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U.S. Naval War College (Editor)

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sioned mail packets are free to enter and depart.” In November of the same year the Portuguese Government notified Great Britain that in respect to the blockade of the River Douro “positive instructions had been given to the ships of war establishing the blockade to allow the British ships of war to enter the port unmolested, and not to prevent the delivery and reception there of the mails conveying the correspondence or the landing of passengers or even the departure of British subjects who may wish to embark in the packets.” (35 British and Foreign State Papers, 862.)

While there had been differences of opinion as to the treatment which mails should receive in time of war, these became more marked during the Civil War in the United States, 1861–1865. There was much correspondence upon this subject beginning early in the war. There was long correspondence relating to the seizure of the Adela, a British merchant vessel having mail on board. On October 10, 1862, Earl Russell in a letter to the British Minister at Washington said:

It is desirable that you should ascertain from Mr. Seward whether the Government of the United States admits the principle that Her Majesty’s mail bags shall neither be searched nor detained. (Parliamentary Papers, North America, No. 5, 1863, p. 5.)

A part of this letter of October 10, 1862, not printed in this Parliamentary Paper, No. 5, appears in No. 10 as follows:

The question which has arisen in this case as to the seizure of Her Majesty’s mails on board the Adela, while it forms a new and very important element in this case, deserving very grave consideration, raises a point of some delicacy and difficulty. Her Majesty’s Government can not doubt that the Government of the United States are prepared to concede that all mail bags, clearly certified to be such, shall be exempt from seizure or visitation, and that some arrangement shall be made for immediately forwarding such bags to their destination in the event of the ship which carries them being detained. If this is done, the necessity
for discussing the claim, as a matter of strict right, that her Majesty's mails, on board a private vessel, should be exempted from visitation or detention, might be avoided; and it is, therefore, desirable that you should ascertain from Mr. Seward whether the Government of the United States admits the principle that Her Majesty's mail bags shall neither be searched nor detained.

In the further correspondence at this time, the attitude of the United States and Great Britain is shown in notes exchanged between Secretary Seward and the British Chargé, Mr. Stuart:

*Mr. Stuart to Mr. Seward*

WASHINGTON, October 29, 1862.

Sir: Referring to our conversation of this morning, I beg to state, in order to prevent misapprehension, that the principle which my Government expects that you will admit, is that all mail bags, clearly certified to be such, shall be exempt from seizure and visitation, and that some arrangement shall be made for immediately forwarding such bags to their destination in the event of the ship which carries them being detained.

If this principle, is admitted, the necessity for discussing the claim, as a matter of strict right, that Her Majesty's mails on board a private vessel should be exempt from visitation or detention might be avoided.

I therefore hope that you will allow me to inform Lord Russell that there will be no difference of opinion between the two Governments on the point in question.

I am, etc.

(Signed) W. STUART.

*Mr. Seward to Mr. Stuart*


Mr. Seward presents his compliments to Mr. Stuart, and with reference to his private note of the 29th ultimo, relative to the exemption of Her Britannic Majesty's mail bags on board of private vessels, from visitation or detention, has the honor to inclose herewith the copy of a letter which has since been addressed by this department to the Secretary of the Navy on the subject.

44003—29—4
Mr. Seward to Mr. Welles

DEPARTMENT OF STATE,
Washington, October 31, 1862.

SIR: It is thought expedient that instructions be given to the blockading and naval officers that, in case of capture of merchant vessels suspected or found to be vessels of the insurgents or contraband, the public mails of any friendly or neutral power, duly certified and authenticated as such, shall not be searched or opened, but be put, as speedily as may be convenient on their way to their designated destinations. This instruction, however, will not be deemed to protect simulated mail-bags, verified by forged certificates or counterfeited seals.

I have, etc.

(Signed) WILLIAM H. SEWARD.

(Ibid. p. 6.)

The instructions of the Secretary of the Navy of the United States to flag officers relative to the right of visit and search on August 18, 1862, stated:

Fourthly: That to avoid difficulty and error in relation to papers which strictly belong to the captured vessel, and mails that are carried or parcels under official seals, you will in the words of the law, “preserve all the papers and writing found on board and transmit the whole of the originals unmutilated to the judge of the district to which such prize is ordered to proceed,” but official seals or locks or fastenings of foreign authorities, are in no case, nor on any pretext, to be broken, or parcels covered by them read by any naval authorities, but all bags, or other things covering such parcels, and duly seized and fastened by foreign authorities, will be in the discretion of the United States officers to whom they may come, delivered to the consuls, commanding naval officers, or legation of the foreign government to be opened, upon the understanding that whatever is contraband or important as evidence concerning the character of the captured vessel will be remitted to the prize court, or to the Secretary of State at Washington, or such sealed bag or parcels may be at once forwarded to this department to the end that the proper authorities of the foreign government may receive the same without delay. (Official Records, War of the Rebellion, Series I, vol. 1, p. 417.)

This order was a somewhat amplified form of instructions transmitted by Secretary of State Seward to Secretary of Navy Welles by direction of the President.
Welles did not approve the latter part of this order and maintained that the mails should be placed in the custody of the court. In his diary of April 13, 1863, Welles says:

On the 18th of August last I prepared a set of instructions embracing the mails, on which Seward had unwittingly got committed. The President requested that this should be done in conformity with certain arrangements which Seward had made with the foreign ministers. I objected that the instructions which Mr. Seward had prepared in consultation with the foreigners were unjust to ourselves and contrary to usage and to law, but to get clear of the difficulty they were so far modified as not to directly violate the statutes, though there remained something invidious toward naval officers which I did not like. The budget of concessions was, indeed, wholly against ourselves, and the covenants were made without any accurate knowledge on the part of the Secretary of State when they were given of what he was yielding. But the whole, in the shape in which the instructions were finally put, passed off very well. Ultimately, however, the circular containing among other matters these instructions by some instrumentality got into the papers, and the concessions were, even after they were cut down, so great that the Englishmen complimented the Secretary of State for his liberal views. (1 Diary of Gideon Welles, p. 269.)

Under a later date, April 21, 1863, Mr. Welles indicates that Mr. Seward inferred that Great Britain regarded the arrangement in regard to mails as reciprocal though Welles does not so regard what had been said.

In a letter to Secretary Seward of April 11, 1863, Lord Lyons protested against holding mails from the Peterhoff and these were subsequently forwarded to their destination. (Diplomatic Correspondence, U. S. 1863, Pt. 1, p. 505, 510.)

Instructions as to mails.—Instructions from time to time had provided for the treatment of mails. Lushington's British Manual of Naval Prize Law of 1866 had stated in the introduction (p. xii) that:

The right to search mail steamers and mail bags threatens to become a very great inconvenience to neutrals, in consequence of the rapid development of postal and passenger services. But, to
give up the right of searching mail steamers and mail bags altogether, at all events when they are destined to a hostile port, is a sacrifice which can hardly be expected of belligerents. In the event of a naval war it is probable that special instructions will be issued regulating the duties of commanders in this respect. The subject, accordingly, is not treated in this book.

But the edition of Holland in 1888 states:

102. The mail bags carried by mail steamers will not in the absence of special instructions, be exempt from search for enemy dispatches.

French instructions of 1870 had provided for the sending of mail to the Government authorities, though later the word of the postal agent on board was accepted as to the character of the mail matter.

The United States in the Spanish-American War, 1898, proclaimed that, "The voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade." (1898, For. Rel. U. S., p. 781.) The same principle had been proclaimed by other states in earlier wars and had been embodied in treaty provisions between some of the leading commercial powers. The exemption from interference was grounded upon the desire to protect from interference the increasing peaceful interest served by the postal system.

The Japanese regulations of 1904 embodied advanced ideas:

Art. XXIV. In visiting or searching a neutral mail ship, if the mail officer of the neutral country on board the ship swears in a written document that there are no contraband papers in certain mail bags those mail bags shall not be searched. In case of grave suspicion, however, this rule does not apply.

Art. LXVIII. When a mail steamer is captured mail bags considered to be harmless shall be taken out of the ship without breaking the seal, and steps shall be taken quickly to send them to their destination at the earliest date.

Secretary Hay in a note to the representative of the United States said:
Any interruption of regular postal communication entails such serious inconvenience to various interests that, apart from the provisions of treaty, a usage has in recent years grown up to exempt neutral mails from search or seizure. In presenting this matter to the Russian Government you will refer to this fact and express the confidence of this Government that, in its treatment of the subject, the Russian Government will recognize the liberal tendency of recent international usage to exempt neutral mails from molestation. (1904 For. Rel. U. S., p. 772.)

The practice in regard to the treatment of postal correspondence was, however, by no means uniform nor could any rule be said to be generally accepted.

The "Panama," 1900.—During the course of the Spanish-American War, 1898, the Panama, a Spanish steamer was captured and brought before a prize court which declared the vessel lawful prize. The case was appealed to the Supreme Court which in the decision said:

It was argued in behalf of the claimant that, independently of her being a merchant vessel, she was exempt from capture by reason of her being a mail steamship and actually carrying mail of the United States.

There are instances in modern times, in which two nations, by convention between themselves, have made special agreements concerning mail ships. But international agreements for the immunity of the mail ships of the contracting parties in case of war between them have never, we believe, gone farther than to provide, as in the postal convention between the United States and Great Britain in 1848, in that between Great Britain and France in 1833, and in other similar conventions, that the mail packets of the two nations shall continue their navigation, without impediment or molestation, until a notification from one of the Governments to the other that the service is to be discontinued; in which case they shall be permitted to return freely, and under special protection, to their respective ports. And the writers on international law concur in affirming that no provision for the immunity of mail ships from capture has as yet been adopted by such a general consent of civilized nations as to constitute a rule of international law. (9 Stat. 969; Wheaton (8th ed.), pp. 659-661, Dana's note; Calvo (5th ed.) §§ 2378, 2809; De Boeck, §§ 207, 208.) De Boeck, in § 208, after observing that in the case of mail packets between belligerent countries, it seems difficult to go farther than in the convention of 1833, above men-
tioned, proceeds to discuss the case of mail packets between a belligerent and a neutral country, as follows: “It goes without saying that each belligerent may stop the departure of its own mail packets. But can either intercept enemy mail packets? There can be no question of intercepting neutral packets, because communications between neutrals and belligerents are lawful, in principle, saving the restrictions relating to blockade, to contraband of war, and the like; the right of search furnishes belligerents with a sufficient means of control. But there is no doubt that it is possible, according to existing practice, to intercept and seize the enemy’s mail packets.” (176 U. S. Supreme Court Reports [1900], p. 535.)

Mails, 1900–1907.—There had been a growing sentiment in favor of exempting postal correspondence from interference as far as this might be possible. The decisions of courts as in the case of the Panama had not found uniform support. In the case of the Argun, a Russian vessel taken by the Japanese in 1904, the Higher Prize Court at Sasebo said, “But the fact of an enemy’s vessel carrying the mails is not recognized in the international law now in force, or in the laws of Japan, as a ground of exemption from capture, so that this point of the protest is overruled.” (Takahashi, Int. Law, Russo-Japanese War, p. 579.) There had been protests against the interference by Russia with neutral mail vessels. The drift of opinion at that time led to the statement in the Naval War College, International Law Topics, 1906, of the conclusion in which it was said:

(a) Neutral mail or passenger vessels, of regular lines established before and not in contemplation of the outbreak of hostilities, bound upon regular voyages and furnishing satisfactory government certification that they are mail or passenger vessels, and do not carry contraband, are exempt from interference except on ample grounds of suspicion of action not permitted to a neutral.

(b) Mail or passenger vessels of belligerents, of similar lines, upon regular voyages, plying to neutral ports should be exempt from interference under such restrictions as will prevent their use for war purposes.

(c) Mail or passenger vessels, similarly plying between belligerent ports, may, under such restrictions as the belligerents may agree upon, be exempt from interference. (1906, Naval War College, Int. Law Topics, p. 104.)
In the arguments used in support of these principles, it was said:

At the present time, with the possibilities of telegraphic communication, it hardly seems reasonable to imagine that important war correspondence of a belligerent will be intrusted to the ordinary course of the mails. Other means are so much more rapid and time is such an important element in warfare that it would seem that only in rare instances would dispatches of importance to the captor be intrusted to the mails. Dispatches thus sent would be liable to delay, loss, and other accidents. It may be that, like some other regulations, they may come so late that the necessity for their existence may have disappeared. Much of the important business of the world in time of peace is now carried on by means of the telegraph. A much greater proportion is intrusted to the telegraph in time of war. (Ibid. p. 93.)

Somewhat similar arguments were used before The Hague Peace Conference in 1907.

The Hague Conference, 1907.—Doctor Kriege of Germany presented to The Hague Peace Conference in 1907 a proposition that postal correspondence on the high seas whatever its character should be inviolable. In supporting this proposition he said:

We believe that it would be of advantage to establish the principle that postal correspondence forwarded by sea is inviolable.

Postal relations have in our time such importance, there are so many commercial and other interests dependent on the regularity of the mails, that it is highly desirable to protect them from the disturbance which might be caused by naval warfare. On the other hand, it is hardly likely that belligerents, who have at their disposal for the transmission of their dispatches the channels of telegraphy and radiotelegraphy would resort to the ordinary mails for official communications relating to military operations. The advantages to be derived by belligerents from control of the postal service is not to be compared with the harm done legitimate commerce by the exercise of this control.

The most effective means of attaining this object would be to free from all control vessels engaged in regular mail service. However, there does not seem to be much likelihood that such action will be taken. We must confine ourselves to proclaiming that belligerents must take into consideration the special character of such vessels and abstain, so far as possible, from exercising the right of search aboard them. But inviolability of the correspondence itself should be absolute, whatever may be the
nationality of the vessel carrying it. Belligerents would have no right, in case of the seizure of a mail steamer, to break the seals of bags containing letters for the purpose of examining them, and they would be bound to take necessary measures to insure their prompt delivery at their destination. (3 Proceedings Hague Peace Conference, 1907, translation, Carnegie edition, p. 851.)

**XI Hague Convention, 1907.**—After discussion the conference adopted Convention XI relative to certain restrictions with regard to capture in maritime war, containing the following articles:

**ARTICLE 1.** The postal correspondence of neutrals or belligerents, whatever its character may be, official or private, found on board a neutral or enemy ship at sea, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for, or proceeding from, the blockaded port.

**ART. 2.** The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to neutral merchant ships in general. The ship, however, must not be searched except in case of necessity, and then with as much consideration and expedition as possible. (I, Ibid. p. 656.)

The French version is official and is as follows:

**ARTICLE 1.** La correspondance postale des neutres ou des belligérants, quel que soit son caractère official ou privé, trouvée en mer sur un navire neutre ou ennemi, est inviolable. S'il y a saisie du navire, elle est expédiée avec le moins de retard possible par le captur.

Les dispositions de l’alinéa précédent ne s’appliquent pas, en case de violation de blocus, à la correspondance qui est à destination ou en provenance du port bloqué.

**ART. 2.** L’inviolabilité de la correspondance postale ne soustrait pas les paquebots-poste neutres aux lois et coutumes de la guerre sur mer concernant les navires de commerce neutres en général. Toutefois, la visite n’en doit être effectuée qu’en cas de nécessité, avec tous les ménagements et toute la célérité possibles. (I, Deuxième Conférence Internationale de la Paix, p. 664.)

This convention was ratified by the greater powers except Russia. It was stated in the conference that
parcel post was excluded "from the privileged treatment accorded to postal correspondence." The attitude of all states might be said to be favorable to inviolability of postal correspondence at the outbreak of the World War in 1914.

In the consideration of postal correspondence the words were understood to mean communications in writing entrusted to the regular mails. The means of transportation of the mails were not exempt from the consequences of the war but the mails were not to be unnecessarily delayed. The object was to facilitate communication and to do this with the minimum of interference.

*En mer.*—The French words "en mer" are official and have been translated into English as "at sea" and "on the high seas."

The words "en mer" are also used in the Sixth Hague Convention of 1907 relative to merchant vessels at the outbreak of hostilities. Article 3 provides:

Les navires de commerce ennemis, qui ont quitté leur dernier port de départ avant le commencement de la guerre et qui sont rencontrés en mer ignorants des hostilités, ne peuvent être confisqués. Ils sont seulement sujets à être saisis, moyennant l'obligation de les restituer après la guerre sans indemnité, ou a être réquisitionnés, ou même à être détruits, à charge d'indemnité et sous l'obligation de pourvoir à la sécurité des personnes ainsi qu'à la conservation des papiers de bord.

Après avoir touché à un port de leur pays ou à un port neutre, ces navires sont soumis aux lois et coutumes de la guerre maritime. (I, Deuxième Conférence Internationale de la Paix, p. 645.)

In the case of the German sailing vessel, the *Möwe*, before the British Prize Court in November, 1914, one of the questions was as to whether the vessel taken in the Firth of Forth was "at sea within the meaning of the Sixth Hague Convention of 1907." The counsel for the owners of the vessel argued that the vessel was seized in port and could only be detained, while the Crown contended that the vessel was captured at sea and ought to be condemned.
Alternatively, it was alleged, but not proved, that she was taken in "territorial waters," and that, therefore, she was not captured on the high seas. But I will assume that she was within territorial waters when the capture was made. In my view that is wholly immaterial.

The Sixth Hague Convention does not refer to "territorial waters." A vessel might be in territorial waters for scores of miles either innocently or nefariously, and pass numerous ports without any intention to enter any of them. It is idle to say that on this account she would be free from capture. * * *

To illustrate the meaning of the word "port" in the conventions I would further observe that the word "ports" is used in various places in conjunction with, but in contradistinction to, roadsteads and to territorial waters. (See Convention XIII, where the words "les ports, les rades, ou les eaux territoriales" are frequently used.)

In my view the claimant in his affidavit was accurate when he said his vessel was "taken at sea." The words of article 3 "recontres en mer" are exactly applicable to this case. And I have no hesitation in finding that the vessel was captured at sea, and not seized in port.

I therefore decree that the vessel be condemned as lawful prize. (The Möwe, P [1915] p. 1.)

Early period of World War.—During the early period of the World War the attitude favorable to the inviolability of postal correspondence, broadly interpreted, continued and a liberal interpretation was given to the Eleventh Hague Convention. The regulations of the United States, France, Germany, Japan, and some other states embodied the provisions of the Eleventh Hague Convention. Some states permitted the seizure of letters addressed to authorities or to persons residing in enemy territory or territory occupied by the enemy. Such mail might be forwarded to the naval or other authorities.

The Secretary of State on August 10, 1914, informed the Austro-Hungarian Ambassador that there was no foreign mail originating in the United States "left on hand in New York," and that mails were being dispatched to the Central Powers three or four times per week. The mail for the Central Powers which reached
Great Britain before August 8, 1914, was returned as undeliverable. The French Ambassador in a communication replying to Acting Secretary of State Lansing in regard to certain mail addressed to but not delivered in Germany said on September 28, 1914:

MY DEAR MR. COUNSELOR: I am sorry to hear that Mr. George S. Viereck’s letters have not been received in Germany, but I do not see in what way I can usefully interfere in order to secure for him a better postal service in the present circumstances.

All postal communication is, of course, suppressed between belligerent countries. If Mr. Viereck sends his letters by way of England or of France, they are sure not to reach Germany any more than the letters of any Englishman or any Frenchman. His only chance, as I take it, is for him to use neutral ships, such as the Dutch ones or any other.

Believe me [etc.],

JUSSERAND.

(1914 For. Rel. U. S., Supplement, p. 534.)

On October 12, 1914, the American Ambassador in Great Britain informed the Secretary of State that—

Sir Edward Grey now informs me after investigation that the United States mail on board S. S. Noordam was not interfered with by British officials. He asks me to say that if the report of interference with it has arisen from the fact that any of the letters in question were found to be opened when they reached their destination, he would be glad if a specimen of such envelopes could be submitted for further investigation. (Ibid. p. 534.)

Later period of World War.—After the first months of the World War various restrictions upon the transmission of mails began to be established. Censorship of a moderate type in the early weeks soon became very comprehensive. Even communications between the consuls in neutral countries with their fellow consuls in belligerent countries and vice versa were opened and censored. On October 14, 1914, the Acting Secretary of State in a dispatch to the American Ambassador in Great Britain said:

DEPARTMENT OF STATE,
Washington, October 22, 1914, 8 p. m.

378. Your dispatches No. 467, September 19, and No. 470, September 24. Department is of opinion that correspondence in time
of war between diplomatic and consular officers in different countries sent by ordinary mail may be subject to censorship in the same manner as other private letters. But pouches under seal passing between diplomatic missions of the United States by mail or courier ought not in the opinion of this Government to be opened or molested by censors or other officials of foreign governments. The same may be said of any official correspondence under seal between diplomatic or consular officers and the Department of State. Please report any instances of opening mails contrary to these rules. (1914 For. Rel. U. S. Supplement, p. 538.)

Several belligerents issued regulations to the effect that consular officers should leave unsealed their correspondence addressed to foreign countries. So many protests and complaints were received that the Secretary of State on November 25, 1914, proposed to the belligerent governments the following for regulations for transmission of American diplomatic and consular correspondence:

1. All correspondence between American diplomatic and consular officers within Austrian territory to be inviolable if under seal of office.
2. No correspondence of private individuals to be forwarded by diplomatic and consular officers under official cover or seal.
3. Official correspondence between American diplomatic officers residing in different countries is not to be opened or molested if under seal of office.
4. Official correspondence under seal of office between the Department of State and American diplomatic and consular officers is not to be opened or molested.
5. Pouches under seal passing between American diplomatic missions by mail or courier not to be opened or molested.
6. Correspondence other than that described in [the] foregoing sent by ordinary mail to be subject to usual censorship. (Ibid. p. 542.)

These regulations were approved by some of the governments, but many controversies arose in regard to mails of all kinds. It was also argued that the Eleventh Hague Convention did not apply because it had not been ratified by Bulgaria, Italy, Montenegro, Russia, Serbia, and Turkey.

*Interference with American mail.*—The United States had many interests in all the belligerent states and large
correspondence with those states was normal. The attitude of the United States early in 1916 may be seen from the detailed statement sent by the Secretary of State to the American Ambassador in Great Britain, January 4, 1916:

Department advised that British customs authorities removed from Danish steamer Oscar Second 734 bags parcel mail en route from United States to Norway, Sweden, and Denmark; that British port authorities have removed from Swedish steamer Stockholm 58 bags parcel mail en route Gothenburg, Sweden, to New York; that 5,000 packages of merchandise, American property, have been seized by British authorities on the Danish steamer United States on her last trip to the United States; that customs authorities at Kirkwall, on December 18, seized 597 bags of parcel mail from steamer Frederich VIII manifested for Norway, Sweden, and Denmark. Other similar cases might be mentioned, such as that of the steamer Heligolad. Department inclined to regard parcel-post articles as subject to same treatment as articles sent as express or freight in respect to belligerent search, seizure, and condemnation. On the other hand, parcel-post articles are entitled to the usual exemptions of neutral trade, and the protests of the Government of the United States in regard to what constitutes the unlawful bringing in of ships for search in port, the illegality of so-called blockade by Great Britain, and the improper assumption of jurisdiction of vessels and cargoes apply to commerce using parcel-post service for the transmission of commodities. Please bring this matter of parcel post formally to the attention of the British Government.

The department is further informed that on December 23, the entire mails, including sealed mails and presumably the American diplomatic and consular pouches, from the United States to the Netherlands, were removed by British authorities from the Dutch steamer New Amsterdam; that on December 20 the Dutch vessel Noorder Dyke was deprived at the Downs of American mail from the United States to Rotterdam, and that these mails are still held by British authorities. Other similar instances could be mentioned, as the cases of the steamers Rotterdam and Noordam. The department can not admit the right of British authorities to seize neutral vessels plying directly between American and neutral European ports without touching at British ports, to bring them into port, and, while there, to remove or censor mails carried by them. Modern practice generally recognizes that mails are not to be censored, confiscated, or destroyed on high seas, even when carried by belligerent mail ships. To attain same end by
bringing such mail ships within British jurisdiction for purposes of search and then subjecting them to local regulations allowing censorship of mails can not be justified on the ground of national jurisdiction. In cases where neutral mail ships merely touch at British ports, the department believes that British authorities have no international right to remove the sealed mails or to censor them on board ship. Mails on such ships never rightfully come into the custody of the British-mail service, and that service is entirely without responsibility for their transit or safety.

As a result of British action, strong feeling is being aroused in this country on account of the loss of valuable letters, money orders, and drafts, and foreign banks are refusing to cash American drafts owing to the absence of any security that the drafts will travel safely in the mails. Moreover, the detention of diplomatic and consular mail is an aggravating circumstance in a practice which is generally regarded in this country as vexatiously inquisitorial and without compensating military advantage to Great Britain. Please lay this matter immediately before the British Government in a formal and vigorous protest and press for a discontinuance of these unwarranted interferences with inviolable mails. Impress upon Sir Edward Grey the necessity for prompt action in this matter.

LANSING.

Removal of mail.—The taking of mail bound for other ports from neutral vessels entering belligerent ports on regular voyages became a matter of diplomatic exchange of notes. This was also the case in the forcible bringing of vessels with mail on board into belligerent ports. In a memorandum of January 10, 1916, communicated to the British Foreign Office by the American ambassador, the position of the United States, as set forth in the foregoing dispatch of January 4, 1916, was fully made known. (British Parliamentary Papers, Misc. No. 5 [1916] [Cd. 8173] p. 1.)

After a delay of two weeks, the following reply was made:

FOREIGN OFFICE, January 25, 1916.

YOUR EXCELLENCY: The communication which Your Excellency was good enough to make on the 10th instant, regarding the seizure of mails from neutral vessels, raises important questions of principle in regard to matters which are determined by the policy jointly decided and acted upon by the allied Governments.
His Majesty's Government are therefore compelled to communicate with their allies before they can send a reply to your memorandum. They are consulting with the French Government in the first instance, and I hope to be in a position before long to state the result of this consultation. (Ibid. p. 2.)

The reply to American communications was in effect made the following April through the French ambassador:

By the Eleventh Hague Convention and for the reasons above mentioned, the signatory powers relinquished the right of thus seizing dispatches and declared all postal correspondence to be inviolable.

This inviolability marks a departure from the common law only as regards "correspondence" that is to say, dispatches or "letters" ("lettres missives"), because, as has been seen, it was thought, rightly or wrongly, that, belligerents having better means of communication by telegraph, postal correspondence was without interest for war purposes. It follows that, on the one hand, the inviolability does not apply to anything sent through the post that is not "correspondence," that is to say "letters" ("lettres missives"); and that, on the other hand, it would be giving to this inviolability a wider application than it actually has if it were held to confer exemption from all examination on articles sent by post, even if they were contraband of war.

In these circumstances the Allied Governments declare:

1. That as regards their right of visit and search, and eventually of detention and seizure, goods sent in the form of postal parcels are not entitled to, and will not receive, other treatment than goods sent in any other way.

2. That the inviolability of postal correspondence, laid down by the Eleventh Hague Convention of 1907, detracts in no way from the right of the Allied Governments to search, and, if necessary, to detain and seize goods concealed in wrappers, envelopes, or letters contained in mail bags.

3. That, faithful to their engagements and duly respecting real "correspondence," the Allied Governments will continue for the present to refrain from capturing at sea and confiscating such correspondence, letters, or dispatches, and that they will insure their being forwarded as rapidly as possible, so soon as their genuine character has been established.

April 3, 1916.

(11 Amer. Jour. Int. Law, Supplement [1916], 405, 409.)
The treatment of mails continued to be a matter for the exchange of notes between the United States and other powers.

The Secretary of State to the British Ambassador

No. 1186.]

DEPARTMENT OF STATE,

EXCELLENCY: I have the honor to acknowledge receipt of Your Excellency’s note of April 3, last * * *

In reply the Government of the United States desires to state that it does not consider that the Postal Union Convention of 1906 necessarily applies to the interferences by the British and French Governments with the oversea transportation of mails of which the Government of the United States complains. Furthermore, the allied powers appear to have overlooked the admission of the Government of the United States that post parcels may be treated as merchandise subject to the exercise of belligerent rights as recognized by international law. But the Government of the United States does not admit that such parcels are subject to the “exercise of the rights of police supervision, visitation, and eventual seizure which belongs to belligerents as to all cargoes on the high seas,” as asserted in the joint note under acknowledgement.

It is noted with satisfaction that the British and French Governments do not claim, and, in the opinion of this Government, properly do not claim, that their so-called “blockade” measures are sufficient grounds upon which to base a right to interfere with all classes of mail matter in transit to or from the Central Powers. On the contrary, their contention appears to be that, as “genuine correspondence” is under conventional stipulation “inviolable,” mail matter of other classes is subject to detention and examination. While the Government of the United States agrees that “genuine correspondence” mail is inviolable, it does not admit that belligerents may search other private sea-borne mails for any other purpose than to discover whether they contain articles of enemy ownership carried on belligerent vessels or articles of contraband transmitted under sealed cover as letter mail, though they may intercept at sea all mails coming out of and going into ports of the enemy’s coast which are effectively blockaded. The Governments of the United States, Great Britain, and France, however, appear to be in substantial agreement as to principle. The method of applying the principle is the chief cause of difference. (Ibid. 412.)
In reply a joint memorandum of the French and British Governments was sent to the United States on October 12, 1916:

10. As for the practice previously followed by the powers in the time of former wars, no general rule can easily be seen therein prohibiting the belligerents from exercising on the open seas, as to postal correspondence, the right of supervision, surveillance, visitation, and, the case arising, seizure and confiscation, which international law confers upon them in the matter of any freight outside of the territorial waters and jurisdiction of the neutral powers.

12. The report adopted by the conference of The Hague in support of convention 11 leaves little doubt as to the former practice in the matter: "The seizure, opening the bags, examination, confiscation if need be, in all cases delay or even loss, are the fate usually awaiting mail bags carried by sea in time of war." (Second Peace Conference Acts and Documents, vol. 1, p. 266.)

17. The imperial Russian decree of May 13–25, 1877, for the exercise of the right of visit and capture, provides, paragraph 7: "The following acts which are forbidden to neutrals are assimilated contraband of war: The carrying * * * of dispatches and correspondence of the enemy." The Russian imperial decree of September 14, 1904, reproduces the same provision. The procedure followed in regard to the mail steamers, and the prize decisions bear witness that public or private mails found on board neutral vessels were examined, landed, and, when occasion arose, seized.

18. Thus, * * * in July, 1904, the steamer Calchas (British), captured by Russian cruisers, had 16 bags of mail * * * seized on board and landed and the prize court of Vladivostok examined their contents, which it was recognized it could lawfully do. (Russian Prize Cases, p. 139.)

19. * * * On the other hand, the Japanese Prize Court rules acknowledged the power of those courts in the examination of prize cases to examine letters and correspondence found on board neutral vessels. (Takahashi, "International Law Applied to Russo-Japanese War," p. 568.)

20. The French practice during the War of 1870 is found outlined in the naval instructions of July 23, 1870, under which official dispatches were on principle assimilated to contraband, and
official or private letters found on board captured vessels were to be sent immediately to the Minister of Marine.

21. During the South African War the British Government was able to limit its intervention in the forwarding of postal correspondence and mails as far as the circumstances of that war allowed, but it did not cease to exercise its supervision of the mails intended for the enemy. (Ibid. pp. 418, 419.)

British-Swedish mails.—On December 18, 1915, in a communication to the British Government, the Swedish minister said:

The Swedish Government have been informed that the authorities at Kirkwall have detained postal parcels inclosed in mail bags addressed to Sweden from the United States, which were taken from the Danish steamship Hellig Olaf during her last voyage from New York. In the note which your excellency was good enough to send me on the 15th instant, the Swedish Government were further informed that 58 mail bags containing postal parcels from Sweden for the United States had been taken from the Swedish steamer Stockholm and detained at Kirkwall. There is every reason to believe that the majority of the latter parcels contained Christmas presents.

On several occasions, when the British authorities had taken measures against Swedish shipping and commerce which seemed to the Royal Government to constitute a violation of international rules as sanctioned by the law of nations, no measure of reprisals or retortion had been taken. This procedure on the part of the Swedish Government was due to their conviction that His Britannic Majesty's Government would consider it right and equitable to rectify the measures in question.

The seizure of the parcels on the Hellig Olaf and the Stockholm gives the impression, however, that the British authorities, far from wishing to minimize the difficulties, find pleasure in increasing them.

The Royal Government, while protesting in the most formal manner against the seizure of the parcels in question, have to their great regret felt constrained to direct the Postal Administration in Sweden to detain all goods from or to England sent by the parcels mail in transit through Sweden. This measure will be maintained by the Swedish authorities till the matter is settled in a manner which the Royal Government consider satisfactory, and a guarantee is given against the repetition of an incident of this nature, so contrary to international law. (British Parliamentary Papers, Misc., No. 28 [1916] [Cd. 8322] p. 1.)
The Swedish Government regarded the taking of mails from vessels sailing between neutral ports without justification in international law and in retaliation detained British mail in transit via Sweden to Russia.

Sir Edward Grey, on January 1, 1916, gave a detailed reply to the communication of December 18, 1915:

I have received, and read with considerable surprise, your note of the 18th ultimo respecting the examination by the British authorities of the parcels mail found on board the Danish steamship *Hellig Olaf* and the Swedish steamship *Stockholm*. You inform me that the Swedish Government protest against this interference with the parcels mail between Sweden and the United States, as contrary to international law.

It is difficult to understand this contention. The steamship *Hellig Olaf* was carrying a number of postal parcels as to which there was reason to suspect that some had an enemy destination. The ship was accordingly visited and searched in accordance with the well-known and well-established belligerent right. In order not to delay the ship unnecessarily, the suspected parcels were removed for examination, and the ship itself allowed to proceed. The result of the examination was to show that one-third of the parcels contained absolute contraband destined for Germany. These will be put into the prize court. The remainder of the parcels have been forwarded to their addresses. In the same way the steamship *Stockholm* was visited and searched. Suspected parcels were removed, and the ship sent on. In this case the parcels turned out to be unobjectionable from a belligerent point of view, and they too have been dispatched to their destinations.

These are the plain facts of the incidents, and His Majesty's Government is at a loss to imagine what is the breach of international law suggested by the Swedish Government. It can not surely be intended to dispute that a belligerent has a right to visit and search a neutral ship and cargo where he suspects an invasion of his belligerent rights. The Swedish Government are far too familiar with international law to raise such a contention as that. Still less can it be supposed that the Swedish Government desire to throw doubt on the legality of seizure by a belligerent of contraband destined for an enemy country. Is it then suggested that the fact that the goods in question were being transmitted by parcels post renders them immune from the operation of belligerent rights? I am unaware of any justification for such a suggestion. On the contrary, when, at the Second Peace Conference, it was agreed by the powers which took part in it, to grant for the first time immunity in certain circumstances to
postal correspondence found upon neutral ships on the high seas, it was expressly declared in the debate which led up to this decision that parcels were "certainly excluded from the privileged treatment accorded to postal correspondence." Indeed, it is obvious that any other decision would have practically destroyed belligerent rights with respect to contraband and blockade. It is further worthy of remark that the right of visit and search, even in the case of letter post, was expressly preserved, and that letters going to and coming from blockaded ports were exempted from the immunity in question.

The Swedish Government is, of course, perfectly cognizant of all these considerations, and I can only suppose that the protest which you have been instructed to make is based on some misapprehension of the facts. That, too, must be the explanation of their otherwise inexplicable and, I must add, indefensible procedure in detaining the British transit mail to Russia. As I understand your note it is not pretended that the Swedish Government has any right to take such action except by way of reprisal or retortion. I must take leave to observe that for a friendly government to proceed to reprisals or retortion without asking for or receiving any explanation of the alleged offense is a somewhat arbitrary procedure. At the least it imposes on the government taking such drastic action the duty of making itself quite sure of its ground. In this case I feel convinced that after due consideration the Swedish Government will recognize that the action of His Majesty's Government has been perfectly correct. His Majesty's Government must therefore request the immediate release of the British mails, and would welcome any explanation which the Swedish Government may wish to offer.

I desire to add that His Majesty's Government much regrets the delay which the exercise of its belligerent rights caused to the innocent parcels post by the steamships Helvig Olaf and Stockholm, and to express the hope that no serious inconvenience was thereby caused. They have done their utmost to minimize delay and inconvenience. (Ibid. p. 3.)

Lengthy communications between the two governments followed and some of these mentioned "smoldering fires of irritation which may at any moment cause serious difficulties." After many months of correspondence plans were made for the adjustment of difficulties. The "Simla," 1915.—In the case of the Simla in 1915 the British Prize Court was asked to condemn articles sent by parcel post and the British Government main-
tained that these did not fall under article 1 of XI Hague Convention of 1907. The brief judgment of the court was,

There is no one here to suggest that articles sent by parcel post are inviolable. There is no appearance. I condemn the goods. (1 Brit. & Col. Prize Cases, p. 281.)

The "Tubantia" and others.—In the case of the Tubantia, the Gelria, and the Hollandia, it was proven that rubber was being shipped in considerable quantities by post.

In the judgment, the president of the prize court, May, 1916, said:

These parcels of rubber were consigned as if they were genuine postal correspondence, because, I assume, it was thought that they would be protected by article 1 of the Eleventh Hague Convention, whereby the postal correspondence of neutrals or belligerents—whatever its particular private character—found on board a ship on the high seas is declared to be inviolable. They certainly are not covered by that convention. The attempt to make use of the article as a cloak for parcels of rubber sent by post is dishonest in the extreme; and it shows how little effect is given in time of war to those conventions which have been made in time of peace.

My duty is clear, and that is to condemn these thousands of parcels seized upon these Dutch vessels as contraband goods going to the enemy country. The attorney general has called attention to the necessity of making public the fact that such goods as these are being shipped in large quantities, and, although contraband, are sent in this way from neutral countries to Germany on board neutral ships, as if they were honest postal communications. (Tubantia, Gelria, Hollandia, 32 T. L. R., p. 529.)

The "Noordam."—The British Prize Court in 1919 in the case of the Noordam considered the matter of inviolability of mails. The question had arisen as to whether bonds and securities in the mails could be seized under the provisions of article 1 of XI Hague Convention of 1907 in regard to the inviolability of postal correspondence. Lord Sterndale, president of the court, said,

I am not at all satisfied, to begin with, that bonds and securities are correspondence. In some cases I believe the securities were inclosed in an envelope with a letter. In some cases the
evidence shows that they were made up into parcels, and when made up into parcels in that way if they had been sent by parcels post they would be admittedly outside the convention. But it is argued that because people choose to pay the letter postal rate instead of the parcels postal rate, what is sent in that way becomes inviolable. I can not think that it depends on whether the contents go by the letter mail or by the parcel mail. I put some instances that have happened during this war of articles such as rubber, and the solicitor general mentioned some others, such as aluminum, and all kinds of things which have been sent by letter mail. But the answer to that was, "But you do not generally send those by letter post," and correspondence must mean letters and everything ordinarily sent by letter post. I am not at all satisfied that that is right, and I do not know how you would work the convention if you were to adopt that method, because if you did you would have to inquire into every case and into what the habits of people were which induced them to put into letters such articles—which I think it would be impossible to do. ([1919] p. 255.)

When this case was appealed the judicial committee of the privy council, in a judgment delivered by Lord Sumner, May 4, 1920, said:

No doubt these securities were documents found in the mail bags of the mail steamers in question, but it can not be contended that everything found in a mail bag at sea and carried at postal rates or franked by postage stamps is ipso facto "postal correspondence" for the purpose of the convention. These documents, though printed and engraved matter, are not vehicles of information, and the value of their contents does not lie in what they tell the reader. On the contrary, expressed in common form and earmarked by serial letters and numbers or otherwise, they are identical records of proprietary rights in certain loans and shares or in the interest payable thereon, and, by their terms or by mercantile usage applicable to them, are transferable on delivery. To a bona fide buyer the document represents the holder's right to a portion of the loan or the share capital as the case may be. They are commonly dealt in; they are a convenient form in which to transfer wealth from one country to another, and they require no separate assignment nor the execution of any instrument of transfer. If, therefore, any incorporeal rights can be assimilated to goods and merchandise, they must be such rights as these documents represent. If any document can stand outside the description "postal correspondence," it must be such a document as these. The occasion is not opportune for an attempt to define the word
“correspondence” as used in the convention, but their lordships are satisfied that none of these securities come within it. ([1920] A. C. 904.)

Résumé.—It is evident from official statements, discussions, and judicial opinions that parcel post is not entitled to any special exceptions during war. If goods are sent under seal as first-class mail, these goods do not thereby become correspondence. The treatment of mails and mail vessels was gradually becoming more liberal in the latter part of the nineteenth century. The World War conditions put to severe tests the provisions of the Eleventh Hague Convention so far as it related to mails, and the practices of the belligerents frequently created friction without bringing any adequate military advantages. The carriage of mails from a neutral state in the neighborhood of a belligerent to another neutral state remote from the theater of war should not be interfered with without special reasons. The belligerent should not be obliged to submit to risks because a person uses first-class mail rather than other means of transportation and articles which would, if otherwise transported, be contraband do not change in character as regards belligerent rights because included in pouches of first-class mail. Of course the recognizable official mail of neutrals is exempt and the neutral may properly be requested so to designate official correspondence that it may not be easily mistaken.

During the World War it became evident that the rules for the regulation of the transportation of postal correspondence should be revised in the interest both of neutrals and belligerents.

Treatment of the Gull.—By the statement of the situation, the Bee “can not take the Gull in nor spare a prize crew to take it in.”

The Gull is apparently innocent and its papers regular and it is a mail vessel and the search should therefore be carried on with expedition.

Mail pouches may contain postal correspondence, parcel post, or other matter. Of these, postal correspondence
alone is declared to be inviolable though questions have been raised in regard to other postal matter and as to what may properly be included as correspondence.

In article 2 of XI Hague Convention of 1907, it is provided:

The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to neutral merchant ships in general. The ship, however, must not be searched except in case of necessity, and then with as much consideration and expedition as possible.

If the ship is detained under article 1, the mails are to be forwarded with the least possible delay. Under article 2 the search of the ship is to be "with as much consideration and expedition as possible." Both provisions should be observed as far as possible. Many treaties and some practice favors the delivery of suspected goods on receiving a receipt from the visiting vessel as a means of expediting movements of commerce and avoiding unnecessary delay of vessels. The search in this case is for contraband goods. The obligation rests upon the visiting vessels to forward postal correspondence with the least possible delay. The ends aimed at by XI Hague Convention would therefore be gained as regards the parties concerned by removing the suspected mails to the visiting vessel for search.

**SOLUTION**

(a) The commander of the Bee having grounds for suspicion may lawfully search the mails, and if this would cause undue delay, may transfer the mails to the Bee for search, in which case he should forward the postal correspondence to its destination as soon as possible.

(b) *Aircraft.*—New agencies in war are not entitled to special and exceptional rights because of their weakness, exceptional, or experimental character. Aircraft, like submarines, are vulnerable and vary in character. There are landplanes, hydroplanes, lighter-than-air
craft, etc. Reasoning from analogy, e. g., of maritime craft, may not be sound unless the principles underlying maritime rules are identical. In visit and search at sea, the vessel to be visited must lie-to till the visiting vessel approaches. This may not be possible when a sea vessel summons an aircraft. Even though the same words may be used, their content would not be identical. Rules good for aircraft against aircraft or seacraft against seacraft may not apply in seacraft against aircraft.

The application of rules should be reasonable and the rules should be practicable. That a projectile from a seacraft might by chance bring down an aircraft does not put the aircraft under seacraft rules nor necessarily give the seacraft a right to act on that chance. Force must not be used unnecessarily or in such manner as to involve undue risk to a neutral.

The rules of the Commission of Jurists, drawn up in 1923, have not been and possibly were not expected to be ratified, though they show a reasonable consensus of opinion of the time in regard to the use of aircraft.

While neutral aircraft should not be allowed freedom to aid the enemy, they should not be unduly restricted. Intentional escape or resistance on the part of aircraft when summoned to lie-to by seacraft might involve no greater or even less risk than compliance with the summons.

Attack upon an aircraft without summons would clearly be unjustifiable and make the attacking party liable. The summons must be such as will be evident to the aircraft and this may be difficult to prove. It is evident even from a superficial consideration that the use of aircraft has introduced problems into warfare other than simply a new dimension.

Commission of Jurists, 1923.—The Commission of Jurists in 1923 in their draft of rules of aerial warfare, and not specially contemplating mixed warfare between maritime and aerial craft, after mentioning lack of or falsi-
fication of aircraft markings, arming, entrance to prohibited zones, provided in article 56 that—

In all other cases, the prize court in adjudicating upon any case of capture of an aircraft or its cargo, or of postal correspondence on board an aircraft, shall apply the same rules as would be applied to a merchant vessel or its cargo or to postal correspondence on board a merchant vessel. (1924 Naval War College, Int. Law Documents, p. 149.)

*Doctor Spaight on belligerent and neutral aircraft.—* Dr. J. M. Spaight, who was of the British delegation of the commission of jurists which drew up rules for aerial warfare and which met at The Hague in 1922–23, has given much attention to this aspect of war. He has pointed out that little precedent exists for determining what law should govern.

The great war is practically devoid of precedents bearing upon the relations of belligerents and neutral aircraft. A few cases did occur in which neutral military aircraft were attacked by belligerent troops or aircraft. But of incidents affecting neutral civil aircraft there appear to have been none. Civil aviation was almost nonexistent in 1914–1918. The belligerent states prohibited all flying other than that carried out by their own or their allies' military machines, and the neutral states had, as a whole, developed aviation to a much smaller extent than the countries which were parties to the conflict. No such international air traffic as that which is now in existence had made its appearance before the end of the war.

* * * Concrete examples being absent, the most convenient text upon which discussion can be based is the tentative legislation contained in the Air Warfare Rules drawn up at The Hague in 1923. These rules include certain articles defining the right of belligerents to interfere with neutral air traffic and to fire upon neutral aircraft. The pertinent articles are as follows:

"Art. 11. Outside the jurisdiction of any state, belligerent or neutral, all aircraft shall have full freedom of passage through the air and of alighting.

"Art. 30. In case a belligerent commanding officer considers that the presence of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment, he may prohibit the passing of neutral aircraft in the immediate vicinity of the forces or may oblige them to follow a particular route. A neutral aircraft which does not conform to such directions, of which it has
had notice issued by the belligerent commanding officer, may be fired upon.

"Art. 35. Neutral aircraft flying within the jurisdiction of a belligerent, and warned of the approach of military aircraft of the opposing belligerent, must make the nearest available landing. Failure to do so exposes them to the risk of being fired upon.

"Art. 50. Belligerent military aircraft have the right to order public nonmilitary and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

"Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon.

"Art. 51. Neutral public nonmilitary aircraft, other than those which are to be treated as private aircraft, are subject only to visit for the purpose of the verification of their papers." (Air Power and War Rights, p. 382.)

Unquestionably some measure of belligerent interference with neutral traffic must be recognized as inevitable and legitimate. Military necessity must take precedence of the right of neutral states and individuals to continue to carry on their air traffic in the theater of war. Generally, apart from liability to capture, neutral aircraft will be subject to the same war risks as belligerent private aircraft, but, because they are neutral, will be entitled to expect from belligerents the maximum assuagement of the rigors of war compatible with military necessities. Those necessities can be pleaded by belligerents as the justification for interference even with neutral public aircraft, but the states to which such aircraft belong will naturally demand that belligerents shall exercise their war rights with due regard to the official character of the aircraft upon which military necessities make it necessary to impose some measure of restraint. Any interference with them is a graver matter than it would be where neutral private aircraft are concerned, and requires a more urgent military necessity to justify it. (Ibid. p. 384.)

Attempts to escape.—Even on the sea an attempt to escape visit and search has not been regarded as resistance. The fleeing vessel is, however, liable to the use of such force as may be necessary to bring it to. A provision to this effect is usually embodied in the regulations of States having navies.

It is evident from the general report of the commission of jurists that they did not intend to identify an attempt to escape with resistance, for in discussing the
liability of neutral private aircraft to capture the commission said of the first ground of liability,

The first is where it resists the legitimate exercise of belligerent rights. This is in harmony with article 63 of the Declaration of London. As first submitted to the commission, the text included the words "or flees." On due consideration, however, these words were omitted. (1924 Naval War College, Int. Law Documents, p. 142.)

Aerial mail.—The Commission of Jurists at The Hague in 1922–23 gave attention to the carriage of mails on board aircraft but were considering the action of aircraft against aircraft. Article 56 provides:

A private aircraft captured upon the ground that it has no external marks or is using false marks, or that it is armed in time of war outside the jurisdiction of its own country, is liable to condemnation. A neutral private aircraft captured upon the ground that it has disregarded the direction of a belligerent commanding officer under article 30 is liable to condemnation, unless it can justify its presence within the prohibited zone.

In all other cases, the prize court in adjudicating upon any case of capture of an aircraft or its cargo, or of postal correspondence on board an aircraft, shall apply the same rules as would be applied to a merchant vessel or its cargo or to postal correspondence on board a merchant vessel. (1924 Naval War College, Int. Law Documents, p. 148.)

General considerations.—In case an aircraft is summoned to stop at sea and obeys, if a heavier-than-air machine, the results may be a crash involving destruction of craft and loss of life of the personnel; if a lighter-than-air craft, the difficulties of visit and approach save in exceptional circumstances would be almost insurmountable. A hydroplane might under favorable circumstances alight. The situation when a sea craft endeavors to visit and search an aircraft is one involving exceptional dangers to the aircraft. Mere suspicion does not justify the subjection of aircraft to undue risk. Craft carrying mails should not be unnecessarily delayed. The mail carrier does not know what are the contents of the mail pouches and is not directly concerned with these contents.
Guilt can not be presumed. Destruction on ground of any act prior to the summons can not easily be justified. In the report upon article 63 of the Declaration of London, cited also by the commission of jurists in 1923, the comment on maritime warfare is as follows:

A belligerent cruiser encounters a merchant vessel and summons her to stop in order that it may proceed to visit and search. The vessel summoned does not stop, but tries to avoid visit and search by flight. The cruiser may employ force to stop her, and if the merchant vessel is damaged or sunk, she has no right to complain, since she has acted contrary to an obligation imposed upon her by the law of nations. If the vessel is stopped, and if it is shown that it was only in order to escape the inconvenience of visit and search that she had recourse to flight, and that otherwise she had done nothing contrary to neutrality, she will not be punished for her attempt. If, on the other hand, it is established that the vessel has contraband on board, or that she has in any way whatever violated her neutral obligations, she will suffer the consequences of her infraction of neutrality, but she will not undergo any further punishment for her attempt at flight. Some thought on the contrary that the ship should be punished for an obvious attempt at flight as much as for forcible resistance. It was said that the possibility of condemnation of the escaping vessel would lead the cruiser to spare her so far as possible. But this view did not prevail. (1909 Naval War College, Int. Law Topics, p. 145.)

This report does not admit punishment for attempt at flight, but does assume that the vessel may not complain if injured in consequence. If, however, the alternative to flight should be destruction with loss of life, as would ordinarily be the case if a land plane was forced to stop, the surface vessel could scarcely assume the right to exercise such authority on the mere suspicion of contraband in mail pouches. Indeed, the inability of the surface vessel to carry on war in the air does not confer upon it special rights and it may act only to the degree that commensurate military advantages would result. The bringing down of aircraft because of suspicion as to the contents of their mail pouches would be justified only when the bringing down could be with reasonable safety
to aircraft and personnel. Of this the aircraft would usually be the judge. Protest might be made to the neutral state of the aircraft, but to shoot down neutral aircraft carrying the mail, which carriage does not assimilate the aircraft in any degree to enemy aircraft, would not be justifiable.

The report of the Commission of Jurists of 1923 in regard to aircraft states:

While aircraft are in flight in the air, the operation of visit and search can not be effected so long as aircraft retain their present form. Article 49, therefore, necessitates the recognition of a right on the part of belligerent military aircraft to order nonmilitary aircraft to alight in order that the right of visit and search may be exercised. They must not only be ordered to alight, but they must be allowed to proceed to a suitable locality for the purpose. It would be a hardship to the neutral if he was obliged to make a long journey for this purpose and the locality must, therefore, not only be suitable, but must be reasonably accessible—that is, reasonably convenient of access. A more precise definition than this can scarcely be given; what is reasonably convenient of access is a question of fact to be determined in each case in the light of the special circumstances which may be present. If no place can be found which is reasonably convenient of access, the aircraft should be allowed to continue its flight. (1924 Naval War College, Int. Law Documents, p. 141.)

SOLUTION

(b) The commander of the Bee may not take any further action in regard to the neutral aircraft carrying suspected mail pouches.