly powers; but the principle does not extend to enable belligerent ships of war to utilize neutral ports directly for the purpose of hostile operations," goes on to direct that the rule previously promulgated, "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 to the case of a 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 fleets 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 accompanying such fleet, whether vessels of such fleet present themselves to such port or roadstead, or within the said waters, at the same time or successively; and that the same practice shall be pursued with reference to single belligerent ships of war proceeding for the 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. (See Parliamentary Paper, Russia, No. 1 (1905), p. 15, and Malta Government Gazette of August 12, 1904. 83 Fortnightly Review, 1905, p. 795.)

Professor Lawrence says:

Lord Lansdowne voiced the usual British doctrine with admirable clearness, when he wrote in February last to a Cardiff firm: "Coal is an article *incipitibus usus* not *per se* contraband of war; but, if destined for warlike as opposed to industrial use, it may become contraband." Can we hold this position, and yet press for the placing of coal on the same footing as ammunition, so far as belligerent men-of-war visiting our territorial waters are concerned? No doubt we should be told that if such ships are no longer to be allowed to buy coal in our ports, we can hardly claim for our merchantmen the right to carry it to their ports unmolested, as long as they are not ports of naval equipment. And yet this argument does not seem conclusive. An article of commerce may be so essential for hostile purposes that no warship ought to be supplied with it in neutral water, and yet so essential for the ordinary purposes of civil life that it ought not to be prevented from reaching the peaceful inhabitants of belligerent countries. The two propositions are not consistent. If both are upheld in reference to coal, we can work for the abolition of the present liberty to supply it to combatant vessels when visiting neutral ports and harbors, and at the same

time maintain that when it is sent abroad in the way of ordinary trade, belligerents must treat it as conditionally and not absolutely contraband. But at present, as we have seen (*see* pp. 129–132), there can be no question of complete prohibition. All we can hope to gain is a rule which will deny coal in future to war vessels when they have broken the conditions on which neutrals allowed them to take a supply. Such an advance in strictness would in no way conflict with our existing doctrine that coal is properly placed among goods conditionally contraband. (*War and Neutrality in the Far East*, 2d ed., p. 160.)

Policy and practice of France.—The French policy as a neutral has been in general to place little restriction upon the entrance or sojourn of belligerent vessels within its ports. It has been maintained by some French writers that it is entirely proper for a belligerent vessel pursued by its enemy to seek refuge in a neutral port.

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. (*Dupuis*, 181 *North American Review*, p. 182.)

The doctrine that belligerent vessels may stay in a neutral port in order to obtain “fresh means of navigation,” but not to make “any increase of fighting strength,” is one which easily leads to abuse. It is exceedingly difficult to distinguish between the military effects of “fresh means of navigation,” as coal, and a definite “increase in fighting strength.” One might be of as great advantage as the other in actual war.

Even the supplementary observations issued by the French minister of marine in February, 1904, contain such provisions as follows:

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 :

Il ne peut être fourni à un belligérant que les vivres, denrées, approvisionnements et moyens de réparations nécessaires à la subsistance de son équipage à la sécurité de sa navigation.

These clauses and others define more clearly than heretofore the position of France.

The French regulations in regard to neutrality of February 13, 1904, were identical with those issued on April

27. 1898, during the Spanish-American war, and can not be said to have been issued with the intention of giving to Russia any especially favorable treatment. The regulations are, however, much less stringent and explicit than those issued by the United States and Great Britain. The French declaration is as follows:

The Government of the Republic declares and notifies whomsoever it may concern that it has decided to observe a strict neutrality in the war which has just broken out between Spain and the United States.

It considers it to be its duty to remind Frenchmen residing in France, in the colonies and protectorates, and abroad that they must refrain from all acts which, committed in violation of French or international law, could be considered as hostile to one of the parties or as contrary to a scrupulous neutrality. They are particularly forbidden to enroll themselves or to take service either in the army on land or on board the ships of war of one or the other of the belligerents, or to contribute to the equipment or armament of a ship of war.

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 the case of forced delay or justifiable necessity.

No sale of objects gained from prizes shall take place in the said harbors and anchorages.

Any person disobeying the above restrictions can have no claim to the protection of the Government or its agents against the acts or measures which the belligerents might exercise or decree in accordance with the rules of international law, and such persons will be prosecuted, should there be cause, according to the laws of the Republic. (Foreign Relations, U. S., 1898, p. 862.)

It will be observed that no reference is made to the taking of coal in French ports nor to the length of sojourn of a belligerent vessel in a French port except when accompanied by prize, when the stay is limited to twenty-four hours. The general custom is to limit the stay of a belligerent vessel to twenty-four hours and to prohibit absolutely the entrance of a vessel with prize.

Professor Lawrence, comparing the French rules with others, and speaking of the British position, says:

But, taken at their best, French rules require strengthening; and the question for us to consider is whether a further advance

on our part would be more likely to bring our neighbor into line with us, or confirm her in her present position. No doubt our interests would be served by complete prohibition, if it could be made general; and for this reason other states may decline to follow any lead we may give. As we are better off for coaling stations than any other power, and have greater facilities for keeping our fleets supplied by colliers, we could not fail to benefit by a change which would make men-of-war dependent upon coal obtained in their own ports or from their own supply ships. On the other hand, we have more to lose than most states by the present system. Our sea-borne trade is so enormous and so essential to our welfare that an enemy could do vast damage by means of two or three swift and well-handled commerce destroyers, which might for a time obtain coal in neutral ports, though we had succeeded in closing all their own against them. Our neighbors are well aware of this; and they know, in addition, that the change, if made, would either greatly restrict their operations at sea, or lay upon them the necessity of acquiring distant coaling stations. (War and Neutrality in the Far East, 2d ed., p. 130.)

In *Le Temps*, Paris, of May 10 and 11, 1905, there are quite full statements of the positions taken by Japan and France in regard to the hospitality extended to the Russian fleet under Admiral Rojestvensky in French ports, the Japanese maintaining that the assistance had been of such character as to violate neutral obligations. While not questioning the good faith of France, the Japanese maintain that the execution of the orders of the Government has not been effective. From this fact the journey of the Russian fleet has been greatly facilitated and this is a reason for complaint, as it was regarded as "une aide dans un but de guerre."

The Japanese note mentions the length of sojourn and furnishing of coal and provisions at Dakar, at Nossi-Bé, and in Indo-Chinese waters. The actual conclusions of Japan were:

1. Que sans incriminer la bonne foi du gouvernement français il estime que ses ordres ont été exécutés de façon insuffisante;
2. Que s'il a été fait droit à ses observations *après*, il est fâcheux qu'une surveillance plus active n'ait pas permis d'en tenir compte *avant* et de prévenir des actes qu'il tient pour des violations de la neutralité.

The French reply to the Japanese complaint maintains that there is no code of international law; that the procla-

mation issued by France in the Spanish-American war in 1898 was the same as that issued in 1905; that the coaling had been done outside territorial waters; that the sojourn in the neighborhood of Nossi-Bé had not involved any violation of neutrality; that Indo-Chinese coasts have not served as a base of operations; that Japan had acted in the Philippines and Netherland Indies in a manner similar to that of Russia in Indo-Chinese waters; that the protest of Japan against France would be equally valid against Great Britain and the powers, and that in England Lord Lansdowne and Mr. Balfour had expressed approval of the attitude taken by France.

A recent French view is as follows:

Il y a là, croyons-nous, une exagération critiquable au point de vue du Droit international et dangereuse au point de vue pratique. Depuis que la navigation à vapeur s'est substituée à la navigation à voiles, le charbon est devenu un agent nécessaire à la marche des navires; le fournir aux belligérants, ce n'est donc pas leur donner *directement* le moyen de combattre, mais celui de naviguer, et on ne comprend pas plus qu'on le leur refuse, qu'on ne leur refusait autrefois la toile dont ils avaient besoin pour réparer leur voilure. Sinon, la logique commanderait de défendre à un navire belligérant de se ravitailler en vivres, de ne pas réparer ses avaries de machine dans un port neutre, car cela aussi lui permet de continuer sa navigation tout comme une fourniture de charbon. L'État neutre ne peut faire lui-même cette fourniture, parce qu'il violerait sa neutralité en mettant à la disposition des belligérants les ressources de ses dépôts de charbon qui ne sont pas destinés à la vente, mais à son propre service militaire, et qu'il les détournerait ainsi de leur affectation normale pour en faire profiter des belligérants. Mais, nous l'avons vu, l'État n'a pas à empêcher les actes de commerce faits avec les belligérants par les particuliers: ceux-ci vendent leur charbon à un navire belligérant comme ils le vendraient à tout bâtiment national ou étranger. (Despagnet, Cours de droit international public, 3d ed., p. 812.)

General drift toward restriction.—The policy of restriction in furnishing coal and other supplies to a belligerent war vessel in a neutral port has been in the direction of limiting such supplies to those necessary for the immediate needs of navigation. While restrictions do not in general begin to appear until the period of the American civil war, since that time the policy has rapidly

spread. By the end of the nineteenth century in the Spanish-American war, the policy of restriction had become common. In the Russo-Japanese war it was very general. France was a marked instance of the lack of restriction on the supply of coal, though several other states made no restrictions.

The unrestricted supply of coal within a neutral port may lead to serious complications and may be greatly to the disadvantage of the neutral permitting the act. The belligerent thus supplied may use the coal in seeking out and making prize of vessels of the neutral which has permitted the supply to be taken in its ports. The belligerent may agree not to capture vessels belonging to the neutral which allows the coaling, but if it preys on the commerce of another neutral the case may be equally disadvantageous. There may be complications between the two neutrals in consequence.

The United States in June, 1905, took action upon the entrance of the Russian Admiral Enquist with his vessels into the port of Manila. Secretary Taft on June 5, 1905, sent instructions to Governor Wright at Manila as follows:

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 in this conclusion, to turn over the execution of this order to Admiral Train, who has been advised accordingly, by the Secretary of the Navy.

On the following day the Government gave out the account of the matter.

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 the 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 the 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.

De Lapradelle entitles an article in 1904 "La nouvelle thèse du refus de charbon aux belligérants dans les eaux neutres."

The proposition to limit the supply to the amount necessary to take the ship to the nearest port of her home country, which has been a form often used and was that approved by the Institute of International Law in 1898, leaves much to be desired. The nearest port may not be in the direction in which the vessel may be voyaging, or if it is it may not be a port suitable for the entrance of such a vessel. The gradual change in recent years has shown that this formula is not sufficient. Such words as the following have been added in certain proclamations: "Or to some nearer neutral destination," "or to some nearer named neutral destination," or that coal shall not be supplied to "a 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."

In most declarations there has been a provision against allowing a neutral port to become a base for equipping a belligerent's vessel with coal, oil, or other supplies. By "base," as thus used, is meant a place to which the vessel frequently returns. The idea of "frequent," as thus used, is generally covered by the prohibition against taking a new supply of coal from the same neutral port till after the expiration of a period of three months. Some states, however, allow such supply within three months provided permission is obtained from the proper authority.

It would seem to be evident that while the supplying of coal to a belligerent is not prohibited by international law though it has been prohibited in many proclamations, yet

the supplying of coal at such frequent intervals as would make the neutral port a base is generally regarded as prohibited by international law, as is practically admitted in the reply of France to Japan in 1905.

It seems to be the general opinion that the supply of fuel, etc., to belligerents should be somewhat restricted in neutral ports.

There are differences of opinion as to the extent of necessary restrictions. Doubtless there would be need of special restriction in special cases. Some degree of freedom should remain to the neutral in making provisions for special conditions. It would seem reasonable that the neutral should not afford a greater supply of coal or oil even for lubricating purposes than an amount sufficient to carry the vessel to the home port. The purpose is to guard against the furnishing of supplies for hostile uses and at the same time not to intern a vessel of a belligerent which may enter a neutral port. It would probably be desirable to restrict the supply of oil for purposes of fuel which would be included under the general head of fuel and for lubricating purposes which makes necessary specific mention of oil.

Considering opinions, precedents, practice and the aims of a regulation, the following seems a reasonable conclusion:

Conclusion.—The supply of fuel or oil within a neutral port to vessels in belligerent service in no case shall exceed what is necessary to make the total amount on board sufficient to reach the nearest unblockaded port of the belligerent vessel's own state or some nearer named destination.

The supply may be subject to such other regulation as the neutral may deem expedient.