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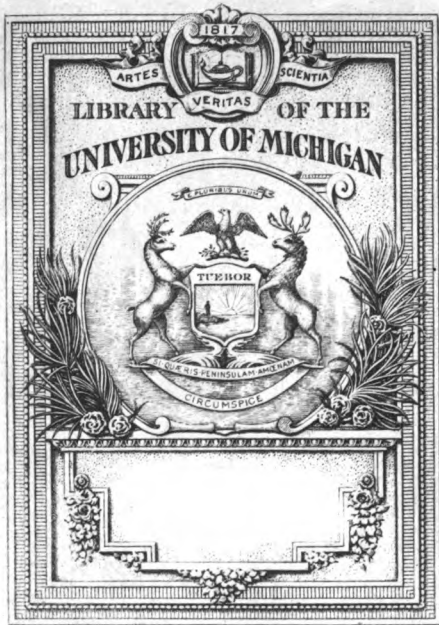
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Submarine telegraphic cables in their international relations

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NAVAL WAR COLLEGE.

SUBMARINE

TELEGRAPHIC CABLES

IN THEIR

INTERNATIONAL RELATIONS.

LECTURES DELIVERED
AT THE
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SUBMARINE TELEGRAPHIC CABLES

IN THEIR

INTERNATIONAL RELATIONS.

(A) SUBMARINE CABLE SERVICE.

(a) NATURE.

Among the great achievements of the nineteenth century was the practical elimination of the elements of time and space in the transmission of thought. This brought about changes in the relations of men to which the people of the world have hardly had time to adjust themselves in the affairs of every day and much less in the time of hostilities between states, which is such an exceptional condition of affairs. Business, and particularly the financial transactions of the world, are now almost wholly dependent on some means of communication that will reduce the influence of time and space to the minimum. Other relations of men have followed the lead of business and commerce and have come to depend upon the telegraph in some form. The diplomatic relations between most states are now directed from a central office at the seat of government, and the personal initiative of the diplomat is of much less importance than in the days before the middle of the nineteenth century. It is not often necessary for him to decide a question on his own responsibility, but merely to wire for instructions. The officers of the army are now usually in easy telegraphic communication with their headquarters. The naval officers are, however, liable to be cut off for a considerable time from this means of communication and in many cases, therefore, must continue to be able to determine their course of action without reference to any central authority.

There is both danger and advantage in the great use and reliance upon the telegraph. This tendency to rely upon the telegraph has led to a centralization of authority at the seat of government, a point often so remote from the scene of military or diplomatic action as to make it impossible for those at that center to intelligently give directions. There are still some features to recommend the old system of choosing a man fitted for a duty and holding him responsible for its performance. In the stock market, in transportation, in business of all kinds, in politics, in diplomacy, in military campaigns, the news of the wire determines the course of action. With all its advantages, this system of relying upon others has its disadvantages in the time of crisis, and the time of crisis is most liable to come in the time of war, so that, while the telegraph may be of the greatest service in the time of war, it at the same time, if too exclusively relied upon, may become a source of the greatest danger, being the means through which all the movements of a force are disclosed to a large number of persons who may be influential in determining the nature of subsequent orders from the central bureau. There is also the grave danger which would naturally follow when one who has been accustomed to rely upon others is cut off from their direction, as might happen through the interruption of telegraphic communication. The tendency of the reliance upon the telegraph has been to centralize everything, often mixing in a sad way tactics and politics. It has been held that, except in matters of general state policy, the central bureau should not interfere in the conduct of a war. This recognizes the fact that the state must declare war and that the central government is the best judge of the time when it should make peace, but that the conduct of the details of the campaign should be left to those upon the field of action. It may be said, therefore, that the telegraphic service may or may not be a blessing in the time of war, according as it is the servant of those conducting the military

operations and the means of making the cooperation of all who are engaged in the campaign more effective or the master depriving the commanders of initiative.

(b) EXTENT.

It is necessary to say something in regard to the extent of the submarine cable service in order that some of the propositions which will be made later may be more plain.

The growth of submarine telegraphy has been phenomenal. It was only sixty years ago that Professor Morse demonstrated the possibility of transmitting electric signals under water from Castle Garden to Governors Island in New York Harbor. It was fifty years ago that the first successful cable was operated in the English Channel. From the time of the elaborate report of the British Board of Trade in regard to submarine telegraphy in 1860 the progress was rapid and soon there was the long distance line connecting Great Britain and India. The success of the Atlantic cable in 1866 removed all doubt as to the feasibility of great cable projects. The far East was opened to the world by the connections of 1871.

The number of submarine telegraphic cables in the world is now about fifteen hundred. The length of the cables is about 170,000 miles. The commercial cable companies, about thirty-five in number, operate about 150,000 miles of this total. The various governments operate about twelve hundred lines, mainly short, with a total mileage of 20,000 miles. The mileage will shortly be increased by Pacific cables for which both the British and the United States Governments are preparing. At present the United States does not own and operate cables. Whether the policy of extension of jurisdiction will make it necessary to undertake such work is still a matter of debate. It was fortunate for the United States that the cable from New York to Haiti was laid in 1896, as it formed the chief line of telegraphic



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communication between the Departments at Washington and the representatives at Santiago and in other parts of the West Indies during the Spanish-American war. Messages were exchanged within so short a time as twelve minutes. Not so direct is the line from Washington to Manila, however. This is Washington to New York by land; to Ireland by cable; to Brighton, England, cable and land; to Havre, cable; to Marseilles, land; to Alexandria, cable; to Suez, land; to Aden, cable; to Bombay, cable; to Madras, land; to Singapore, cable; to Saigon, cable; to Hongkong, cable; to Manila, cable, a distance of about 14,000 miles and passing through various jurisdictions.

It is estimated that about six million messages are annually sent along these lines. This gives some faint idea of the service performed by this species of the world's property which, as yet, has only an indefinite international status. The cables also represent an investment of about \$250,000,000. The International Bureau of Telegraph Administration has done much to make the operation of the cables most beneficial to the world at large, but much remains to be done which is outside the province of this bureau.

(B) PRESENT SIGNIFICANCE.

(a) SOCIAL.

From the nature and extent of the submarine telegraphic service, it is easily seen that any interruption of the service would greatly disturb the relations existing among the peoples of the world. Their daily action is in many ways dependent upon the news which the telegraph may bring. The suffering in the famine districts of India may be a matter of as vital importance to many American citizens as the destitution in a neighboring alley. It is a serious matter to interpose the old barriers of time and space between the members of the human family after they have once been removed.

(b) COMMERCIAL.

The economic activity of the world is even more disturbed by any interruption of the cable service, for it was originally for this field of the world's activity that the cable was laid. The fact that the interruption of the cable service during hostilities may do a great amount of damage to the citizens of a state which has no relations to the war itself and no concern in its issue, complicates matters at such a time. The ownership may be in the hands of persons who belong to a neutral state and while, by the strict letter of the law, the property of a neutral in a belligerent territory (and under certain circumstances outside of it) is liable to hostile treatment, yet it is not always wise to subject it to such treatment in the practical operations of war. This fact has led to attempts to define the limits of allowable interruption in the time of war.

(c) MILITARY AND STRATEGIC.

It needs but a glance to see upon the map of the cables of the world that the state which possesses the lines connecting with many points has a vast advantage in time of war over a state which possesses few such connecting lines. If these lines of the more favorably conditioned state are so located as to be wholly within its jurisdiction the advantage is still further enhanced.

England has been compared to a spider whose web enmeshes the world and vibrates and reports at once at London if in a slight degree disturbed in the remotest regions. This web, running to all divisions of the realm, has done more than any one thing to solve the difficulties of imperialism. The imperialistic policy of Great Britain has also done much to change the character of telegraph connections. Originally planned with a view to financial returns to the constructing companies, recent lay outs have been with a view to military and strategic usefulness, and the plans for future cables are made with still greater reference to their adaptableness for war

purposes. Great Britain is now considering a proposition to acquire one of the Cape Verde Islands with a view to bringing a cable direct from the Island of Ascension to English soil without entering Portuguese territory. Those who are objecting to it raise the point that Great Britain now has all the territory at remote points that she can defend in the time of war with a first-class power. The cable from Halifax to Jamaica via Bermuda was constructed particularly upon strategic grounds. This policy of construction on imperialistic instead of commercial grounds has arisen mainly within the last ten years.

London is now the great cable center. Aden is the center of the control for strategic purposes in the East and Bathurst for Western Africa. The wars in South Africa and the Spanish-American war have called attention to these facts. Spain could not reach her colonies except at second hand. The lines passing through Aden or other English stations were the only ones by which France and some of the other European states could reach the far East in the times of the recent troubles there. This has aroused the liveliest debate in France, and recent papers have many articles upon the absence of a "cable policy" in that Republic. Germany feels the necessity of meeting Great Britain by lines of cable defense, and in April began to show her purpose to push measures for such a line of defense by the launching of a great cable ship. (For description see *Scientific American*, Supplement 50, p. 20639.) Propositions for new Pacific Ocean cables under national control of the respective powers have recently been made in Great Britain and in the United States. Both Governments seem inclined to support these cables with ample subsidies, if not to undertake them directly.

Perhaps something can be learned from the fact that from her isolated position Great Britain for many years has been compelled to take measures to care for herself without reference to any other state. It may be wise for

the United States to follow Washington's advice to avoid "entangling alliances" and to be able to care for herself without alliances, for thus the United States can make suitable alliances at any time and need not bind herself until necessity arises. One of the surest, and at the same time one of the easiest, means of strengthening the independent position of the United States is by the institution of an adequate cable policy. An indication of the direction which will be taken is seen in the message of the President, February, 1899, when he said that "such communication should be established in such a way as to be wholly under the control of the United States, whether in time of peace or of war." The engineering difficulties in the Pacific are scarcely greater than those encountered in the laying of the cable from Halifax to Jamaica and, without a question, would be overcome by American engineers. Should the Nicaraguan Canal project be carried through the reasons for the immediate construction of the cable in the Pacific would be even more urgent.

(C) GOVERNMENT OWNERSHIP OR CONTROL.

(a) REASONS.

Such being, in a general way, the nature, extent, and the social, commercial, military, and strategic importance of the submarine telegraph service, the question naturally arises as to the control of this means of communication.

1. From the *national* point of view it is easy to see that the control or ownership of such cables is a matter of great importance. As between ownership and management by the state and private ownership under government control the preference is at the present time, for good reason, in favor of private ownership under government control. This method, for the most part adopted by Great Britain, has the advantage of removing from the government, except at such time as is needed by the government, all responsibility for and all management of the cables, leaving the business to develop

normally, except in cases where the government, for special reasons, finds it necessary to apply an artificial stimulus in the way of a subsidy, or otherwise.

That the government should control the cable at such times as it may, for state reasons, be deemed necessary is but a corollary of the right to self-protection, which right every government possesses.

Again, as the location of the cable is through a large part of its course at the bottom of the high seas, there must necessarily be some measure of jurisdiction in the state, as the state will be held responsible for the acts of its citizens within such an area, and a private citizen can not acquire any rights in this area which is technically *res nullius*. As rights and obligations are correlative, and as the state must assume the obligation, it must have a corresponding right. The right to legislate for this form of property is, therefore, in the power of the state, or in case no legislation has been enacted, the legal control is in the proper department of the government. This position was affirmed by Secretary Fish as early as July 10, 1869, as follows:

It is not doubted by this Government that the complete control of the whole subject, both of the permission and the regulation of foreign intercourse, is with the Government of the United States, and that, however suitable certain legislation on the part of a State of the Union may become, in respect to proprietary rights in aid of such enterprises, the entire question of allowance or prohibition of such means of foreign intercourse, commercial or political, and of the terms and the conditions of its allowance, is under the control of the Government of the United States.—*Sen. Doc. 122, p. 65.*

President Grant took practically the same position in his message of December, 1875, and since that time the position has often been reaffirmed. All foreign submarine cables having a terminus in the United States have been landed under a distinct condition that the "executive permission is to be accepted and understood by the company as being subject to any future action of Congress in relation to the whole subject of submarine teleg-



raphy." A late opinion of the Attorney General, in accordance with which the President was entitled to act and to order all the departments of executive character to act, sums up the matter as follows:

The preservation of our territorial integrity and the protection of our foreign interests is entrusted, in the first instance, to the President. * * * The President has charge of our relations with foreign powers. It is his duty to see that in the exchange of comities among nations we get as much as we give. He ought not to stand by and permit a cable to land on our shores under concessions from a foreign power which does not permit our cables to land on its shores and enjoy there facilities equal to those accorded its cable here. * * * The President is not only the head of the diplomatic service, but Commander in Chief of the Army and Navy. A submarine cable is of inestimable service to the Government in communicating with its officers in the diplomatic and consular service, and in the Army and Navy when abroad. The President should, therefore, demand that the Government have precedence in the use of the line, and this was done by President Grant in the third point of his message. * * * The Executive permission to land a cable is, of course, subject to subsequent Congressional action. The President's authority to control the landing of a foreign cable does not flow from his right to permit it in the sense of granting a franchise, but from his power to prohibit it should he deem it an encroachment on our rights or prejudicial to our interests. The unconditional landing of a foreign cable might be both, and therefore to be prohibited, but a landing under judicious restrictions and conditions might be neither, and therefore to be permitted in the promotion of international intercourse.—*Opin. Atty. Gen.* 22, p. 25.

In a later decision it was held that the same restriction applied to the landing of submarine cables in Cuba in the time of military occupation on the island. *Ibid.* p. 515.

There can then be no doubt that for the executive branches of the United States Government the principle of control by the President is established in absence of any legislation to the contrary. Therefore the matter of relations of the United States to a cable policy becomes one particularly within the Department of State in connection with the President, and as thus far enunciated is one of limited government control, subject to

further control through action of Congress should occasion arise. This leaves the Government in a very free position in determining its future action, which is a particularly fortunate condition of affairs just at this time of submarine telegraphic extension.

2. From the *international* standpoint, the control of cables by individual states is much more satisfactory than the control by individuals or corporations, as the state can be reached to some extent directly, while the individual or corporation can be reached only indirectly. The disadvantages of either form of control were so many that the demand for some sort of an international agreement was made soon after submarine cables came into successful operation. This finally led to the convention of 1884, which, to a limited extent, still determines the status of submarine cables.

(D) THE STATUS OF SUBMARINE CABLES IN THE TIME OF PEACE.

The status of submarine cables in the time of peace from the international standpoint is, in general, determined by the convention of 1884. This convention was drawn up by the representatives of all the leading states of the world and received their approval. The final protocol fixed the date at which it was to go into effect as May 1, 1888.

This convention was one whose provisions became, for the states parties to it, at once effective outside of territorial waters giving certain special obligations and duties to such states. By its provision was made against willful injuries or interruption to the cable service and for reasonable care for the cables and boats engaged in the cable service. Any violation of the provisions of the convention were to be tried by the courts of the state to which the offending party belonged and were to be instituted by the state itself. The naval forces of the states parties to the convention were to have their functions extended so as to meet the following provision of Article

X: "When the officers commanding the vessels of war, or the vessels specially commissioned for that purpose, of one of the high contracting parties shall have reason to believe that an infraction of the measures provided for by this convention has been committed by a vessel other than a vessel of war they may require the captain or master to exhibit the official documents furnishing evidence of the nationality of the said vessel. Summary mention of such exhibition shall at once be made on the documents exhibited." The treaty also provides for a regular method of filing complaints in such cases, thus making the officers of the navies of the contracting powers sort of provisional guardians of the international cable service of the world. It is to be observed that the convention does not make this service obligatory, but only permissive. The individual states are to determine to what extent it shall be obligatory in their several navies and to communicate to each other such laws as they may make upon the subject of cables as affected by the convention. Article XV is, while brief, of great importance. It reads as follows: "Article XV. It is understood that the stipulations of this convention shall in nowise affect the liberty of action of belligerents." Lest there might, even after this article, be an opportunity for misunderstanding, Lord Lyons offered in behalf of the British Government the following declaration: "Her Majesty's Government understands Article XV in this sense, that, in time of war, a belligerent, a signatory of the convention, shall be free to act in regard to submarine cables as if the convention did not exist." In the same tenor the Belgian delegate submitted the following declaration: "The Belgian Government, through its delegates to the conference, has maintained that the convention has no effect upon the rights of belligerent powers. These rights would be neither more nor less extensive after the signature than they are now. The mention inserted in Article XV, although absolute, in the opinion of the Belgian Government, would not,

however, justify a refusal on its part to unite in a work, the expediency of which is indisputable." From the clause of the convention and from the declarations of the two delegates it will be seen that the status of submarine cables in the time of war was, after the convention, even less definite than before, as there might be a possibility of making some claims for their protection in the absence of any provision which withdrew them from such action as did Article XV and the two declarations, but after the convention, cables in the time of war were definitely excluded from the international stipulations. As the submarine cables in war time had thus, for a period at least, been put beyond international agreement, the discussion which had been common before 1884, ceased for the most part and was only revived by the force of circumstances consequent upon the wars of very recent years. Till 1890 there was little further attempt to define the war status of cables as it was regarded as almost useless after the convention of 1884.

The period before 1884 might be called a period of indefinite status for all cables at all times, except as prescribed in the local laws of the various states. The period from 1884 to 1890 may be called a period of definite status for cables in the time of peace among nearly all nations, but of no status in the time of war. The period from 1890 may be described as a period of definite status in the time of peace and of attempts to develop a status for the time of war. These attempts to evolve a status for cables in time of war have come in consequence of the evils experienced during the last ten years of the nineteenth century because of this lack of status.

(E) EXAMPLES OF INTERRUPTION OF SUBMARINE CABLE SERVICE.

(a) Prior to 1890 there had been interruptions of the cable service, particularly along the coast of Central and South America. In the insurrection of which General

Barrios was the leader, in 1885, a cable which was the property of citizens of the United States was in such danger of being cut as to cause our Government to feel that the danger was "so imminent as to call for urgent remonstrance and precautionary measures toward the protection of the property of citizens of the United States then threatened." (U. S. For. Rel., 1891, p. 58.)

(b) Interruption also took place in the disturbances of 1890 in Central American states. Mr. Blaine, in a communication of February 20, 1891, enunciates the following as a dictum:

It appears to be unquestioned that coastwise cables touching at Central American points are entitled to protection from interference. * * * While it may not be possible to prevent their injury during actual war, their willful interruption should be guarded against, and their use, when in working order, should be open to the diplomatic and consular officers of the United States for official communications with their Government, or with each other, without hindrance of any kind.—*Ibid.*

(c.) The next examples of interruption of cable service were in the recent wars, particularly the South African war and the Spanish-American war.

1. The interruptions in consequence of the South African war were generally directly in accord with the regulations under which the cables upon which the interruption occurred had been constructed. Such companies operate under the following general conditions: "The dispatches of the Imperial Government shall have priority when demanded. The cable must not, at any station, employ foreigners, and the lines must not pass through any office or be subject to the control of any foreign government. In event of war the Government (of Great Britain) may occupy all stations on English territory or under the protection of Great Britain, and it may use the cable by means of its own employees."

Great Britain, therefore, was acting entirely within her rights, as secured by her domestic laws, in refusing the transmission of the messages, though this act caused much

opposition from some of the people of Europe. The international position of submarine cables gave full warrant to the act of the Government of November 18, 1899, forbidding the transmission of any telegrams by the way of Aden without passing through the hands of the censor, and this action was unquestionably within the jurisdiction of the British Government. Cipher dispatches of all kinds and to whomsoever addressed were refused at Aden and at the Cape.

The resumption of service was indicated by the following press notice of August 5, 1901:

NEW YORK, *August 5.*

The Western Union Telegraph Company to-day sent out the following: "The Western Union Company has received notice that messages may now be sent at senders' risk and subject to delay, in any of the authorized commercial codes, at Aden and Cape Town, and from Edenburg, Bloemfontein, Brandfort, Kronstad, and Harrismith, in the Orange River Colony, and Johannesburg, Pretoria, Potchefstroom, Vereeniging, Heidelberg, Stander-ton, Volksrust, Middleberg, Wakkerstroom, Krugersdorp, and Barberton, in the Transvaal. The name of the code used must be indicated in the check of the message."

It will also be seen that this notice does not give entire freedom of cable service.

France has been thrown almost into a panic in its attempt to counteract this sort of a control of the seas. It was a surprise to the European states to discover that the British Government had an investment of about five million dollars in cable making plants and in cable laying ships. This stimulated similar investments on the part of other states.

The lines had also been interrupted at the time when the English bombarded Alexandria in 1882, but this gave rise to no action which forms any precedent.

2. The interruptions of cable communication during the Spanish-American war attracted more attention because the domestic laws did not, as in the case of the South African war, generally cover the circumstances of the interruption. Of all these cases, the cutting of the

cable at Manila gave rise to the greatest amount of discussion both in the United States and abroad. This cable was the property of the British Eastern Extension Australasia and China Telegraph Company, limited, and is generally known as the Hongkong-Manila cable. This cable was constructed under certain conditions imposed by the Spanish Government. Among these conditions was one to the effect that the company should not send telegrams when forbidden by the Spanish authorities. The company claimed to have received an order in proper form, forbidding its use, and from the status of such property the company could not disobey an order of the domestic government of the state within which it was situated. The position of the company was therefore clear. It could not operate until it received authority from somebody having proper competence and would prefer that the cable remain idle rather than that the concession under which it operated should be endangered. The managers of the company maintained, with propriety, that so long as the control of the Philippines had not legally passed into other hands they would be doing an injustice to their shareholders if they endangered their franchise by action which the Spanish Government would not sanction. They were willing, however, to attempt to resume service if the United States would guarantee them against all danger of forfeiture, and in case of forfeiture would indemnify their shareholders. The negotiations continued for more than two months before the cable was, by the consent of both parties, opened for service. These negotiations show most clearly the inconveniences of the lack of international status of submarine cables in the time of war. During the whole period while the sovereignty of the Philippines was in doubt the cable company, though willing to perform its proper service, was unable to do so because of the fact that no provision had been made for such a contingency, either in their concession from the domestic Government of Spain or by international

convention. The United States also attempted to obtain the use of the cable by an arrangement to be "made confidentially with the British company owning cable from Manila to Hongkong for use of same by United States authorities." The chairman of the company, the Marquis of Tweeddale, replied that he saw "no way to take our telegrams in face of formal prohibition of Spanish Government." (U. S. For. Rel. 1898, p. 978.) A month after these propositions of the United States, the Marquis of Tweeddale informed Mr. Hay that the "Spanish Government has agreed to reopening Manila office, to be free to all telegrams of every kind." To this proposition Mr. Day, then Secretary of State, replied: "Thank Lord Tweeddale for kindly interest shown in Manila-Hongkong cable matter, but postpone consideration of submitted proposal for the present." During these negotiations with the company, the United States had been engaged in the attempt to obtain the consent of the British Government to land at Hongkong a United States cable from Manila. The British authorities gave courteous consideration to this request. Lord Salisbury replied: "I have consulted the lord chancellor and the attorney and solicitor general in respect to your excellency's communication, and regret to inform you that as I am advised Her Majesty's Government is not at liberty to comply with the proposal of the Government of the United States."

What diplomacy and other negotiations failed to accomplish, the potent influence of commerce in world's affairs hastened. A telegram from the manager of the company in the far East put a new aspect upon the interruption to the cable service. This telegram read as follows:

Commodore, Hongkong, and shipping community much concerned, now that typhoon season commences, at absence weather telegrams from Manila, which are of immense value to life and property. Authorities of all nations with whom Commodore consulted agree and hope that representations and pressure on

part of company in proper quarters may bring about speedy restoration.—*U. S. For. Rel.*, 1898, p. 979.

This action brought the Spanish Government to a speedy agreement that communication should be restored "provided the cable and telegraph station in Manila are completely neutralized, so as to be available for the transmission of telegrams of every kind and from all sources." On August 17, 1898, the United States consented to the reopening of the cable service with the expression of the hope that the "Spanish Government" would "not object." (Moore, dispatch to Hay.) On August 22 the company was ready for business. (By the protocol, hostilities had been suspended from August 12.)

The transactions in regard to this cable seem to have acknowledged the principles: (1) That at the present time domestic law of the state granting the cable company the right to exist determines the actions of the company so long as one of its terminals is within the territory of that state. (2) That such a cable could not justly afford any special favors to any other government, unless with the sanction of the government from which it received its franchise. (3) That a neutral government can not grant a landing place in the time of war to a cable of either of the belligerents, without danger of violation of neutrality.

This last is an entirely new question and was considered upon broad grounds of international law and not upon any precedent derived from conventions. It may be said that this decision of the law officers of the British Crown probably indicates a line of procedure which will be followed in determining cable status in the future in other states, particularly as the same position has, in another case, been taken by a law officer of the United States when the Attorney General, in an opinion of February 1, 1899, says: "It is true * * * that a cable is a new and peculiar species of property and that a precedent based upon the cutting of a cable is difficult

to find; but the strict law applicable to the case does not, on that account, become doubtful." The conclusion that the status of submarine cables in the time of war is to be determined upon the broad grounds of existing principles governing states in their international relations is a long step in the settlement of many possible difficult questions which may arise.

(F) WAR AS AN INTERRUPTION OF ORDINARY RELATIONS.

It has been claimed that the limitation of cable service is an undue hardship, even in the time of war, but it is generally recognized that the time of war is a time of hardship. The further claim has been made that the burden of interruption of cable communication rests more heavily upon neutrals than is just, and there seems to be some ground for such a claim; yet there seems to be no strong indication that the states of the world propose to make this burden any lighter through an international convention, as was thought probable till recent years. It was thought possible that a movement might be made to neutralize cables in 1897 after the inconveniences experienced as a consequence of the limiting of cable service during the troubles between Turkey and Greece. Some believed that the cable service might be put upon the same basis as the use of the Suez Canal, by a neutralization which Holland well defines as an act "to bestow by convention a neutral character upon states, persons, and things which would or might otherwise bear a belligerent character." ("Studies," Internat. Position Suez Canal.) As the Franco-Prussian war prevented the calling of a convention for neutralizing cables in accord with a plan which the United States had championed in 1869, so again the outbreak of hostilities involving the very subject to be considered prevented the possible calling of a convention upon the subject of submarine cables in the last decade of the nineteenth

century. Hence, there is thus far no conventional agreements upon the status of such cables, and as the distinguished Calvo says, "That neutralization which seems to flow naturally from the neutrality of the seas has not yet been established in principle or recognized by the maritime powers." (Calvo, Droit Int. Sec. 2650.)

(G) PRINCIPLES TO BE CONSIDERED.

If, then, the submarine cables are not neutralized, and if no conventional agreements have been made for their treatment in the time of war, but if, on the contrary, two of the great nations whose relations to this sort of service are most extensive have declared that so far as cables involve international relations they must be treated as the recognized principles of the laws binding states require, then it is necessary to consider what these principles which may affect cables are.

1. The most common principle cited in support of the interruption of the cable service is that which justifies a belligerent in maintaining a blockade of his enemy's port. It is generally accepted that "Blockade consists in the interception by a belligerent of access to territory or to a place which is in the possession of his enemy. As it is obviously a mode by which severe stress may be put upon the population subjected to it through the interruption of communication with the external world which it entails, it is an invariable concomitant of all warlike operations by which control is gained over avenues through which such communication takes place. * * * But at sea the rights of a neutral being equal to those of the belligerent except in so far as they are subordinated to the special needs of the latter, the neutral has *prima facie* a right of access to the enemy; and when this right is ousted by the assertion of the special needs of the belligerent, it must be shown that the latter is in a position to render the assertion effective." These words, quoted from Hall ("International Law," 4th ed.,

sec. 257,) state practically the English and American position. Further, both states agree in practice that what renders one liable to a penalty for the breach of blockade is the knowledge of the fact of its existence. There would, therefore, be doubt as to the propriety of the interruption of the cable service between a neutral and a belligerent before the blockade had been duly made known, if the interruption was to be purely on the ground of breach of blockade. If the cable is to be interrupted on this ground then it might be best to make known to the controlling parties that the blockade covered the cable service also.

2. There are other grounds advanced for the severing of cable communications. The usage of states, still somewhat unsettled, it must be admitted, in regard to the transmission of mail matter has been cited as similar to that of a cable. If the principles were sufficiently well established in these cases it might be of great value in determining the rules to be followed in regard to cables, but even the latest authorities offer solutions which are only tentative in character. As Hall again says: "No government could undertake to answer for all the letters passed in the ordinary manner through its post-offices. To give immunity from seizure as of right to neutral mail bags would therefore be equivalent to resigning all power to intercept correspondence between the hostile country and its colonies, or a distant expedition sent out by it; and it is not difficult to imagine occasions when the absence of such power might be a matter of grave importance" (p. 704, sec. 252). It has been common to settle by treaty agreement the treatment which postal vessels and postal matter shall receive in the time of war between the states parties to the treaty. Such conventional agreements are not uniform, and all that can be said is that the mail and cable service should be interrupted as little as may be consistent with the necessities of war, particularly with reference to states not parties to the hostilities.

3. Another element in the cable operations is such as to make it possible to bring the act, under certain circumstances, within the limits of what is now termed unneutral service, which includes the knowing carriage or repetition of messages of the enemy by a neutral. If this principle is to be generally recognized, and it doubtless must be if wireless telegraphy becomes widely practicable, then the transmission of messages by cable is one of the means by which unneutral service may be most easily rendered, and provision must be made to check it. The neutral landing place of the cable would be the seat of an act of the nature of an unneutral service as truly as a vessel which, on the high seas, repeats a message of a belligerent at one point to his fellow belligerent at another point, more or less distant, with a view to aiding him, either for pay or for reasons of friendship. While the neutral landing place of the cable can not be seized any more than can the neutral ship if it be within the neutral jurisdiction, the act in either case can be a subject of protest, and if continued may be a basis for damages. If the cable be one connecting with the belligerent territory it may, outside of the neutral jurisdiction, be interrupted. Of course a cable between two neutral points can not perform such service, and is therefore not liable to interruption.

(H) CONDITIONS OF CABLE SERVICE.

The possibility and the propriety of interruption of cable service may vary with the conditions which depend in some measure on the landing places of the termini of the cables.

Captain Squier (Proceedings U. S. Naval Institute, XXVI, 617) describes the five classes into which cables were divided in the time of the Spanish-American war as follows:

“*First.* Those of which the termini are in the enemy’s country; for instance, the Cuba Submarine Cable System along the south coast of Cuba.

“*Second.* Which directly connect countries at war, so that each belligerent controls one end of cable; for instance, the International Oceanic Telegraphic Company between Florida and Havana.

“*Third.* Where one end of the cable is in the enemy’s country and the other in neutral territory; for instance, the West India and Panama cables extending from Jamaica to Cuba, and to Porto Rico, and thence to St. Thomas.

“*Fourth.* Where a cable extends from the coast of an offensive belligerent to a neutral country contiguous to the territory of the defensive belligerent; for instance, the Hayti cable from New York City to Hayti, where there is direct cable connection with the Island of Cuba.

“*Fifth.* Other cables having one terminus in the territory of the offensive belligerent and the other in neutral regions, remote from the scene of hostility; for instance, the Atlantic cables connecting the United States and Europe.”

(I) TREATMENT OF THE DIFFERENT CLASSES.

The treatment of the different classes of cables would vary with the conditions and the place of landing of the termini.

(a) IN CUBAN WATERS.

1. Cables having both termini in the hostile territory were liable to all the consequences of hostile treatment, whether along the immediate coast or in the high seas. No difference was made as to whether the owners were neutrals or belligerents. These cables were cut, destroyed, seized, or used for the belligerent purposes of the captor, if found desirable. The appurtenances of the service, as cable machinery and houses, were liable to the same treatment.

2. Cables of the second class, as the cable from Havana to Key West, were liable to interruption by either side or might be operated under a joint agreement of the two belligerents. In the case of the Key

West and Havana cable, it was operated under strict military censorship, both at Havana and at Key West. Messages in open text that could pass the double censorship were transmitted.

3. Cables of the third class, those between belligerent territory and a neutral territory which is not remote, but not contiguous, as the cable to Panama via Jamaica, were, according to Captain Squier, "viewed as contraband of war; but it was also recognized that the liability to destruction depended in a measure on the locality of the cable. It recognized as unsettled and of doubtful expediency the right of any belligerent to raise from the bottom and destroy on the high sea a neutral cable, merely on the ground that such cable landed in a hostile country. A more rigid rule was applied, however; to such portions of cables, cable huts, instruments, etc., as were located within the territorial jurisdiction of the enemy." These last were made liable to the vicissitudes of war. The cables to the south of Cuba were therefore liable to the vicissitudes of war so far as they could be reached within the marine league or, by a special provision, within the "range of the Spanish batteries." When cables of this class came within the military jurisdiction of the United States the owners were sometimes given the option to continue the operation of the cable under military censorship or abandon the cable to the exigencies of war.

4. Cables of the fourth class, from the belligerent territory to a neutral territory contiguous to the other belligerent, were, when possible, to be seized and operated under military censorship.

5. Cables of the fifth class were to be placed under military censorship and as they connected the belligerent territory with remote points the censorship was only under the general supervision of an officer of the United States who left the responsibility for the operation of the cable upon the reliable agents of the company whose action was guaranteed by a written pledge.

In the case of these lines, the chief signal officer prohibited Spanish messages and any others of doubtful character. The free use of such lines was secured to the United States.

As Captain Squier says:

In the absence of definite international law upon many points involved the United States was forced to take the initiative and use this powerful military weapon for the benefit of the cause of the United States, while at the same time respecting and subserving the rights of neutrals with an equity and fairness which characterized the actions of this Government.—*Submarine Cables*, p. 619, *Proceed.*, *United Naval Inst.* Vol. XXVI.

A review of these rules enunciated by the Chief Signal Officer will show that, for the purpose of establishing principles for international action, the classes of cables are only three, and that the last three classes are within the same category and are distinguished by him for the purpose of convenience in the actual operations of war and are to be treated in a different manner only because the military operations can be best served by so distinguishing them, rather than because of any difference in the nature of the classes themselves. Indeed, the last three classes might all be treated in a similar manner, if it seemed to serve the military needs better. What has been said may fairly cover the principles upon which the action in regard to Cuban cables was based.

(b) THE MANILA CABLE.

The other instance of cable cutting or interruption which caused the most remark in the world was that at Manila, as has been said. The facts of this case were briefly these: On the afternoon of May 1, 1898, Commodore Dewey, having military possession of maritime area within which the cable from Manila to Hongkong lay, asked the Governor General of the Philippines that the cable "be neutralized to the extent that each belligerent be at liberty to send messages over it without limitations or censorship by the other." This proposition was refused, and the "cable was cut by the *Zafiro* on the morning of May 2, 1898, off Sangley Point * * * and the

two ends buoyed." Five days later Commodore Dewey dispatched "a vessel to the point of rupture, about two miles off Cavite, where the cable lay in about ten fathoms. The wave action had carried the ends about two hundred feet apart, to the full length of a stout rope that had joined them to facilitate recovery. There was no regular cable to be had, and the repair was accomplished by splicing in a piece of insulated field wire, with such an allowance of slack that the stay rope, which was left on, should bear the strain. Hongkong was called, only to find that to avoid complications the company had sealed the cable, and after all the grappling and improvising the dispatch boat had to be continued."

This cable was the property of the British Eastern Extension Australasia and China Telegraph Company, a neutral company acting under a franchise which they claimed was to continue till 1940 and which gave to the company the exclusive right to operate cables in the Philippines to that date. Another clause provides that the company shall receive \$25,000 per year if other cables are allowed to operate in the islands before that date. The company promptly filed a claim for \$36,000 damages against the United States on account of the laying of military cables in the Philippines and on account of the interruption of the cable itself. The Attorney General gave his opinion:

Property of a neutral permanently situated within the territory of our enemy is, from its situation alone, liable to damage from the lawful operations of war, which this cutting is conceded to have been, and no compensation is due for such damage.—*Opin. Atty. Gen. Griggs, Feb. 1, 1899, XXII, 316.*

And he further maintains that, instead of being obliged to show why cable property should be subject to the general rule in regard to property in the time of war, it is, on the other hand, necessary for the claimants to show why it should be exempt, if any such reason exists. The Attorney General also says:

It was possible to take up the outer end and operate the cable to Hongkong from the time it was cut; and it was the sealing of the cable at Hongkong, and not the cutting, which prevented this

from being done. It seems to me, therefore, that the injury by cutting can properly be regarded as in no way withdrawn from the rule by reason of its supposed extension beyond territorial waters, even if an extension of the injury could in any case alter the rights of the belligerent.—*Ibid*, 317.

This case, then, reaffirms the principle that the status of submarine cables is determined by rules already existing and is not on that account doubtful, except in cases where no general principle which has been acknowledged applies.

(J) CABLES AS AFFECTED BY LAWS AND POLICY.

The laws under which cables are operated help in determining their status in the time of war. If France and Germany do as they propose in establishing cable service with their dependencies with the distinct purpose of securing more fully their military defense, it will be very difficult to convince Great Britain or any other power that in the time of war so effective means of defense are entitled to special exemption. Similarly, cables subsidized by the policy of a given state can not expect to be free from a taint of participation in public service if the enemy wishes to maintain such a charge. The policy of Great Britain in placing all cables under a quasi-public control enlarges the area of possible attack upon her in the time of war. This led to the proposition of a leading statesman that Great Britain make provision for a cable patrol, the extent of which he could scarcely have appreciated. The difficulties would be greatly increased from the fact that the patrol would be most necessary at a time when the ships could least easily be spared for the service, in the time of war. The proposition shows how a "cable policy" carries with it a "naval policy," "a coaling policy," and an "imperialistic policy" of some kind, and also how any one of these policies demands the other, whatever be the merits or demerits of either singly. That Great Britain does not propose to submit the question of the regulation

of her submarine cable service to the decision of any convention now more than in 1884 is seen in the decided refusal of Sir Julian Pauncefote to allow the question to be presented for discussion at The Hague Peace Conference when it appeared in a tentative form. (Holls, "Hague Peace Conference," p. 158.) The United States has entered upon an aggressive cable policy while maintaining her earlier policy as announced in refusing "to allow a cable to be landed upon our shores which possessed from a foreign country exclusive privileges with respect to cable communication between that country and this." (Mr. Foster in regard to Brazilian company 1892, For. Rel. p. 16.) That the United States was uncertain as to what policy it would pursue at the beginning of the Spanish-American war is evident from such messages as the following:

WASHINGTON, *April 25, 1898.*

SAMPSON, *Key West:*

Telegraphic cables must not be interfered with until further notice.

LONG.

WASHINGTON, *April 27, 1898.*

SAMPSON, *Key West:*

We are considering the advantage of declaring telegraphic cables neutral.

LONG.

President McKinley's message of February 10, 1899, indicated a decided inclination to follow the British lead in the direction of entering on what might be called a "cable policy." In this the votes of Congress at that time seemed to concur. The British Government did not propose to be behind the United States in the Pacific and indicated its intention to subsidize a cable line from Vancouver to Queensland, which plan also met with general approval in England.

It must be observed, therefore, that the attitude of belligerents toward cables in the time of war will probably be influenced by the relations of the cable to the governments of the territories which they touch. It would be as absurd to exempt a subsidized cable from

the consequences of hostilities as it would to exempt an auxiliary cruiser from such consequences. Probably the cable would be of greater service. There are those who claim that the state controlling the "cables and the coal" controls the world.

The law and policy of the great powers of the world alike show that the hope of President Buchanan in regard to neutralization, which he expressed in a message at the opening of the first Atlantic cable, will not be speedily realized, and the law and policy also show that the cable occupies a very different place in the world from that which President Buchanan anticipated when he said, in regard to the desirability of immunity of cables: "In this view will not all nations of Christendom spontaneously unite in the declaration that it (the cable) shall be forever neutral and its communications shall be held sacred in passing to their places of destination, even in the midst of hostilities."

The fact is that at present it would not be possible to make an effective international agreement in regard to neutralization without the approval of Great Britain, and there is little for Great Britain, already in control of an elaborate system of cables, to gain by such an agreement and much for her to lose. That neutralization will be a matter of speedy agreement is at least unlikely.

(K) THE PROVISIONS OF THE UNITED STATES NAVAL WAR CODE.

Article 5 of the Naval War Code, prepared by the former president of this War College, contains these provisions:

"The following rules are to be followed with regard to submarine telegraphic cables in the time of war, irrespective of their ownership:

"(a) Submarine telegraphic cables between points in the territory of an enemy, or between the territory of the United States and that of an enemy, are subject to such treatment as the necessities of war may require.

“(b) Submarine telegraphic cables between the territory of an enemy and neutral territory may be interrupted within the territorial jurisdiction of the enemy.

“(c) Submarine telegraphic cables between two neutral territories shall be held inviolable and free from interruption.”

Under article 36 of the same code “materials for the construction of railways or telegraphs” are enumerated among those conditionally contraband. There can be no doubt as to the propriety of this provision in regard to the contraband nature of telegraphic materials. The practice and theory alike demand this treatment of such materials. This is evident when it is considered that the various states have now in stock, as a part of their war equipment, more than eighty thousand miles of war cable of different sorts. It is proper that the whole range of appurtenances necessary for the equipment of this essential branch of modern war undertakings should be included under contraband. Indeed, the definition of contraband will need to be more a matter of general principle as time goes on and less a matter of particular enumeration, as formerly.

(L) POINTS NOT COVERED IN THE CODE.

(a) The Naval War Code was, of necessity, a collection of rules which could be generally agreed upon. While the portion of the code relating to submarine cables was a new matter in the rules of warfare, the statements were made in such a way as to cover only such cases as would admit of no doubt. The rules (a) and (c), those in regard to full liability of cables wholly within the area of the two belligerents and in regard to the full exemption of cables wholly within the jurisdiction of neutrals, are not open to any considerable difference of opinion.

The rule (b), viz: “Submarine telegraphic cables between the territory of an enemy and neutral territory may be interrupted within the jurisdiction of the enemy,” is, without doubt, correct as a statement of principle, and

justifiable. It will be observed that the statement is that such cables may be cut within enemy jurisdiction, and not that they are not to be cut elsewhere. It is certain that such a cable should not be interrupted by any act which itself shall take place within neutral jurisdiction. It would not, of course, be allowable for any belligerent to cut any cable within the three-mile limit of a neutral state. There is then left entirely undetermined the status of cables between an enemy and a neutral so far as they lay in the high seas.

If cables between neutrals and belligerents can be cut only within the jurisdiction of the belligerent, it would be good policy for a belligerent to see that, so far as possible, immediately on the outbreak of hostilities a neutral landing place be interposed between the termini of all his cables or to make provision for this in their original construction, thus leaving only the guardianship of the cable line within the three-mile limit for the belligerent's cruisers. This would probably not be maintained seriously in a case necessitating the cutting of a cable, even beyond the three-mile limit, or, as was maintained in the Spanish-American war, "the limit of the range of the enemy's guns."

It has been pointed out already that the status of submarine telegraphic cables has, in time of war, been determined by reference to general principles, and not by any conventional agreement among states, and that the tendency still appears to follow the same course in spite of the hopes of those who have labored for a conventional agreement for many years. It may be that such agreement will come, as in many cases before, after the matters involved have been settled in practice.

(b) It has been stated also that the conditions of ownership and operation of cables may, under certain circumstances, affect the attitude of a state at war toward them. In the Naval War Code the statement is made that the rules there set forth apply regardless of ownership. This is true so far as those rules go in their

application, but it must be observed that these rules do not profess to cover cables beyond the three-mile limit, unless they are wholly belligerent or wholly neutral, leaving outside of the consideration the cables which may, for convenience, be called "mixed cables," i. e., connecting neutrals and belligerents. This covers a large class, particularly of those cables touching the United States. If these cables are exempt from interruption beyond the maritime jurisdiction and if the large number of cables connecting various portions of the realm of Great Britain are liable to interruption at any point in their course, then the United States is in a happy condition.

If cables of a "mixed character" are to be exempt beyond the maritime jurisdiction of the enemy state, then the mere protection of the cables within this area is to give to the enemy state the most formidable agents for carrying on hostilities with a minimum necessity of defense and minimum liability to injury. That the agency of a cable may be a means of protecting commerce, neutralizing naval expeditions, and facilitating the hostile movements of an enemy needs only to be mentioned. Captain Stockton, writing of cables, without specifying that they connect neutral and hostile territory, says:

It is generally recognized, certainly by the United States, that under certain circumstances and conditions, materials for the construction of telegraphs are contraband of war. Submarine cables, if found ashore in belligerent territory, or afloat, bound for a belligerent destination, as an enemy's port or fleet, would certainly be liable to seizure as material for the construction of telegraphic communication, and hence contraband of war. If it then can be considered contraband of war on its way to a hostile destination on the high seas, as material or a component part only of a working telegraph, how much more does such a cable become contraband of war when it is in working order, actually conveying aid, information, and, possibly, money to a belligerent or belligerent country in time of war.—*Proceed. U. S. N. Inst., Vol. XXIV, p. 453.*

In addition to the contraband element in the case of a "mixed cable" there is the element of unneutral service, which is equally marked. Both of these considerations would render any other agency liable to seizure and probable confiscation on general principles. The principles which apply in other cases apply all the more forcibly to submarine telegraphic cables, even though they possess a "mixed character."

Hence, the general conclusion is that, in addition to the rules of the Naval War Code, cables between a belligerent and a neutral territory are liable to seizure or to interruption outside neutral jurisdiction, should circumstances warrant.

(c) BRAZILIAN DECLARATION.

If a belligerent has a right to demand that a port of a neutral shall not become a point for the fitting out of hostile expeditions or the enlistment of hostile forces, and this is generally admitted, a belligerent has an equal right to demand that a state which is neutral use due diligence to prevent such aid as would be even more injurious to a given party, viz, the giving of information, signals, and other unneutral actions. This important principle seems to have been recognized during the Spanish-American war for the first time, so far as the use of the telegraph is concerned, and Brazil, in its Proclamation of Neutrality, Article V, declared that "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." This makes the hostile use of the telegraph an act contrary to strict neutrality. Brazil seems to have regarded the position of the submarine cable merely on the ground of general principles, and not as a special and exceptional circumstance. Such hostile use of a cable is, from this standpoint, merely one way by which citizens may violate the neutrality of the state.

A further complication arises in consequence of public ownership or public control of cables. It is a principle of domestic law that a state may lay down the rules and fix the conditions upon which cables may enter its jurisdiction. This right is easily drawn from the state's sovereignty over the coast waters. Since many states have a control of the lines touching their shores, when they care to exercise such control, and since their messages have priority, and, in the case of Great Britain, government employees may be put in charge of the operation of the lines when necessary, it would seem that Brazil was acting in a way which might commend itself to other states. If a state can control the telegraph in the time of war for its own service, can it not control it in the time of neutrality, that the cable may not be used in an unneutral manner? The answer would seem to be undoubtedly in the affirmative, for the violation of neutrality may be the cause of war or the ground for the demand for indemnity.

In the case of telegraphic cables owned or subsidized by the state which is neutral, and extending from its territory to the territory of a belligerent, the responsibility of the state owning or subsidizing the cable becomes even more direct, and that state will doubtless be held responsible for the use of the cable to the injury of either belligerent.

(M) CONCLUSIONS.

(a) GENERAL.

Thus far, in a general way, the nature of the submarine telegraphic cable service has been considered and found to be such as to materially change the methods of commerce, diplomacy, and war. The extent of this service is so great that any unnecessary interruption to the ordinary workings should, if possible, be prevented for the sake of the world at large. While it is expected that war will be burdensome it should not be unnecessarily so to neutrals. The use of cables has been found of such

importance as to cause some of the states of the world to enter upon distinct "cable policies," which involve more than the simple laying and operation of the lines. Where the governments have control of the lines there is an obligation to use them in an enlightened manner, but at present each state may determine what this involves, provided the principles generally recognized as governing interstate relations are not transgressed. These principles for the time of peace are outlined in the international agreement of 1884. The interruptions in the time of war have all been within comparatively recent years, and those from which any precedents can be drawn are mainly interruptions which occurred during the recent war in South Africa and the Spanish-American war. It was held that Great Britain was entirely within her rights in establishing a strict supervision over the cables which touched her territory and which were landed under her laws, which provided for such supervision in the time of war. The interruption of the Manila-Hong-kong service caused the company which owned it to refuse to resume operation unless under guaranty that the United States would be responsible for any loss that might accrue during the time of doubt as to the sovereignty of the Philippine Islands. This same interruption brought from the law officers of the British Crown the opinion that a neutral state could not, without a violation of its neutrality, allow a new cable from a belligerent point to be landed in its territory during the hostilities and for the purpose of military communication with a cable within British jurisdiction. Communication over this cable was resumed on the agreement of both the hostile parties that it should be open for the transmission of all messages of every kind. Propositions for conventional neutralization have failed. The attempt has been made to justify interruption of the cable service on the grounds of breach of blockade, the carriage of belligerent dispatches and the unneutral character of the service. The rules enunciated by the

Chief Signal Officer of the United States introduce the principle of relative utility as a factor in determining the treatment, but this is merely a matter of domestic policy of proper consideration in such a case as led to its publication, though not leading to the change in the classes before that time recognized. The Attorney General of the United States announced his opinion that the treatment of cables should be determined by the general principles of the law of nations and reaffirms the dictum that the general law does apply in absence of proof to the contrary. Since the states of the world have not made any conventional agreement the questions of policy may determine cable treatment, as in Secretary Long's dispatch, "We are considering the advantage of declaring telegraphic cables neutral," and the attitude of belligerents toward cables in the time of war may be influenced by the relations of the cables to the governments of the territories which they touch. The provisions of the Naval War Code cover the cases upon which there is general agreement. This code does not, however, cover the debatable points in regard to cables which are beyond the three-mile limit or other limit of jurisdiction of a belligerent and the same limits of a neutral state. The status of such cables must be determined, for the present, by reference to general principles and the tendency is to so determine their status. This is necessary because great injury might be done to one or both of the belligerents if the laws of different states might say what was proper service in the time of war, as was formerly thought to be possible unless a convention was adopted among the leading states. If the material of which the cable is to be made is liable to seizure and confiscation on the high sea in the time of war, then it is not too much to claim that the cable itself, when in full operation, is liable to the consequences of war under like circumstances. Brazil has recognized this and has prohibited the unneutral use of cables in the time of war. This action also points to the acknowledgment of

responsibility by the neutral state for the service rendered by the cables touching its territory and connecting with the territory of one of the belligerents. It would seem that the drift is toward giving a belligerent the right to demand that a cable touching at a neutral point shall not be used for hostile purposes any more than that the same point should be used as a base of supplies or a port for fitting out expeditions.

The facts being as stated in regard to the extent, nature, and possible significance of submarine telegraphic service and the tendencies as shown in enunciated rules and in precedents, certain special conclusions may be drawn.

(b) SPECIAL.

1. The cables within the territory of the belligerents are liable to such treatment as the exigencies of war may demand. They may be continued under military censorship, they may be destroyed, they may be seized, or may be treated in such manner as the two belligerents may be able to agree upon.

2. Cables between neutral points are exempt from all interruption. It may, however, be obligatory upon the neutral to exercise a reasonable care to see that the cable landing in his state does not become a means by which neutrality is violated. The question may be raised, for instance, whether it is practicable to limit the use of cables in the time of war at all, provided they touch or connect neutral points only. It is doubtful, at least, whether the law could be extended to attach any responsibility to a state which made no restrictions upon this service. At the present time no such responsibility attaches. If a message is passing between two neutral points no taint of violation of neutrality rests upon it unless forbidden by domestic law, whoever may own the line, whatever may be the character of the message, or whoever may be the addressee. That is, if under the Brazilian prohibition a message in regard to the movements of the United States vessels had been sent to London from Rio de

Janeiro, the United States would have had no cause of complaint, even though Brazil might regard the sender as a violator of a domestic prohibition and liable before domestic law.

3. In regard to cables between neutral and belligerent points, the responsibility of the neutral state for the nature of the cable service is beginning to be recognized in theory and in practice. It is true that a belligerent may interrupt any such cable outside the jurisdiction of the neutral or may destroy it as a measure of war. A better provision would be that which was adopted when certain cables in Cuba were seized, i. e., to allow the transmission of messages which were neutral in character, though this may be often difficult to determine. To carry this principle a step further, somewhat in the line of the Brazilian action, it would be possible for the neutral to proclaim the neutrality of the cables from the neutral state touching belligerent points and to allow the transmission of such messages only as the belligerents could mutually agree upon rather than to risk the danger of the cutting of the cables by the belligerents on the one hand or to resort to the sealing of the cables at the neutral port on the other. Had this course been adopted by Great Britain in the case of the Hongkong-Manila cable there would have been no necessity for the cutting or the sealing of the cable, but it might have been used for the transmission of weather observations, which were of so great importance to commerce in general and for other strictly neutral messages. The war messages would have been transmitted only when received in a neutral port after being brought by a dispatch boat, as was the case. In other words, the peaceful use of the cable would not have been interrupted and all the burdens of transmission of war messages would have remained. That this is feasible through a censorship of all messages from and to the belligerent point is seen in the dual censorship of messages between Key West and Havana during a portion of the hostilities. The neutral and both belligerents



would be interested to preserve the neutrality of the cable because it is within the rights of either belligerent, by cutting the cable or otherwise, to interrupt the service if it becomes belligerent rather than neutral. It is also within the rights of the neutral to seal the cable and to put an end to all communication with the belligerent point, if the neutral fears that the cable is being used in such a way as to make the neutral liable for any violation of neutrality. Against unneutral use then there may be interposed, without new laws, new regulations, or any international convention, the extension of principles already recognized, which will make both the belligerents and the neutrals alike defenders of the neutrality of cables and will effectively reach nearly all cases of possible unneutral cable service. Thus the extension of recognized principles of international law may at the same time preserve this species of property from damage and enable the world to profit by the use of the cable for peaceful purposes during a period of war rather than result in loss by removing it from service during a part of its already short life. (The life of the average cable is only from twenty to thirty years.) The doctrine that the belligerents shall, so far as possible, bear the burdens of the war, and that neutrals shall, so far as possible, be free from such burdens demands this extension of recognized principles; the simplicity of this course commends it; theory approves it, and the drift of practice points to its adoption. This would leave the lines of the world open for proper communication so far as the absolute necessities of war did not prevent, and still leave each state to judge of the urgency of any interruption and to act accordingly.

To this solution of the international telegraphic cable problem in the time of war, the sane action of the officers and advisers of the United States Government during the war with Spain has in the highest degree contributed.

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