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PERSONS, DOMICILE

ART. III. The national character of a person shall be decided by the place of his actual residence, whatever his nationality may be.—Jap. Reg. 1904.

ART. IV. By the place of residence is meant the place where a person permanently lives; in the case of a merchant, the place where he principally carries on his business; and in the case of a consul who is engaged in mercantile business, the place where he carried on that business.—Jap. Reg. 1904.

5. "Domicile" means a certain place permanently resided by a person. In case the party concerned is a juristic person, the place where its head office is situated shall be considered as its domicile.—China, Reg. 1917.

RESIDENTS OF OCCUPIED TERRITORY

ART. V. The district temporarily occupied by the enemy shall not be considered enemy territory in respect to the national character of persons, ships, and their cargoes.—Jap. Reg. 1904.

6. The term "enemy countries" shall be equally applied to territories being occupied by the enemy troops.—China, Reg. 1917.

NEUTRAL PROPERTY

LIABILITY

Neutral vessels, liability to capture.

64. A neutral private vessel is in general liable to capture if she—

(a) Attempts to avoid visit and search by flight, but this must be clearly evident; or resists with force.

(b) Presents irregular or fraudulent papers, or lacks necessary papers, or destroys, defaces, or conceals papers.

(c) Carries contraband, except when permitted by treaty to surrender ("deliver up," "deliver out") the contraband to the captors.

(d) Has broken or has attempted to break a blockade.

(e) Has engaged in unneutral service.

(f) Is under enemy convoy; or under neutral convoy to avoid rightful capture.—U. S. Ins. 1917.

7. Nothing in this order shall be deemed to affect the liability of any vessel or goods to capture or condemnation independently of this order.—Br. O. in C., Mar., 1915.

26. Les neutres sont auotrisés par le droit des gens à continuer librement leur commerce avoc les belligérants. Toutefois les navires

neutres sont soumis au droit de visite et, éventuellement, à la capture dans les cas suivants :

1. S'ils résistent à la visite dans les conditions de l'Article XII ci-après ;

2. S'ils transportent des objets de contrebande de guerre, dans les conditions de l'Article VIII ci-après ;

3. S'ils prêtent assistance à l'ennemi dans les conditions de l'Article IX ci-après ;

4. S'ils tentent de violer un blocus dans les conditions de l'Article X ci-après.—Fr. Ins. 1912.

ART. 7. In other cases which have not been provided for in this decree or other national legislation in force, the provisions bearing on the subject contained in the legislation of the allied nations, as well as the general principles of public international law shall be applicable.—Port. Dec. 1916.

2. The right of capture does not apply to neutral public vessels.—Ger. O. 1909.

2. Merchant ships, under whatever flag they may be sailing, shall be subject to capture in accordance with the provisions of the following articles if—

(a) Guilty of violation of blockade.

(b) Transporting contraband of war.

(c) Lending assistance to the enemy.

(d) They forcibly resist or endeavor to avoid search.

(e) They are without ship's papers, or have on board ship's papers or manifests which are either falsified, altered, or insufficient so as to give rise to suspicion that they are concealing their real nationality or the real description or destination of the cargo.

(f) They are going to an enemy port, while on the ship's papers a neutral destination is indicated.

(g) They have been transferred from an enemy to a neutral flag subsequent to the outbreak of war, or not more than 30 days before that date, or not more than 60 days when the deed of sale by which the transfer of flag was effected is not found on board.—Italy, P. R. 1915.

11. Merchant vessels of neutral nationality are subject to confiscation as prizes in the following cases: (1) When the vessels are caught conveying to the enemy or to any enemy's port: (a) Ammunition, as well as objects and accessories for making explosives, independently of their quantity; (b) other objects contraband of war, in quantities exceeding, by volume or weight, half of the entire cargo; (c) hostile military detachments, unless it be proven in all these cases that the declaration of war remained unknown to the masters of these vessels; (2) when the vessels are caught violating

a blockade and it is not proven that the establishment of the blockade remained unknown to the masters; (3) when the vessels have resisted by armed force their stoppage, examination, or detention; and (4) when they have taken part in the hostile operations of the enemy.—Rus. Reg. 1895.

12. The cargo of merchant vessels of neutral nationality is subject to confiscation as prizes: (1) When such cargo consists of contraband of war being conveyed to the enemy or to any enemy's port and it is not proven that the declaration of war was unknown to the masters of the vessels; (2) when the cargo is found on board a vessel subject to confiscation by virtue of points 2-4 of article 11, and it is not proven that it belongs to Russian owners or to neutral owners not guilty of violations involving confiscation.—Rus. Reg. 1895.

28. Detained property is subjected to confiscation only in case it belongs to the class of articles which may be confiscated as prizes (arts. 10-12) and provided it has been detained in observance of the conditions laid down (arts. 2, 3, and 15-17). In a contrary case the property is released and returned to the original owner.—Rus. Reg. 1895.

ART. 37. Vessels subject to detention are the following:

Neutral merchant vessels—

(a) If they are carrying to the enemy any quantity whatever of ammunition, objects, or appurtenances for making explosives, or detachments of hostile troops.

(b) If they are carrying to the enemy other articles contraband of war in a quantity exceeding by volume or weight half of the whole cargo.

NOTE.—If the quantity of such contraband of war is less than half of the whole cargo, the vessel is detained only until the contraband is surrendered, and it is left to the discretion of the commander as to whether such surrender may be made at the place of detention or after the vessel has been conducted into port.

(c) If they are caught violating an actual and declared blockade.

(d) If they have shown armed resistance to stoppage or examination.

(e) If they have taken part in hostile operations of the enemy.

ART. 38. Cargoes subject to detention are the following:

(2) Hostile and neutral cargoes found on neutral vessels which have violated their neutrality: that is—

(a) On neutral vessels which have taken part in hostile operations of the enemy;

(b) Which have shown armed resistance to stoppage, examination, or detention; and

(c) Caught violating a blockade.

(3) All cargoes which constitute contraband of war, with the exception of articles constituting the armament and provisioning of the neutral vessel itself.

In detaining vessels and cargoes the rule is observed that personal effects intended for the personal use of the crew and passengers is not subject to detention.

Except in the above-mentioned cases the following rules are observed:

(1) A neutral flag covers an enemy's cargo with the exception of contraband of war.

(2) Neutral goods, with the exception of contraband of war, are not subject to detention under a hostile flag.—Rus. Ins. 1900.

ART. XXXVII. Any vessel that comes under one of the following categories shall be captured, no matter of what national character it is:

1. Vessels that carry persons, papers, or goods that are contraband of war.

2. Vessels that carry no ship's papers, or have willfully mutilated or thrown them away, or hidden them, or that produce false papers.

3. Vessels that have violated a blockade.

4. Vessels that are deemed to have been fitted out for the enemy's military service.

5. Vessels that engage in scouting or carry information in the interest of the enemy, or are deemed clearly guilty of any other act to assist the enemy.

6. Vessels that oppose visitation or search.

7. Vessels voyaging under the convey of an enemy's man-of-war.—Jap. Reg. 1904.

ART. 25. III. The following ships are liable to capture, whether they are under a neutral flag or under the flag of the Republic of China:

(a) Ships carrying contraband of war or hostile persons.

(b) Ships in violation of blockade.

(c) Ships engaged in giving information to the enemy or participating in any hostile acts in the interest of the enemy.

(d) Ships under the convoy of the enemy flag.

(e) Ships having no necessary papers or giving fraudulent papers or having destroyed, concealed, defaced their papers.—China, Reg. 1917.

ART. XXXIX. Vessels that come under one of the following cases may be captured, no matter of what national character they are:

1. When a vessel does not produce the necessary papers or they are not kept in good order.

2. When there are contradictions among the ship's papers or between the statements of the master and the ship's papers.

3. Besides the above two cases, when as the result of visitation or search there is sufficient suspicion to justify capture according to articles from XXXV to XXXVII.—Jap. Reg. 1904.

ART. LXV. After visit and search has been made, if the captain of the man-of-war still has suspicion of the vessel, he shall order the boarding officer to hear the explanation of her master; and if after those explanations there still appear to be grounds for capturing her, such vessel shall be captured.—Jap. Reg. 1904.

ART. LXVI. In deciding whether a vessel is to be captured or not, the nature of the vessel, her equipments, cargo, and papers, the master and crew and their testimony, etc., shall be taken into consideration.—Jap. Reg. 1904; art 151, Reg. 1914.

Neutral property, under enemy flag.

(3) Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.—D. of P. 1856.

68. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.—U. S. Ins. 1917.

ART. 3. (b) Neutral goods, 'except contraband of war, are not liable to confiscation under the enemy's flag.—Spain, Dec. 1898.

TRANSFER OF FLAG

Transfer of flag.

108. Lorsqu'il résulte de l'examen des pièces de bord que le navire est passé récemment sous pavillon neutre, il y a lieu de procéder avec la plus grande attention et de s'inspirer des règles suivantes.—Fr. Ins. 1912.

Before war.

ART. 55. The transfer of an enemy vessel to a neutral flag, effected before the opening of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences which the enemy character of the vessel would involve. There is, however, a presumption that the transfer is void if the bill of sale is not on board in case the vessel has lost her belligerent nationality less than 60 days before the opening of hostilities. Proof to the contrary is admitted. There is absolute presumption of the validity of a transfer effected more than 30 days before the opening of hostilities if it is absolute, complete, conforms to the laws of the countries concerned, and if its effect is such that the control of the vessel and the profits of her employment do not remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than 60 days before the opening of hostilities, and if the bill of sale is not on board, the capture of the vessel would not give a right to compensation.—D. of L. 1909.