

FOREIGN OFFICE,

S.W.1.

6th December, 1958.

Sir,

I am directed by Viscount Halifax to transmit to you herewith, for the information of the Lords Commissioners of the Admiralty, copy of a despatch from His Majesty's Minister at Panama dated the 7th October together with copy of a memorandum prepared in this Department on the subject of the amount of fuel to be supplied to belligerent warships in neutral waters.

2. It appears from this memorandum that His Majesty's Government have supported the rule that a warship in a neutral port should be allowed to take on board the fuel necessary to enable her to reach her nearest home port, but it seems clear that in supporting this rule they assumed that the nearest home port would not be very distant, since they seem to have objected to the alternative rule also embodied in Article 19 of the relevant Hague Convention that belligerent warships might be allowed to take on board enough fuel to fill up their bunkers. As Lord Halifax understands it, it was because of the inclusion of this rule as an alternative to the other rule that His Majesty's Government entered a reservation against Article 19. Unless qualified as suggested above, the rule about the nearest home port would be meaningless in those cases (very likely to be of frequent occurrence) where the nearest home port was so far distant that it could only be reached, if at all, by

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The Secretary  
of the Admiralty.

filling all bunkers.

3. It also appears from the memorandum that what the delegates to the conference had principally in mind was that it would be impracticable to make a rule about taking fuel on board which was of so narrow and rigid a character that warships visiting a neutral port would either become immobilised there for want of fuel or alternatively would become derelict on the high seas because they were not allowed to take on board enough fuel to proceed to some other destination. On the other hand it does not appear to have been the intention to allow a warship to take on board so much that she could proceed untrammelled with her belligerent operations; and it is clear that there may be a very narrow margin between a bona fide refuelling and the use in effect of a neutral port as a base. This applies especially in the case of commerce raiders operating at a great distance from any port of their own flag, particularly now when the cruising radius of a fully fuelled ship is presumably much greater than at the date of the Hague Convention.

4. It would appear therefore that neither of the rules embodied in Article 19 is satisfactory as they fail to bring out the duty of a neutral not to allow refuelling in such circumstances or on such a scale as in effect to permit their ports to be used as a base. It is for consideration therefore, whether in time of war His Majesty's Government should not rely on their reservation to Article 19 for the purpose of contending vis-à-vis neutrals that the correct rule of international law is that, while a belligerent warship should generally speaking be allowed to take on board enough fuel to save her from immobilisation or from becoming

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derelict on the high seas, it would be contrary to the obligations of a neutral to allow her to take on board enough to render her fully efficient for warlike purposes. Consequently, save in very exceptional circumstances, His Majesty's Government could not agree to the rule about filling the bunkers and must interpret the alternative rule about the nearest home port as being based on the assumption that a home port exists within such a limited distance that a warship could reach it by taking on board a moderate quantity of fuel. It might also be necessary, where commerce raiders are making regular use of neutral ports for refuelling, to raise the question whether a neutral which allows such refuelling with knowledge of the circumstances is acting in conformity with neutral obligations.

5. An interesting commentary on the failure of the Hague Convention to provide a satisfactory solution of the question is furnished by the case of Chile, which in 1914 adopted the rule of supplying coal in sufficient quantity to enable belligerent warships to reach the nearest coaling port of the neighbouring nation. The preamble to the relevant decree (State Papers, Volume 108, page 805) stated that the application of the Hague Convention rules was producing results clearly contrary to its spirit because belligerent warships took advantage of the considerable quantity of coal permitted to be supplied to them for reaching their distant countries, in order to continue their warlike operations in American waters, instead of proceeding to their own countries.

6. Lord Halifax would be grateful for an expression of Their Lordships' views on the points raised in this letter.

I am,  
Sir,  
Your obedient Servant,

(Sd.) J. BALFOUR



Copy.

(A 7968/14/51).

Amount of coal to be supplied to belligerent warships  
in neutral waters. (Hague Conference proceedings)

In the general instructions addressed to His Majesty's First Plenipotentiary to the Second Peace Conference at The Hague on June 12, 1907 it was stated, as regards the rights and duties of neutrals at sea, that nations were agreed on general principles but that there was bound to be great divergence in their application; it was suggested that rules based on certain principles would help to clear the situation, and among these rules the following were included:-

"(a) Neutrals shall not allow their territorial waters to be used for purposes which will directly assist a belligerent in operations of war.

. . . . .  
(c) The customary maritime facilities known as 'hospitality' shall not be withheld."

In this connexion a distinction was made between Great Britain as a belligerent and as a neutral: in the former capacity it was unlikely that she would have to depend upon the assistance of neutrals in the direct carrying out of operations of war; as a neutral, her interests required uniformity of practice on the part of neutrals generally and it would be desirable that the rules obtaining in this country should obtain international sanction at the Conference.

2. Rules of neutrality had been drawn up in this country in 1862 (during the American civil war) in which were included those dealing with the supply of coal to belligerent warships./

warships. These permitted the supply of sufficient coal to enable warships to reach the nearest point of their own country or to some nearer destination; "port" was subsequently substituted for "point" in this phrase, which in the rule issued during the Russo-Japanese war read as follows:- "to the nearest port of her own country, or to "some nearer-named neutral destination."

3. In July 1907, Mr. (now Sir C.) Hurst drew up a draft convention on the subject of neutrality during naval war for submission by the British delegation to The Hague Conference. This draft included the following two rules:-

"XVI. A neutral Power must not knowingly allow a belligerent war-ship to take on board within its jurisdiction any stores, fuel or supplies, for the purpose of enabling it to proceed against the enemy, or to carry out belligerent operations.

"XVII. A neutral Power must not knowingly allow a belligerent war-ship to take on board within its jurisdiction any stores, fuel, or supplies, unless the stores, fuel, or supplies already on board are insufficient to enable it to proceed to the nearest port of its own country; nor in any case shall the stores, fuel, or supplies shipped within neutral jurisdiction exceed the amount required, including those already on board, to take the war-ship to the nearest port of its own country."

In...

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In an accompanying memorandum, Mr. Hurst pointed out that in Rule XVII he had omitted the phrase "nearer named neutral destination" used in 1904 as, theoretically, under Rule XVI the vessel could not be intending to commit hostile acts; and he expressed the view that no breach of neutrality would be caused by supplying a vessel up to the limit required to take her to her own country. (It may be noted here that Admiralty letter of July 23, 1907, commenting upon the draft convention made no mention of these particular rules).

4. The question of the rights and duties of neutrals in a maritime war was referred to a sub-committee (the Second Sub-Committee of the Third Commission), at the third meeting of which, on July 27th, there was general agreement as to the desirability of limiting the amount of coal supplied to belligerent warships, although there were differences of opinion as to the extent of such limitation. At the next meeting of the sub-committee, held on July 30, the Netherlands representative, discussing proposals formulated by the Spanish and Japanese Governments, called attention to the impossibility of a neutral Power ascertaining at the time whether or not a warship was proceeding on work of a belligerent nature, stating that in time of war every belligerent vessel must be regarded as having a doubtful or unknown destination; he stressed the desirability of establishing definite rules for safeguarding the position of neutral States and suggested rules for the supply of sufficient fuel for the warship to reach the nearest non-enemy port, with  
the...



the exception of the period at the outbreak of hostilities, when sufficient might be supplied for the voyage to a home port.

5. The question was more fully discussed at the meeting of the sub-committee on August 1st. On this occasion the Russian representative made a statement containing the argument that while all were agreed that a neutral State must not allow its ports to be used for increasing the belligerent power of warships, it would be an equal breach of neutrality (in favour of the other belligerent) to decrease that power by refusing supplies within certain limits, and recommending the adoption of the phrase:-

"dans la mesure fixée par la législation intérieure de  
"l'Etat neutre et dans les limites exigées par les  
"intérêts de ces batiments."

At this same meeting the Japanese representative discussed the question of the destination of belligerent warships after leaving a neutral port and expressed the view that they should be obliged to declare their destination as a prior condition to the grant of hospitality in neutral ports. The discussions having brought to light a number of different points of view, the whole question of the rights and duties of neutrals in naval warfare was referred to a Comité d'Examen.

6. The Comité d'Examen produced in September a draft convention, Article XIX of which read as follows, with alternatives as shown:-

"Les...

"Les navires de guerre belligérants ne peuvent se ravitailler dans les ports et rades neutres que pour compléter leur approvisionnement normal du temps de paix; le ravitaillement ne donne pas droit à prolonger la durée légale du séjour.

Ces navires ne peuvent	:	Ces navires ne peuvent
de même prendre du	:	de même prendre du
combustible que pour	:	combustible que pour
gagner le port le plus	:	compléter leur plein
proche de leur propre	:	normal de temps de paix.
pays.	:	

. . . . ."

(In examining this particular article it is of course necessary to have regard to the provisions of the draft convention as a whole, e.g. the preamble, which provided for its application impartially to all belligerents, and Article V which prohibited the use of neutral ports and waters as a base of naval operations.)

Article XIX of the draft convention was discussed at a meeting of the Comité d'Examen on September 11-12, when Sir Ernest Satow maintained that a neutral had no right to give aid and assistance to a belligerent to meet its adversary and urged the adoption of the original British proposal, expressing the view that the sole reason for supplying coal to a warship was to prevent its becoming a wreck on the high seas. He was followed by the German representative, who supported...



supported the second alternative; in the course of his argument he mentioned that against this it had been maintained that a belligerent vessel would thus be enabled to obtain sufficient fuel to enable her to remain on the high seas and undertake belligerent operations, especially when the vessel was in the neighbourhood of several neutral States; he argued however that this would apply only to some parts of the world as in vast regions the ports with coaling facilities were far distant from each other; he went on to say that the same objection applied to the first alternative, as the supply of coal by neutrals to warships far from their own country might even exceed the normal amount; finally, he pointed out that a neutral could forbid the use of its ports to any wayship which endeavoured to use them as a base of operations, adding however that the neutral had not the right to prejudge the intentions of a belligerent warship on its first visiting its waters.

7. After further discussion the Russian representative finally suggested the following wording:-

"Ces navires ne peuvent de même prendre du  
 "combustible que pour gagner le port le plus proche  
 "de leur propre pays. Ils peuvent prendre du  
 "combustible pour compléter leur plein de soutes  
 "proprement dites dans les ports d'Etats neutres  
 "qui donnent la préférence à ce moyen de définir la  
 "quantité de combustible requise."

This wording was put to the vote in the Comité d'Examen and carried, Great Britain, the United States and Japan abstaining...

abstaining. At the close of the meeting, the Russian representative summed up in the following words:-

"Nous avons discuté sur la quantité du charbon;  
"mais quelle que soit cette quantité, il faut laisser  
"aux intéressés le temps nécessaire pour la charger.  
"Sans cela cette disposition serait un leurre et une  
"source de malentendus. Or, nous avons tous reconnu  
"que c'est un droit pour le navire que de pouvoir vivre  
"en mer, et qu'il n'entre pas dans les attributions d'un  
"Etat neutre de réduire un navire belligérant à l'état  
"d'épave."

Subsequent discussion of the question in the Third Committee on October 4 brought forward no new argument, and on the final vote Great Britain (who had already made a general reservation) was in a minority against the wording of the draft article and there were a number of abstentions (including the United States who, having made a general reservation, abstained from voting on separate articles).

8. A convenient summary of the attitude of His Majesty's Government in this matter will be found in the final report of an interdepartmental committee submitted to the Secretary of State on May 28, 1908, in which were included the following points:-

- (a) The extent of Great Britain's coast lines and the number of her ports in all parts of the world make it certain that in a war, during which she is a neutral, belligerents will frequently desire to obtain shelter and supplies for their warships in her waters or ports; equally...

equally, with Great Britain as a belligerent, it is essential that she should know what assistance of this character it is permissible to neutrals to render her or her adversary.

(b) The interests of nations differently situated either as to their possessions, as to their strength at sea, and as to the probabilities of their being engaged in maritime war diverge seriously.

(c) In the past it suited the interests of Great Britain to take a strict view as to the obligations of a neutral State because she was to a very small extent dependent on the right to use neutral ports and her strength at sea enabled her, generally speaking, to insist on her own rules; general agreement would however be improbable unless Great Britain were prepared to make some concessions to those countries to whom her rules would be inconvenient when belligerent or burdensome when neutral.

(d) Article XIX:- The argument usually brought against any rule which makes the amount of coal dependent on the port to which the ship is going is that the neutral has no means of testing the accuracy of the statements made and that the captain himself does not always know the port to which he will next be ordered. In practice however the rule as enforced by this country had worked well. It must be assumed that there was little hope of securing the general adoption of the British rule, and, as there...



there would be advantage in having the same rules adopted by as many nations as possible, it was not considered wise for Great Britain to stand out alone against acceptance of the article. The committee therefore recommended that if the convention were signed a reservation should be entered against this article, which could be maintained or not as thought fit (in the light of the attitude of other Powers) when the time came for ratification.

The convention was eventually signed (but not ratified) by this country, with reservations of Article XIX (and of Article XXIII).

FOREIGN OFFICE,

November 8, 1938.