

International Law Studies—Volume 8

International Law Situations

With Solutions and Notes

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SITUATION III.

SEQUESTRATION OF PRIZE.

There is war between the United States and State X. Other States are neutral. France has not placed any restriction on the entrance into French ports of vessels with prize.

A war ship of the United States captures a merchant vessel of State Z which has evidently been guilty of violation of blockade. The United States war vessel is near a French port, but remote from a United States prize court. In order to avoid more severe action the commander of the United States war vessel decides to send the captured vessel into the French port with the request that it be held pending the decision of the United States prize court on the evidence which has been forwarded.

How far would this action be allowable?

SOLUTION.

The commander should not take the prize into French port to be sequestrated pending prize proceedings unless instructed. He should act in accord with General Orders, 492, of the Navy Department, 1898.

20. Prizes should be sent in for adjudication, unless otherwise directed, to the nearest home port in which a prize court may be sitting.

NOTES ON SITUATION III.

Statement.—In Situation III while the United States is at war with State X and other States neutral, an American war ship captures a merchant vessel of State Z because of violation of blockade. This vessel is near a French port. The question then arises as to whether the captor can send a vessel into a neutral port to await the decision of a prize court of the United States.

Early history.—In earlier centuries there seems to have been a considerable variation in the practice as to receiving prize within neutral ports. In France an ordinance in

1400 prescribes that prizes made by French war vessels shall be sent to French ports. A similar ordinance was issued in Denmark in 1710. French ordinances of 1543, 1674, and 1689, in general made definite provisions by which—

Il étoit défendu à tous capitaines ou commandans des vaisseaux de guerre, de laisser, ou d'envoyer en pays étranger, aucunes des prises qu'ils pourroient faire.

Christopher Robinson says:

The practice continued till a new system was introduced by the ord. 11 March, 1705. "Qui pour la première fois a permis de conduire es prises dans les ports étrangers, de les y vendre, ou de les ramener, sous la garde et la surveillance des consuls Français." (Code des Prises 1799, vol. i, p. 375.) In 1759, ord. 22 May, France seems to have returned to the old practice: "Aucune prise ne sera conduite dans un port étranger, à moins d'une absolue nécessité." Code des Prises 1784, p. 1221. (Collectanea Maritima, p. 32n.)

The wars at the end of the eighteenth century disturbed practice and gave rise to irregularities in many matters relating to maritime warfare.

British opinion, court and vessel in neutral jurisdiction.—In the case of the *Flad Oyen* which had been condemned by a French consul in a neutral port, Lord Stowell in 1799 said of prize condemnations:

Now, in what form have these adjudications constantly appeared? They are the sentences of courts acting and exercising their functions in the belligerent country, and it is for the very first time in the world that, in the year 1799, an attempt is made to impose upon the court a sentence of a tribunal not existing in the belligerent country, but of a person pretending to be authorized within the dominions of a neutral country. In my opinion, if it could be shown that, regarding mere speculative general principles, such a condemnation ought to be deemed sufficient, that would not be enough; more must be proved; it must be shown that it is conformable to the usage and practice of nations.

A great part of the Law of Nations stands on no other foundation; it is introduced, indeed, by general principles, but it travels with those general principles only to a certain extent; and, if it stops there, you are not at liberty to go farther, and to say that mere general speculations would bear you out in a further progress. Thus, for instance, on mere general principles it is lawful to destroy your enemy, and mere general principles make no great difference as to the manner by which this is to be effected; but the conventional law of mankind, which is

evidenced in their practice, does make a distinction, and allows some and prohibits other modes of destruction; and a belligerent is bound to confine himself to those modes which the common practice of mankind has employed, and to relinquish those which the same practice has not brought within the ordinary exercise of war, however sanctioned by its principles and purposes.

Now, it having been the constant usage that the tribunals of the Law of Nations in these matters shall exercise their functions within the belligerent country, if it was proved to me in the clearest manner that on mere general theory such a tribunal might act in the neutral country, I must take my stand on the ancient and universal practice of mankind, and say that, as far as that practice has gone, I am willing to go, and where it has thought proper to stop, there I must stop likewise.

It is my duty not to admit, that because one nation has thought proper to depart from the common usage of the world, and to meet the notice of mankind in a new and unprecedented manner, that I am on that account under the necessity of acknowledging the efficacy of such a novel institution, merely because general theory might give it a degree of countenance, independent of all practice from the earliest history of mankind. The institution must conform to the text law, and likewise to the constant usage upon the matter; and when I am told that, before the present war, no sentence of this kind has ever been produced in the annals of mankind, and that it is produced by one nation only in this war, I require nothing more to satisfy me that it is the duty of this court to reject such a sentence as inadmissible.

Having thus declared that there must be an antecedent usage upon the subject, I should think myself justified in dismissing this matter without entering into any farther discussion. But even if we look farther, I see no sufficient ground to say, that on mere general principles such a sentence could be sustained; proceedings upon prize are proceedings *in rem*; and it is presumed that the body and substance of the thing is in the country which has to exercise the jurisdiction. (1 C. Robinson, Admiralty Reports, 135.)

The condemnation in a neutral port is not far removed from the sequestration in a neutral port pending a decision of the prize court. Either makes possible the using of the neutral port as a sort of base. As was said by Lord Stowell in this case of the *Flad Oyen*:

It gives one belligerent the unfair advantage of a new station of war which does not properly belong to him, and it gives to the other the unfair disadvantage of an active enemy in a quarter where no enemy would naturally be found. The coasts of Norway could no longer be approached by the British merchant with safety, and a suspension of commerce would soon be followed by a suspension of amity.

Wisely, therefore, did the American Government defeat a similar attempt made on them, at an earlier period of the war; they knew that to permit such an exercise of the rights of war within their cities, would be to make their coasts a station of hostility.

Later practice allowed the validity of condemnation when the court sat in the belligerent state, even though the prize might be in a neutral port. This was, however, regarded as irregular.

Certain other points were raised in the case of the *Falcon*.

This was a case on the claim of the British proprietor of a vessel, which had been captured by the French June 2, 1803, and condemned in a French consular court at Leghorn and sold under the authority of that sentence to the American consul in France. The vessel, after that conversion, was condemned on a rehearing, in the nature of an appeal in the "Conseil des Prises" at Paris, March 26, 1805.

If the matter had rested there, on the validity of the consular sentences at Leghorn, this court, under its former decisions, which have been affirmed in the superior court would not have held that title to be good. But there has been also a sentence of the Conseil des Prises at Paris.

In our own courts it happens unavoidably as to ships taken in the East Indies that long before the case comes to adjudication the property may have passed to other hands. If the title is impeached before the sentence takes place it may be vitiated, but when a valid sentence comes, it must be considered, as operating retroactively, so as to rehabilitate the former title. (The *Falcon*, 6 Robinson, Admiralty Reports 194.)

British opinion, court in belligerent, vessel in neutral jurisdiction.—In the case of the *Henrick and Maria*, in November, 1799, the question arose as to whether a purchaser could hold this vessel by the title of condemnation passed upon her while lying in a neutral port, when she had never been conducted into the country of the captor, nor into any port of an ally in time of war. Of this Lord Stowell said:

Without entering into a discussion of the several opinions that have been thrown out on this subject, I think I may state the better opinion and practice to have been that a prize should be brought *infra praesidia* of the capturing country, where, by being so brought, it may be considered as incorporated into the mass of national stock. The greatest extension that has been allowed has not carried the rule be-

yond the ports or places of security belonging to some friend or ally in the war who has a common interest in defending the acquisitions of the belligerent, made from the common enemy of both.

In later times an additional formality has been required, that of a sentence of condemnation, in a competent court, decreeing the capture to have been rightly made, *jure belli*; it not being thought fit, in civilized society, that property of this sort should be converted without the sentence of a competent court pronouncing it to have been seized as the property of an enemy, and to be now become *jure belli* the property of the captor. The purposes of justice require that such exercises of war should be placed under public inspection; and therefore the mere *deductio infra praesidia* has not been deemed sufficient. No man buys under that title; he requires a sentence of condemnation as the foundation of the title of the seller; and when the transfer is accepted he is liable to have that document called for, as the foundation of his own. From the moment that a sentence of condemnation becomes necessary, it imposes an additional obligation for bringing the property, on which it is to pass, into the country of the captor; for a legal sentence must be the result of legal proceedings in a legitimate court, armed with competent authority upon the subject-matter and upon the parties concerned—a court which has the means of pursuing the proper inquiry and enforcing its decisions. These are principles of universal jurisprudence applicable to all courts, and more peculiarly to those which by their constitution, in all countries, must act *in rem* upon the *corpus* or substance of the thing acquired and upon the parties, one of whom is not subject to other rights than those of war, and is amenable to no jurisdiction but such as belongs to those who possess the rights of war against him.

Upon principle, therefore, it is not to be asserted that a ship brought into a neutral port is with effect proceeded against in the belligerent country. The *res ipsa*, the *corpus*, is not within the possession of the court; and possession, in such cases, founds the jurisdiction. (4 C. Robinson, Admiralty Reports, 43.)

Lord Stowell further continues the maintenance of this principle, but in view of practice of his country in several instances holds that the court—

Is bound, against the true principle, by practice which it has not only admitted, but applied.

On the effect of the Sentence of the Prize Tribunals of France, pronounced on vessels carried into neutral ports, the editor takes this opportunity of inserting the recent (1807) decision of the Court of Appeal.

* * * * *

This case involves a question as the validity of sentences of condemnation pronounced in a belligerent country on prizes carried into neutral ports. There was some difference of opinion among the members

of the board, before whom the case was originally argued. But it appeared to me that the acknowledged practice of this country must have the effect of making those sentences valid whilst that practice continued. For there could be no equity, on which we could deny the validity of that title to neutrals purchasing of the enemy, at the same time that they were invited to take them from ourselves. (The *Henrick and Maria*, 6 Robinson, Admiralty Reports, 138—Note.)

In 1854, Doctor Lushington pronounced upon certain Russian merchant vessels which the British war vessels had brought to the neutral port of Memel, in Prussia. The merchant vessels were not seaworthy and had been deserted by their crews.

The Queen's Advocate moved the court to condemn the vessels and decree their sale in the port of Memel, stating that an intimation had been received from the Prussian Government that no objection would be made to such a course, provided they were sold by private contract, without being advertised or put up to auction.

Doctor Lushington said:

The circumstances under which the present application is made are quite peculiar, and form an exception to the general principle upon which this court proceeds. Though there is no direct evidence that the vessels are Russian, yet there is no claim, and the court entertains no doubt upon the subject. I have no hesitation in condemning them; and, looking at the fact deposed to, that they are not in a fit state to be brought to England, and the consent of the Prussian Government to their sale at Memel, the court will allow that course in the present case, but with the proviso that the wishes of the Prussian Government shall be fully observed with respect to the sale.

I wish it, moreover, to be expressly understood, that this case is decided upon its own peculiar circumstances, and is not to be considered as a precedent for the condemnation of a prize while lying in a neutral port. The rule is that the prize shall be brought into a port belonging to the captors' country, and the court must guard itself against allowing a precedent to the contrary to be established. (The *Polka Spinks*, Ecclesiastical and Admiralty Reports, 447.)

British opinion, vessels within belligerent or allied jurisdiction, but not near prize court.—It has been held that it is not necessary that the captured vessel should be brought into port where the prize court is sitting, provided the vessel is within the jurisdiction of the belligerent or of an ally, and little objection has been raised to this position, since it does not involve the use of neutral territory for the ends of war.

No objection was taken to the condemnation in the case of *La Dame Cécile*.

This was a case on appeal from the Vice-Admiralty Court of Barbadoes, as to a prize ship and cargo of slaves, which had been seized by the Goree garrison, who took the usual examinations and forwarded them, with the ship papers, to the High Court of Admiralty for adjudication, where the ship and cargo were condemned. They were in the meantime sold to a British merchant, who sent them to the island of Barbadoes for sale.

Held, these proceedings were valid and not contra to 26 and 29 Geo. 3, regarding importation into a British island.

The ship and cargo were seized by the garrison of Goree as prize. The captors could not bring them in person to adjudication for they could not move from their station; and it was impossible that such a cargo could find a market anywhere but in the West Indies. (*La Dame Cécile*, 6 Robinson Admiralty Reports 257.)

A further extension of this principle is seen in the case of the *Peacock*.

This was an American ship and cargo of wine taken by an English privateer on a voyage from Cadiz to London, May 19, 1800, and carried into Lisbon, where they were detained a long time, though no proceedings were commenced till they were afterwards brought to Jersey.

Supposing that the captors were justified in bringing in, to see if this representation of the false destination was true or not, what ought they to have done? The capture was made in Lat. 42 considerably to the north of Lisbon, the wind being then fair for England. It was their duty to have brought the prize directly to England; for if the public instructions give to captors the power of coming to the most convenient ports, they do not give them a wild and arbitrary discretion, but a discretion to be soundly exercised, on a due consideration of their own convenience, and of the interest of the neutral persons that may be concerned.

Another reason given for this delay is, that they waited for an opportunity of sending the vessel to England under convoy. Whether they sailed under convoy at last or not does not appear, but they did not sail for six weeks. It is the duty of privateers to bring their prizes home to a port of the kingdom as soon as they can. King's ships may reasonably be allowed a greater latitude, as being frequently attached to stations, which they can not leave. It may sometimes be necessary for them to send their prizes to Lisbon; and in some cases, I will not say that it may be absolutely impossible for privateers. But it cannot be so necessary and unless some very particular reason intervenes, it is their duty to bring their prizes home as speedily as possible, unless they carry them to the port of Gibraltar. (*The Peacock*, 4 Robinson Admiralty Reports 185.)

American opinion, court and vessel outside belligerent jurisdiction.—During the Mexican war the ship *Admittance* was captured as prize by a United States vessel, carried to Monterey, and condemned by a court established there. This court, however, was not in the legal sense a court of the United States, and hence was not authorized to adjudicate upon the question of prize or no prize. It was decided in the present suit that the captor had forfeited no rights by the above proceedings, and an order was given to proceed in a court of prize within whose jurisdiction were the proceeds of the sale of the property. (Jecker et al. v. Montgomery, 13 Howard, U. S. Supreme Court Reports, 512.)

As a general rule, it is the duty of the captor to bring it (the prize) within the jurisdiction of a Prize Court of the nation to which he belongs, and to institute proceedings to have it condemned. This is required by the act of Congress in cases of capture by ships of war of the United States; and this act merely enforces the performance of a duty imposed upon the captor by the law of nations, which in all civilized countries secures to the captured a trial in a court of competent jurisdiction before he can finally be deprived of his property.

But there are cases where, from existing circumstances, the captor may be excused from the performance of this duty, and may sell or otherwise dispose of the property before condemnation. And where the commander of a national ship cannot, without weakening inconveniently the force under his command, spare a sufficient prize crew to man the captured vessel; or where the orders of his government prohibit him from doing so, he may lawfully sell or otherwise dispose of the captured property in a foreign country; and may afterwards proceed to adjudication in a court of the United States. (13 Howard U. S. Supreme Court Reports, 516.)

American opinion, court in belligerent, vessel in neutral jurisdiction.—The United States courts in the war with Great Britain did not hesitate in following British precedent:

The British ships *Arabella* and *Madeira* were captured in June, 1814, by the private armed brig *Rambler*, Edes, commander, and 30 boxes of medicines, 16 bales of piece goods, 5 boxes of opium, and 75 casks of Madeira wine, parcel of their cargoes, were removed on board of the *Rambler*, carried into the port of Canton, China, and there landed.

Mr. Justice Story said:

The first question which presents itself, is whether the court has jurisdiction to proceed to the adjudication of prize property, lying in a foreign neutral port. This question has been discussed with much ability and learning in the courts of Great Britain, and has there been finally settled in the affirmative, not so much on the supposed correctness of the principle, as the general usage of nations. It was then admitted, that condemnation of prize property, lying in the ports of an ally in the war, was strictly justifiable; but it was thought that a different rule might apply to neutral ports. In the courts of the United States, the question has received a solemn decision, and it has been held that upon principle, a condemnation of a prize lying in a neutral port, is valid, and may be rightfully decreed by the prize jurisdiction. And the correctness of this decision is evidently presupposed in several provisions of the prize act. If therefore, I felt any lurking doubts on the subject, I should feel myself bound by authority. But I am free to declare, that after much reflection, I am entirely satisfied, that the doctrine is found in national law: "It is the duty of captors to bring in the master of the captured ship and the ship's papers. An omission to do this must be fully and satisfactorily explained to the court. The removal of prize goods is an inequality, but is indulged under certain circumstances." In point of practice, however, even in the British courts, when a similar statutable direction exists, a more indulgent rule has been adopted. When property has been captured on a remote station, or under circumstances calling for a removal, sale or other conversion, or even a delivery on bail, on the ground of some great inconvenience, the act has been held valid upon the proper explanations being made, and condemnation has been pronounced in favor of the captors. (*The Arabella* and the *Madeira*, 2 Gallison's U. S. Circuit Court Reports, 368.)

In the case of *Hudson v. Guestier*, the United States Supreme Court says:

The vessel and cargo which constitute the subject of controversy were seized within the territorial jurisdiction of the Government of Santo Domingo, and carried into a Spanish port. While lying in that port proceedings were regularly instituted in the court for the island of Guadaloupe; the cargo was sold by a provisional order of that court, after which the vessel and cargo were condemned. The single question, therefore, which exists in this case is, did the court of the captor lose its jurisdiction over the captured vessel by its being carried into a Spanish port?

A vessel captured as prize of war is, then, while lying in the port of a neutral, still in the possession of the sovereign of the captor, and that possession cannot be rightfully divested.

In cases of prize of war, then, the difficulty of executing the sentence does not seem to afford any conclusive argument against the jurisdiction of the court of the captor over a vessel in possession of the captor, but lying in a neutral or friendly port.

Do the same principles apply to a seizure made within the territory of a State for the violation of its municipal laws?

Possession of the *res* by the sovereign has been considered as giving the jurisdiction to his court; the particular mode of introducing the subject into the court, or, in other words, of instituting the particular process which is preliminary to the sentence, is properly of municipal regulation, uncontrolled by the law of nations, and, therefore, is not examinable by a foreign tribunal. It would seem, then, that the principles which have been stated as applicable in this respect to a prize of war, may be applied to a vessel rightfully seized for violating the municipal laws of a nation, if the sovereign of the captor possesses the same right to maintain his possession against the claim of the original owner in the latter as in the former case.

Had this been a prize of war, we have precedents and principles which would guide us. The cases cited from Robinson's Reports, and the regulations made by Louis XVI, in November, 1779, show that the practice of condemning prizes of war while lying in neutral ports has prevailed in England, and has been adopted in France. The objections to this practice may perhaps be sufficient to induce nations to change it by common consent, but until they change it the practice must be submitted to, and the sentence of condemnation passed under such circumstances will bind the property, unless the legislature of the country in which the captured vessel may be claimed, or the law of nations shall otherwise direct. (*Hudson v. Guestier*, 4 Cranch U. S. Supreme Court Reports, 293.)

American opinion, legality of capture.—It was held that in case a prize was brought within neutral jurisdiction, the neutral had a right to assure itself of the legality of the capture:

The right of adjudicating on all captures and questions of prize, exclusively belongs to the courts of the captors' country; but, it is an exception to the general rule, that where the captured vessel is brought, or voluntarily comes, *infra praesidia* of a neutral power, that power has a right to inquire whether its own neutrality has been violated by the cruiser which made the capture; and, if such violation has been committed, is in duty bound to restore, to the original owner, property captured by cruisers illegally equipped in its ports. (*The Estrella*, 4 Wheaton U. S. Supreme Court Reports, 298.)

Condemnation of prize not brought in.—It is sometimes necessary that the court should pass upon captures which have been made and which for urgent reason have been

destroyed, or have been lost at sea or for other reason can not be brought into the port where the prize court is sitting:

It is fully within the usage of prize courts to entertain and perfect their jurisdiction over property captured on board a vessel, without having the vessel itself brought within this cognizance. (Proceeds of Prizes of War, Abbott's Adm. R., 495; 10 Am. Encyc. 357, art. "Prize by Story, J.;" Jecker *v.* Montgomery, 18 How., 110, and 13 How., 498.)

In many instances this mode of procedure is indispensable, as in the case of the capture of enemy property in neutral vessels, and when the vessel is destroyed in capture. (The *Edward Barnard*, Blatchford's Prize Cases, 122.)

The vessel was destroyed by the captors because unfit to be sent in for adjudication. The cargo was sent in. Held that the court had judicial cognizance of the capture of the vessel without having been within its territorial jurisdiction. (The Schooner *Zavalla* and Cargo, Blatchford's Prize Cases, 173.)

This case also decided that although ordinarily it was necessary to send in the ship's papers and other first hand evidence, yet there might be extraordinary circumstances which would excuse a failure to do so.

The sentence of a competent court proceeding *in rem*, is conclusive with respect to the thing itself, and works an absolute change of the property.

A sale, before condemnation, by one acting under the possession of the captor, does not divest the court of jurisdiction, and the condemnation relates back to the capture, affirms its legality, and establishes the title of the purchaser. (Williams et al. *v.* Amroyd, 7 Cranch U. S. Supreme Court Reports, 423.)

Opinions of text writers.—The opinions of American and British authorities are fairly uniform. Wheaton in his "History of the Law of Nations," summarizes the views upon the competency of prize tribunals under differing conditions:

This brings Lampredi to consider the question as to the competent tribunal to determine the validity of captures, brought, not within the territorial jurisdiction of the sovereign, under whose authority the captures are made, but within that of a neutral sovereign, whose subjects are no parties to the controversy. And he does not hesitate to decide that the possession of the captor, *jure belli*, of the captured

property, brought into a neutral port, gives to the belligerent sovereign the exclusive right of determining the validity of the seizure, thus made and continued under his authority; that the neutral sovereign is bound to respect the possession of the captor as that of his sovereign; and cannot himself undertake to determine the validity of the capture, nor to interfere with the execution of the sentence, either of condemnation or restitution, which may be pronounced by the competent belligerent tribunal, provided such sentence be pronounced without the limits of the neutral territory, within which no foreign power can usurp the rights of sovereignty. Thus the captures made by British cruisers in the Mediterranean, and brought into the neutral port of Leghorn, had ever been adjudicated, either by the British court of vice-admiralty sitting at Minorca whilst that island belonged to Great Britain, or by the High Court of Admiralty in England. It is true that the prize commissioners delegated by these courts were permitted to examine the captured persons and papers of the vessels brought into that port, in order to determine the preliminary question whether there was such probable cause of capture as to warrant further judicial proceedings, in which case the cause was immediately evoked to the competent tribunal sitting in the belligerent country. The only two cases, according to Lamprédi, in which the neutral sovereign can interfere through his tribunals to take incidental cognizance of the validity of belligerent captures brought within his territorial jurisdiction are:

1. Where the capture has been made within the neutral territory itself, or by an armament fitted out in the ports of the neutral state in violation of its laws and treaties.

2. Where the captured party complains to the neutral sovereign that his property has been piratically seized by captors, under color of a belligerent commission, to which they are not lawfully entitled: In this case the neutral tribunal may so far interfere as to inquire into the validity of the commission under which the capture was made. (Wheaton, *History of the Law of Nations*, p. 321.)

Phillimore says:

An attentive review of all the cases decided in the courts of England and the North American United States leads to the conclusion that the condemnation of a capture, by a regular Prize Court, sitting in the country of the belligerent, of a prize lying at the time of the sentence in a neutral port, is irregular, but clearly valid. It appeared to be the inclination of the English Prize Court, during the last war with Russia, to limit to cases of necessity the condemnation of vessels lying in a neutral port. It is scarcely necessary to add, after what has been said as to the former French law on condemnations by judges of the belligerent in neutral ports, that such condemnations of vessels lying in neutral ports are holden valid by the French Prize Courts. (3 *Int. Law CCCLXXIX*, p. 594.)

Hall offers a very positive opinion in regard to the treatment of prize brought into a neutral port:

The right of the captor to that which unquestionably belongs to his enemy is no doubt complete as between him and his enemy so soon as seizure has been effected; but as between him and a neutral state, as has been already seen, further evidence of definitive appropriation is required, and his right to the property of a neutral trader seized, for example, as being contraband goods or for breach of blockade, is only complete after judgment is given by a prize court. If therefore the belligerent carries his prize into neutral waters, without deposit in a safe place or possession during twenty-four hours in the case of hostile property, or without protection from the judgment of a prize court in the case of neutral property, he brings there property which does not yet belong to him; in other words, he continues the act of war through which it has come into his power. Indirectly also he is militarily strengthened by his use of the neutral territory; he deposits an encumbrance, and by recovering the prize crew becomes free to act with his whole force. Nevertheless, although the neutral may permit or forbid the entry of prizes as he thinks best, the belligerent is held, until express prohibition, to have the privilege not only of placing his prizes within the security of a neutral harbor, but of keeping them there while the suit for their condemnation is being prosecuted in the appropriate court. Most writers think that he is also justified by usage in selling them at the neutral port after condemnation; and, as they then undoubtedly belong to him, it is hard to see on what ground he can be prohibited from dealing with his own. But it is now usual for the neutral state to restrain belligerents from bringing their prizes into its harbors, except in cases of danger or of want of provisions, and then for as short a time as the circumstances of the case will allow; and it is impossible not to feel an ardent wish that a practice at once wholesome and consistent with principle may speedily be transformed into a duty. (Int. Law, 5th ed., p. 618.)

In Atlay's recent edition of Wheaton the subject is also reviewed:

During the American civil war a captor, who brought his prizes into British waters, was to be requested to depart and remove such prizes immediately. A vessel *bona fide* converted into a ship of war was, however, not to be deemed a prize. In case of stress of weather, or other extreme and unavoidable necessity, the necessary time for removing the prize was to be allowed. If the prize was not removed by the prescribed time, or if the capture was made in violation of British jurisdiction, the prize was to be detained until Her Majesty's pleasure should be made known. Cargoes were to be subject to the same rules as prizes. A subsequent order provided that no ship of war of either belligerent should be allowed to remain in a British port for the purpose of being dismantled or sold.

During the Franco-German war of 1870-1, armed ships of either party were interdicted from carrying prizes made by them into the ports, harbors, roadsteads, or waters of the United Kingdom, or any of Her Majesty's colonies or possessions abroad. A similar rule was made in 1898 and 1904.

While the American civil war was prevailing, France prohibited all ships of war or privateers of either party from remaining in her ports with prizes for more than twenty-four hours, except in case of imminent perils of the sea. No prize goods were permitted to be sold in French territory. Prussia remained content with ordering her subjects not to engage in the equipment of privateers, and to obey the general rules of international law. The Belgian rule commanded all privateers to depart immediately, unless prevented by absolute necessity. (Wheaton's Int. Law, Atlay, 4th ed., secs. 434d, 434e.)

There are, however, many differences of opinion as to the merits of the prohibition of the entrance and sojourn of prize in a neutral port:

Under the general rule a prize may not only be brought into a neutral port, but may also be kept there until duly condemned by a Prize Court sitting in the belligerent's own territory. This clearly amounts to a permission to make military use of neutral territory, and is only justified in that it is granted impartially to both belligerents.

On the whole it seems likely that the practice of excluding the prizes of both sides, except in cases of necessity, will be adhered to in future. Such a course is, in fact, almost a necessary corollary of the strict rules which either already regulate, or are likely to regulate, the admission of belligerent public vessels other than prizes into neutral waters and ports in time of war. These rules as to recruitment, coaling, and such matters are discussed in detail in Chapter III.

Speaking generally, it may be said that just as a neutral State's right of "inviolability of territory" is overshadowed by its duty of impartiality, which compels it to protect and enforce that right, so is its right of hospitality overshadowed by the duty of preventing its territory or ports from being made a theatre of warlike operations by either of the belligerents. (Risley, Law of War, 176.)

Pradier-Fodéré states the present practice in regard to jurisdiction over prizes as follows:

C'est généralement au commencement des guerres que se sont constitués les tribunaux de prises. Ces tribunaux ne peuvent siéger que dans les pays belligérants; leur création est, en effet, un acte motivé par la guerre. Les États neutres ne sont conséquemment pas appelés à en instituer, et peuvent ne pas tolérer que les belligérants exercent sur leur territoire la juridiction des prises. Les agents consulaires des belligérants à l'étranger n'ont plus aujourd'hui le droit de juger les prises qui seraient conduites en relâche forcée dans les ports neutres de

leur consulat, ils ne peuvent que procéder à l'instruction. Si un État belligérant avait la prétention de conférer à ses envoyés diplomatiques ou à ses consuls près les États neutres, le droit d'exercer une juridiction sur les prises, ces États auraient donc le droit incontestable de s'y opposer et de ne tolérer sur leur territoire l'exécution d'aucune mesure ordonnée par le belligérant. (8 Droit Int. Public, sec. 3201, p. 764.)

Dana's note to Wheaton's International Law presents very clearly the practice in 1866 in regard to the place of prize at time of condemnation:

As it is not necessary to the jurisdiction of a prize court that the prize should be in existence, it would seem to be unnecessary that it should be within its custody. Yet, for a long time, this was a vexed question of international law. Where a prize is not fit for a voyage to a place of adjudication, and yet may be of value, it is customary to sell her. The statutes of the United States assume, that a captor, or any national authority, may sell in a case of necessity, rather than destroy the vessel; and that the Government may itself take a prize into its service, in a case of belligerent necessity, or if it is unseaworthy for a voyage to a port of adjudication. (Act 1864, ch. 174, p. 28.) In the one case it is the duty of the captor to send the proceeds of the prize to the prize court, and in the other of the Government to deposit the value for adjudication in lieu of the prize itself. (Ibid.) It is believed that this practice is sanctioned by the law of nations.

As to a prize in a neutral port, writers seem often to have confounded the duty of the captor with the jurisdiction of the court. The duty of the captor is to send his prize to a port of his own country, that the prize tribunal may have it within its custody, not only for a fairer investigation of evidence—often derivable from the vessel and cargo itself—but also to diminish the risks of concealment or destruction, by the captors, of evidence or property, and to insure a fair sale for full value in case of condemnation, or a more speedy and satisfactory restitution. The captor must give some reason of necessity for leaving his prize in a neutral port, or, as before stated, for not bringing it in. But, irrespective of the advantages or disadvantages to claimants or captors, on the bare question of the capacity of the court to take cognizance of a cause where the prize is not bodily in its custody, and yet is in existence, there seems to be now no doubt. (For analogous cases in civil proceedings, see *Hudson v. Guestier*, Cranch, iv, 293; *Ib.*, vi, 281; and *Rose v. Himely*, Cranch, iv, 241.) Whether a court will exercise its functions in any given case of an absent prize, is a different question, and one of discretion, upon circumstances.

Whether a prize may or may not be taken into or remain in a neutral port to await proceedings at home, or for sale by captors, or for any other purpose, is a question for the neutral sovereign to decide. Consular prize courts, in neutral States, are not now recognized by nations. The locality of the court must be in the territory of the belligerent.

This was first decided politically by Washington's Cabinet, in the case of the prizes taken by M. Genet's privateers (American State Papers, i, 144); and judicially by the Supreme Court, in the *Betsey* (Dallas, iii, 6); and afterwards by Sir William Scott, in the *Flad Oyen* (Rob. i, 135). It is within the fortunes of war, whether the captor shall be able to get his prize into a home port. It is obviously for the interest of neutrals to require such a course, and to object to all adjudication on absent prizes, except in cases of necessity.

The modern practice of neutrals prohibits the use of their ports by the prizes of a belligerent, except in cases of necessity; and they may remain in the ports only for the meeting of the exigency. The necessity must be one arising from perils of the seas, or need of repairs for seaworthiness, or provisions and supplies. Increase of armament is prohibited. The neutral will protect the prize against pursuit from the same port for twenty-four hours, and against capture within his waters; but, beyond that, the general peril of war, arising from the power or vigilance of the other belligerent, does not constitute a necessity which the neutral recognizes as justifying a remaining in his port. This rule, if adhered to, will prevent the arising of a custom of retaining prizes in safety in a neutral port, until they can be condemned in the home port, in their absence. But, apart from any such practice of neutrals, it seems clear, that to allow prizes to fly to a neutral port, and remain there in safety while prize proceedings are going on in a home port, would give occasion to nearly all the objections that exist against prize courts in neutral ports. It seems, therefore, to be the tendency, if not the settled rule, now, that a decree of condemnation will not be passed against prizes remaining abroad, unless in case of necessity, or if passed, will not be respected by other nations.

This résumé of the opinion in 1866 fairly represented American and British opinion at the beginning of the twentieth century.

Instructions in regard to the bringing in of prize.—The instructions issued to the commanders of British war vessels on April 15, 1854, were as follows:

The commanders of Her Majesty's ships and vessels of war shall send all ships, vessels, and goods which they shall seize and take into such port within Her Majesty's dominions, as shall be most convenient for them, in order to have the same legally adjudged at the High Court of Admiralty of England or in some other admiralty court lawfully authorized to take cognizance of matters of prize.

The Instructions Complémentaires issued by France in 1870 contains the following clause:

14. Envoi de prises dans les ports français—Les prises sont exclusivement dirigées sur les ports de France ou des possessions françaises. En cas de force majeure seulement, elles peuvent entrer dans les ports

neutres pour réparation d'avaries ou ravitaillement. Elles n'y séjournent que le temps nécessaire à ces opérations.

17. Prise conduite dans un port étranger—Lorsqu'une prise est conduite dans un port étranger où elle peut être admise, le conducteur de la prise représente les capteurs dans l'instruction consulaire.

18. Refus d'admission—Presque toutes les puissances assimilent les prises aux bâtiments de guerre des belligérants et ne les admettent pas dans leurs ports, si ce n'est en cas de relâche forcée, et pour une période de temps très courte.

Le conducteur d'une prise doit toujours, en pareil cas, déférer aux invitations qui lui sont adressées par le gouvernement du pays où il se trouve. Il agit alors au mieux des intérêts dont il est chargé et rend compte, sans délai, au ministre de la marine du refus d'admission qu'il a essuyé.

The British regulations issued in 1888 provide:

298. If the surveying officers report that the vessel is not in a condition to be sent into a proper port of adjudication, the commander should, if practicable, take her into the nearest neutral port that may be willing to admit her.

299. The commander, however, must bear in mind that he can not take the vessel into a neutral port against the will of the local authorities; and that under no circumstances can proceedings for adjudication be instituted in a neutral country.

300. Both the cruiser and, if admitted, her prize are by the comity of nations exempt from the local jurisdiction.

301. If the vessel is admitted into a neutral port, then, in order that proceedings for adjudication may be duly instituted, the commander should forward the witnesses, together with the vessel's papers and necessary affidavits, in charge of one of the officers of his ship to the nearest British prize court. (Manual of Naval Prize Law, p. 85.)

The following instructions were issued as General Order 492, by the Navy Department of the United States during the Spanish-American war in 1898:

Sending in of prizes. 20. Prizes should be sent in for adjudication, unless otherwise directed, to the nearest home port in which a prize court may be sitting.

21. The prize should be delivered to the court as nearly as possible in the condition in which she was at the time of seizure; and to this end her papers should be sealed at the time of seizure and kept in the custody of the prize master. Attention is called to articles numbers 16 and 17 for the government of the United States Navy (Exhibit A).

22. All witnesses whose testimony is necessary to the adjudication of the prize should be detained and sent in with her, and if circumstances permit it is preferable that the officer making the search should act as prize master.

23. As to the delivery of the prize to the judicial authority, consult sections 4615, 4616, and 4617, Revised Statutes of 1878 (Exhibit B). The papers, including the log book of the prize, are delivered to the prize commissioners; the witnesses, to the custody of the United States marshal; and the prize itself remains in the custody of the prize master until the court issues process directing one of its own officers to take charge.

24. The title to property seized as prize changes only by the decision rendered by the prize court. But if the vessel itself, or its cargo, is needed for immediate public use, it may be converted to such use, a careful inventory and appraisal being made by impartial persons and certified to the prize court.

Provisions in recent neutrality proclamations.—The attitude of the leading States of the world in regard to the bringing of prize and its sojourn in a neutral port is shown in the neutrality proclamations issued during the Spanish-American war of 1898 and Russo-Japanese of 1904. In most cases the terms of the proclamations are identical in both wars.

Brazil, 1898:

VI. No war ship or privateer shall be permitted to enter and remain, with prizes, in our ports or bays during more than twenty-four hours, except in case of a forced putting into port, and in no manner shall it be permitted to it to dispose of its prizes or of articles coming out of them.

By the words "except in case of a forced putting into port," should also be understood that a ship shall not be required to leave port within the said time: First. If it shall not have been able to make the preparations indispensable to enable it to go to sea without risk of being lost. Second. If there should be the same risk on account of bad weather. Third. And, finally, if it should be menaced by an enemy.

In these cases, it shall be for the Government, at its discretion, to determine, in view of the circumstances, the time within which the ship should leave.

VII. Privateers, although they do not conduct prizes, shall not be admitted to the ports of the Republic for more than twenty-four hours, except in the cases indicated in the preceding section.

Denmark, 1898:

Third. The ports and territorial waters of the islands shall be closed to the prizes of either belligerent, except when they are found in cases of distress.

Dutch West Indies, 1898:

ART. 3. The vessels of war or privateers of the belligerents are not permitted to enter the ports or roadsteads of the colony with prizes,

except in the case of accidents of the sea or want of provisions. As soon as the reasons for their admission have ceased to exist, they must depart immediately. They will not be permitted to take on board more provisions than they require in order to reach the nearest port of the country to which they belong, or that of one of its allies in the war. They shall not be supplied with coal so long as they are in possession of prizes. If vessels of war chased by the enemy take refuge in the territory of the colony, their prizes must be released.

ART. 4. The sale, exchange, or giving away of prizes or of articles taken therefrom, as also of captured goods, is prohibited in the ports, the roadsteads, and the territorial waters of the colony.

ART. 5. Ships and vessels of war, admitted in accordance with articles 1, 2, and 3, must not remain in the ports or roadsteads of the colony longer than therein provided. If, however, ships or vessels of war or others belonging to the belligerents should happen to be in the same port or roadstead of the colony, an interval of at least twenty-four hours must elapse between the departure of a ship or ships, or of a vessel or vessels, of one of the belligerents, and the subsequent departure of a ship or ships, or of a vessel or vessels, of the other. This interval may be lengthened according to circumstances.

France, 1898:

The Government of the Republic declares and notifies whomsoever it may concern that it has decided to observe a strict neutrality in the war which has just broken out between Spain and the United States.

It considers it to be its duty to remind Frenchmen residing in France, in the colonies and protectorates, and abroad, that they must refrain from all acts which, committed in violation of French or international law, could be considered as hostile to one of the parties, or as contrary to a scrupulous neutrality. They are particularly forbidden to enroll themselves or to take service either in the army on land or on board the ships of war of one or the other of the belligerents, or to contribute to the equipment or armament of a ship of war.

The Government decides in addition that no ship of war of either belligerent will be permitted to enter and to remain with her prizes in the harbors and anchorages of France, its colonies and protectorates, for more than twenty-four hours, except in the case of forced delay or justifiable necessity.

No sale of objects gained from prizes shall take place in the said harbors and anchorages.

Great Britain, 1898:

Rule 4. Armed ships of either belligerent are interdicted from carrying prizes made by them into the ports, harbors, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of Her Majesty's colonies or possessions abroad.

Italy, laws of April 6, 1864, and June 16, 1895, published with neutrality proclamation of 1898:

Decree of April 6, 1864:

ARTICLE I. No vessel of war or armed for cruising of any belligerent state shall be allowed to enter and remain with prizes in the ports or roadsteads of the kingdom, except in the case of arrival under stress.

Decree of June 16, 1895:

ART. 12. Foreign ships of war and merchantmen armed for cruising are forbidden to bring prizes into, or to arrest and search vessels in, the territorial sea or in the sea adjacent to the Italian islands, as well as to commit other acts which constitute an offense to the rights of state sovereignty.

Japan, 1898:

4. No man-of-war or other ships used for warlike purposes, belonging to one or the other of the belligerent powers, shall be permitted to take any captured vessel into the territorial waters of the Empire, except under stress of weather, or on account of destitution of articles necessary for navigation, or of disablement. In the last-mentioned case, it is not permissible under whatever pretext to land any prisoner of war or to dispose of the captured vessel or articles.

Netherlands, 1898:

ART. 3. The ships of war or privateers of the parties at war shall not enter Netherlands' ports or sea channels with prizes, except in case of dangers of the sea or lack of provender.

As soon as the reason for their admittance has ceased to exist, they shall move off.

They shall not be allowed to ship more provender than is necessary to permit of their reaching the nearest port of the country to which the ship belongs, or that of one of its allies.

Coal shall not be supplied them so long as they are in possession of prizes.

If ships of war, pursued by the enemy, seek a refuge within our territory, they shall liberate the prizes.

ART. 4. The sale, exchange, and free disposal of prizes or of articles coming thence, as also of booty, is prohibited in the ports, roads, sea channels, and in the territorial waters of the Netherlands.

ART. 5. Ships and vessels of war, which in virtue of articles 1, 2, and 3 are admitted, shall not remain in our ports, roads, or sea channels beyond the time therein indicated.

Portugal, 1898:

ART. 2. The entrance into the ports and waters mentioned in the foregoing article, of privateers and prizes taken by them or by any vessels of war of the belligerent powers is likewise forbidden.

Sole paragraph.—Cases of vis major, in which, according to international law, hospitality becomes indispensable, are excepted from the provisions of this article, but the sale of articles obtained from prizes shall not be allowed, and vessels having charge of prizes shall not be permitted to remain for a longer time than is indispensable for them to receive the necessary aid.

China, 1904:

32. War vessels and transports of belligerents must not bring ships which they have captured into a Chinese port. But should they be seeking shelter from a storm or desiring to repair damages or buy necessary provisions, and there really be no alternative course, they shall be exempted from this prohibition, and immediately upon the conclusion of their business they must take their departure. During their stay, however, they must not land their captives nor sell captured vessels or materials.

Denmark, 1904:

Paragraph 3. Privateers will not be permitted to enter Danish harbors nor to lie in a Danish roadstead.

Prizes must not be brought into a Danish harbor or roadstead except in evident case of stress, nor must prizes be condemned or sold therein.

Netherlands, 1904:

ART. 3. War ships or privateers shall not be admitted to the harbors or outlets of the Netherlands Indies when accompanied by prize, except in the case of distress or want of provisions. As soon as the reason for their entry is passed they shall leave immediately. They shall not ship more provisions than is necessary for them to reach the nearest harbor of the country to which they belong, or that of one of their allies in the war. So long as they keep prizes coal shall not be supplied them. When war ships pursued by the enemy shall seek shelter in Netherlands Indies waterways they shall abandon their prizes.

ART. 4. The sale and exchange and distribution of prizes or of articles derived thence, as also of booty, shall not be allowed in the harbors, roads, in the outlets, and the territorial waters of the Netherlands Indies.

Sweden, 1904:

The King has decided—

* * * * *

3rd. To forbid entrance into the ports and roadsteads of Sweden and Norway, except in case of distress, of prizes as well as their condemnation or sale therein.

The question of sequestration of prize in a neutral port at the Hague Conference, 1907.—Great Britain in the

propositions presented to the Second Hague Conference in 1907 did not favor the admission of prize within neutral jurisdiction.

(26) Une puissance neutre ne pourra permettre sciemment à un belligérant d'amener une prise dans sa juridiction que si la prise à court de combustibles ou de provisions ou si elle se trouvait en péril en raison de son innavigabilité ou de mauvais état de la mer. La puissance neutre ne permettra pas sciemment à une prise de faire des chargements de munitions, de combustibles ou de provisions ou de réparer ses avaries au delà de ce qui serait nécessaire pour lui permettre de gagner le port le plus proche du pays belligérant: la puissance neutre devra notifier à la prise qu'elle ait à partir aussitôt que possible après avoir effectué les réparations nécessaires.

(27) Toute prise belligérante amenée dans des eaux neutres pour échapper à la poursuite de l'ennemi sera relâchée avec ses officiers et son équipage par la puissance neutre mais l'équipage mis à bord de la prise par le capteur sera interné.

It was argued at the Second Hague Conference that the granting of the right of sequestration of a captured neutral vessel in a neutral port would remove the temptation to destroy the captured vessel if from remoteness or other reason it is difficult to send the vessel to a home port. The American and British practice has been to release a neutral vessel that could not for any reason be brought to a prize court.

Sir Ernest Satow, of the British delegation, said of this Article 23 of the Convention concerning the Rights and Duties of Neutral Powers in Naval War:

L'article en question ne fait aucune mention de la différence fondamentale existant entre les prises ennemies et les prises neutres.

Le droit international reconnaît au belligérant le droit de couler les navires marchands de l'ennemi, la capture les ayant rendu la propriété de l'État capteur qui peut, en conséquence, en disposer à son gré. S'il les coule, lui seul en supporte la perte, le propriétaire ayant été dépossédé par le fait même de la capture. Permettre en conséquence à un belligérant de conduire une prise ennemie dans un port neutre, c'est lui accorder la faculté de se servir de ce port pour son avantage particulier.

En ce qui concerne les prises neutres, l'adoption de l'article 23 impliquerait l'abandon du principe qui est nôtre et en vertu duquel ces prises devraient être relâchées.

L'article 23 a été proposé, si je ne me trompe, par la Délégation italienne dans l'espoir que son adoption faciliterait la retraite à ceux qui soutiennent le droit de détruire les prises neutres dans certains cas de

force majeure. Puisque les deux comités de rédaction sont ici en présence, il n'y a rien d'irrégulier à citer ce qui a été dit au sein du Comité de la Quatrième Commission. Dans la séance du 28 août un des Délégués a dit "qu'il est certain que la proposition aura pour effet de restreindre les cas où la destruction sera une mesure nécessaire, mais elle ne les fera pas tous disparaître, il restera en particulier celui de la proximité de l'ennemi et celui du chargement de contrebande absolue." Un autre a dit que "la proposition ne suffira pas à faire disparaître la destruction des prises neutres: 1°. parce qu'il n'est pas sûr que les ports neutres acceptent d'être séquestres; 2°. parcequ'il y a des cas où il est impossible d'amener le navire dans le port neutre; par exemple si le mauvais état du bâtiment en rend la conduite impossible où si l'approche des forces ennemies ou d'autres raisons en font craindre la reprise ou si l'équipage du vaisseau de guerre est insuffisant pour amarrer convenablement le bâtiment.

Ces deux déclarations, qui ne manquent pas de clarté, démontrent le peu d'avantage qu'on retirerait de l'adoption de l'article en question. De plus, il y aurait danger pour le neutre à admettre les prises dans ses ports des belligérants. En effet un belligérant ne verra pas avec indifférence interner les prises faites par l'ennemi dans le port d'un neutre. Il est donc à craindre que d'une telle situation ne s'ensuivent des complications graves entre l'État neutre et l'État belligérant qui croirait avoir à se plaindre.

Il est vrai que les auteurs du projet laissent au neutre la faculté de fermer ses ports aux prises des belligérants, mais c'est là une liberté d'action dont il lui sera bien difficile et dangereux de se servir et que, par conséquent, il ferait bien de ne pas exercer. Je me vois donc dans la nécessité de voter contre l'article 23, même au risque de perdre l'appui de la Délégation italienne pour notre proposition au sujet de la destruction des prises neutres.

In the vote upon this article 23, Germany, Belgium, Brazil, France, Italy, Netherlands, Russia, Servia, and Sweden favored the article; Great Britain and Japan voted against it; and the United States, Austria-Hungary, Denmark, Spain, Norway, and Turkey refrained from voting.

Attitude of the United States as to sequestration of prize in a neutral port.—Article 23 of the Convention concerning the Rights and Duties of Neutral Powers in Naval War, The Hague, 1907, was as follows:

A neutral power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

The report of the delegates of the United States to the Hague Conference of 1907 briefly summarizes the American attitude toward such a rule and shows its possibilities of abuse:

Articles 21 to 25 relate to the admission of prizes to neutral ports. Articles 21 and 22 seem to be unobjectionable. Article 23 authorizes the neutral to permit prizes to enter its ports and to remain there pending action on their cases by the proper prize courts. This is objectionable, for the reason that it involves a neutral in participation in the war to the extent of giving asylum to a prize which the belligerent may not be able to conduct to a home port. This article represents the revival of an ancient abuse and should not be approved. In this connection it is proper to note that a proposition absolutely forbidding the destruction of a neutral prize, which was vigorously supported by England and the United States, failed of adoption. Had the proposition been adopted, there would have been some reason for authorizing such an asylum to be afforded in the case of neutral prizes.

The United States ratified the Convention concerning the Rights and Duties of Neutral Powers in Naval War, on April 17, 1908, with the following reservations:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the adherence of the United States to a convention adopted by the Second International Peace Conference held at The Hague from June 15 to October 18, 1907, concerning the rights and duties of neutral powers in naval war, reserving and excluding however Article XXIII thereof, which is in the following words: "A neutral power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court. It may have the prize taken to another of its ports. If the prize is convoyed by a war ship, the prize crew may go on board the convoying ship. If the prize is not under convoy, the prize crew are left at liberty."

Resolved, further, That the United States adheres to this convention with the understanding that the last clause of Article III implies the duty of a neutral power to make the demand therein mentioned for the return of a ship captured within jurisdiction and no longer within that jurisdiction.

Article XXVIII of the Convention concerning the Rights and Duties of Neutral Powers in Naval War provides that—

The provisions of the present convention do not apply except to the contracting powers, and then only if all the belligerents are parties to the convention.

As regards Article XXIII allowing sequestration of prize in a neutral port pending decision by a prize court, the United States is not a contracting party and therefore the convention does not apply. As the convention applies "only if all the belligerents are parties to the convention," it would not be applicable so far as France is concerned even if France and State X were both parties to the convention. In this question it would therefore be, in the words of the convention, "expedient to take into consideration the general principles of the law of nations."

"Taking into consideration the general principles of the law of nations," as the preliminary articles of the convention advise, it would be possible, in accord with certain opinions and precedents, to take the captured vessel into the French port to be sequestered, provided France allowed such action. The convention by Article XXIII does not make it obligatory to allow prize to be thus brought in, but only permits a state to grant the privilege. In case of such grant, it would be directly contrary to the spirit of the preceding articles, which provide—

ARTICLE XXI.

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral power must order it to leave at once; should it fail to obey, the neutral power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

ARTICLE XXII.

A neutral power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article XXI.

The United States is a party to the above articles, but not to Article XXIII, which permits sequestration. Articles XXI and XXII may therefore be taken as showing the attitude of the United States Government in regard to the sending in of prize. The commander of the war ship making the capture of the merchant

ship should not therefore take the merchant ship into a neutral port to be sequestered pending the action of the prize court. He should observe the principles followed in recent United States practice, as shown in General Order 492 of the Navy Department in 1898, and in the action of the Government in adherence to the Convention concerning the Rights and Duties of Neutral Powers in Naval War.

CONCLUSION.

The commander should not take the prize into French port to be sequestered pending prize proceedings unless instructed. He should act in accord with General Orders 492 of the Navy Department, 1898.

20. Prize should be sent in for adjudication, unless otherwise directed, to the nearest home port in which a prize court may be sitting.