

31st March, 1939.

Sir,

In reply to Foreign Office letter No. A 7968/14/51 of the 6th December last, concerning the quantity of fuel to be supplied to belligerent warships from neutral sources, I am commanded by My Lords Commissioners of the Admiralty to acquaint you, for the information of the Secretary of State for Foreign Affairs, that they agree that neither of the alternative rules laid down in Article 19 of Hague Convention XIII is entirely satisfactory. They accordingly welcome the suggestion in paragraph 4 of your letter that H.M. Government should rely on their reservation to this Article for the purpose of contending that the provision allowing a sufficient supply of fuel to reach the nearest home port must be interpreted on the assumption that it was not intended to allow belligerent warships to take on more fuel than would be necessary to enable them to steam a moderate distance. In support of this contention, it should be possible to argue that, owing to the increase which has taken place in the endurance of warships, they are now able to conduct operations at distances from their home ports far greater than those contemplated by the delegates to the Conference of 1907.

2. In the light of the experience of enemy commerce raiding operations in the last war, it appears to Their Lordships necessary to take into account, also, the probability that belligerent warships will not enter neutral

The Under-Secretary of State,
Foreign Office.

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ports themselves for fuelling and storing purposes, but will rely upon the services of supply ships which load the necessary cargoes in neutral ports. It is desirable, therefore, to form some view as to the extent to which the treatment of such vessels should be assimilated to that of warships for the purposes at present under discussion.

3. After careful review of this question and bearing in mind the possible needs of the British Fleet in certain contingencies, Their Lordships consider that H.M. Government would best adhere to the attitude outlined in the memorandum forwarded with Admiralty semi-official letter M.0482/34 of the 10th August, 1934, addressed to Mr. Nicholls, which suggested that oilers and tankers directly attached to the Fleet and intended for communication with the Base, should, from the start, be treated as vessels of war for fuelling purposes. It further suggested that oilers and tankers not attached to the Fleet might legitimately be diverted to oil warships at sea, provided that repeated use was not made of any particular merchant ship and that the Fleet was not operating in the neighbourhood.

4. If this test is applied, it will be possible to urge upon neutrals the restriction, in accordance with the view of Article 19 of Hague Convention XIII discussed above, of cargoes supplied to any particular oiler as soon as the enemy is unwise enough to use her more than once for the purpose of shipping fuel from a neutral port. Even if the enemy is careful to use a number of oilers in turn, it will still be possible to make representations to the neutral government concerned, as soon as the direct shipment of supplies to enemy warships is repeated a

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sufficient number of times from a port or ports in the same neutral country to justify the suspicion that the ports of that country, either individually or collectively, are being used as a base for belligerent operations. The distance at which the warships are operating from the port or ports would clearly be a relevant factor in deciding at what stage this latter argument could be employed.

5. Finally, I am to refer also to Foreign Office letter A.241/241/45 of the 13th January, concerning the rule adopted by the Panama Canal Authorities to govern the fuelling of belligerent warships. In view of the various issues discussed above, My Lords suggest that enquiries should be made, firstly, as to whether the same rule would be applied generally throughout the territory of the United States of America in wartime; and secondly, what vessels, in what circumstances, would be regarded by the United States Authorities as assimilated to warships for the purposes of applying this rule. X

6. My Lords also suggest that if the rule adopted by the Panama Canal Authorities found acceptance in a few other neutral countries, this would afford grounds for quoting it as an example of one way in which Article 19 of Hague Convention XIII in the interpretation placed upon it by H.M. Government, could be put into effect. X

I am, etc.,

(Sgd.) S.H. PHILLIPS.