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## II. Destruction of Prizes

### 1. *Enemy Prizes.*

Since title to a captured enemy vessel vests in the captor's government by virtue of the fact of capture, enemy ships made prizes may in case of military necessity be destroyed by the capturing officer when they cannot be sent or escorted in for adjudication, provided that the ship's papers and documents, the passengers and crew, and, if practicable, their personal effects, are placed in safety.

1. Article 14. "In case of military or other necessity, merchant vessels of an enemy may be destroyed, or they may be retained for the service of the Government."

Article 50. "If there are controlling reasons why vessels that are properly captured may not be sent in for adjudication—such as unseaworthiness, the existence of infectious disease, or the lack of a prize crew—they may be appraised and sold, and if this cannot be done, they may be destroyed. The imminent danger of recapture would justify destruction if there should be no doubt that the vessel was a proper prize. But in all such cases all of the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered.

*The United States Naval War Code of 1900.* United States Naval War College, *International Law Discussions*, 1903; 53, 88.

2. Article XCI. "In the following cases, and when it is unavoidable, the captain of the man-of-war may destroy a captured vessel or dispose of her according to the exigency of the occasion. But before so destroying or disposing of her he shall transship all persons on board, and as far as possible the cargo also, and shall preserve the ship's papers and all other documents required for judicial examination:

"(1) When the captured vessel is in very bad condition, and cannot be navigated on account of the heavy sea.

“(2) When there is apprehension that the vessel may be recaptured by the enemy.

“(3) When the man-of-war cannot man the prize without so reducing her own complement as to endanger her safety.”

Japanese Regulations, 1904. United States Naval War College, *International Law Documents*, 1925, 74-5.

3. Article 1. “During a war the commander of H. M. ships of war have the right to stop and search enemy and neutral merchant vessels, and to seize—and, in exceptional cases, to destroy—the same, together with the enemy and neutral goods found thereon.”

German Prize Code (1909) as in force July 1, 1915.

Huberich and King, *The Prize Code of the German Empire*, (New York, 1915), 1.

4. Article 122. “A captured enemy vessel may be destroyed if the taking of such vessel to a Japanese port is considered to involve danger to the ship of war or to the success of her operations.”

Article 123. “Before destroying a vessel (enemy) under the preceding article, the commanding officer of the warship must remove all the persons on board to a safe place and must take on board his ship all the papers necessary for trial of the vessel.”

Japanese Regulations, 1914. United States Naval War College, *International Law Documents*, 1925, 78-9.

5. “The sinking of prizes is in itself a questionable act to be resorted to only in extraordinary circumstances and after provision has been made for the safety of all the crew or passengers, if there are passengers on board. The responsibility for discriminating between neutral and enemy vessels, and between neutral and enemy cargo, obviously rests with the attacking ship, whose duty it is to verify the status and character of the vessel and cargo and to preserve all papers before sinking or even capturing it. So also is the humane duty of providing for the safety of the crews of merchant vessels, whether neutral or enemy, an obligation upon every belligerent.”



British-French memorandum to the neutral States, Mar. 1, 1915. *United States Foreign Relations, 1915, Supp.*, 127.

6. "5. If visit and search disclose that the vessel is of belligerent nationality, the vessel may be sunk only if it is impossible to take it into port, *provided* that the persons on board are put in a place of safety and loss of neutral property is indemnified.

"NOTE: (a) A place of safety is not an open boat out of sight of land.

"(b) A place of safety is not an open boat, if the wind is strong, the sea rough, or the weather thick, or if it is very cold.

"(c) A place of safety is not an open boat which is overcrowded or is small or unseaworthy or insufficiently manned."

U. S. Secretary of State to Ambassador in Germany, April 28, 1916. *United States Foreign Relations, 1916, Supp.*, 252.

7. "94. An enemy ship made prize may be destroyed by the capturing officer in case of military necessity, when the vessel can not be sent or brought in for adjudication.

"95. Engaging in unneutral service as defined in paragraph 39 stamps a neutral vessel with hostile character, and such a neutral vessel made prize may be destroyed by the capturing officer in the case of military necessity, when the vessel cannot be sent or brought in for adjudication."

"97. In no case after a vessel had been brought to may it be destroyed until after visit and search has been made and all persons on board have been placed in safety, and also, if practicable, their personal effects.

"All the documents, letters, and papers found on board the prize shall be taken on board the capturing vessel of war and be inventoried and sealed in accordance with the procedure of section 4615, Revised Statutes (see page 28) for delivery to the prize court, with especial view to the protection of the interests of the owners of any innocent neutral cargo on board. All mails on board should be saved so far as possible and practicable."



*Instructions for the Navy of the United States Governing Maritime Warfare*, (June, 1917), 35.

8. "There is, of course, no doubt as to the right to make prize of an enemy ship on the high seas, and, under certain conditions, to destroy her, and equally no doubt of the obligation to safeguard the lives of all persons aboard, whether passengers or crew."

*The Lusitania*, 251 Fed. 734 (S. D. N. Y., 1918).

9. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

"A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after seizure.

"A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

"(2) Belligerent submarines are not under any circumstance exempt from the universal rules above stated; and if a submarine cannot capture a merchant vessel in conformity with these rules, the existing law of nations requires it to desist from attack and to permit the merchant vessel to proceed unmolested."

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarines and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

10. Article 57. "Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved."

General Report of the Commissions of Jurists at the Hague, (1923). 17 *A. J. I. L.*, (1923), *Supp.*, 259.

11. Article 1. "The following rules shall govern commerce in time of war:

"1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship with the object of ascertaining its character and nationality and of verifying

whether it conveys cargo prohibited by international law or has committed any violation of blockade. If the merchant ship does not heed the signal to stop, it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it.

“The ship shall not be rendered incapable of navigation before the crew and passengers have been placed in safety.

“2. Belligerent submarines are subject to the foregoing rules.”

Convention on Maritime Neutrality between the United States and Other American Republics, (1928).

*United States Treaty Series*, No. 845, 2-3.

12. Article 22. “The following are accepted as established rules of International Law :

“(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.

“(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship’s papers in a place of safety. For this purpose the ship’s boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board.”

Treaty between the United States and Other Powers for the Limitation and Reduction of Naval Armament (1930). *United States Treaty Series*, No. 830, 27. Also the proces-verbal, (1936). 173 *League of Nations Treaty Series*, 353.

13. The International Agreement for Collective Measures against Piratical Attacks in the Mediterranean by Submarines signed at Nyon on Sept. 14, 1937 invoked the rules stated in the Treaty between the United States and Other Powers for Limitation and Reducation of Naval Armament, (1930), and in the proces-verbal of 1936.



The United Kingdom of Great Britain and Northern Ireland, Bulgaria, Egypt, France, Greece, Rumania, Turkey, the Union of Soviet Socialist Republics, and Yugoslavia were signatories.

United States Naval War College, *International Law Situations*, 1938, 100-103.

The same rules were applied to aircraft through the following provision of the Supplementary Agreement to the Nyon Arrangement:

"II. The present Agreement applies to any attack by a surface vessel or an aircraft upon any merchant vessel in the Mediterranean not belonging to either of the conflicting Spanish parties, when such attack is accompanied by a violation of the humanitarian principles embodied in the rules of international law with regard to warfare at sea, which are referred to in Part IV of the Treaty of London of April 22nd, 1930, and confirmed in the Protocol signed in London on November 6th, 1936."

United States Naval War College, *International Law Situations*, 1938, 104.

14. Article 54. "(3) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface or submarine, or a military aircraft, may not sink or render incapable of navigation an unarmed merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or by the presence of another vessel which is in a position to take them on board."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War* (Harvard Law School). 33 *A. J. I. L.* (1939), *Supp.*, 186.

15. "That a belligerent may lawfully destroy before condemnation enemy vessels captured as prizes, subject to certain conditions, is generally admitted." "It should be noted that among the conditions almost uniformly recognized and carried out, at least before the World War, were those re-



quiring that there be some necessity for the destruction, and that all persons on the vessel to be destroyed be placed in safety."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War* (Harvard Law School). *Comment.* 33 *A. J. I. L.* (1939), *Supp.*, 563.

16. Article 72. "Captured enemy vessels may be destroyed if it appears to be inexpedient or unsafe to bring them to port."

Article 74. "(1) The destruction of vessels in accordance with Articles 72 and 73 is admissible only if the passengers, crew, and papers of the vessel have been brought to a place of safety before destruction.

"(2) Ship's boats are not to be regarded as a place of safety unless the safety of passengers and crew under the existing conditions of the sea and the weather is assured by the proximity of land or the presence of another vessel which is able to take them on board."

*German Prize Code* (1939). Hackworth, G. H., *Digest of International Law* (Washington, 1943). Vol. VII, 255, 248.

The British Legation at Montevideo, Uruguay, announced on Sept. 4, 1939, the first sinking of a German merchant ship in World War II. The German ship, the *Olinda*, was stopped by the *Ajax*, a British cruiser. British officers boarded the *Olinda* and ordered the *Olinda's* officers and crew to abandon ship. The German officers and crew were given time to pack their personal belongings. After the crew had been picked up by a British tanker standing by, the *Ajax* shelled and sank the *Olinda*. The tanker carried the *Olinda's* crew to Montevideo.

If innocent neutral goods are destroyed with the enemy prize, the owner of such goods is entitled to compensation.

1. Article 3. "Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag;"

Declaration of Paris, (1856). (translation)

3. "La marchandise neutre, á l'exception de la contrebande de guerre, n'est par saisissable sous pavillon ennemi;"

*British and Foreign State Papers*, Vol. 46, (1855-1856), 27.

2. "68. 'Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.'"

*Instructions for the Navy of the United States Governing Maritime Warfare*, (June, 1917), 27. Many bilateral treaties between the United States and foreign states have included this article from the Declaration of Paris, as for example the treaty with Bolivia, (1858), article 16. Malloy, *Treaties, Conventions*, I, 119.

3. Article 53. "If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation."

Declaration of London, (1909). Not ratified. *British Parliamentary Papers*, Misc. No. 4, (1909), (Cd. 4554), 86.

4. "5. If a visit and search disclose that the vessel is of belligerent nationality, the vessel may be sunk only if it is impossible to take it into port, *provided* that the persons on board are put in a place of safety and loss of neutral property is indemnified."

United States Secretary of State to the Ambassador in Germany, Apr. 28, 1916. *United States Foreign Relations*, 1916, *Supp.*, 252.

5. "The British view has been that when an enemy vessel captured as prize is destroyed, the captor must pay for innocent neutral cargo destroyed with the vessel."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School). Comment. 33 *A. J. I. L.*, (1939), *Supp.*, 557.

## 2. Neutral Prizes.

The right to destroy neutral merchant vessels captured as prizes was not generally claimed nor



exercised before the Russo-Japanese War. By 1914, however, the right to destroy neutral prizes was already being claimed by a number of countries subject to the condition that passengers, crews, and the ships' papers be removed to a place of safety.

1. Article 50. "If there are controlling reasons why vessels that are properly captured may not be sent in for adjudication—such as unseaworthiness, the existence of infectious disease, or the lack of a prize crew—they may be appraised and sold, and if this cannot be done, they may be destroyed. The imminent danger of recapture would justify destruction if there should be no doubt that the vessel was a proper prize. But in all such cases all of the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered."

*The United States Naval War Code of 1900.* United States Naval War College, *International Law Discussions*, 1903, 88.

2. "States have been much less inclined, however, to claim or exercise the right to destroy neutral merchant vessels captured as prizes. Few, if any, instances of such destruction before condemnation prior to the Russo-Japanese War have been found."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School). *Comment.* 33 *A. J. I. L.*, (1939), *Supp.*, 563.

3. "There is, thus, no clear record of destruction of a seaworthy neutral vessel not alleged to be guilty of unneutral service prior to the Russo-Japanese War."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School). 33 *A. J. I. L.*, (1939), *Supp.*, 564.

4. Article XCI. "In the following cases, and when it is unavoidable, the captain of the man-of-war may destroy a captured vessel or dispose of her according to the exigency of the occasion. But before so destroying or disposing of her he shall transship all persons on board, and as far as possible the cargo also, and shall preserve the ship's papers and all other documents required for judicial examination :



(1) When the captured vessel is in very bad condition, and cannot be navigated on account of the heavy sea.

(2) When there is apprehension that the vessel may be recaptured by the enemy.

(3) When the man-of-war cannot man the prize without so reducing her own complement as to endanger her safety."

*Japanese Regulations* (1904). United States Naval War College, *International Law Documents*, 1925, 74-5.

5. "Neutral vessels.—If a seized neutral vessel cannot for any reason be brought into port for adjudication, it should be dismissed."

United States Naval War College, *International Law Topics and Discussions*, 1905, 62.

6. "From the opinions, precedents, rules, treaties, etc., thus far stated it is evident that the treatment of neutral vessels in the time of war is not yet a fully settled question."

United States Naval War College, *International Law Situations*, 1907, 106.

7. "Destruction, on account of military necessity, of a neutral vessel guilty only of the carriage of contraband entitles the owner to fullest compensation. Before destruction all persons and papers should be placed in safety."

United States Naval War College, *International Law Situations*, 1907, 108.

8. Article 48. "A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture."

Article 49. "As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time."

Article 50. "Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider

relevant for the purpose of deciding on the validity of the capture must be taken on board the warship."

Article 51. "A captor who has destroyed a neutral vessel must, as a condition precedent to any decision upon the validity of the capture, establish in fact that he only acted in the face of an exceptional necessity, such as is contemplated in article 49. Failing to do this, he must compensate the parties interested without as to whether or not the capture was valid."

Article 53. "If neutral goods which were not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation."

Declaration of London, (1909). Not ratified. *British Parliamentary Papers*. Misc. No. 4, (1909) (Cd. 4554). 86.

9. Article 1. "During a war the commanders of H. M. ships of war have the right to stop and search enemy and neutral merchant vessels, and to seize—and, in exceptional cases, to destroy—the same, together with the enemy and neutral goods found thereon."

Article 113. "When a neutral vessel has been captured under the circumstances set forth in article 39 for carrying contraband, or in articles 77 and 78, for breach of blockade, or in article 51, for rendering unneutral services; the commander may destroy the same, provided that:

(a) the vessel is subject to condemnation, and in addition thereto,

(b) the bringing into port would subject the war vessel to danger, or be liable to impede the success of the operations in which it is at the time engaged. Among other circumstances, this may, inter alia, be assumed to be the case, if:

(a) the vessel, on account of its defective condition or by reason of deficiency of supplies, cannot be brought into port; or

(b) the vessel cannot follow the war vessel, and is therefore liable to recapture; or

(c) the proximity of the enemy forces gives ground for a fear of recapture; or



(d) the war vessel is not in a position to furnish an adequate prize crew."

Article 116. "Before proceeding to a destruction of the vessel, the safety of all persons on board, and, so far as possible, their effects, is to be provided for, and all ship's papers and other evidentiary material, which, according to the views of the persons at interest, is of value for the formulation of the judgment of the prize court, are to be taken over by the commander."

Huberich and King, *The Prize Code of the German Empire*, (New York, 1915), 1, 66-7, and 68.

During the World War, most nations tacitly or expressly approved and followed the Declaration of London. Neutral prizes were destroyed only in cases of military necessity and only after passengers, crews, and ships' papers were removed to a place of safety.

1. "The practice of nations in the past, stated generally, has been to sink prizes of war taken on the high seas if either the ship or any part of her cargo was neutral property only when military necessity made this course imperative. This practice has now been embodied, at least in part, in the rules of the Declaration of London, which Germany appears to have adopted for her guidance in the present naval warfares, and on which she has presumably based her action in this instance. It is not to be presumed, however, that the German Government will refuse to grant indemnity for neutral property which has been lost in such manner and which would otherwise have been restored by a court of prize."

Acting Secretary of State to the Secretary of the Coffee Exchange of the City of New York, Oct. 9, 1914. *United States Foreign Relations*, 1914, *Supp.*, 319.

2. Article 126. "A neutral vessel captured and which would be liable to condemnation, may be destroyed, if taking such vessel to a Japanese port would involve danger to the Japanese ship of war or to the success of the operations in which she is at the time engaged."



Article 128. "The commanding officer of a ship of war who has destroyed a neutral vessel must, as a condition precedent to any decision upon the validity of the capture, establish in fact that he only acted in the face of an exceptional necessity such as is contemplated in article 126."

Article 127. "Before the destruction mentioned in the preceding article, the commanding officer of the warship shall remove the persons on board to a place of safety, and all the ship's papers and other documents which are considered relevant for the decision as to the validity of the capture must be taken on board the warship."

United States Naval War College, *International Law Documents*, 1925, 74, 77, and 79.

3. "Germany and Austria-Hungary practiced the destruction of neutral prizes in a large scale, aside from the destruction of vessels in war zones."

"Allied warships, however, generally refrained from destroying neutral vessels." "The British apparently never destroyed any neutral prize."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School). *Comment.* 33 *A. J. I. L.*, (1939), *Supp.*, 572, 571.

4. "Germany never seriously asserted a general right to destroy neutral vessels without placing all the persons on board in safety; the indiscriminate sinkings in war zones and elsewhere were said to be justified on the grounds of retaliation and self-preservation."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School). *Comment.* 33 *A. J. I. L.*, (1939), *Supp.*, 575.

Cases:

1. Sinking of the *William P. Frye*. *United States Foreign Relations*, 1915, *Supp.*, 360.

2. *The Cysne*.

Lauterpacht, *Annual Digest of Public International Law Cases*, 1929-1930, 487-491.

5. "The sinking of prizes is in itself a questionable act to be resorted to only in extraordinary circumstances and after provision has been made for the safety of all the crew or passengers, if there are passengers on board. The responsibility for discriminating between neutral and enemy vessels, and between neutral and enemy cargo, obviously rests with the attacking ship, whose duty it is to verify the status and character of the vessel and cargo and to preserve all papers before sinking or even capturing it. So also is the humane duty of providing for the safety of the crews of merchant vessels, whether neutral or enemy, an obligation upon every belligerent."

British-French memorandum to the neutral states, March 1, 1915. *United States Foreign Relations, 1915, Supp.*, 127.

6. "6. If, however, visit and search disclose that the vessel is of neutral nationality, it must not be sunk in any circumstances, except of gravest importance to the captor's state, and then only in accordance with the above provisos and notes."

Secretary of State to Ambassador in Germany, April 28, 1916. *United States Foreign Relations, 1916, Supp.*, 252.

7. "95. Engaging in unneutral service as defined in paragraph 39 stamps a neutral vessel with hostile character, and such a neutral vessel made prize may be destroyed by the capturing officer in the case of military necessity, when the vessel can not be sent or brought in for adjudication.

"96. Owing to the serious responsibility involved, a neutral vessel *not* engaged in unneutral service as defined in paragraph 39, must not be destroyed by the capturing officer save in case of the gravest military emergency which would not justify him in releasing the vessel or sending it in for adjudication. If circumstances permit, it is preferable to appraise and sell the prize, as provided in section 4615, Revised Statutes (see page 28) rather than to destroy it.

"97. In no case after a vessel has been brought to may it be destroyed until after visit and search has been made and all persons on board have been placed in safety, and also, if practicable, their personal effects.



“All the documents, letters, and papers found on board the prize shall be taken on board the capturing vessel of war and be inventoried and sealed in accordance with the procedure of section 4615, Revised Statutes (see page 28) for delivery to the prize court, with especial view to the protection of the interests of the owners of any innocent neutral cargo on board. All mails on board should be saved so far as possible and practicable.”

*Instructions for the Navy of the United States Governing Maritime Warfare*, (June, 1917), 35.

8. “The practice during the World War indicated a general acceptance of the view that destruction of neutral vessels was lawful under certain circumstances, and the provisions of the Declaration of London were openly or tacitly approved by most States, belligerent and neutral.”

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). Comment. 33 *A. J. I. L.*, (1939), *Supp.*, 571.

Although there has still been some discussion since the World War as to whether or not a neutral prize should be destroyed, practice and documents indicate that the destruction of neutral vessels and aircraft captured as prizes may be destroyed only if warranted by the extreme seriousness of the military situation and by the utter impracticability of bringing the prize in for adjudication. In the case of destruction, passengers (if possible, their personal effects also), the crew, and the craft's papers must be placed in safety.

1. Article 1. “(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

“A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after seizure.

“A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.



“(2) Belligerent submarines are not under any circumstance exempt from the universal rules above stated; and if a submarine cannot capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and to permit the merchant vessel to proceed unmolested.”

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarine and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

2. Article 57. “Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved.”

Article 58. “Private aircraft which are found upon visit and search to be neutral aircraft liable to condemnation upon the ground of unneutral service, or upon the ground that they have no external marks or are bearing false marks; may be destroyed, if sending them in for adjudication would be impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. Apart from the cases mentioned above, a neutral private aircraft must not be destroyed except in the gravest military emergency, which would not justify the officer in command in releasing it or sending it in for adjudication.”

Article 59. “Before a neutral private aircraft is destroyed, all persons on board must be placed in safety, and all the papers of the aircraft must be preserved.

“A captor who had destroyed a neutral private aircraft must bring the capture before the prize court, and must first establish that he was justified in destroying it under Article 58. If he fails to do this, parties interested in the aircraft or its cargo are entitled to compensation. If the capture is held to be invalid, though the act of destruction is held to have been justifiable, compensation must be paid to the parties interested in place of the restitution to which they would have been entitled.”

Article 60. "Where a neutral private aircraft is captured on the ground that it is carrying contraband, the captor may demand the surrender of any absolute contraband on board, or may proceed to the destruction of such absolute contraband, if sending in the aircraft for adjudication is impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. After entering in the log book of the aircraft the delivery or destruction of the goods, and securing, in original or copy, the relevant papers of the aircraft, the captor must allow the neutral aircraft to continue its flight.

"The provisions of the second paragraph of Article 59 will apply when absolute contraband on board a neutral private aircraft is handed over or destroyed."

"General Report of the Commission of Jurists at the Hague, (1923) 17 *A. J. I. L.*, (1923), *Supp.*, 259-260.

3. Article 1. "The following rules shall govern commerce in time of war :

"1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship with the object of ascertaining its character and nationality and of verifying whether it conveys cargo prohibited by international law or has committed any violation of blockade. If the merchant ship does not heed the signal to stop, it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it.

"The ship shall not be rendered incapable of navigation before the crew and passengers have been placed in safety.

"2. Belligerent submarines are subject to the foregoing rules."

Convention on Maritime Neutrality between the United States and Other American Republics, (1928). *United States Treaty Series*, No. 845, 2-3.

4. Article 22. "The following are accepted as established rules of International Law :

"(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.



“(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship whether surface vessel or submarines, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship’s papers in a place of safety. For this purpose the ship’s boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board.”

Treaty between the United States and Other Powers for the Limitation and Reduction of Naval Armament (1930). *United States Treaty Series*, No. 830, 27. Also the proces-verbal, 1936). 173 *League of Nations Treaty Series*, 353.

5. Article 54. “(3) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface or submarine, or a military aircraft, may not sink or render incapable of navigation an unarmed merchant vessel without having first placed passengers, crew and ship’s papers in a place of safety. For this purpose the ship’s boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or by the presence of another vessel which is in a position to take them on board.”

Article 61. “(1) If a vessel does not display the distinctive colors and markings required of a certified vessel under Article 44, or fails to produce a certificate of neutrality, and if the belligerent as a result of visit and search has reasonable grounds for belief that the vessel or its cargo is subject to condemnation or preemption, the belligerent may capture the vessel and conduct or send it to one of its ports for prize proceedings. If to conduct or send the captured vessel to port would involve danger to the safety of the captor or to the success of the operations in which he is engaged at the time, the captured vessel may be destroyed subject to compliance with the rules laid down in Article 54. In such

cases prize proceedings shall be held on the basis of the ship's papers and other lawful evidence."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School). 33 *A. J. I. L.*, (1939), *Supp.*, 186, 187.

6. " \* \* \* States evince greater readiness to destroy neutral vessels guilty of unneutral service than those guilty only of carrying contraband."

*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School). Comment. 33 *A. J. I. L.*, (1939), *Supp.*, 564.

7. Article 73. "(1) Captured neutral vessels may be destroyed if:

"1. They were captured because of proceeding under enemy convoy, forcible resistance, or aid to the enemy and

"2. It appears to be inexpedient or unsafe to bring them to port.

(2) By way of exception neutral vessels which were captured for reasons other than those named in par. 1 No. 1 may likewise be destroyed if:

"1. Their condemnation would be expected as a certainty and

"2. To bring them to port would expose the vessel which captured them to danger or might prejudice the success of the enterprises on which it is engaged."

Article 74. "(1) The destruction of vessels in accordance with Articles 72 and 73 is admissible only if the passengers, crew, and papers of the vessel have been brought to a place of safety before destruction.

(2) Ship's boats are not to be regarded as a place of safety unless the safety of passenger and crew under the existing conditions of the seas and the weather is assured by the proximity of land or the presence of another vessel which is able to take them on board."

*German Prize Law Code* (1939). *Hackworth, G. H., Digest of International Law*, (Washington, 1943), 257, 248.

8. "The sinking of this American ship by a German submarine flagrantly violated the right of United States vessels freely to navigate the seas subject only to a belligerent



right accepted under international law. This belligerent right, as is known to the German Government, does not include the right deliberately to sink a merchant vessel, leaving the passengers and crew to the mercies of the elements. On the contrary the belligerent is required to place the passengers and crew in places of safety."

Sinking of the S. S. "*Robin Moor*."

*Dept. of State Bulletin*, Vol. IV, No. 104, June 21, 1941. United States Naval War College, *International Law Documents*, 1940, 237.

9. "A few months ago an American-flag merchant ship, the *Robin Moor*, was sunk by a Nazi submarine in the middle of the South Atlantic, under circumstances violating long-established international law and very principle of humanity. The passengers and the crew were forced into open boats hundreds and miles from land, in direct violation of international agreements signed by the Government of Germany. No apology, no allegation of mistake, no offer or reparations has come from the Nazi Government."

*Freedom of the Seas*, address by the President, Sept. 11, 1941. *Dept. of State Bulletin*, Vol. V, No. 116, Sept. 13, 1941. United States Naval War College, *International Law Documents*, 1941, 15.

10. "The particularly revolting and horrifying circumstances of the machine-gunning by an Axis submarine crew of the survivors of the torpedoed Colombian schooner *Resolute* has produced the deepest feeling of indignation in the American people. These murderous tactics of Nazi pirate crews only serve to redouble the resolve of decent men to exterminate the pernicious evil of vicious Nazism."

Statement by Cordell Hull, Secretary of State, June 27, 1942. *The Department of State Bulletin*, June 27, 1942, Vol. VI, No. 157, Publication 1761, 562.