

USE OF NEUTRAL TERRITORY

211

"3. Allied troops must also avoid the Papal Domains which, although not having international status as neutral territory, are entitled to full diplomatic immunity. While every precaution must be taken to avoid violating territory of the Vatican City during the assault upon Rome, the diplomatic immunity of the Papal Domains should not be allowed to interfere with military operations, artillery fire, bombing, etc., during assault.

"On December 10, 1948 the Vatican presented to us a claim for \$1,523,810.98 in damages. However, the United States Army Claims Service determined through a survey of the damage that a reasonable assessment, based upon the costs of labor and materials as of April 1945 and calculated according to the then prevailing exchange rate of 100 lire to the dollar, would be 964,199.35. It is understood that the principal reason for the difference between the Vatican figure and the United States Army figure is that the latter does not take account of the cultural and artistic value of the destroyed or damaged property.

"While the Department agrees with the intent of H. R. 10766 that payment of an appropriate sum should be made as compensation for the damage sustained at Castel Gandolfo, it believes that such payment is a special matter for determination by the Congress, and that the record should show that the payment is made *ex gratia* and not as a matter of legal liability."

Letter from Assistant Secretary of State Hill to the Chairman of the Committee on Foreign Relations, United States Senate (George), June 11, 1956, S. Rept. 2292, 84th Cong., 2d sess., pp. 2-3. For appeals by the Vatican to the United States and British Governments in 1942 that they refrain from bombing Rome, see 1942 For. Rel., vol. III, pp. 791-800. See also 1944 For. Rel., vol. IV, pp. 1274-1314.

Bills for the payment of \$1,523,810.98, the full sum claimed by the Vatican, were introduced in the House of Representatives in 1956. In the House, the sum was reduced to \$964,199.35. The measure providing for the payment of the reduced amount was passed by the Congress and approved by the President on July 3, 1956, and funds for payment were included in an Act approved July 27, 1956. See 84th Cong., 2d sess., H.R. 10766 and H.R. 10767, H. Rept. 2251, p. 1, and 70 Stat. 495, 689.

USE OF NEUTRAL TERRITORY

Base of Operations

§ 10

The duty of a neutral State to prevent its territory from being used as a base of belligerent operations has been widely acknowledged in treaties and proclamations of neutrality but the content of the obligation has proved difficult to define.

STAT

See Tucker, "The Law of War and Neutrality at Sea", U.S. Naval War College, *International Law Studies*, 1955 (1957) 226-231 and authorities cited therein. Thus, the obligation was specifically mentioned in the "General Declaration of Neutrality of the American Republics", October 3, 1939 (*Report of the Delegate of the United States of America to the Meeting of the Foreign Ministers of the American Republics, Held at Panamá September 23-October 3, 1939*, p. 54); in the Declaration between Denmark, Finland, Iceland, Norway, and Sweden Establishing Similar Rules of Neutrality, Stockholm, May 27, 1938 (CXLII Br. & For. St. Paps. (1938) 533); and in the Neutrality Declarations of Belgium, Estonia, Latvia, and the Netherlands in 1939 (CXLIII *ibid.* (1939) 356, 471, 557, 584).

"By a base of operations in neutral territory is meant a place where, contrary to international law, a belligerent may augment his strength to wage war more effectively against his enemy, as by recruiting and fitting out expeditions, taking refuge there, establishing a rendezvous, disseminating military information, or performing other acts of a like character. A place may constitute such a base even though it is not under the control of the belligerent and the assistance is rendered through private persons. Although habitual use of the place by the belligerent for such purposes would constitute clear evidence that it was a base of operations, even use on a single occasion may give it that character. [VII Hackworth, *Digest of International Law* (1943), 391-396; III Hyde, *International Law Chiefly as Interpreted and Applied by the United States* (2d ed., 1945), 2249-2253.]"

Greenspan, *The Modern Law of Land Warfare* (1959) 542.

"... The prohibition against bases on land comprises the following rules: ... a neutral State may not either permanently or temporarily *surrender fortifications or portions of its territory* nor its sovereign rights to a belligerent. This prohibition remains in force even though the fortification or territory concerned is far removed from the actual theatre of war." Castrén, *The Present Law of War and Neutrality* (Helsinki, 1954) 472.

Bases

The concept of "base of operations" is broader than the establishment of airfields or military bases by belligerents on nominally neutral territory. Liberia and Portugal, which granted such facilities, regarded their action as giving them special claims to protection by the belligerents which benefited. Ireland refused to cede or lease ports as British air or naval bases on the ground that such action would constitute a breach of neutrality.

See, on the establishment of airfields in Liberia, the American Minister in Liberia (Walton) to the Secretary of State, telegram, Dec. 22, 1941, MS. Department of State, file 811.79682/33; 1941 For. Rel., vol. III, pp. 544-545; on the facilities granted by Portugal in the Azores, see Documents constituting Agreements between the United Kingdom and Portugal concerning Facilities in the Azores, Lisbon, Aug. 17, 1943, CXLVI Br. &

USE OF NEUTRAL TERRITORY

213

For. St. Paps. (1946) 447-452; U.S. Agreement with Portugal on Santa Maria Air Base, Nov. 28, 1944, U.S. TIAS 2338; 2 UST 2124-2126; on the refusal of the Irish Government to cede or lease ports, memorandum of the Irish Legation to the Department of State, undated, annexed to memorandum of conversation by the Under Secretary of State (Welles), Nov. 9, 1940, MS. Department of State, file 740.0011 European War 1939/6918; 1940 For. Rel., vol. III, pp. 166, 167-168. See also 1941 *ibid.*, vol. III, pp. 240, 241-242.

The German Navy obtained the use of a base on the northern Russian coast west of Murmansk for the repair and supply of submarines in October 1939, at a time when the Soviet Union was officially neutral in the war in which Germany was engaged. The Germans abandoned this base in 1940 after their occupation of Norway.

Documents on German Foreign Policy 1918-1945, Series D, vol. VIII (1954), pp. 213, 288; *ibid.*, vol. XI (1960), p. 29. As to the German Navy's desire for further Soviet assistance in naval warfare, see also *ibid.*, vol. VIII (1954), pp. 277, 278, 287-288.

At the Yalta Conference, at a time when the Soviet Union was neutral in the war against Japan, the Soviet Chiefs of Staff informed the United States Chiefs of Staff that airbases in Eastern Siberia "would be given the United States Air Forces" and that arrangements would "be made to open additional [weather] stations". When the United States Joint Chiefs of Staff met with Soviet Chiefs of Staff at the Berlin (Potsdam) Conference to discuss the campaign to be waged by both against Japan, the Soviet authorities were willing to grant only limited facilities to United States Air Forces in emergencies and refused to allow United States personnel to operate weather stations in Eastern Siberia.

See memorandum for the United States Chiefs of Staff, Feb. 9, 1945, For. Rel., The Conferences at Malta and Yalta, 1945, pp. 839, 840; Joint Chiefs of Staff Minutes, July 26, 1945, letter from President Truman to Generalissimo Stalin, July 21, 1945, questions from the United States Chiefs of Staff to the Soviet Chiefs of Staff, July 24, 1945, For. Rel., The Conference of Berlin (Potsdam), 1945, vol. II, pp. 408, 409, 413, 1326, 1327, 1328.

In October 1939 the Legal Adviser's Office (Department of State) examined an informal inquiry by the British Embassy as to whether there would be any objection on the part of the United States Government "to the establishment in New York of a branch of the British Ministry of Shipping, under the direction of a Comptroller of Shipping, to supplant the agencies now in the United States of the several British merchant marine lines." The point considered was whether such action "would amount to the establishment of a base of operations

Comptroller
of
shipping

NEUTRALITY IN A CHANGING WORLD

in the United States within the meaning in which that term is generally understood." The Legal Adviser declared:

"A base of operations, as that term is generally employed in international law, contemplates the use of a neutral port for supplying warships, either directly or indirectly, through the employment of naval tenders of the belligerent or belligerent or neutral merchant vessels acting as tenders.

"While the setting up of such an office in the United States would probably not be regarded as establishing in this country a base of operations from which hostile expeditions or operations would be carried on, the establishment of such an office would be going rather far in the direction of allowing operations by a belligerent in the United States. The ships under the direction of the Comptroller of Shipping would, of course, be devoted primarily to the movement of commodities in the interest of belligerent needs; that is to say, the ships would be required to give first consideration to those articles essential to the carrying on of war by Great Britain. This would not prevent us from applying our laws with respect to neutrality, but it would clothe the operations in an atmosphere which it would be difficult for us to explain as entirely in keeping with complete neutrality.

"International law and the practice of nations recognize the right of governments to exchange diplomatic and consular officers and to have attached to diplomatic missions naval, military, and commercial attachés. The establishment of trade commissions is also resorted to occasionally. It would seem that such functions as it is proper for a belligerent government to exercise in this country might be exercised through these recognized agencies without the designation of a special officer and the establishment of a special office for that purpose. . . . Had the British Government, with our permission, established a Comptroller of Shipping in the United States prior to the war, it is highly probable that no objection would now be raised to the continuance of his functions, but the sending of such an official here at this time—while probably not contrary to the strict letter of our neutral obligations—cannot be viewed as other than the implementation of Great Britain's belligerent activities. I seriously doubt the advisability of our acquiescing in any such arrangement."

The Legal Adviser (Hackworth) to the Chief of the Division of European Affairs (Moffat), memorandum, Oct. 18, 1939, MS. Department of State, file 841.24/115.

No objection on grounds of neutrality was raised when the question of establishing an Anglo-French Purchasing Board in the United States for the coordination of British and French purchasing during the war arose. See memorandum of conversation by the Chief of the Division of European Affairs (Moffat), Sept. 25, 1939, MS. Department of State, file 841.24/109; 1939 For. Rel., vol. I, pp. 564-565.

In January chase of land used for the l for belligerent arrangement "overnment" would operations."

The Lega memorandum

The United North Africa of operations."

The Acti at Vichy (L 862.24/631;

Article V of

"Bellige as a base particular for the p on land or

Conventio Naval War, 2352, 2359.

Article III o

"Bellige

"(a.) E telegraphy municating

"(b.) U before the military p of public i

Article VIII

"A neut use on beh or of wire panies or p

Conventio Persons in etc. (1910)

The Hagu drawn up 1

USE OF NEUTRAL TERRITORY

215

In January 1940 the Legal Adviser took the view that "the purchase of land in the United States by a Canadian national to be used for the landing of planes that are being exported to Canada for belligerent purposes, especially when we know that such an arrangement would be made for the benefit of the Canadian Government" would amount to "the use of our territory for belligerent operations."

Purchase of
landing
field

The Legal Adviser (Hackworth) to Assistant Secretary of State Berle, memorandum, Jan. 4, 1940, MS. Department of State, file 842.24511/8.

The United States regarded the fueling of Italian planes in French North Africa in 1942 as "making use of French territory as a base of operations."

Fueling
planes

The Acting Secretary of State (Welles) to the American Ambassador at Vichy (Leahy), telegram, Mar. 24, 1942, MS. Department of State, file 862.24/631; 1942 For. Rel., vol. II, pp. 153, 154.

Article V of Hague Convention XIII reads:

"Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea."

Telecom-
munications

Convention Concerning the Rights and Duties of Neutral Powers in Naval War, The Hague, Oct. 18, 1907, II Malloy, Treaties, etc. (1910) 2352, 2359.

Article III of Hague Convention V reads:

"Belligerents are likewise forbidden to:

"(a.) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea;

"(b.) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages."

Article VIII of the same Convention provides:

"A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to Companies or private individuals."

Convention Respecting the Rights and Duties of Neutral Powers and Persons in War on Land, The Hague, Oct. 18, 1907, II Malloy, Treaties, etc. (1910) 2290, 2297-2298.

The Hague Rules for the Control of Radio in Time of War, which were drawn up by a Commission of Jurists in 1923, never became binding.

NEUTRALITY IN A CHANGING WORLD

These rules would have made certain modifications in the regime of the Hague Conventions, notably :

"Article 3. The erection or operation by a belligerent Power or its agents of radio stations within neutral jurisdiction constitutes a violation of neutrality on the part of such belligerent as well as on the part of the neutral Power which permits the erection or operation of such stations.

"Article 4. A neutral Power is not called upon to restrict or prohibit the use of radio stations which are located within its jurisdiction, except so far as may be necessary to prevent the transmission of information destined for a belligerent concerning military forces or military operations and except as prescribed by article 5.

"All restrictive or prohibitive measures taken by a neutral Power shall be applied impartially by it to the belligerents.

"Article 5. Belligerent mobile radio stations are bound within the jurisdiction of a neutral State to abstain from all use of their radio apparatus. Neutral Governments are bound to employ the means at their disposal to prevent such use." *Commission of Jurists to Consider and Report upon the Revision of the Rules of Warfare, The Hague, December 11, 1922-February 19, 1923* (The Hague, 1923) 281; or "Commission of Jurists to Consider and Report upon the Revision of the Rules of Warfare—General Report", published in U.S. Naval War College, *International Law Documents, 1924* (1926) 96, 100, 101.

Article 4 (b) of the Convention on Maritime Neutrality, signed at Habana on February 20, 1923, provides :

"Under the terms of the preceding article, a belligerent state is forbidden :

"b) To install in neutral waters radio-telegraph stations or any other apparatus which may serve as a means of communication with its military forces, or to make use of installations of this kind it may have established before the war and which may not have been opened to the public." IV Trenwith, *Treaties, etc.* (1938) 4743, 4745.

The United States Army field manual, the Law of Land Warfare, in sections 528 and 529, repeats verbatim the texts quoted above from Hague Convention V (arts. 3 and 8). Section 530 states :

"The liberty of a neutral State, if it so desires, to transmit messages by means of its telegraph, telephone, cable, radio, or other telecommunications facilities does not imply the power so to use them or to permit their use as to lend assistance to the belligerents on one side only."

U.S. Department of the Army Field Manual (FM 27-10) on The Law of Land Warfare (1956) 187.

The German High Command demanded in June 1941 that—

"6. Sweden will make her *communications network* available to the German communication service. The necessary liaison personnel in matters of communication will be assigned to the German Military Attaché." Directive of the High Command of the Wehrmacht, June 17, 1941, *Documents on German Foreign Policy 1918-1945*, Series D, vol. XII (1962), pp. 1040, 1041. On Swedish compliance, see *ibid.*, vol. XIII (1964), pp. 30-32.

The United
tion 443c, prov

"Bellige:
roadsteads.
supplies of
apparatus
forces on l
Articles 5
tral states
telegraph :
sea.]"

U.S. Depa
Law of Nav
printed in
(1957) 384,

The British r

"667. Ne
the neutra
postal, tel
open to th
operated b
to private
them or pe
to render a
of the othe

"669. A
strict the
have been
tion or rest
the telegra
neutral Sta
served by
[Hague] N

"670. Alt
of services
forbidden t
less station
with their
prevented f
tablished by
of a neutra
paratus wa
the Neutral

Great Brit
of the Manual

USE OF NEUTRAL TERRITORY

217

The United States naval manual, *Law of Naval Warfare*, section 443c, provides:

"Belligerent warships may not make use of neutral ports, roadsteads, or territorial waters to replenish or to increase their supplies of war materials or their armaments or to erect any apparatus for the purpose of communicating with belligerent forces on land or at sea. [Hague Convention No. XIII (1907) Articles 5 and 18. During World War II practically all neutral states prohibited the employment by belligerents of radio-telegraph and radiotelephonic apparatus within their territorial sea.]"

U.S. Department of the Navy, Chief of Naval Operations, NWIP 10-2, *Law of Naval Warfare* (Sept. 1955, as amended July 1959); 1955 version printed in U.S. Naval War College, *International Law Studies*, 1955 (1957) 384, 392, n.25.

The British military manual, *The Law of War on Land*, provides:

"667. Neutrality is not violated by a belligerent using, and the neutral State permitting the use in its territory of, the postal, telegraph (including wireless) and telephone services open to the public. It is immaterial whether such services are operated by and belong to the neutral State, to companies, or to private individuals. This does not imply the right of using them or permitting them to be used in such a way as obviously to render assistance to one of the belligerents to the disadvantage of the other.

"669. A neutral State, however, is at liberty to forbid or restrict the use by belligerents of any or all the facilities that have been mentioned. In that case it must apply the prohibition or restriction impartially to both or all belligerents. Should the telegraph and other services not be owned by the State, the neutral State is specially bound to see that impartiality is observed by the company or private owners concerned, see the [Hague] Neutrality Convention, Arts. 7, 8 and 9.

"670. Although belligerents may thus be permitted the benefit of services 'opened to the use of the public', they are expressly forbidden to install on the territory of a neutral State a wireless station or any apparatus for the purpose of communicating with their own forces on land, sea or air. Belligerents are also prevented from using wireless stations or other apparatus established by them for purely military purposes on the territory of a neutral State before the war began, if such station or apparatus was not previously open for the use of the public, see the Neutrality Convention, Art. 3."

Great Britain, War Office, *The Law of War on Land, Being Part III of the Manual of Military Law* (1958) 191.

NEUTRALITY IN A CHANGING WORLD

Greenspan, after describing the provisions of Hague V on radio and other forms of communication, declared:

"The neutral power is, therefore, obligated to see that all belligerents receive impartial treatment regarding communication facilities on its territory, whether they are owned by the state, companies, or private persons. No discrimination is permissible between the belligerents, as for instance by keeping the communication offices open at abnormal hours in order to favor a particular belligerent, or by giving his messages undue priority." Greenspan, *The Modern Law of Land Warfare* (1959) 542-543.

Guggenheim, after detailing articles III and V of Hague Convention V, observed:

"... However, the general prohibition of the use of neutral territory for the transmission of military information to belligerents assumes a much greater importance than the above-mentioned provisions. The transmission of news of this character is illegal even if it is done on a basis of equality. The neutrality policy of different neutral States has led them to embody this prohibition in their national law." II Guggenheim, *Traité de Droit international public* (Geneva, 1954) 527 (unofficial translation).

Article V of Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in War on Land reads:

"A neutral Power must not allow any of the acts referred to in Articles II to IV to occur on its territory.

"It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory." II Malloy, *Treaties, etc.* (1910) 2290, 2298.

Castrén noted:

"... Neutral States have usually not permitted belligerents to use, without censorship, wireless transmitters and other comparable installations set up before the war, and they have sometimes even been taken over by the neutral State... The requirements laid down by the Hague rules may be made more severe by a neutral State—this is not prevented by international agreements on telecommunications—but *impartiality* must be observed even in this case."

Castrén also stated:

"In practice, and particularly during the *First* and *Second World War*, neutral States have issued many restrictions on the use of telecommunications and they have exercised a strict control, for example, by prohibiting the employment of cipher by any authorities other than their own, except the legations of foreign Powers." Castrén, *The Present Law of War and Neutrality* (Helsinki, 1954) 481, 484. Castrén also refers, p. 480, to the British prohibition on the use of cipher, etc., by legations just prior to the invasion of France in 1944.

Lemoine writing on aerial neutrality in 1951, proposed that any radio installation belonging to a belligerent on neutral territory should be closed at the outbreak of war. This proposed rule was more severe than that embodied in article III of the Hague Convention (V) of 1907 on the Rights and Duties of Neutral Powers and Persons in War on Land, but, he argued, it would avoid friction between belligerents and neutrals.

Lemoine also discussed the proposal set forth in article 5 of the Rules for the Control of Radio in Time of War, drawn up by the Commission of Jurists to consider and report upon the revision of the rules of warfare at The Hague in 1922-1923. This proposed rule was as follows:

"Belligerents of a neutral Government are to prevent s

Lemoine considers belligerent civil aircraft the like. He then above-mentioned civil aircraft in neutral regulations landing in its territory. "La Neutralité" 10-11. Article II 5 of the Hague Convention, p. 216.

The United States in 1939, prohibited a signal apparatus and subject to the jurisdiction of the belligerent in such harbors, port waters; provided material aid to the vessels may be sea such seals shall not States except by p

4 *Fed. Reg.* 3^d vol. I, pp. 685, 6

The General Decree of Panama, October 1900, can Republics share or their agents of territory of the Americas to communicate with belligerents."

Report of the Commission of the Foreign Affairs of the Republics for the September 23-October 1, 1900 see Pan American Regulations on Aerial Neutrality, No. 2 (undated),

646-719-68

USE OF NEUTRAL TERRITORY

219

"Belligerent mobile radio stations are bound within the jurisdiction of a neutral State to abstain from all use of their radio apparatus. Neutral Governments are bound to employ the means at their disposal to prevent such use."

Lemoine considered that this proposed rule interfered with the right of belligerent civil aircraft to use their radios to obtain landing directions and the like. He therefore suggested that the rule proposed in article 5 of the above-mentioned Hague Rules should be modified to permit a belligerent civil aircraft in neutral jurisdiction to use its radio to comply with pertinent regulations laid down by the neutral State for aircraft flying over or landing in its territory or to ask for assistance in case of danger. Lemoine "La Neutralité Aérienne", 5 *Revue Française de Droit Aérien* (1951) 1, 10-11. Article III of Hague Convention V is quoted *ante*, p. 215. Article 5 of the Hague Rules for the Control of Radio in Time of War is quoted *ante*, p. 216.

The United States Proclamation of Neutrality of September 5, 1939, prohibited all belligerent vessels from using "their radio and signal apparatus while in the harbors, ports, roadsteads, or waters subject to the jurisdiction of the United States, except for calls of distress and communications connected with safe navigation or arrangements for the arrival of the vessel within, or departure from, such harbors, ports, roadsteads, or waters, or passage through such waters; provided that such communications will not be of direct material aid to the belligerent in the conduct of military operations against an opposing belligerent. The radio of belligerent merchant vessels may be sealed by the authorities of the United States, and such seals shall not be broken within the jurisdiction of the United States except by proper authority of the United States." Neutrality regulations on telecommunications

4 *Fed. Reg.* 3809, 3811; 54 *Stat.* 2629; also printed in 1939 *For. Rel.*, vol. I, pp. 685, 639.

The General Declaration of Neutrality of the American Republics, Panama, October 3, 1939, provided in article 3 (c) that the American Republics shall prevent "the establishment by the belligerents or their agents of radio stations in the terrestrial or maritime territory of the American Republics, or the utilization of such stations to communicate with the governments or armed forces of the belligerents."

Report of the Delegate of the United States of America to the Meeting of the Foreign Ministers of the American Republics, Held at Panamá, September 23-October 3, 1939, pp. 54, 55. For decrees by American Republics for the control of radio and other means of communication, see Pan American Union, Law and Treaty Series, No. 12, *Decrees and Regulations on Neutrality* (Dec. 1939), pp. 3, 7, 8, 10, 12, 14, 26, 36, 49, 71, 79, 86, 88; *ibid.*, No. 14, *Decrees and Regulations on Neutrality*, Supp. No. 2 (undated), p. 14.

646-719-68-15

Prohibitions on the use of radio on belligerent ships in territorial waters were included in the neutrality rules of Belgium, Brazil, Denmark, Finland, the Netherlands, Norway, and Sweden during World War II. Belgium, Denmark, Finland, the Netherlands, Norway, and Sweden also included prohibitions on the erection or use of radio stations or other means of communication in the service of one of the belligerent powers. Belgium and the Netherlands further forbade the use of radio stations within their jurisdiction for broadcasting information about armed forces outside the jurisdiction. Switzerland authorized the commander of the army to keep watch over the publication and transmission of information "particularly by post, telegraph, telephone, agencies of the press and information, radio, film, and picture."

See *Laws and Regulations on the Regime of the Territorial Sea* (U.K. Legislative Series, 1957), ST/LEG/Ser. E/6, as to Belgium, p. 618; Brazil, p. 622; Denmark, p. 632; Finland, p. 638; the Netherlands, p. 650; Norway, p. 654; and Sweden, p. 658. As to Switzerland, see II Guggenheim, *Traité de Droit international public* (Geneva, 1954) 527, n.2.

When the *Altmark* used its radio facilities in Norwegian territorial waters contrary to Norwegian regulations, the Norwegian authorities intercepted the message and warned the captain of the *Altmark* that he had violated regulations. Great Britain, Correspondence between His Majesty's Government in the United Kingdom and the Norwegian Government respecting the German Steamer "Altmark", Cmd. 8012, Norway, No. 1 (1950), pp. 7, 11, n.6. *Documents on German Foreign Policy 1918-1945*, Series D, vol. VIII (1954), pp. 779, 780-781.

The British Naval Attaché in Brazil informed the Brazilian Government that the German merchant vessel *Wakama* was using its radio "while in port in Rio de Janeiro to communicate regarding ship movements at sea. . . . The *Wakama* left port 36 hours thereafter, the inference being that the Brazilian Government had 'done something'." The Chief of the Division of the American Republics (Duggan), memorandum of conversation, Feb. 21, 1940, MS. Department of State, file 862.857/94; 1940 For. Rel., vol. I, p. 699.

The Legal Adviser of the Department of State said on March 6, 1940, that he saw no objection to asking the Treasury Department to issue a regulation for the sealing of radios on foreign merchant vessels under charter to a belligerent government when such vessels were in United States ports. The Legal Adviser (Hackworth) to the Division of International Communications, Mr. Burke, Chief, Mr. Berle, and Mr. Moore, memorandum, Mar. 6, 1940, MS. Department of State, file FW 740.00111a-Radio/12.

In June 1940 the Inter-American Neutrality Committee adopted a recommendation on telecommunications. For an analysis of the recommendation, see Fenwick, "The Inter-American Neutrality Committee", 35 Am. J. Int'l L. (1941) 12, 33-35. For the text, see Pan American Union, Law and Treaty Series, No. 14, *Decrees and Regulations on Neutrality*, Supp. 2 (undated), pp. 57-63.

Novemb
mal pres
station
author
In the
stia d
on the
ation w
autho
nder cor
station
his stati
which the
ight als
ing bo
Miqu
eable o
super
The Can
18, 1941
of the I
ed that
adian m
ments to
the Cana
Depart
n.3.
for subse
the Un
pite the
uelon on
551-570;
1947) 212-2
1900) 318-
aire of 19
ing the co
tinue a
in 1942,
ring of
contrary
The Frenc
the Repr
bale, Oct.
r. Rel., vol

USE OF NEUTRAL TERRITORY

221

- In November 1941 the Canadian Government made the following informal presentation to the United States of its concern about the radio station on St. Pierre, which was under the control of Vichy French authorities:

Radio
station,
St. Pierre

"In the opinion of the Government of Canada, a serious potential danger to the safety of trans-Atlantic shipping arises from the existence at St. Pierre of a short wave transmission station which is able to communicate in cypher or in code with the authorities in Vichy. The Government of Canada have under consideration a proposal that Canadian personnel should be stationed at St. Pierre to control all outward messages from this station and to prevent the use of cypher or of any code which they are not able to read. This Canadian personnel might also be charged with inspecting the radio equipment of fishing boats and other ships based on the islands of St. Pierre and Miquelon, in order to make sure that their equipment is not capable of long-distance transmission. They would also exercise supervision over the other radio stations at St. Pierre."

The Canadian Legation to the Department of State, memorandum, Nov. 3, 1941, MS. Department of State, file 851A.74/5. "John D. Hlickerson of the Division of European Affairs in a memorandum of November 24, stated that on November 8 the Canadians were informed orally that the Canadian memorandum of November 3 'had been noted and we had no comments to make.' He added: 'This was intended and so understood by the Canadians as constituting a green light for them to go ahead.'" MS. Department of State, file 841.8595/58; 1941 For. Rel., vol. II, p. 541 and n.3.

For subsequent discussions of this subject by Canada, the United Kingdom, the United States, and Free French officials, see *ibid.*, pp. 542-551. Despite these discussions, Free French forces occupied St. Pierre and Miquelon on December 24, 1941. For subsequent negotiations, see *ibid.*, pp. 551-570; 1942 *ibid.*, vol. II, pp. 654-671; Langer, *Our Vichy Gamble* (1947) 212-221; and Pickersgill, I *The Mackenzie King Record, 1939-1944* (1960) 318-324. See generally D. G. Anglin, *The St. Pierre and Miquelon Affaire of 1941* (Toronto, 1966).

During the conversations between the United States Representative in Martinique and the French High Commissioner in the French West Indies in 1942, the latter declared that the establishment of American monitoring of telecommunications at Fort de France "would be directly contrary to our position of neutrality."

The French High Commissioner in the French West Indies (Robert) to the Representative of the United States in Martinique (S. Reber) note verbale, Oct. 27, 1942, MS. Department of State, file 851B.20/142½; 1942 For. Rel., vol. II, p. 642.

Argentina Secretary of State Hull stated in a telegram to the American Ambassador in Argentina :

" . . . If you have not already done so, you might point out in your future interviews that even if the Argentine Government should prohibit the transmission of messages in code and cipher by radio it falls short of the terms of Resolution 40 of the Rio Conference which was signed by Argentina and provides for the closing of all radiotelephone and radiotelegraph communications between the American republics and the aggressor nations. You might also point out that denying the right to Axis missions to transmit messages in code may be an inconvenience to them but that failure to prohibit the transmission of such code messages results in the loss of life and property belonging to the United Nations, a most one-sided interpretation of neutrality.

"In the last war, during the period of our neutrality, the only means of communication between this country and Germany was by radio. We controlled the radio stations and refused to send any messages in code for the diplomatic missions of the Central Powers unless a copy of such code was furnished to the Navy personnel in charge of the radio stations. You might bring this information to the attention of the Argentine officials. . . ."

The Secretary of State (Hull) to the American Ambassador in Argentina (Armour), telegram, Dec. 1, 1942, MS. Department of State, file 810.74/628; 1942 For. Rel., vol. V, pp. 177, 178. For Resolution 40 of the Rio Conference, see *Report on the Third Meeting of the Ministers of Foreign Affairs of the American Republics, Rio de Janeiro, January 15-28, 1942* (Pan American Union, 1942) 60.

Argentina continued, however, to permit "radiotelephone and radiotelegraph communications with Japan, Germany and Italy". Press release, Sept. 8, 1943, IX *Bulletin*, Department of State, No. 220, Sept. 11, 1943, pp. 159, 164.

Aerial
observation

"The principle that neutral territory must not become the base of activities directly connected with the war operations imposes upon the neutral State the duty to use the means at its disposal to prevent within its territory aerial observation made for the purpose of conveying to a belligerent information concerning the movements, operations or defences of the other belligerent. The Hague Air Rules of 1923 [Art. 47] contain an express provision to that effect, and so do various municipal neutrality regulations. [The Scandinavian Neutrality Rules of 1938 provide generally that it is prohibited to carry out in neutral territory 'observations from an aircraft or in any other manner, relating to the movements, operations or defence works of a belligerent with a view to informing the other belligerent' (Article 13). The neutrality regulations of numerous other countries are to the same effect. See, *e.g.*, Article 17 of the Belgian Regulations of September 3, 1939. . . .]"

II Lauterpacht, *Oppenheim's International Law* (7th ed., 1952), p. 751. The Hague Air Rules of 1923 have not been brought into effect. Spaight

Ca
to in
indir
tion

to the American Am-

ou might point out in Argentine Government codes in code and cipher resolution 40 of the Rio and provides for the graph communications aggressor nations. You at to Axis missions to convenience to them but of such code messages belonging to the United neutrality.

ar neutrality, the only try and Germany was s and refused to send missions of the Central ished to the Navy per- You might bring this ine officials. . . ."

Ambassador in Argentina t of State, file 810.74/628; ion 40 of the Rio Confer- ters of Foreign Affairs of 15-28, 1942 (Pan Ameri-

radiotelephone and radio- y and Italy". Press re- State, No. 220, Sept. 11,

must not become the a the war operations to use the means at ry aerial observation elligent information defences of the other [Art. 47] contain an do various municipal n Neutrality Rules of d to carry out in neu- craft or in any other ions or defence works the other belligerent' s of numerous other g., Article 17 of the]"

o (7th ed., 1952), p. 751. ght into effect. Spaight

stated in 1947 that "there is no record in either great war of the use of neutral atmosphere for aerial observation on behalf of a belligerent. . . ." Spaight, *Air Power and War Rights* (3d ed., 1947) 459.

Prohibitions of aerial observation were contained in the neutrality regulations of Belgium, Denmark, Finland, the Netherlands, Norway, and Sweden in World War II. See *Laws and Regulations on the Regime of the Territorial Sea* (U.N. Legislative Series, 1957), ST/LEG/SER.B/6, for Belgium, p. 618; Denmark, p. 632; Finland, p. 638; the Netherlands, p. 650; Norway, p. 654; and Sweden, p. 658.

The British military manual, *The Law of War on Land*, states:

"668. Although a neutral State must prevent the establish- Intelligence ment on its territory by a belligerent of an official bureau for intelligence purposes, it need not prevent the supplying of information by private individuals resident there."

Great Britain, War Office, *The Law of War on Land, Being Part III of the Manual of Military Law* (1958) 191.

Castrén stated that all forms "of intelligence activity which would turn neutral territory into a base for war operations must be prohibited, even though it is often difficult to say on which side of the line a particular activity falls. . . ." Castrén, *The Present Law of War and Neutrality* (Helsinki, 1954) 507.

In July 1943 the British Ambassador in Spain presented to the Spanish Ministry of Foreign Affairs a memorandum dealing with instances of unneutral facilities granted or not denied to the Axis. This included complaints that the Germans had been allowed to set up night observation stations on both sides of the Straits of Gibraltar in Spanish territory, to build up an espionage organization in Spain, to install radio transmission stations, and to set up meteorological stations in Spain. In January 1944 the British Ambassador presented a similar, detailed account. After the agreement in May 1944 that Spain would expel German agents, the British Ambassador presented a memorandum dealing with methods by which the agreement was being circumvented. Sir Samuel Hoare, Viscount Templewood, *Ambassador on Special Mission* (1946) 197, 199-200, 249, 251-252, 254, 267-268. As to the agreement referred to see X *Bulletin*, Department of State, No. 254, May 6, 1944, p. 412; the American Ambassador in Spain (Hayes) to the Spanish Minister for Foreign Affairs (Jordana), letter, May 1, 1944, encl. 1 in the American Ambassador in Spain (Hayes) to the Secretary of State (Hull), despatch No. 2430, May 4, 1944, MS. Department of State, file 711.52/472; 1944 For. Rel., vol. IV, pp. 409-410.

Castrén wrote that it was difficult to take a position with respect to information which, though not expressly military, might be indirectly useful to belligerents, as, for example, weather information in enemy territory. Weather information

Castrén, "La Neutralité aérienne", XIV *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1951-1952) 118, 122.

NEUTRALITY IN A CHANGING WORLD

On September 7, 1939, Argentina issued a special regulation with respect to weather reports by a governmental radio station. The station was forbidden to transmit weather despatches which were not part of the official program of meteorological transmissions or to interchange weather communications with radio stations not recognized by the Argentine Bureau of Meteorology, and it was instructed to seek official authorization for the transmission of meteorological information requested by "institutions, countries, or vessels" which had not been recognized by the Argentine Bureau of Meteorology. Pan American Union, Law and Treaty Series, No. 12, *Decrees and Regulations on Neutrality* (Dec. 1939) 14-15; English translation in Déak and Jessup, *Neutrality Laws, Regulations and Treaties, Supp.* (1940) 32[16]-32[17].

In 1940 the Department of Agriculture addressed the following inquiry to the Department of State:

"The International Ice Patrol will begin operations in the near future for the 1940 season. Meteorological information transmitted from the United States Coast Guard cutter employed in the Ice Patrol is of much interest to the Weather Bureau of this Department. Since the patrol vessel will be located in a region where weather information from ships is much restricted by limitations imposed by countries now at war, it is considered that possibly there is a question of neutrality involved in the transmission of meteorological information from the patrol vessel to the Weather Bureau. A statement of the procedure in question is therefore submitted with request for an opinion from the State Department.

"When the patrol vessel is on duty, meteorological information is broadcast or transmitted by radio in two separate and distinct operations, one of which is international in character, the other being of a purely domestic nature. In the first operation, the Coast Guard vessel broadcasts information concerning icebergs and includes weather information in plain language in connection therewith. Presumably, any vessel, of whatever nationality, is privileged to call upon the Ice Patrol vessel for this information, and it is understood that it is freely given. This operation is of an international character; the Weather Bureau of this Department is not especially interested and no question is raised here regarding the meteorological information disseminated in this manner.

"The second operation is one carried on especially for the Weather Bureau. Surface observations of meteorological elements and upper air data secured by radiosondes are transmitted to the Weather Bureau from the Coast Guard cutter at specified intervals. The Weather Bureau finances the radio-sonde observations. No other country contributes to the cost of these special observations. They are transmitted by radio in messages specifically addressed to, 'Observer, Washington', which is the radio-telegraphic address of the Weather Bureau.

USE OF NEUTRAL TERRITORY

225

The messages are not broadcast but are the property of the Weather Bureau and are intended only for domestic uses. Each year the Weather Bureau prepares the instructions for coding the observations.

"Under present conditions, the Weather Bureau desires to use a confidential code in the transmission of these special surface and upper air observations to make sure that they are not intercepted and utilized by unauthorized agencies. Unauthorized interception might be inimical to the interests of the Weather Bureau in its exchanges of meteorological information with other countries. The Weather Bureau does not intend to divulge the information to any agency of any other country, and it believes that the nearest possible approach to complete secrecy in the transmissions is the best assurance of neutrality. The Weather Bureau believes that these messages, which are specifically addressed, are the property of the Weather Bureau and may be held confidential, just as any other agency of the government may receive point-to-point communications, specifically addressed, for its own confidential information.

"In previous Ice Patrol seasons the Weather Bureau has received these surface and upper air observations in specifically addressed messages and in codes devised by the Weather Bureau for that purpose. Heretofore, however, the principal reason for using codes was for brevity and not for secrecy.

"In this instance, the principal motive for using a confidential code is to avoid any impairment of the existing arrangements for exchange of meteorological information between the meteorological service of Canada and the Weather Bureau. A discussion of this arrangement will be found in State Department file IN 842.9243/7, letter of October 12, 1939 and previous correspondence on the subject. However, as previously stated, the information received in special message from the cutter on the Ice Patrol is not to be a part of the exchange with the Canadian meteorological service. The Weather Bureau is anxious that unauthorized interception by another belligerent country shall not render the observations objectionable to Canada or to any other country which cooperates in the exchange of meteorological information.

"If the State Department sees no objection to the use of a confidential code in the transmission of meteorological observations from the Ice Patrol vessel to the Weather Bureau, as set forth herein, it is desired that the confidential code be put into effect at the beginning of the Ice Patrol for the season of 1940. It will be much appreciated if special consideration is given to this question in order that the opinion of the State Department may be known before the Coast Guard cutter leaves for patrol duty."

The Acting Secretary of Agriculture (Theill) to the Secretary of State (Hull), Mar. 23, 1940, MS. Department of State, file 800.83/859.

Secretary of State Hull replied to the Secretary of Agriculture on April 15, 1940, stating:

"I have received your Department's letter of March 23, 1940, inquiring whether this Department perceives any objection to the use of a confidential code in the transmission of meteorological observations from the International Ice Patrol vessel to the Weather Bureau.

"I note from your Department's letter under acknowledgment that the information thus obtained is solely for the use of this Government and that the Weather Bureau does not intend to divulge the information to any agency of any other country.

"From the foregoing it would seem that this is a domestic matter purely within the cognizance of this Government and in the circumstances this Department perceives no objection to the use of a confidential code in the transmission of these meteorological observations from the Ice Patrol vessel to the Weather Bureau."

The Secretary of State (Hull) (Assistant Secretary of State Long signing for the Secretary) to the Secretary of Agriculture (Wallace), Apr. 15, 1940, MS. Department of State, file 800.83/859.

In 1941, the German High Command demanded that—

"4. Sweden will make certain that *weather reports* no longer go to Soviet Russia, whereas they will be available to Germany in full." Directive of the High Command of the Wehrmacht, June 17, 1941, *Documents on German Foreign Policy 1918-1945*, Series D, vol. XII (1962), pp. 1040, 1042. See further *ibid.*, vol. XIII (1964), pp. 47-48.

As to diplomatic exchanges between the United States and Ireland regarding alleged radio weather reports by Axis diplomatic agents in Ireland, see memorandum of conversation prepared by the Under Secretary of State (Welles), Oct. 29, 1942, MS. Department of State, file 811.24541E/7 and memorandum of conversation also prepared by the Under Secretary of State (Welles), Nov. 16, 1942, with aide mémoire annexed, MS. Department of State, file 811.24541E/9; 1942 For. Rel., vol. I, pp. 771-772.

**Closing of
consulates**

The United States, while neutral, requested the closing of Italian and German consulates in the United States because of activities "outside the scope of their legitimate duties".

The Secretary of State (signed by Welles) to the German Chargé (Thomsen), note June 16, 1941, MS. Department of State, file 702.6211/1525½a; the Secretary of State (Hull) to the American Ambassador in Italy (Phillips), telegram, Feb. 23, 1941, MS. Department of State, file 702.6511/1337a; 1941 For. Rel., vol. II, pp. 629, 793, 794.

The Second Meeting of the Ministers of Foreign Affairs of the American Republics, meeting at Habana in July 1940, adopted a Resolution on Norms concerning Diplomatic and Consular Functions and another on Activities Directed from Abroad against Domestic Institutions. Secretary of State Hull, in his closing statement at

USE OF NEUTRAL TERRITORY

227

the Habana meeting, described the rationale of these resolutions as follows:

"... It is well known that members of diplomatic missions have well-recognized functions and that the members of such missions are clothed with special immunities. When they engage in activities foreign to those that are recognized, they abuse their immunities, and the government that has received them may well be concerned. Likewise, the functions of consular officers are generally defined in international law and practice, and the officers themselves enjoy certain special consideration by the local authorities. But when such officials engage in activities divorced from the customary consular functions, they abuse the hospitality of the state in which they serve.

"That situations of the foregoing character have developed in many of the American republics, has been generally known for some time past."

III *Bulletin*, Department of State, No. 58, Aug. 3, 1940, pp. 65, 67. The texts of the resolutions are printed in *Second Meeting of the Ministers of Foreign Affairs of the American Republics, Habana, July 21-30, 1940, Report of the Secretary of State (1941) 61, 64-65.*

At the Third Meeting of the Ministers of Foreign Affairs held at Rio de Janeiro, in January 1942, the prime objective of the United States was "to obtain a joint declaration of all the American Republics that they feel it necessary to sever all relations with the Axis powers." Chile and Argentina were reluctant to agree to such a joint resolution, arguing military unpreparedness. The United States contended:

"The preeminent issue presented is solely that those republics engaged in war shall not be dealt a deadly thrust by the agents of the Axis ensconced upon the soil and enjoying the hospitality of others of the American republics.

"The shibboleth of classic neutrality in its narrow sense can, in this tragic modern world, no longer be the ideal of any freedom-loving people of the Americas."

The Meeting of Foreign Ministers on January 28, 1942, adopted a resolution recommending "the breaking of their diplomatic relations with Japan, Germany, and Italy".

The Secretary of State (Hull), to the American Ambassador in Argentina (Armour), telegram, Jan. 7, 1942, MS. Department of State, file 710.Consultation (3)/254c; the American Ambassador in Uruguay (Dawson) to the Secretary of State (Hull), telegram, Jan. 3, 1942, MS. Department of State, file 710.Consultation (3)/194; the American Ambassador in Argentina (Armour) to the Secretary of State (Hull), telegram, Jan. 15, 1942, MS. Department of State, file 710.Consultation (3)/329;

646-719-68—16

Severance of
diplomatic
relations

1942 For. Rel., vol. V, pp. 12, 23, 27; speech by Under Secretary Welles at opening session, VI *Bulletin*, Department of State, No. 134, Jan. 17, 1942, pp. 55, 60; *Report on the Third Meeting of the Ministers of Foreign Affairs of the American Republics, Rio de Janeiro, January 15-28, 1942* (Pan American Union, 1942) 32.

All the American Republics that had not broken off diplomatic relations with the Axis powers now did so with the exception of Chile and Argentina.

The United States thereafter continued to press for the severance of relations by the two latter Republics, presenting evidence linking Axis diplomatic and consular officers with espionage activities harmful to the other American Republics.

See, *inter alia*, Drafts of Memoranda on German Military Espionage in Argentina, enclosure with despatch No. 7065 from the American Ambassador in Argentina (Armour) to the Secretary of State (Hull), Oct. 22, 1942, MS. Department of State, file 862.20210/1996; Summary of Memorandum on German Espionage Agents in Chile, Oct. 28, 1942, MS. Department of State, file 862.20225/620; 1942 For. Rel., vol. V, pp. 217, 218, 225; address by Under Secretary Welles, Oct. 8, 1942, VII *Bulletin*, Department of State, No. 172, Oct. 10, 1942, pp. 808, 810. In this connection, see also Emergency Advisory Committee for Political Defense, *Annual Report, July 1943* (Montevideo, 1943), and *Second Annual Report, July 15, 1943-October 15, 1944* (Montevideo, 1944).

Chile severed diplomatic relations with the Axis powers on January 19, 1943, and Argentina took similar action on January 26, 1944.

On the effort by the United States, supported by the United Kingdom, to have the Irish Government request the recall of German and Japanese representatives in Ireland or sever diplomatic relations with Germany and Japan, see the Secretary of State (Hull) to the American Ambassador in the United Kingdom (Winant), telegram, Feb. 3, 1944, MS. Department of State, file 841D.01/235a; 1944 For. Rel., vol. III, pp. 217-218. On the refusal of the Irish Government, see the Acting Secretary of State (Stettinius) to the American Minister in Ireland (Gray), telegram, Mar. 8, 1944, MS. Department of State, file 841D.01/251a; 1944 For. Rel., vol. III, pp. 232-233.

Sabotage

"It is implied in the prohibition of more limited neutral partialities, in the declaration of Article 1, that neutral territory is 'inviolable', and in the duty of the neutral State under Article 5 to punish any violations, that the neutral State must prevent hostile acts against the enemy on neutral territory. As to normal combat, this mainly affects territorial waters . . . ; but it is also important as to sabotage by belligerent agents against enemy ships and property in neutral territory, which was a prominent German activity in the United States both in the 1914 and 1939 Wars. [During the 1914 War the German Foreign Office authorised the German Embassy at Washington to procure acts of sabotage against Allied property in the United States. See *Lehigh Valley Railroad Company and Others*, decided in Oct. 1930, by the Mixed Claims Commission between the United States and Germany, 25 Am. J. Int'l L. (1931) 147-169. The Commission's finding that this authority was not

USE OF NEUTRAL TERRITORY

229

carried out was reversed in 1939, when the Commission reopened the case.]”

Stone, *Legal Controls of International Conflict* (New York, 1959) 390.

For articles I and V of Hague Convention V of 1907, see II Malloy, *Treaties*, etc. (1910) 2290, 2297, 2298.

On the conflict between German political and military authorities as to the advisability of sabotage in the United States in 1939 and 1940, see *Documents on German Foreign Policy 1918-1945*, Series D, vol. VIII (1954), pp. 89-91 and 700-701 and notes; *ibid.*, vol. IX (1956), pp. 398-400 and notes, 410-412, 491, 502, and 543.

For present United States law with respect to conspiracy to injure the property of a foreign government, see 18 U.S.C. § 956.

As to the powers granted to the President to safeguard vessels, harbors, and the like from sabotage or other subversive acts by regulating the anchorage and movement of vessels during a national emergency by reason of war or disturbance of the international relations of the United States, see 50 U.S.C. § 191.

As to dissatisfaction with Argentine measures to prevent acts of sabotage in ports, see the American Ambassador in Argentina (Armour) to the Secretary of State (Hull), telegram, Jan. 2, 1942, MS. Department of State, file 710 Consultation (3)/188; 1942 For. Rel., vol. V, p. 12.

In October 1943 the American Ambassador in Spain (Hayes) protested to the Spanish Government concerning an Italian sabotage force in Spain engaged in activities in the harbor of Gibraltar. In 1944 Spain agreed to expel Axis sabotage agents from Spain and Spanish-controlled territory.

The American Ambassador in Spain (Hayes) to the Secretary of State (Hull), Oct. 2, 1943, MS. Department of State, file 862.20252/216; 1943 For. Rel., vol. II, pp. 619-620. As to the 1944 agreement between the United States and Spain, see the American Ambassador in Spain (Hayes) to the Spanish Minister for Foreign Affairs (Jordana), letter, May 1, 1944, encl. 1 in the American Ambassador in Spain (Hayes) to the Secretary of State (Hull), despatch No. 2430, May 4, 1944, MS. Department of State, file 711.52/472; 1944 For. Rel., vol. IV, pp. 409-410.

As to British protests regarding German and Italian sabotage of merchant shipping in Spanish waters and the Bay of Gibraltar, see Sir Samuel Hoare, Viscount Templewood, *Ambassador on Special Mission* (1946) 251-254, 268.

The British Embassy inquired in June 1941 whether Secretary of State Hull perceived any objection to the employment of British military personnel as watchmen against the sabotaging of British merchant vessels in American ports and whether the men would have to remain on board rather than on the docks during guard duty. The reply was that—

“The Secretary of State perceives no objection to the Embassy’s proposal provided that the guards perform their duties

British
armed
guards

exclusively aboard the vessels concerned. It is, of course, understood that such guards as may be assigned for duty on British registered vessels by the masters thereof will not interfere in any way with the right of Coast Guard officers and men to board the vessels at will in carrying out their official duties, that such guards will not interfere with the duties of any other officers of the Federal Government or the state or local Governments presently exercised by those officers in carrying out their official functions, and that the military status of the guards will in no way affect the right of American Courts to take jurisdiction in the event of disturbances occurring in territorial waters of the United States."

The British Ambassador (Halifax) to the Secretary of State (Hull), note, June 16, 1941, MS. Department of State, file 841.8595/51; the Secretary of State (Hull) to the British Chargé (Campbell), note, Oct. 6, 1941, MS. Department of State, file 841.8595/51; 1941 For. Rel., vol. I, pp. 391-392, 394-395.

Hostile Expeditions

§

"Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both."

18 U.S.C. § 960.

"The duty of a State not to permit its territory with the persons who inhabit it to wage war against another State with which it is at peace and maintains friendly relations, seems to be acknowledged. That obligation is violated when an expedition, organized on neutral soil for the purpose of engaging in military operations against a belligerent State, is permitted to depart from the national domain and in consequence causes injury to that State. [It should be observed that this broad obligation is not attributable to the law of neutrality. It exists whether the foreign State be at war, or endeavoring to suppress unrecognized insurgents, or enjoying freedom from any internal disturbance. It has not been as a neutral that the United States has most frequently felt the burden of this particular duty. . . .]"

III Hyde, *International Law Chiefly as Interpreted and Applied by the United States* (Little, Brown and Co., 2d rev. ed., 1945) 2253-2254.

STAT

The case is likewise different when a belligerent intends to erect in a neutral country, or in a neutral port or neutral waters, a wireless telegraphy station, or any apparatus intended as a means of communication with belligerent forces on land or sea, or to make use of any installation of this kind established by him before the outbreak of war for purely military purposes, and not previously opened for the services of the public generally. According to Articles 3 and 5 of Convention V. and Article 5 of Convention XIII., a neutral is bound to prohibit this. When in 1904, in the Russo-Japanese War, during the siege of Port Arthur, the Russians installed an apparatus for wireless telegraphy in Chifu, and communicated thereby with the besieged, this constituted a violation of neutrality.

(4) It is obvious that his duty of impartiality must prevent a neutral from allowing belligerents to establish intelligence bureaux on his territory.¹ On the other hand, a neutral is not obliged to prevent his subjects from giving information to belligerents, be it by letter, telegram, telephone, or wireless telegraphy. In particular, a neutral is not obliged to prevent his subjects from giving information to belligerents by wireless telegraphy apparatus installed on a neutral merchantman. Such individuals run, however, the risk of being punished as spies, if they act clandestinely or under false pretences,² and the vessel is liable to be captured and confiscated for rendering unneutral service.

On the other hand, newspaper correspondents making use of a wireless installation on a neutral merchantman for the purpose of sending news to their papers³ may not be treated as spies—although during the Russo-Japanese War Russia

Channel to England and from there back to France—Great Britain refused her consent on account of her neutrality. Again, in 1898, during war between Spain and the United States of America, when the latter intended to land at Hong-Kong a cable proposed to be laid from Manila, Great Britain refused her consent. See Fauchille, § 1321 (1); Phillipson, *op. cit.*, p. 92; Lawrence, *War*, p. 219.

¹ See Fauchille, § 1476 (1), on the

attitude of the Swiss Government during the First World War.

² See above, § 159.

³ See the case of the *Haimun* (Lawrence, *War*, pp. 85-92). On the position of newspaper correspondents in naval warfare, as it was before the First World War, see Higgins, *War and the Private Citizen* (1912), pp. 91-112, and in *Z.V.*, 6 (1912), pp. 19-28, and the literature and cases there cited.

threatened to treat may not be confiscated the presence of such course, an individual respondent for a neutral then be punished.

§ 356a. The principle become the basis war operations in use the means at aerial observation belligerent information or defences Rules of 1923¹ and so do various

VIO

Hall, §§ 227-229—Law
—*Letters by Histor*
149-162—Taylor,
§§ 429-433—Moore,
—Heffter, § 146—
Ullmann, § 191—
Pradier-Fodéré, vii
2666—Fiore, iii. 1
Dupuis, Nos. 332-3
132—Hyde, ii. §§
Mächte im Seekrie
ii. § 562—Harris
Research (1939), pp

§ 357. Many war only treat under t

¹ Article 47.

² The Scandinavian Rules of 1938 (see a provide generally that to carry out in neu observations from an any other manner, re movements, operation