

Answers
Concerning the Capture of Enemy's
Vessel on the Sea.

A. The practice of seizing private property of an enemy's subject on the sea is one of the rights of war according to International Law, and has not been "abolished" by the "Declaration of Paris". A practice which has for ages been an acknowledged right of war could not be so abolished by a convention of a limited number of the states of the world.

That declaration is of binding force upon those states only which have given in their adherence thereto. The original number of nations represented in the Convention was few ^{and} but many others gave an adherence to the rules adopted: but others did not and those states of which the United States of America was perhaps the most conspicuous

Example are not bound by those rules.

It follows therefore that a state which has not given an adherence to the Declaration of Paris may without a breach of International law capture the private property of the Enemy at sea.

B. Although it may be said to be one of the chief rights of war for a State to place all the subjects of the Enemy without its territory, it is contrary to modern usage to exercise that power and such an act would doubtless be looked on by other nations as a very harsh measure. If however that course were determined on, the notice to such persons should of course be public and brought to the attention of the persons concerned, and should allow sufficient time for such persons to arrange their affairs and prepare for

their departure. What treatment should be afforded to such of them as should refuse or neglect to leave would be a matter wholly within the discretion of the state taking the action to determine. It would probably be best to only exercise a surveillance over them without any imprisonment or personal punishment so long as they committed no offensive act against the government.

As to such subjects of the Enemy there is no difference between those who may be employed by the subjects of neutral States resident in the land and other persons.

The rule for the treatment of such persons is not found in International law because if a nation see fit to exercise this extreme power under the laws of war the treatment of such persons within the State would be a

matter of domestic concern only and
own to be governed by domestic policy.
It could be hardly said that we must
search international law for a rule
of action in such circumstances.

6. I am not wholly familiar with
the instance in which this extreme power
has been exercised. One notable instance
is that of the late war between France and
Germany when a military order was
issued during the military operations about
the city of Paris requiring all German subjects
to leave Paris. Money was provided by the Govt
of Germany to assist such persons to return
to Germany and was entrusted to the Representatives
of the United States in France. By that means
nearly all Germans returned to their native country.
Those who did not comply with the order were
subject to be arrested and punished according to the
military law. What the actual treatment was
of any who neglected to leave I cannot tell for
I have no account of their trial - but it is quite
probable that they were severely dealt with -
most likely arrested and either forced into the
military service in defense of the city or imprisoned.

Q. This like the matter answered at "B" is also a matter of policy. The right to Confiscate debts due to the subjects of the Sunny Empire in theory, but it is one which the section to which you refer (305) tells us is seldom exercised.

It might almost be said of such debts (as it is indeed said of certain property mentioned in Section 346) that modern usage which has acquired ^{nearly} the force of law has become nearly uniform in holding such debts exempt from Confiscation.

The answer is same as in "B" and "D"

Q. } The section to which you here refer (334) does not refer to such property as buildings and real estate, but to ships on the sea and their cargo, which may be the property of a house of trade (a trading company) which includes in its Company of members the subjects

of the Enemy. as to such property the
Section applies & should be followed. but not
as to Real property & Buildings

7. The Effect of the Declaration of Paris
on the general code of International Law
I have explained in answer to "A" and
the remarks there apply to the rules which
you have here quoted.

The book from which you are citing
passages. (Wheaton Int Law) it must
be recollected was written some forty
years since and long before the Con-
vention at Paris attempted this mod-
ification of the Law of war. This Section
of that work (505) treats of the law as
it then long stood. and as I have explained
above stands still in that particular
except as between the nations which have
agreed to the Declaration of Paris.
This helps to explain its full meaning.
I do not think in any case the two
rules of the Declⁿ of Paris. you quote

affect at all the 3^o proposition Con-
tained in that Section (505) for the rule
then laid down applies only to the fraud-
ulent carriage of contraband goods.
which act would I apprehend in effect
make the ship liable to be treated
as an Enemy's ship and as such sub-
ject to Condemnation even under the
rules of the Declaration of Paris.

This whole section however (505) is
treating particular principles of the
prize law affecting Capture on the Sea
at which the Declaration of Paris is
not aimed, and we cannot therefore
say that ^{the doctrine of} the 1st & 2^d Paragraphs of the
section are abolished or changed by
the Rules you have ~~also~~ quoted.

G. I think you have made a mistake
in the meaning of Section 336.
Reference is made in that Section

to property which is being conveyed
on the sea in a ship of the enemy
and from a port within the dominion
of the enemy - and which is as I have
already shown liable to capture by the
laws of war. It is not then said that
"without distinction to any person or
" place"; but something very different
" to wit = "Whatever may be his national
" Character in other respects or whatever
" may be his place of residence; and it
means that property being so conveyed
partakes of the Character of the territory
of which it is the produce and thus
obtains a hostile Character; (that
territory being enemy's territory) Al-
though the owner may be the subject
of a foreign and friendly power.

There is a wide distinction as to
the place of the capture although
there be none as to the person who

may be the owner.

In the very case adduced
the identical property while it yet
remained upon the soil and in the
possession of the owner in the
island of Santa Cruz would not
have been (under the modern usage
of nations) liable to confiscation in
the event of the subjugation of that
island by the forces of the United States.

There is therefore no contra-
diction in the passages adduced, all
^{private} property ~~of every kind~~ being liable to
capture at sea, while on the land public
property only is so liable.

Respectfully Submitted

G. W. Hill

Esq. of the Admiralty

Yours

14. Oct. 74.