

International Law Studies—Volume 60

Documents on Prisoners of War

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DOCUMENT NO. 19

**OPINION OF THE [BRITISH] KING'S ADVOCATE CONCERNING
THE IMPROPER TREATMENT OF PRISONERS OF WAR
(London, 24 September 1832)**

SOURCE

3 McNair, International Law Opinions 119

NOTE

For many years the King's Advocate, located at Doctors' Commons, was the adviser to the British Government on matters of international law. The opinion here presented was requested at a time when the usurper monarch of Portugal, Dom Miguel, was besieging Porto (Oporto) which was held by the forces of the constitutional king, Pedro I, who had the support of the British. The latter feared that the city would fall to the besiegers and that Dom Miguel would massacre the members of the constitutional forces who fell into his hands. (Actually, Porto did not fall and Dom Pedro succeeded in gaining his throne.) The British Government sought advice as to its right to intervene in an internal conflict in order to ensure the protection of the prospective prisoners of war.

TEXT

DOCTOR'S COMMONS

October 24th, 1832

My Lord,

I am honoured with Your Lordship's Commands signified in Mr. Backhouse's letter of the 13th instant transmitting to me, confidentially, a letter from Col. Evans, relative to the conduct which it is feared may be adopted, towards the Defenders of Oporto, in the event of the City being captured by the troops of Don Miguel, and Your Lordship is pleased to request that I would communicate any remarks that may occur to me upon the contents of this letter, and that I would state my opinion with regard to the right of the British Government to intervene at all in this matter.

In obedience to Your Lordship's commands I have the honour to report that cases may possibly occur in which treatment of Prisoners of War by a nation may be so barbarous and inhuman as to call upon other powers to make common cause against it, and to take such measures as may be necessary to compel it to abandon such practice, and to conform itself to the more lenient exercise of the rights of war, adopted by other States, and such I conceive to have been the principle acted upon in the cases of Turks and Algerines referred to by Col. Evans. But I apprehend that such interference can only be justified by the notorious existence of the fact, as in the instances just mentioned, and I am humbly of opinion that apprehension of what may possibly occur, in the event of the capture of Oporto, founded upon reports and rumours, which are the only grounds upon which the present application appears to rest, will not be a sufficient reason for His Majesty's Government

to interfere, by causing 'an Intimation to be given to Don Miguel, that England will not permit the ordinary Laws of war to be departed from', as suggested by Col. Evans or in any other manner.

I have the honour to be etc.

Viscount Palmerston

HERBERT JENNER