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ENEMY CHARACTER

VESSELS

Whereas by the Declaration of London, order in council No. 2, 1914, His Majesty was pleased to declare that during the present hostilities the provisions of the said Declaration of London should, subject to certain exceptions and modifications therein specified, be adopted and put in force by His Majesty's Government; and

Whereas by article 57 of the said declaration, it is provided that the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly; and

Whereas it is no longer expedient to adopt the said article;

Now, therefore, His Majesty, by and with the advice of his privy council, is pleased to order, and it is hereby ordered, that from and after this date articles 57 of the Declaration of London shall cease to be adopted and put in force.

In lieu of the said article, British prize courts shall apply the rules and principles formerly observed in such courts.

This order may be cited as "The Declaration of London, order in council, 1915."


Art. 1. The provisions of article 57, paragraph 1, of the Declaration signed at London, February 26, 1909, relating to naval warfare, shall be applied during the present war, with the following modification to it whenever it is established that a ship flying an enemy flag belongs in fact to the nationals of a neutral or an allied country, or conversely that a ship flying a neutral or allied flag belongs in fact to nationals of an enemy country, or to parties residing in an enemy country, the ship shall accordingly be considered neutral, allied, or enemy.—Fr. Dec. Oct. 23, 1915.

11. A neutral ship will be treated as an enemy ship if the property belongs partly or wholly to citizens of enemy states. As citizens of enemy states in the sense of this ordinance are also to be considered judicial persons or societies of other countries which have their seat in enemy countries. It will be considered as equal to location in an enemy country if the capital belongs overwhelmingly to citizens of enemy countries, or if the management is carried on by enemy citizens, or is directed from or controlled by an enemy country. The same holds good if the fact has been established that capital or other means to carry on the business is contributed from citizens of enemy countries or from enemy countries themselves.—Ger. P. C. amendment, July 16, 1917.

If due to general combination of circumstances it appears, that in a vessel sailing under the enemy's flag are actually interested, subjects of neutral or allied powers, or that, on other hand, if in a vessel sailing under neutral or allied flag there are actually interested
subjects of an enemy power or persons living in an enemy state, then such a vessel may in consequence be considered as neutral, allied, or enemy. The governing Senate will not fail to make suitable dispositions for fulfillment.—Rus. P. O. Feb. 4, 1916.

Par. 4. If under the general circumstances of the case it appears, that in a vessel sailing under the enemy’s flag are actually interested subjects of neutral or allied powers, or that, on the other hand, in a vessel sailing under neutral or allied flag there are actually interested subjects of an enemy power or persons living in an enemy state—then such a vessel may in consequence be considered as neutral, allied, or enemy. The governing Senate will not fail to make suitable dispositions for fulfillment.—Rus. Dec. 8, 1916.

Art. VI. The following are enemy vessels:

1. Vessels employed by the enemy, including the case in which such employment is compulsory.
2. Vessels voyaging under the enemy’s flag or with license of the enemy.
3. Vessels, the whole or part of which is owned by the enemy state or its subjects. Vessels that have certificates of nationality as Japanese, or that voyage under the license of Japan, do not, however, come under this rule.
4. Vessels, the ownership of which has been transferred before the war, but in expectation of its outbreak or during the war, by the enemy state or its subjects to persons having residence in Japan or a neutral state, unless there is proof of a complete and bona fide transfer of ownership.

In case the ownership of a vessel is transferred during its voyage and actual delivery is not effected, such transfer of ownership shall not be considered as complete and bona fide.—Jap. Reg. 1904.

Art. 18. The neutral or enemy character of a vessel is determined by the flag which she has the right to fly. A neutral ship which is engaged, with a license from the government of the enemy State, on a voyage which is forbidden by that state in peace to foreign ships, is deemed an enemy ship.—Jap. Reg. 1914.

3. Ships regarded as of enemy character in the present regulations shall be as follows:
(a) Ships flying the enemy flags.
(b) Ships flying neutral flags in accordance with law but the whole of a portion of the owners of the ship have domicile in enemy countries.
(c) Ships employed by the enemy countries.
(d) Enemy ships being transferred to persons having domicile in the Republic or other neutral countries during the war or in anticipation of the war, without the transfer fully completed and having no proof to show the bona fide of the deal.—China, Reg. 1917.

Art. 51. Du caractère ennemi.—Le caractère ennemi ou neutre d’un navire est déterminé par le pavillon qu’il a le droit de porter. Le caractère ennemi ou neutre de marchandises trouvées à bord d’un
navire ennemi est déterminé par le caractère ennemi ou neutre de leur propriétaire. Chaque État doit déclarer, au plus tard dès le début des hostilités, si le caractère ennemi ou neutre du propriétaire des marchandises est déterminé par le domicile ou par la nationalité de ce propriétaire. Le caractère ennemi de la marchandise trouvée à bord d'un navire ennemi subsiste jusqu'à l'arrivée à destination, non-obstant un transfert intervenu pendant le cours de l'expédition, après l'ouverture des hostilités. Toutefois, si, antérieurement à la capture, un précédent propriétaire neutre exerce, en cas de faillite du propriétaire ennemi actuel, un droit de revendication légale sur la marchandise, celle-ci reprend le caractère neutre.—Institut, 1913.

Arr. 57. Subject to the provisions respecting the transfer of flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly. The case in which a neutral vessel is engaged in a trade which is reserved in time of peace, remains outside the scope of, and is in no wise affected by, this rule.—D. of L. 1909.

56. The neutral or enemy character of a private vessel is determined by the neutral or enemy character of the State whose flag the vessel has a right to fly as evidenced by her papers.—U. S. Ins. 1917.

27. Neutral ships are those which are entitled to fly the flag of a neutral State.—Ger. P. C. 1916.

15. When the captain is not in a position to determine to which flag a vessel which has been transferred to a neutral flag formerly belonged he is authorized to assume that she belongs to the enemy flag.—Ger. O. 1909.

27. Caractère neutre ou ennemi.—Sous réserve des dispositions de l’Article XIII ci-après, relativement au transfert de pavillon, le caractère d’un navire est déterminé par le pavillon qu’il a le droit de porter. Le caractère neutre ou ennemi des marchandises trouvées à bord d’un navire ennemi est déterminé par la nationalité de leur propriétaire. Si le caractère neutre de la marchandise trouvée à bord d’un navire ennemi n’est pas établi, la marchandise est presumée ennemie.—Fr. Ins. 1912.

27. Under reservation of the dispositions of Article XIII following, concerning the transfer of flag, the character of a ship is determined by the flag which it has the right to bear. However, should it be ascertained that the interests in the property of the ship bearing enemy flag, belong in fact to subjects of a neutral or allied country, or, reciprocally, that the interests in the property of a ship bearing a neutral or allied flag belong in fact to subjects of an enemy country, or to persons residing in enemy country, the ship will in consequence be considered neutral, allied, or enemy.
28. The neutral or enemy character of the merchandise found on board an enemy ship is determined by the nationality of their owner. Should the neutral character of the merchandise found on board an enemy ship not be established, the merchandise will be presumed to be enemy. A neutral flag covers enemy merchandise, with the exception of contraband of war. Should, without infringing the above rule, some particular measure be taken concerning enemy commerce, you will be informed of the same.—Fr. Ins. 1916.

3. Sous réserve des dispositions de l’Article XIII ci-après, relatives au transfert de pavillon, tout navire est présumé ennemi qui ne peut justifier du droit de porter un pavillon neutre.—Fr. Ins. 1912.

11. The character of a ship, whether enemy or neutral, will be determined by the flag which she has a right to carry. Which flag a ship has the right to carry is proven, under the navigation laws of nearly all seafaring States by some official document (ship’s register, nationality certificate, lettre de mer, acte de Francisation, zeebrief, pass, patent, fribrief, etc.) which each merchant vessel must have on board. When the nationality of a ship can not unquestionably be determined, especially if the document necessary to indicate the right to carry the flag of the nation concerned is missing, the ship is to be treated as hostile.—Ger. O. 1909.

Vessels engaging in closed trade (Rule of 1756).

16. A neutral ship is to be treated as an enemy ship further when it—(a) engages in a voyage which is permitted only since the outbreak of the war, or within two months. A neutral ship is to be treated as an enemy ship further when it—(b) forcibly resists the measures of the law of prize; against such ship, force of arms is to be employed until resistance ceases; mere attempt to escape does not constitute forcible resistance.—Ger. O. 1909.

Suspected neutral vessels.

Vessels subject to detention are the following:

(3) All suspicious vessels, although sailing under a neutral flag. The following and other similar acts furnish grounds for considering a merchant vessel as suspicious:

(a) If the vessel does not stop its engines or lie to upon the demand of the cruiser, in consequence whereof the latter is compelled to give chase and use force in order to stop her.

(b) If the vessel has no papers, or has counterfeit or suspicious papers.

(c) If there are grounds for supposing that the vessel was fictitiously sold to a neutral subject after the declaration of war.

(d) If the halted vessel has shown resistance to the examination, and likewise if the master refuse to open the apartments on the demand of the examining officer.—Rus. Ins. 1906.
Art. 58. The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.—D. of L. 1909.

59. The neutral or enemy character of merchandise on board an enemy private vessel is determined by the neutral or enemy commercial domicile of the owner, whether the owner be an individual, a firm, or a corporation. In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.—U. S. Ins. 1917.

20. (a) The captain will regard the goods found on board an enemy ship as enemy goods, unless the neutral character of the goods is clearly shown. (b) The character of the goods found on board an enemy ship as neutral or enemy goods, is determined by the nationality of the owner. If he have no, or as much neutral as hostile nationality, the character of the goods is determined by the domicile of the owner. Goods which belong to a stock corporation will be regarded as enemy’s or neutral according as the corporation has its headquarters in a hostile or neutral country.—Ger. O. 1909.

Art. VIII. The national character of a cargo shall be decided by the national character of the owner.—Jap. Reg. 1904.

Art. 19. The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner, and in case such owner has dual nationality, by whether his residence lies in a neutral State or in an enemy State.—Jap. Reg. 1914.

Art. IX. In the following cases the cargo shall be considered enemy property, in spite of the above regulations:

1. A cargo consigned before the war but in expectation of its outbreak or during the war by a person who has residence in the Empire or in a neutral State or by his representative to the enemy State or to a subject of the enemy State or to his representative.

2. A cargo, the ownership of which has been transferred before the war but in expectation of its outbreak or during the war by the enemy State or its subject to a person who has a residence in the Empire or in a neutral State, unless there is proof of full bona fide transfer.

In case the ownership of a cargo is transferred during a voyage, and actual delivery is not effected, such transfer shall not be considered bona fide and full.—Jap. Reg. 1904.

Art. 20. If the neutral character of goods found on board an enemy vessel is not proven, they are presumed to be enemy goods.—Jap. Reg. 1914.

4. Enemy goods are as follows: (a) Goods owned by persons having domicile in the enemy countries. (b) Goods owned by persons having domicile in the Republic or other neutral countries and
consigned to enemy countries or subjects during the war or in anticipation of it. (c) Enemy goods being transferred to persons having domicile in the Republic or other neutral countries during the war or in anticipation of it without the transfer being fully concluded and having no proof to show the bona fide of the deal.—China, Reg. 1917.

Presumption.

Art. 59. If the neutral character of goods found on board an enemy vessel is not proven, they are presumed to be enemy goods.—D. of L. 1909.

Transfers in transitu.

Art. 60. The enemy character of goods on board an enemy vessel continues until they reach their destination, notwithstanding an intervening transfer after the opening of hostilities while the goods are being forwarded. If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of a present enemy owner, a legal right to recover the goods, they regain their neutral character.—D. of L. 1909.

Neutral goods may be transferred to enemy ownership during the voyage.—Ger. O. 1909.

Art. 20. (c) The proof, whose property portions of the cargo are and whether they are neutral goods will in general hardly be determinable on board. The character of goods carried as freight on board an enemy vessel continues as enemy goods until the arrival at destination, regardless of any change of ownership during the voyage after the outbreak of hostilities. (d) Neutral goods may be transferred to enemy ownership during the voyage.—U. S. Ins. 1917.

Art. 21. The enemy character of goods on board an enemy vessel continues until they reach their destination notwithstanding an intervening transfer after the opening of hostilities while the goods are being forwarded. If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of a present enemy owner, a legal right to recover the goods, they regain their neutral character.—Jap. Reg. 1914.

PRODUCE OF ENEMY SOIL

60. Articles which are products of the soil of an enemy country and shipped therefrom after the outbreak of war are impressed with the enemy character of the territory, although the owner may be domiciled or resident in a neutral country.—U. S. Ins. 1917.
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 autorisés par le droit des gens à continuer librement leur commerce avec les belligérants. Toutefois les navires