

**INTERNATIONAL LAW
DOCUMENTS
WITH SOLUTIONS
AND NOTES, 1902**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649531172

International Law Documents with Solutions and Notes, 1902 by Naval War College

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NAVAL WAR COLLEGE

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INTERNATIONAL LAW SITUATIONS

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NOTES

1902

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1903.

INTERNATIONAL LAW SITUATIONS.

PREFACE.

The International Law Situations at the Naval War College during the summer course of 1902 were under the immediate direction of Mr. George Grafton Wilson, Professor in Brown University, whose name is already known to the service through previous papers prepared by him for the college.

As last year by Mr. Moore, this year the situations were set by Mr. Wilson, and tentative solutions offered by the committees into which the officers in attendance are divided for the college work. Throughout the several law periods during the summer there were general, and frequently long-continued, discussions of the solutions by the officers, making the subject a living one; the more so, that several of the situations were of late occurrence, which the officers concerned have sent to the college for consideration. It is hoped that so profitable a practice will be continued by the officers afloat.

F. E. CHADWICK,

Captain, U. S. N., President.

NAVAL WAR COLLEGE,

Newport, R. I., November 19, 1902.

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SITUATION I.

While a state of war exists between the United States and foreign state X, it is found that a submarine telegraphic cable owned by a neutral company and connecting hostile state X with neutral state Y is used for the transmission of dispatches hostile to the United States.

The United States naval officer in command of the fleet cruising near protests to neutral state Y against such use of the cable.

The authorities of state Y claim that they have no responsibility.

It is not possible for the United States vessel to interrupt the cable within the three-mile limit of hostile state X. The cable is, however, grappled beyond the three-mile limit in the high sea, and by order of the commanding officer is cut.

The neutral owners claim damages from the United States for injury to the cable and for interruption of service, alleging among other reasons in support of the claim that the act of the commanding officer in cutting the cable was contrary to Article V of the Naval War Code of the United States.

Was the action of the officer proper?

SOLUTION.

1. The action of the officer in protesting against the hostile use of the cable connecting enemy state X and neutral state Y was proper action. Such action is desirable whenever possible without undue risk, of which risk the officer himself must judge. This does not imply an obligation to give such official protest or responsibility in case such protest is not made.

2. The authorities of a neutral state may assume or decline to assume responsibility for a cable connecting the neutral with a belligerent state.

3. The cable service is to be considered, when hostile, in the category of unneutral service and the penalties should be determined accordingly.

4. The neutral owners have no ground for claim for damages for injury to the cable or for interruption to service.

5. The Naval War Code of the United States makes no provision for such a case, but practice and general principles justify the action of the officer in cutting the cable anywhere outside of neutral jurisdiction.

NOTES ON SITUATION I.

SUBMARINE CABLES IN TIME OF WAR.

The protest.—The propriety of the first act of the commanding officer in entering a protest against the use of the cable can be affirmed; the question of his obligation to do so must depend upon the policy of the United States and the urgency of cutting off the communication. It is sufficient to say that at the present time neither international law nor national policy makes such a protest obligatory.

The action of Brazil in 1898¹ and the occasional action of other neutral countries show a drift toward the assumption of governmental authority over such cable service as in time of war may involve violation of the strict neutrality of neutral territory. The development of this tendency to assume authority would give a basis for judgment of the obligation to give notification before cutting a cable.

The rule in regard to obligation might be stated as follows: In proportion as the neutral government assumes responsibility for the communication by cable between its territory and belligerent territory, in that proportion is it the obligation of the belligerent to notify the neutral (whenever possible without serious danger to the belligerent himself) that the belligerent proposes to interrupt freedom of communication by cable. The cable should then be used only under such restrictions as may be

¹Neutrality Regulations, Brazil, April 29, 1898, Art. V: "It is prohibited citizens or aliens residing in Brazil to announce by telegraph the departure or near arrival of any ship, merchant or war, of the belligerents, or to give to them any orders, instructions, or warnings, with the purpose of prejudicing the enemy." (Proclamations and decrees during the war with Spain, p. 14.)

agreed upon by the belligerent and the neutral. In all such cases the action may lead to cutting in case the belligerent is not satisfied with the restrictions proposed, or to the sealing and absolute prohibition of the service in case the neutral is not satisfied with the conditions proposed.

The development of a policy of national responsible control is advocated as the best method for securing the end advocated by all, "the complete submission of the enemy at the earliest possible period with the least expenditure of life and property." National control and guarantee of neutrality in time of war would be for the advantage of owners during war and for the world at large on return of peace, provided always a satisfactory means for assuring neutrality can be found.

The responsibility of state Y.—The general principles of jurisdiction or the right to exercise state authority undoubtedly carries with it the right to control cables so far as is necessary for the protection of state Y or the maintenance of its sovereignty, particularly so far as those cables are within the limits of the jurisdiction of the state.

From the relation of a state to a cable, state Y is doubtless at liberty to disclaim responsibility for a cable already constructed so far as its international relations are concerned. It may, however, as in the case of Brazil, by Article V of the proclamation of neutrality in 1898, prohibit the use of a cable or other means of telegraphic communication for the aid of either belligerent by a domestic regulation.² Brazil would thus assume a moral obligation to enforce its proclamation. This would not carry international responsibility, but merely shows that a state may assume of its own accord some supervision of its cable service. It is not, however, a violation of neutrality not to assume any control or responsibility for private lines.

It has been held, however, that the state does control absolutely the landing of cables upon its shores, and that it would therefore be a violation of neutrality to permit,

¹ Naval War Code of the United States.

² Proclamations and decrees during the war with Spain, p. 14.