Stone considered a claim for compensation as the main remedy for breaches of neutrality but continued:

> "How far a belligerent is entitled himself to take measures of self-defence or self-help in neutral waters against his opponent's breach of that neutrality is more difficult. One clear principle is that, the right of self-preservation apart, an aggrieved State is clearly not entitled to violate the neutral's territorial integrity, simply because his enemy has done so. Diplomatic representations and claim are the proper course. Another is that, at any rate where appeal for local protection is feasible, the aggrieved State's vessel would seem not to be entitled to defend or help itself in neutral territory or waters. [See *The General Armstrong*, 2 Moore, *Arbitrations* 1071–1132.] If appeal to local protection was impossible or pointless, the attacked vessel's right of self-defence is more arguable [See the discussion by Mr. Justice Story in *The Anne* (1818) 3 Wheaton 435, 447–449.]; it does not seem likely that it could extend beyond what its own self-preservation or escape from peril required. [Professor Lauterpacht, with his eye perhaps on the action of the British destroyer which used sufficient force to remove British prisoners of war from *The Altmark* in Norwegian territorial waters, suggests exceptions where strategy or humanity might justify self-help. . . .]"

Self-defense or self-help

Stone, *Legal Controls of International Conflict* (1959) 400, 401.

Lauterpacht had said: "Normally, diplomatic representation and a claim for compensation are the proper remedy for any disregard of neutral duties of this nature [violation of neutral territory]. However, circumstances may arise in which subsequent redress by the neutral must, *in natura rerum*, be wholly inadequate and in which the aggrieved belligerent must, therefore, be held to be justified in resorting to self-help. . . ." II Lauterpacht, *Oppenheim's International Law* (7th ed., 1952) 695 n.1.

For further views of writers on the use of force by a belligerent to redress abuses of neutrality, see MacChesney, "International Law Situation," U.S. Naval War College, *International Law Situation and Documents, 1956* (1957) 23–27.

Tucker stated that the belligerent duty to respect the inviolability of neutral territory is "not without limitation". He added:

> ". . . A belligerent is not obligated to refrain *under all circumstances* from taking hostile measures against the naval forces of an enemy located in neutral waters. In the event that the forces of one belligerent violate neutral waters (or ports) and the neutral state willfully permits such violation it cannot complain if the other belligerent—as an extreme measure—attacks his enemy while still in the waters of the neutral state. The neutral state has not only the right to prevent the misuse of its waters and ports but also a duty to take adequate measures of prevention. This neutral duty is owed to the belligerent that has otherwise respected the rights of the neutral state and that

> will be placed at a disadvantage in war by the unlawful use made of neutral waters and ports by an enemy. In allowing the forces of one belligerent to misuse its waters and ports the neutral state thereby violates its duty toward the other belligerent, and the acts of hostility that the offended belligerent may take against the forces of his enemy in neutral waters may be interpreted as permitted measures of reprisal against the delinquent neutral."

Tucker also recognized that there may be circumstances in which "the neutral state, while using the means at its disposal, may be wholly unable to enforce its rights effectively" and asked whether the injured belligerent must "nevertheless abstain from taking hostile measures in neutral waters against his adversary". He continued:

> "It can hardly be said that the dilemma posed by the situation of the weak neutral has been clearly and satisfactorily resolved even today. The relatively few incidents that appear to have a bearing upon this problem are not entirely free from ambiguity, and their significance as possible precedents ought not to be overestimated. Despite this dearth of precedents it is the opinion of a number of publicists that if the neutral state is unable to enforce its rights against one belligerent making unlawful use of its waters the other belligerent may—as an extreme measure—resort to hostile action against the forces of its enemy, though in neutral waters. If this opinion is correct, as it is believed to be, then a belligerent's duty to abstain from committing acts of hostility in neutral waters must be limited not only by the willingness but also by the ability of the neutral to enforce its rights effectively. At the same time, there is general agreement that where a neutral state is employing the means at its disposal (though ineffectively) to prevent belligerent violations of its waters, a belligerent ought not to take hostile measures against an enemy making unlawful use of these waters except when so required for reasons of self-preservation or—though this is still a matter of some dispute—in order to prevent an enemy from gaining a material advantage in the conduct of war.
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> "["It is still the opinion of perhaps the majority of writers that the only exception ought to be self preservation—interpreted in the most narrow sense. . . . Yet it should be apparent that belligerent misuse of neutral waters may thereby confer important advantages upon the lawbreaker, even though considerations of self-preservation—in the most immediate and narrow interpretation of that term—are not involved. To limit the belligerent whose interests suffer as a result of these unlawful activities merely to urging the weak neutral to use more effective measures of prevention, when it is evident such measures are not available to the neutral, would appear neither a reasonable nor a very realistic solution. No doubt the real danger attendant upon the position taken here is that the belligerent may use any

alleged violation of neutral waters by an enemy—no matter how minor—and against which the neutral has not taken effective preventive measures, as an excuse for resorting to hostile acts within these same waters. Undoubtedly this danger exists, despite any attempt to restrict belligerents by laying down what can only be—at best—rather broad criteria. The only real alternative, however, is to prohibit all hostile belligerent measures in neutral jurisdiction despite neutral ineffectiveness in preventing the unlawful acts of an enemy. And it should be pointed out that even to restrict belligerents to the taking of hostile measures only for reasons of 'immediate self-preservation' leaves the door more than slightly ajar to the above danger.]"

Tucker, "The Law of War and Neutrality at Sea", U.S. Naval War College, *International Law Studies, 1955* (1957) 220, 221–223. The precedents referred to by Tucker are the incident of the Russian destroyer. *Peshitelni* or *Ryeshetelni* in the Russo-Japanese War, for which see VII Moore, *Digest of International Law* (1906) 1091; the German cruiser *Dresden* in World War I, for which see VII Hackworth, *Digest of International Law* (1943) 370; the *Altmark*, below; and the action of the British and French in sowing mines in Norwegian territorial waters in World War II *post*.

Tucker considers the *Altmark* incident a reprisal against a neutral rather than self-help. He adds: "In the *Altmark* incident there appeared little doubt that Norway had the 'means at its disposal' to enforce its neutrality. Nor did the British Government attempt to justify the measures of hostility it finally resorted to within Norwegian waters on the grounds that Norway was unable to enforce her rights. On the contrary, the British contention was that Norway had the means but was unwilling to use these means. The British action, if justifiable, must be interpreted then as a reprisal against Norway for the latter's failure to observe her duties toward Great Britain. . . ." (Tucker, *op. cit.*, 221–222n.)

MacChesney wrote:

> "It has been seen that there is a general consensus that an injured belligerent has the right to resort to self-help if the circumstances are sufficiently serious and the neutral is unable or unwilling to intervene to redress the breach of neutrality. . . .
>
> "On the facts of the *Altmark* case, the right of self-help presents a debatable question. As indicated previously, the writers have divided on the merits of the British intervention. . . . In view of the weaknesses of international society in providing adequate means for redressing wrongs, a rule permitting intervention on the ground of self-help on the facts in the *Altmark* case might be justified. Such a rule would be more in accord with the realities and more likely to secure the survival of the rules of neutrality. On the other hand, resort to self-help should be confined to the gravest circumstances. On moral and humanitarian grounds, the British intervention can be understood and defended. It is difficult to say dogmatically that their intervention violated the law in force at the time. The thrust of the Charter provisions and the *Corfu Channel* case, however, suggest that the use of force under such circumstances would now be illegal. In view of the weaknesses of international institutions previously mentioned, it may still be questioned whether such a conclusion is desirable." MacChesney, "International Law Situation", U.S. Naval War College, *International Law Situation and Documents, 1956* (1957) 26–27.

With respect to the sowing of mines in Norwegian territorial waters by the British and the French during World War II, Tucker observed: "The implication was clear that the mining of Norwegian waters was a measure of 'self help' justified in view of Norway's inability to prevent German misuse of her waters." Tucker, *op. cit.*, 222n.

On May 14, 1941, the British Government requested the United States to transmit to Marshal Pétain, Chief of State of the Vichy Government, the following statement, which was to be made in the House of Commons on May 15:

"Information at the disposal of His Majesty's Government shows that French authorities in Syria are allowing German aircraft to use Syrian airdromes as staging posts for flights to Iraq. His Majesty's Government have in consequence given full authority for action to be taken against these German aircraft on Syrian airdromes. The French Government cannot escape responsibility for this situation. This action under German orders in permitting these flights is a clear breach of armistice terms and is inconsistent with undertakings given by the French Government."

The Secretary of State (Hull) to the American Ambassador in France (Leahy), telegram, May 14, 1941, MS. Department of State, file 740.0011 European War 1939/1115a; 1941 For. Rel., vol. III, p. 710.

The American Ambassador in France had reported earlier:

"We were told in confidence by a Government official yesterday that instructions have been sent to the High Commissioner in Syria that in the event German planes fly over Syria toward Iraq they should not be fired upon; that if any of them should land in Syria they should not be permitted to depart pending instructions to be requested from Vichy. If on the other hand British planes should fly over Syria the High Commissioner's instructions are to endeavor to shoot them down." The American Ambassador in France (Leahy) to the Secretary of State (Hull), telegram, May 9, 1941, MS. Department of State, file 740.0011 European War 1939/10761; 1941 For. Rel., vol. III, pp. 701–702.

The United States Army manual, the Law of Land Warfare, provides:

"520. Should the neutral State be unable, or fail for any reason, to prevent violations of its neutrality by the troops of one belligerent entering or passing through its territory, the other belligerent may be justified in attacking the enemy forces on this territory."

U.S. Department of the Army Field Manual (FM 27–10) on the Law of Land Warfare (1956) 185.

The United States naval manual, *Law of Naval Warfare*, states:

". . . a belligerent is not forbidden to resort to acts of hostility in neutral jurisdiction against enemy troops, vessels, or aircraft making illegal use of neutral territory, waters, or air space, if

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a neutral state will not or cannot effectively enforce its rights against such offending belligerent forces."

U.S. Department of the Navy, Chief of Naval Operations, NWIP 10-2, *Law of Naval Warfare* (Sept. 1955, as amended July 1959), sec. 441; 1955 version printed in U.S. Naval War College, *International Law Studies, 1955* (1957) 383.

Inviolability of Neutral Territory

§ 9

The United States Army manual, Law of Land Warfare, sec. 515, "Inviolability of Territory" reads:

"*a. Treaty Provision.*

"The territory of neutral Powers is inviolable. (Hague Convention, V, art. 1.)

"*b. Application of Rule.* The foregoing rule prohibits any unauthorized entry into the territory of a neutral State, its territorial waters, or the airspace over such areas by troops or instrumentalities of war. If harm is caused in a neutral State by the unauthorized entry of a belligerent, the offending State may be required, according to the circumstances, to respond in damages."

U.S. Department of the Army Field Manual (FM 27-10) on the Law of Land Warfare (1956) 185.

The British manual states:

"655. The territory of a neutral State must not be violated by the belligerents and must not, therefore, be made a theatre of operations. Belligerents are expressly forbidden to move troops or convoys, whether of military stores or supplies, across the territory of a neutral State. Any attack on enemy forces which may have taken refuge on such territory is a violation of neutrality. Should, however, one belligerent violate neutral territory by marching troops across it and the neutral State be unable or unwilling to resist the violation, the other belligerent may be justified in attacking the enemy there or in demanding compensation from the offending State."

Great Britain, War Office, *The Law of War on Land, Being Part III of the Manual of Military Law* (1958) 187.

Attack on Norway

German plans for gaining bases in Norway, by force, if necessary, were discussed as early as October 1939. On March 1, 1940, Hitler issued a directive saying:

"'The development of the situation in Scandinavia requires the making of all preparations for the occupation of Denmark and Norway by a part of the German Armed Forces. This

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