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INTERNATIONAL LAW IN TIME OF WAR.

Liability of Private Property to Capture.

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Private enemy property on land is, as a rule, not liable to confiscation. Although an invader in occupation of enemy territory may requisition foodstuffs, he must pay for them. On sea, however, private enemy property is liable to confiscation if found on enemy ships. The ships also may be taken. Moreover, enemy goods on neutral ships are liable to seizure if contraband or destined for a blockaded port. In the present article I shall deal with the law which defines the conditions of liability to capture apart from the special circumstances involved in a consideration of contraband and blockade.

—Shipping in Enemy Ports.—

Enemy ships and goods which are in their adversary's ports at the outbreak of war, according to the code of maritime law which was adopted by the International Institute of Law at its Oxford Conference in 1913, are not liable to capture. The ships should be given a reasonable time for departure. It is doubtful, however, whether this represents international law or only custom on its way to become law. The custom undoubtedly exists; but its observance can hardly be said to be obligatory. At the outbreak of the present war, German ships were detained in Imperial ports, presumably pending an assurance that Germany would observe the prevailing custom. Moreover, as Oppenheim remarks in his book on "War and Neutrality," enemy mail boats which have been built from special designs for the purpose of conversion into cruisers of the navy are unlikely to be allowed to leave the ports of a belligerent at the outbreak of a war. This is but one of many illustrations of the distinction between enemy contraband and enemy non-contraband—a distinction which has acquired an ever increasing importance in modern usage. You may attack the enemy's actual or potential fighting forces; but not his private subjects. The liability of private property at sea to capture is an anomaly which has survived from barbarous times. Probably some day that anomaly will be abolished—saving, of course blockade and contraband. But in the meantime we have to deal with the law which exists.

—Capture on the High Seas.—

On the high seas enemy ships and enemy goods on board of them are liable to capture—in some countries for the benefit of the captor State, in other countries (including Great Britain) for the profit of the officers and crew of the vessel which effects the capture. Generally recognized exceptions to the liability of capture are personal effects of the officers and crew, cargoes of works of art, inshore fishing vessels not used for warlike purposes, and vessels engaged in exploration. As incidental to the right of capture, a belligerent State may exercise what is known as the right of search. It may stop all vessels on the high seas, other than neutral men-of-war, for the purpose of ascertaining whether they carry goods which are liable to capture. On due suspicion that such goods are being carried it has been usual for the vessel to be sent to territory (either belonging to the belligerent or occupied by him) for adjudication by a Municipal Prize Court. According to the code adopted at Oxford in 1913, article 104, it is only permissible to destroy enemy ships on seizure in presence of an exceptional necessity, e.g., when the destruction is required for the security of the captor or for the success of military operations in which the captor is at the time engaged.

In former times a belligerent would exercise rights of capture, either by public ships or by adventurers licensed to prey upon enemy commerce. But privateering was formally abolished by the Declaration of Paris in 1856. Unfortunately, a new species of ships' prey has to be reckoned with. Existing law sanctions the practice of inviting sailors and shipowners to place their services and resources at the disposal of their country, as a volunteer fleet and under naval discipline. It is well known that Great Britain has standing agreements with several steamship companies for the purchase of fast liners at a fixed price and on a short notice. At international conferences, held in 1907 and 1909, British delegates endeavoured in vain to secure a satisfactory limitation upon the conditions under which such a conversion of merchant ships might take place. They pointed out that a private vessel might frequent a neutral port, receive full supplies, spy upon other ships, and subsequently hoist the naval flag and declare itself a vessel of war. Nor is a belligerent limited to the ships of its own subjects. Through intermediaries it may buy the ships of any other country and hoist the naval flag at the appropriate moment. The Oxford Conference of 1913 adopted the following articles relative to the present subject matter. Article 3 affirms that a ship can only be converted into a vessel of war if it is placed under the direct authority, the immediate control, and responsibility of the belligerent power. Article 4 requires the ship so converted to adopt the distinctive signs of the war vessels of the belligerent. By article 9 the conversion can only take place in the waters of a belligerent State, of its allies, of the enemy, or of occupied territory. By article 10 a ship of war cannot be converted into a private ship during the course of the war. Unfortunately though these articles were almost unanimously adopted by the Institute, the Institute does not carry the authority of an international conference of official delegates. An eminent English Judge, Earl Loreburn, in his work on "Capture at Sea," which was also published in 1913, expresses his opinion that Great Britain will have to reckon with the probability that her enemies will claim the right to convert private vessels into vessels of war on the high seas, and also with the possibility that a vessel so converted may be reconverted into a private vessel as the convenience of the moment may dictate. "Possibly it might haul down the naval flag and resume its commercial character so as to take refuge in a neutral port when danger appeared." With all deference to the great authority which attaches to the opinion of the members of the International Institute, I fear we must anticipate in the present war that Germany and Austria will claim the right to convert private vessels into vessels of war on the high seas. As regards reconversion, however, I am inclined to think that the views expressed by the institute will prevail. *Mais nous verrons!*

—Britain's Peril.—

It remains to consider the precise bearing of the above mentioned rules when they are viewed in relation to British and German policy in the present war. In the last issue of *The Strand Magazine*, Sir Conan Doyle has a sensational article under the title of "England's Peril." The article was written before the outbreak of the war. It postulates a war between Great Britain and a minor power possessed of a very superior fleet of submarines. This fleet torpedoes merchant ships, whether British or neutral, wherever it finds them on the way to convey foodstuffs to the mother country. If such ships take refuge in neutral waters, the submarines follow them there and torpedoes them forthwith. Result, Great Britain is speedily starved into submission! That the supply of foodstuffs in time of war must necessarily be a grave question for British Statesmen cannot be denied. But no one who has even a bowing acquaintance with international law, and the extent of its restraining influence, would suggest that a modern State will allow its fighting forces to adopt the tactics which Sir Conan Doyle so graphically depicts. We need not fear in the present war any such wholesale depredations by the submarines of Germany or Austria. Submarines will be mainly used for fighting purposes, as distinct from purposes which

can only be described as practical. The real danger of Great Britain is fourfold. In the first place, though both Germany and Great Britain can secure immunity of private property in the high seas (apart from contraband and blockade), by having such property placed on neutral ships, this possibility is much more a practicability for Germany than for Great Britain. At least four times as many ships for the purpose would be required by Great Britain as would be required by Germany. In the second place, both because Great Britain is more exclusively a manufacturing country than Germany, and also because Great Britain is isolated by the high seas, she is much more dependent upon the maintenance of sea commerce than Germany. In the third place, we may anticipate, at any rate if the war continues for any length of time, that Germany will establish a volunteer fleet consisting of rapid cruisers capable of inflicting great damage upon British trade, and of reducing the home supplies of foodstuffs to an extent which must be serious and may be calamitous.

The volunteer fleet would probably not trouble about taking her prizes to a German Court. This would involve delay and possibility of recapture. "The enemy," writes Westlake, "has no cause of complaint if his property is destroyed at sea instead of being brought in for adjudication." I assume that our fleet maintains supremacy on the high seas. But even if it does, the danger referred to, though greatly lessened, would still exist. As Lord Loreburn remarks, the view that we hope for, practical immunity for our commerce, as a result of the supremacy of our fleet, can only be entertained by those who are unacquainted with the intentions and opinions of foreign Powers as disclosed at the conferences of 1907 and 1909. In the fourth place, British-carrying trade is imperilled. Although neutral goods on British ships are not liable to confiscation, they are liable to risks and delays sufficiently serious to warrant neutral shippers wherever practicable in preferring neutral ships.

—Conclusion.—

The general conclusion at which I arrive is that England's policy should be, while maintaining her supremacy on the high seas, to assist in the attack upon Germany by land. She should strike as hard as she can, as early as practicable, and everywhere the opportunity offers. Germany will have her own troubles, of course; but it seems probable that a prolongation of the war would impose a severer test on Great Britain than on her enemy. Germany is more self-contained, has land communication with seven States, and will probably retain command of the Baltic and of the trade with neutrals bordering on it. Thanks to the Kiel Canal, Germany can concentrate her naval forces either in the North Sea or the Baltic at will. Even if Great Britain could gain access to the Baltic, which may be doubted in view of the mines laid or to be laid, she would hesitate before detaching from the North Sea Fleet a squadron of sufficient force to meet the array which Germany could marshal against her.