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International Law Topics and Discussions

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INTERNATIONAL LAW TOPICS, WITH CONCLUSIONS AND NOTES.

Topic I.

CLASSIFICATION OF PUBLIC VESSELS.

How should public vessels be classified having regard to their relations to and possible usefulness for warlike operations?

CONCLUSION.

Even though there have been propositions to include other vessels under the classes granted exemptions, considering the present tendencies of international opinion and practice the following general classification seems to be approved for public vessels:

Classification of public vessels.

1. Vessels of war; all vessels under public control for military or hostile purposes.¹
2. Hospital ships under X Hague convention for the adaptation to maritime war of the principles of the Geneva convention.
3. Cartel ships.
4. Vessels engaged exclusively in scientific or philanthropic work or in exploration.
5. Other vessels.

Treatment of public vessels.

1. Vessels of class 1 may, according to the rules of war, be captured or destroyed.
2. Vessels of class 2 are exempt from capture when conforming to X Hague convention.
3. Vessels of class 3 are exempt from capture when conforming strictly to the terms of the cartel agreement.
4. Vessels of class 4 are exempt from capture when their status has been made known by notification and when innocently employed.
5. Other vessels are liable to capture.

¹ Usually a public armed vessel under command of a duly commissioned officer and having a crew under naval discipline.
Introduction.—The changes in methods and means of maritime warfare have been more rapid than the changes in the laws regulating the conduct of maritime war. The rules generally cited were drawn up for the conduct of war at a period when wooden ships were used and when ships were propelled by sails. The elements of time and space then bore a relation to military operations very different from that of to-day. The attempt to extend the old rules to modern conditions has in many cases shown these rules inapplicable.

Classifications.—There has also arisen in consequence of changed conditions, a demand for new rules in order that States may not suffer undue hardships. In early times all ships of the enemy were liable to like treatment regardless of the fact as to whether they were public or private. Now there is not merely a difference in the treatment of the public and private ships of the enemy, but also in the treatment of different classes of public ships.

Vessels used in war.—In a sense all vessels for hostile use may be called vessels of war, but the term should be more clearly defined. The introduction of steam as a motive power has increased the importance of coal and coaling stations, and colliers have become more important. The same may be said in regard to other forms of fuel and fuel ships.

The change in material of ship construction has made repair ships essential. Docking facilities, dry docks, etc., have assumed a new importance. Ports which might be suitable as bases for fleets of wooden ships of war may be entirely unsuited for modern battleships.

The highly specialized service of some ships of war requires that supplies and other forms of aid be always close at hand and supply ships and other auxiliary ships have been enrolled in the maritime service.

The transportation of the military and naval forces is often by special troop ships.

Vessels serving in the various capacities mentioned above may be regarded as so closely related to the naval
service as to be analogous to vessels of war if not actually within that category.

Attempts at definition.—There have been many attempts at definition of vessels of war in order to distinguish a ship which is liable to the extreme consequences of war from a vessel which may receive a somewhat less severe treatment. The need of clear definition has been particularly evident because of the questions arising in regard to conversion or transformation of vessels of other classes into vessels of war. Naturally if there are to be rules for conversion there must be a clear conception of the class into which conversion is to be made. The question of definition arose at The Hague in 1907 together with the question of conversion.

At this time Great Britain proposed that vessels of war should be divided into two categories.

A. Vaisseaux de combat.
B. Vaisseaux auxiliaires.

A. Sera compris dans le terme “vaisseau de combat:” Tout navire battant un pavillon reconnu, armé aux frais de l’État pour attaquer l’ennemi et dont les officiers et l’équipage sont dûment autorisés à cet effet par le Gouvernement dont ils dépendent. Il ne sera pas licite au navire de revêtir ce caractère sauf avant son départ d’un port national ni de s’en dévêtir sauf après être rentré dans un port national.

B. Sera compris dans le terme “vaisseau auxiliaire:” Tout navire marchand, soit belligérant soit neutre, qui sera employé au transport de marins, de munitions de guerre, combustibles, vivres, eau ou toute autre espèce de munitions navales, ou qui sera destiné à l’exécution de réparations ou chargé du port de dépêches ou de la transmission d’information si le dit navire est obligé de se conformer aux ordres de marche à lui communiqué, soit directement soit indirectement, par la flotte belligérante. Sera de même compris dans la définition tout navire employé au transport de troupes militaires.” (Deuxième Conférence Internationale de la Paix, Tome III, p. 862.)

These definitions received somewhat full treatment and explanation from Lord Reay, who, speaking of the term “vaisseau de guerre,” said:

Il me semble qu’il serait opportun d’ajouter quelques mots d’explication en appelant votre attention sur les conditions de la guerre maritime de nos jours qui sont, vous en conviendrez, très différentes de celles qui existaient du temps de Suffren, de Nelson ou de Paul Jones.

Autrefois, Messieurs, le vent était l’élément indispensable sans lequel une flotte était paralysée dans ses mouvements; aujourd’hui
c'est le charbon qui joue le rôle principal et sans lui une escadre moderne ne peut pas naviguer et se trouve dans l'impossibilité d'échapper à la poursuite de l'ennemi. Il est donc indispensable aux vaisseaux de guerre de faire du charbon et d'organiser à ces fins un service de vaisseaux charbonniers qui, le cas échéant, accompagnaient la flotte. On ne saurait contester que ces vaisseaux charbonniers font partie intégrante d'une flotte belligérante et que l'ennemi s'efforcerait toujours de s'en emparer, quel que soit leur pavillon. En effet, supposons qu'une escadre belligérante rencontre des vaisseaux chargés de charbon à destination de l'ennemi, croyez-vous qu'elle hésitera à les saisir comme faisant partie de l'escadre ennemie? Pour ma part, je ne le crois pas.

Des vaisseaux neutres faisant ce service de ravitaillement rendent à l'un des belligérants une assistance hostile que l'adversaire ne saurait reconnaître comme licite et s'exposent de ce fait à toutes les conséquences qui découlent de l'état de belligérant. Toute fourniture de combustibles, de vivres ou de munitions faite par un navire neutre accompagnant ou escortant une escadre belligérante, constitue de sa part une infraction à la règle générale qui interdit à un neutre de porter directement secours à un belligérant. Il ne s'agit plus, dans l'espèce, d'une simple entreprise commerciale, mais d'un acte d'ingérence dans les opérations de la guerre.

Les navires qui font ce service de ravitaillement, ou qui sont chargés d'exécuter des réparations ou de porter des dépêches, sont directement soumis aux ordres des autorités compétentes du belligérant. Ils sont incorporés dans ses forces maritimes, qu'ils soient armés ou non, qu'ils naviguent en conserve avec les flottes du belligérant ou qu'ils attendent les ordres de marche ou l'arrivée des navires de guerre, soit en mer, soit dans un port.

Leur caractère belligérant est donc incontestable puisqu'ils prennent une part active aux opérations de guerre.

Les armateurs qui mettraient leurs navires ainsi à la disposition d'un des belligérants les exposent de ce fait à tous les risques et périls encourus par les navires de guerre du belligérant auquel ils prêtent leur assistance hostile. Reconnaître la légitimité de leurs actes aurait pour effet de prolonger la guerre et d'étendre le théâtre des hostilités. Nous croyons, Messieurs, que le résultat de l'adoption de notre proposition serait au contraire d'accorder une protection plus large aux neutres et de limiter les forces belligérantes aux forces nationales qui seules, à notre avis, devraient se trouver en présence les unes des autres.

Il est bien entendu que la règle ne s'appliquerait qu'aux navires se trouvant dans les conditions précitées et qui rendraient les services déjà énumérés. Il ne saurait y avoir aucun doute dans notre esprit sur le caractère hostile des services rendus dans ces conditions.

Selon ces conditions, les navires devront être placés sous les ordres directs ou indirects d'un Gouvernement belligérant ou d'un commandant d'une escadre belligérante; ils devront de temps en temps être incorporés dans une escadre belligérante ou la rejoindre selon les circonstances; ils devront être employés au transport de marins ou de
soldats, de munitions de guerre, de charbon, de provisions ou d’articles d’approvisionnement maritime, ou chargés d’exécuter des réparations ou de transmettre des dépêches ou des informations à l’escadre dont ils dépendent.

Dans ces conditions ils seront considérés comme prêtenant une assistance hostile à l’ennemi. (Deuxième Conférence de la Paix, Tome III, p. 847.)

Admiral Röell, of the Netherlands delegation, raised the question whether it was intended to give to these "vaisseaux auxiliaires" all the rights of vessels of war. He referred to the right of capture of enemy and of neutral ships, the right of visit and search, and sojourn in neutral ports.

The American delegate, Gen. Porter, suggested that apparently the purpose was to give the belligerents the same summary jurisdiction over them that they would exercise over regularly commissioned ships of war—i.e., they might be seized or destroyed without reference to a prize court before or after the act. He also held that a vessel engaged in unneutral service would under the existing principles of international law be brought before a court for adjudication, but under the classification and definition proposed by Great Britain would be subject to treatment such as the will of an enemy commander might dictate.

The Russian delegate thought that the term "vaisseaux auxiliaires" included all private ships, even though neutral, which were employed in the transportation of fuel, provisions, water, etc., for the belligerent fleet.

The question of definition of the term "vaisseau de guerre" was, after discussion, referred to a committee, of which Admiral C. S. Sperry, United States Navy, was a member, for special consideration and more precise definition. This committee reported through M. Fromageot:

La proposition britannique, telle qu’elle a été présentée, comprend dans son préambule, comme vous l’avez vu, sous une même expression "vaisseaux de guerre" deux catégories: les vaisseaux de combat et les vaisseaux auxiliaires.

S. Exc. Lord Reay a, tout d’abord, déclaré retirer ce préambule.

Il en résulte qu’il ne s’agit plus actuellement de présenter, comme une catégorie de navires de guerre, les navires visés par la proposition britannique sous le nom de navires auxiliaires.
La proposition se trouve donc actuellement à comprendre deux dispositions nettement distinctes:

1°. Une disposition relative à la définition du navire de combat, c'est-à-dire aux caractères que doit présenter le navire de guerre pour jouir de cette qualité au point de vue du droit des gens.

À cet égard, et en réponse à une observation du Comte Tornielli, l'honorable Délégué britannique a très nettement déclaré que rien n'était plus loin de la pensée de son Gouvernement que de proposer un texte pouvant faire songer à un rétablissement déguisé de l'ancien droit de course.

Aussi bien, ce premier paragraphe n'avait pas à être examiné par le Comité. La discussion en paraît naturellement devoir être rattachée à la discussion des propositions présentées sur le même sujet, par les autres Délégations.

2°. Une disposition apportant une définition de ce que la Délégation britannique propose d'appeler "vaisseaux auxiliaires."

Sur ce point, S. Exc. Lord Reay a expliqué le point de vue de sa Délégation, qui est d'assimiler aux navires militaires d'une force navale, quant au traitement auquel ils sont exposés, les navires de commerce, soit employés au service de cette flotte pour un usage quelconque, soit placés sous ses ordres, soit servant à des transports de troupes, dans tous les cas, prêtant ainsi à la flotte une assistance évidemment hostile.

Pour préciser la portée de la proposition, les membres du Comité ont tour à tour expliqué les conséquences qu'elle leur paraissait entraîner.

Le caractère hostile reconnu aux navires transporteurs de munitions, combustibles, vivres, etc., a-t-on fait remarquer, ne serait autre chose que la consécration de la notion de contrebande—ce qui paraît en contradiction avec la proposition, faite d'autre part par la Grande-Bretagne, d'abolir cette notion. La contrebande destinée à une force navale se trouverait ainsi rester saisissable—et, comme on va le voir, dans des conditions plus rigoureuses qu'autrefois—tandis que le même transport, destiné à un port de l'ennemi, serait licite.

D'autre part, dans l'état actuel du droit, le navire de commerce accompagnant une flotte est simplement exposé au traitement de droit commun, c'est-à-dire, la capture et la nécessité d'une décision de validation par une cour de prise.

L'assujettissement du même navire au traitement des navires militaires de cette flotte autoriserait non-seulement la capture sans aucune formalité judiciaire de prise, mais encore l'emploi de tous moyens de destruction en usage entre forces militaires.

De cet échange d'observations et des explications fournies par S. Exc. Lord Reay, il résulte que le sens et la portée de la proposition britannique peuvent se caractériser comme il suit:

Il ne s'agit pas ici à proprement parler ni de contrebande, ni de navires de commerce transformés en navires de guerre, c'est-à-dire mobilisés. Ce n'est pas le commerce avec le belligérant qui est visé, c'est le fait pour un navire d'être au service de ce belligérant, à quelque titre d'ailleurs que ce soit, comme navire-magasin, comme navire-
atelier, comme réserve de vivres, de combustibles ou de munitions; peut-être même le navire sera sur lest, accompagnant la flotte en vue de telle ou telle éventualité.

Ces navires, au cours de leur service au profit du belligérant, seraient, d'après la proposition britannique, soumis au traitement éventuel des navires militaires de ce belligérant, avec toutes les conséquences de fait et de droit qui en résultent.

Une fois leur service terminé, ils se retrouveraient sous l'empire du droit commun.

L'expression de "navire auxiliaire" souvent employée pour désigner des navires mobilisables ou mobilisés, et destinés à exercer les droits de belligérants, pourrait prêter ici à confusion. Cette confusion, comme on le voit, doit être évitée.

Convient-il, ainsi que l'a fait remarquer notre Président, M. de Martens, de reconnaître cette nouvelle classe de navires, se plaçant en quelque sorte entre le navire militaire belligérant et le navire privé? Y a-t-il lieu de leur imposer le traitement proposé?

Faut-il distinguer entre le cas du navire voyageant de conserve avec la flotte,— le cas du navire voyageant isolément aux ordres de ladite flotte,— le cas du navire transporteur de troupes?

Le Comité d'examen n'avait pas à se prononcer à cet égard. Il s'est efforcé, comme il en était chargé, de préciser la question; il vous appartiendra de la résoudre. (Ibid., p. 863.)

Further discussion led to the withdrawal of the British definition of "vaisseau auxiliaire," and the question so far as relates to unneutral service was considered at the International Naval Conference, 1908-9, and the conclusions embodied in the Declaration of London, 1909.

*Neutrality proclamations.*—The proclamations of neutrality have shown that neutrals intended to include other ships than those which might be called men-of-war in the regulations provided such ships were under belligerent control. These provisions vary somewhat according to the conditions, but, in general, cover vessels controlled by belligerents for hostile purposes.

In 1898, at the time of the Spanish-American War, the Brazilian regulations, which were reaffirmed for the Russo-Japanese War in 1904, stated:

VIII. No ship with the flag of one of the belligerents, employed in the war, or destined for the same, may be provisioned, equipped, or armed in the ports of the Republic, the furnishing of victuals and naval stores which it may absolutely need and the things indispensable to the continuation of its voyage not being included in this prohibition. (Proclamations and Decrees, p. 14.)
Denmark, in 1898, provided that—

Vessels of war of either belligerent or transport boats belonging to their fleets will be permitted to enter the ports and territorial waters of the islands, but to remain there only during twenty-four hours, except in case they find themselves in distress caused either by bad weather, lack of provisions, accident, or other cause. (Ibid., p. 23.)

The Italian royal decree, of June 16, 1905, embodied the same prohibitions in article 12 for "Foreign ships of war and merchantmen armed for cruising."

In 1898, also an imperial ordinance of Japan, No. LXXXVII, extended the same rules to "men-of-war and such other ships used for warlike purposes" as may "happen to be in the territorial waters of the Empire."

**Regulations as to visits.**—Several States have issued regulations in regard to the entrance of vessels into their ports. Not all of the regulations give any definition as to the scope of the regulations. Among the statements made may be mentioned that of France, which uses the word which has been translated as "man-of-war." Article I, of the French Regulations of May 21, 1913, is as follows:

The term "man-of-war" shall be considered as applying not only to all the ships designated as such in the recognized sense of this word, but likewise to auxiliary ships of all sorts. (Visits of men-of-war to foreign ports, p. 14.)

The German Regulations of August 18, 1911, in the first article use the term "warships and other vessels of war of foreign powers." In Article VII "ships and vessels of foreign navies" are mentioned. In the German Regulations of May 14, 1913, Article I, the phraseology is "war vessels (war ships and war craft) of foreign powers."

The regulations relating to the Dutch protectorates refer to vessels of war as in the regulations relating to Curacao of April 2, 1912, which say:

**Article I.** This resolution includes among men-of-war and vessels equalized therewith all vessels—

First. Which carry the outward marks of men-of-war of their nationality (flag and command flag or split command pennant); 

Second. Whose commander is in the service of the State and is charged with the command by the competent authority; and 

Third. Whose crew is subjected to military laws.
The regulations of the Dutch East Indies of October 16, 1905, state:

**Article I.** In these regulations the term "foreign warships" is to be understood to mean—

I. All warships of nations on friendly terms with the Netherlands.

II. All ships having on board armed troops of nations on friendly terms with the Netherlands.

Great Britain, in December, 1912, announced, for the purpose of regulations for the United Kingdom, that—

The term "ship of war" is to be understood as including all ships designated as such in the accepted sense of the term, and also auxiliary vessels of all descriptions.

There seems to be a growing tendency to use a brief general term to cover all vessels under public control for purposes of war. This becomes particularly necessary when regulations are to be made in accordance with the Hague conventions for regulating the number of ships which may be in a neutral port. Such a general definition is also convenient in order to avoid misunderstandings in the time of peace. As privateering is, in general, discountenanced, vessels under public control are now regarded as the only legitimate vessels for hostile use.

**Résumé.**—While the term "fighting ship" or "battleship" may perhaps be reserved for such vessels as are actually equipped for engaging in battle, there is reason for a general term which will cover the range of vessels used for hostile purposes in time of war. It may be difficult to predict whether the issue of a naval campaign will depend more upon the battleship or upon supply ship and collier. Each may be essential. Each is designed for use in war, and several ships may be necessary to constitute a fighting unit. It is not easy to maintain such distinctions under modern conditions as were possible earlier, when each ship might be a self-sufficient fighting unit. The fact that one ship has the guns, another supplies, and another coal, does not necessarily determine the respective usefulness of each for war purposes. Transport ships designed to carry troops from one region to another are likewise for purposes of war. Many other auxiliary vessels are now necessary, such as dispatch boats, repair ships, etc.
There are, however, certain vessels with a fleet which are not there for war purposes, such as hospital ships. It is the mission of these to mitigate the evils of war. They care for the shipwrecked and wounded of both parties, and their purpose is not hostile.

The object of the service of the battleship, the supply ship, the collier, the dispatch boat, etc., is hostile. The object of the service of the hospital ship is not hostile. The first may be broadly classed as vessels of war, and as such are distinct from hospital ships. Therefore the term "vessels of war" applies to all vessels under public control for hostile purposes.

Consideration in 1899.—At the First Hague Peace Conference in 1899, the subject of classification of vessels devoted to the care of the sick, wounded, and shipwrecked received consideration. The president of the committee having the matter in charge, speaking of vessels in general which might render hospital service, mentioned—

1. bâtiments-hôpitaux militaires;
2. bâtiments de commerce;
3. bâtiments hospitaliers, équipés aux frais de sociétés de secours;
4. embarcations. (Conférence Internationale de la Paix, Troisième Partie, p. 62.)

Of this proposition Capt. Siegel, of the German delegation, said:

M. Siegel dit qu'en soumettant les embarcations à cette décision, on a eu en vue de faciliter au commandement supérieur le contrôle des navires admis sur le champ de bataille.

Cependant cette question soulève des difficultés.

Les navires dont il s'agit peuvent être de deux sortes:
1°. les bâtiments hospitaliers équipés aux frais de sociétés de secours, reconnus et commissionnés par leurs Gouvernements;
2°. les bâtiments de commerce, de plaisance, de pêche, etc., qui se trouvent fortuitement sur le champ de bataille.

M. Siegel est d'avis que les premiers peuvent être assimilés aux navires de l'Etat et que les forcer à arborer un pavillon étranger serait un acte incompatible avec la souveraineté de l'Etat de qui ils relèvent, un acte qui pourrait être considéré comme peu amical pour la Puissance non favorisée et qui constituerait peut-être même une violation de la stricte neutralité au bénéfice de l'un des belligérants.

Si l'on accorde aux bâtiments de commerce la liberté de porter, s'ils le jugent à propos, un pavillon étranger avec le pavillon de leur pays, il
reste toujours le fait d'un acte peu amical qui augmenterait probablement les risques de l'entreprise.

M. Siegel ajoute qu'il lui paraîtrait utile, dans ces conditions, de laisser aux bâtiments hospitaliers le droit de porter, avec le pavillon blanc à croix rouge, exclusivement leur pavillon national en y ajoutant, si cela était jugé nécessaire, une marque distinctive qui serait à déterminer. (Ibid., p. 63.)

Not merely did the conference of 1899 consider that hospital ships should be easily recognizable, but that their character should be made known in advance, as was shown in the report of the committee:

La Commission propose donc de soustraire à la prise les bâtiments construits ou aménagés par les États spécialement et uniquement en vue de porter secours aux blessés, malades et naufragés. Chaque État construira ou aménagera comme il l'entendra les bâtiments affectés à son service hospitalier; on ne saurait lui imposer aucun type déterminé. L'idée essentielle est que les bâtiments auront un caractère exclusivement hospitalier, par suite ne pourront rien porter qui ne soit destiné aux blessés ou malades et à ceux qui les soignent, qui puisse être utilisé pour des actes hostiles.

Chaque belligérant doit connaître les bâtiments de son adversaire auxquels des immunités particulières sont accordées; il sera donc nécessaire que les noms de ces bâtiments aient été officiellement communiqués. À quel moment cette communication devra-t-elle avoir été faite? Au moment même de l'ouverture des hostilités, les belligérants doivent naturellement se notifier les noms de leurs bâtiments-hôpitaux. Mais il serait excessif de n'accepter que les notifications faites à ce moment. Un belligérant peut avoir été surpris par la guerre, il n'avait pas d'avance construit ou aménagé des bâtiments-hôpitaux; ou bien la guerre prend de grandes proportions et les bâtiments-hôpitaux existants sont jugés insuffisants. Ne serait-il pas cruel d'interdire aux belligérants la faculté de développer leur service hospitalier suivant les nécessités de la guerre, par conséquent d'aménager de nouveaux bâtiments? C'est ce qui a été admis. Une notification pourra donc être faite au cours même des hostilités; elle devra seulement précéder l'emploi du navire pour son nouveau service.

La notification des noms des bâtiments-hôpitaux militaires intéresse tout d'abord les belligérants; elle peut intéresser aussi les neutres, puisque, ainsi qu'il va être expliqué, une condition particulière est faite à ces bâtiments dans les ports neutres. Il est donc à désirer que les belligérants portent les noms de ces bâtiments à la connaissance des États neutres, quand ce ne serait que par une insertion dans leur journal ou recueil officiel. (Ibid., p. 14.)

The Second Hague Conference, 1907, did not make any change in the classification adopted at the first conference, though it did define somewhat more strictly the conditions under which exemptions would be granted.
Classification, hospital ships.—Hospital ships form a distinct class owing to the functions which they have to perform. As hospital ships to whatever nationality belonging are performing a public service, they become for the time entitled to special exemptions and are under special regulations.

As was determined by the Hague Convention of 1899, these ships may be of three classes—(1) military hospital ships belonging to the belligerent States, (2) hospital ships equipped wholly or in part by private individuals by societies of the belligerent State, (3) hospital ships equipped wholly or in part by private individuals or by societies of a neutral State. The societies above mentioned must be officially recognized relief societies.

As these hospital ships are under the control and subject to the orders of the belligerent commander, they may be classed as public vessels.

The method of control and degree of responsibility to the commander of the naval forces may be determined by the domestic law of a State, but as regards the conduct of hospital ships such as enumerated above the responsibility to the opposing belligerent is of the nature of a public responsibility.

Hospital ships seem from the above and from other reasons properly within the category of public ships, but not within the category of vessels of war.

Cartel ships.—It may be necessary that even in time of war some relations may be had between belligerents. It may be for the advantage of both belligerents that these relations be maintained. During the hostilities it may be necessary that certain communications between the belligerents be continued or that prisoners be exchanged, particularly since in modern times the conduct and treatment of prisoners have been so carefully regulated. Certain vessels are usually set apart to carry on this exchange. If the exchange is for the advantage of both parties these vessels should be given full freedom to carry on their work. At the same time, as there would be exceptional opportunities for dishonorable persons to take advantage of their position to the injury of one or the other of the belligerents, the full freedom for the
performance of the specific work would be closely limited to the specific work.

The class of vessels commonly called cartel ships and authorized to pass between the belligerents under strict regulations will probably continue to be recognized as special class.

_Vessels engaged in scientific work._—It has been customary for many years to grant special privileges to vessels engaging in scientific work which from its nature would benefit mankind. Notice of the departure of such expeditions has often been transmitted to foreign States in order that the vessels might not be interrupted. So long as the vessels are strictly employed in their scientific work, the immunity has been readily conceded. Sometimes a voyage is undertaken into a remote region better to observe an eclipse. The results of such observations may be of great general value and any interference with the work may be an injury to the State which interferes and bring no military advantage. The same may be said of expeditions to map the sea currents and other like undertakings.

There may be scientific work which from its nature closely resembles work which may be undertaken for military purposes. The taking of certain soundings or making of certain surveys in time of war may be doubtful in character and must be clearly shown to have no relation to the war in order that it may not be stopped or even be penalized. A vessel equipped for scientific work may be specially suited to serve hostile purposes, and for that reason must, if given exemption, be particularly careful to avoid suspicion.

Not merely should such vessels be careful to avoid suspicion, but at the present time it seems a reasonable requirement that the status of such vessels be made known in advance and that they be properly designated in order that they may not be put to inconvenience and in order that the belligerents may identify such vessels at sight and without difficulty.

_Philanthropic and religious work._—There are now many vessels engaged in various forms of philanthropic and religious work. Usually these vessels, like hospital ships,
assist those in need regardless of nationality or attitude toward the war. Vessels engaged in philanthropic and religious work would ordinarily be equipped with radiotelegraphic apparatus and their personnel would be especially familiar with the region in which they might be found. The personnel of such vessels would ordinarily not be under responsible State control. The possibility that information of a military character might be given to a belligerent by such a vessel would always be present. Indeed some of the personnel might regard such action as a patriotic duty. At the same time, such service as these vessels would habitually render might be even more needed in time of war than in time of peace. It would, for example, be as needful that such service as Dr. Grenfell has rendered to the Newfoundland fishermen should continue in war as in peace, because the fishermen are by international law and by convention exempt from capture and entitled to carry on their ordinary pursuits in an innocent fashion. The general principle followed in these cases seems to be that persons and property having no relation to the war should, so far as possible, be exempt from the consequences of war. While private rather than public vessels usually engage in such philanthropic and religious service, it seems reasonable that such vessels should be properly designated and that their status should be duly established.

Vessels engaged in exploration.—As the extent of unexplored earth surface decreases, the importance of such vessels naturally becomes less. Such vessels are, however, sometimes met. The service which they render is in a general way of value to all mankind. It is a service which, if innocently carried on, does not imply any participation in the war. Public ships are sometimes engaged in this service and officers of the Navy are frequently found best qualified to direct such work. Such vessels, if belonging to the State, should be notified to the foreign States and designated in a manner which will make them easily distinguishable.

Vessels in scientific, philanthropic, exploration service.—It is evident that vessels exclusively engaged in scientific and philanthropic work or in exploration would, in
Lighthouses, general, be entirely unrelated to the war. Their work, while not necessarily like that of the hospital ships, would in a broad way be for the good of all and would not have any belligerent character. These vessels may, therefore, form a distinct class because of their aloofness from the war.

Lighthouses, general.—In time of peace lighthouses are maintained for the benefit of shipping in general without distinction as to nationality. In some instances, particularly in earlier times, the shipping coming within the jurisdiction of a State might be taxed for the upkeep of the lighthouses, and the payment of light dues was not unusual. This practice has now for the most part been discontinued, though these dues may be covered in the tonnage dues.

Opinion of Ferguson.—Ferguson, who had been the Netherlands minister to China, writing in 1883, said of lighthouses, etc.:

Lighthouses, pilot boats, telegraph vessels, and all vessels belonging to institutions which are established exclusively for the convenience, security, and public safety of navigation, and for the general benefit of all nationalities, are entitled to international protection also during war, as long as interference with them is not absolutely necessary in connection with stringent measures of war.

Regarding mail boats (paquebot poste, post-dampfer) we have noted above, in paragraphs 109 and 122, that the privileges which they enjoy result from international postal conventions or special treaties.

Lighthouse tenders are exempt from capture. If the belligerent has not actually occupied the lighthouse, the regular supply by the lighthouse tender must be allowed to go on in the usual way for the benefit of navigation at large. When the belligerent cuts off the supply of a lighthouse situated on a blockaded coast or on outside islands or shoals, by capturing the means of communication, he is bound to continue the maintenance of the light and its supply by his own means by reason of the general international utility attached to the objects thus occupied or captured by him. (Manual of Int. Law, Vol. II, sec. 213.)

Policy in Far East.—The opinion of Ferguson favoring exemption of lighthouse tenders is in accord with the opinion natural in the Far East, because the lighthouse service was in a degree under international control and particularly protected by treaties and conventional agreements.
The Japanese prize law of 1894 extended exemption from capture not merely to hospital ships, but also to boats belonging to lighthouses.

The regulations governing captures at sea, issued in 1904 by Japan, also exempted "lighthouse vessels and tenders." (Art. XXXV.)

China.—Many States have treaties with China giving to their consular representatives a certain participation in the locating of lighthouses, etc., which puts the service in China on a basis somewhat different from that in other States. The treaty of 1858 with the United States is similar to others. Article XVI of this treaty provides that "the collectors of customs at the open ports shall consult with the consuls about the erection of beacons or lighthouses and where buoys and lightships should be placed."

Article XXVI implies that it will be necessary for China to maintain a lighthouse service even during war in order that the vessels of the United States may "pursue their commerce in freedom and security."

Article XXVI.—Relations of peace and amity between the United States and China being established by this treaty, and the vessels of the United States being admitted to trade freely to and from the ports of China open to foreign commerce, it is further agreed that, in case at any time hereafter China should be at war with any foreign nation whatever, and should for that cause exclude such nation from entering her ports, still the vessels of the United States shall not the less continue to pursue their commerce in freedom and security, and to transport goods to and from the ports of the belligerent powers, full respect being paid to the neutrality of the flag of the United States, provided that the said flag shall not protect vessels engaged in the transportation of officers or soldiers in the enemy's service, nor shall said flag be fraudulently used to enable the enemy's ships, with their cargoes, to enter the ports of China; but all such vessels so offending shall be subject to forfeiture and confiscation to the Chinese Government.

Cuban lights, 1898.—In the Spanish-American War in 1898 the lights were not regarded as inviolable, and lightships were liable to the consequences of war.

U. S. S. EAGLE,
At Sea, May 12, 1898.

Sir: I have the honor to report that the Eagle reached the lightship off Diego Perez Island at 7 a. m. of the 11th instant, and at once commenced a search for the submarine cable connecting Batabano with
Cienfuegos. A boat was sent to the lightship and the keeper's services secured to aid in the search.

Six lines were carefully run at varying depths between the lightship and the point of the shoal to the eastward, now marked by a wreck, the bottom being visible most of the time. This vessel and two of her boats performed this duty, but without a satisfactory result. The strong wind and rough sea, the pilot's assurance that no holding ground could be found for an anchorage, the evident fact that the chart was extremely unreliable, and the positive statement of the lightship keeper that no one had overhauled the cable in that vicinity for over three years determined me to abandon the search at 4 p. m. as fruitless, it being more than probable that the cable was buried deep in the sand of the reefs.

In accordance with your order, the lightship was then set fire and was burning fiercely when this vessel left. Her keeper expressing a desire to go to Cienfuegos, took him on board this vessel with his personal effects and his own small boat, and will drop him off Cienfuegos when you so direct.

This action on my part was principally due to the fact that the sea was too rough for him to get ashore unaided. He states that he is a Cuban and has not received his salary from the Government for the last seven months.

We reached Piedras Cay at sunset. Sent an armed crew on shore and destroyed the lighting apparatus and what pertained thereto. Two men were in charge of the light and with them a small boy. These we found in a starving condition, in consequence of which it became necessary to bring them on board for removal from the island. They had been eight months without pay, three weeks without any communication with the outside, and five days without food.

Very respectfully,

W. H. H. Southerland,
Lieutenant, United States Navy, Commanding.

Commander B. H. McCalla,
United States Navy, Commanding Division.

[Naval Operations of War with Spain, 1898, pp. 198-199.]

Lighthouse, Cape San Juan.—Early in August, 1898, the Puritan and Amphritrite took the lighthouse at Cape San Juan. An attempt to recover the lighthouse was later made by the Spaniards, as is shown in the following report:

U. S. S. CINCINNATI, SECOND RATE,
St. Thomas, Danish West Indies, September 2, 1898.

Sir: As part of the record of this ship for the month of August I have the honor to submit the following report of the attack by the Spanish forces on the lighthouses at Cape San Juan on August 8:

On August 7 I was ordered by Capt. Frederick Rodgers, commanding U. S. S. Puritan, to proceed to maintain the blockade of the port of
San Juan, P. R., which had been left open by the withdrawal of the U. S. S. New Orleans.

I proceeded immediately and, as directed, stopped at Cape San Juan to take coal from the U. S. S. Hannibal. There I found the U. S. S. Amphitrite and Leyden, and Capt. Barclay had a party of seamen on shore holding the lighthouse. Under the protection of the party were about 70 Porto Rican refugees, most of whom were women and children. The town of Fajardo had been occupied by our naval forces, but upon their withdrawal it was raided by some Spanish troops, and it was feared they would make an attack on the lighthouse.

Just before dark of the 8th of August reports came in that a large force, said to be several hundred strong, was advancing to retake the lighthouse, and, notwithstanding the urgent necessity of reestablishing the blockade, I deemed that the circumstances warranted my remaining to assist in the defense of the place, especially as a night attack was threatened and the Cincinnati was the only ship present with searchlights in working order.

At about midnight firing was begun on shore and the three ships, under the glare of the Cincinnati's searchlights, immediately began to shell the woods and slope of the hill on which the lighthouse stands. This, together with the fire on shore, soon drove back the attacking party.

Very respectfully,

C. M. Chester,
Captain, United States Navy, Commanding
and Senior Officer Present.

The Secretary of the Navy,
Navy Department.


There was an evident intent to prepare the lighthouse for defense in time of war:

U. S. S. Amphitrite, Second Rate,
Off Cape San Juan, P. R., August 10, 1898.

*Military defense.—The lighthouse is a brick structure 100 by 40 feet, inside measurement, with walls 2 feet thick, evidently built for military defense. There is little woodwork about except the doors and windows. These are furnished with heavy shutters, instead of frames for glass, and have ordinary slat blinds outside of them. The shutters when closed are secured with iron diagonal braces. The floor is marble tile, the roof beams and girders iron, and the roof floor brick. There is only one lofty story and no cellar. The front is commanded by a slightly raised central portico, with loopholes in the parapet. Opposite the portico the lighthouse tower abuts against the rear wall, and a circular gallery just under the light is loopholed. The light tower is about twice as high from the ground as the roof, and can only be entered
from the ground floor or the roof. Two-foot brick parapet walls, about 2½ feet high, subdivide the roof. The window sills are 5 or 6 feet above the ground.

The light is 265 feet above the sea on the summit of a steep hill, which commands the four lower hills and the distant land approaches across a low neck half a mile south. The four lower hills are near to the northward and westward, and the five make up a small promontory on which it is difficult to land boats on account of the shallow water over coral reefs. The land drops away from the lighthouse immediately and on all sides. Fifty feet from the building is a barbed-wire fence. Around this and from 50 to 200 yards from it is another barbed-wire fence and a low hedge. Beyond all is rugged hillside, covered densely with high brush and creepers and traversed by rough paths, except west, where there is a pasture commanded by the lighthouse. The lighthouse inclosures are cleared except of a few low bushes and cactus hedges.

I am, very respectfully,

CHARLES N. ATWATER,
Lieutenant, United States Navy.

Capt. CHARLES J. BARCLAY,
Commanding U. S. S. Amphitrite.


Maintenance of lights.—If lighthouse tenders and other boats in the service of lighthouses are to be exempt from capture in time of war, the service should be maintained in an impartial manner and with the intent of giving the same security to navigators as in the time of peace. The extinction of a light or the change of color or character of a light may lead to disaster for vessels depending upon its constancy. The changing of a light may be an easy ruse for confusing the enemy though it would doubtless affect the private shipping rather than the public vessels of war. Neutral vessels both public and private might be misled.

The legitimacy of the extinction of lights in lighthouses in time of war seems to have been recognized for many years, and court decisions, particularly in regard to maritime insurance, have been rendered accordingly. (Ionides v. Universal Marine Ins. Co., 14 Common Bench Reports, N. S., p. 259.)

Lighthouse vessels.—Lighthouse vessels of different kinds have sometimes been placed in a distinct class in the time of war. This seems to have been because of
exceptional circumstances in the Far East. Lighthouses have sometimes been captured and destroyed in war, and lighthouse tenders have sometimes been used for hostile purposes. Lighthouse vessels might under certain circumstances be used for transmitting messages or other hostile service. They are closely related to the lighthouse service, which is established and maintained to aid navigation. It is doubtful whether a belligerent would desire to guarantee to maintain aids to navigation which would perhaps particularly serve his opponent because his own ships would presumably be less dependent upon these aids, owing to greater familiarity with the waters. The establishing of a special class of vessels entitled to special treatment, because in the lighthouse service, seems to depend upon the establishment of a conventional agreement upon the treatment of lighthouses in the time of war. As exemption is at present exceptional, and as it does not seem possible to make a special agreement as to vessels in the lighthouse service, it does not seem expedient to make of such vessels a special class.

_Jurisdiction for revenue purposes._—There have been wide claims of jurisdiction set up to enforce revenue laws and to prevent smuggling. Twelve miles has been a common limit set up by Great Britain and by the United States. (U.S. Rev. Stat., sec. 2760.) The claims of other States have usually been less extreme.

_Revenue service of the United States._—The revenue-cutter service of the United States was organized early. In 1790, under the direction of the Treasury Department, this service formed the main naval force, and after the Navy Department was established the Revenue-Cutter Service remained under the Treasury Department, though cooperating with the Navy. The officers are commissioned by the President, and by law hold rank with officers of the Army and Navy, the captain commandant ranking with the colonel in the Army and with the captain in the Navy.

Revenue cutters were frequently ordered to undertake captures or given commissions. Sir William Scott, in
1809, speaking of private vessels and ships of war, and then mentioning revenue vessels, said:

But these vessels, employed in the service of the revenue, are a class of ships of an anomalous kind, partaking in some degree of both characters—they belong to the Government and are maintained at the public expense—but it is not for the purpose of making captures from the enemy. On the other hand, they have commissions of war, but these are private commissions, which impose no peculiar duties upon them; they are not bound to attack and pursue the enemy more than other private ships of war. (The Bellona, Edwards, Admiralty Reports, 63).

_Revenue and naval service._—The revenue service is generally closely related to the naval service of a State. The object of the service is to prevent the unlawful entrance to a State of goods or persons. The laws relating to the payment of duties may be thus enforced and the revenues of the State may be thus increased. The vessels engaged in this service are usually of such construction as to be easily available for use in war.

The personnel of revenue vessels is sometimes directly enrolled in the navy of a State and usually available at short notice for this service.

To grant exemption to vessels engaged in the revenue service would seem to be a grant of exemption to a class of vessels already in the service of a State for the purpose of assuring the income from its trade. While granting this exemption an enemy might be using its forces to put an end to the trade itself. Such an exemption would seem, from the nature of conditions, illogical. The vessels of the revenue service at the present time, with trained observers and with skilled operators of radiotelegraph, might be of greatest aid in the military plans and in furnishing information. The relations of the revenue service seem in the highest degree such as to make it undesirable that it should receive any exemption in time of war. The vessels belonging to this service would not be a class entitled to special consideration.

_Treatment of vessels, vessels of war._—As war is a relation of hostility of State to State, it is a relation which brings the units of the State into hostility one to another. This relation of hostility of the units varies in character according to the relation of the units to the war itself. It
is now admitted that a coast fishing vessel innocently employed would have no relation to the war and accordingly should be generally exempt from capture. It is similarly admitted that a ship of war of an enemy is so closely identified with the war that it is subject to the most extreme treatment necessary for the end of the war, the aim of which is the restoration of peace with the least possible loss of life and property. This aim is much more humane than many of those sought in early wars, such as the complete reduction of the enemy. The modern aim of war, looking to peace with the least possible loss of life and property, avoids conduct which does not conduce to that end. Unnecessary or wanton destruction of life or property therefore would be regarded as in excess of the rights of legitimate warfare. Indeed it is regarded as an obligation to preserve so far as possible enemy lives and property which may have no relation to or effect upon the end of the war. Unnecessary destruction of life or property may make the return to peace more difficult and hence be contrary to the end sought.

Such considerations as the above have led to the limiting of the extreme measures of war to the persons and instruments particularly devoted to the war and to an attempt to treat other persons and things according to their relations to the hostilities. This may be illustrated by the treatment of mails and mail vessels which were formerly liable to capture, but with the change in the methods of transmission of news have become exempt in general practice and latter by convention.

The principle that persons and things are liable to the consequences of war in accordance with their relations to the war seems to be generally accepted.

Applying this principle to ships of war particularly designed to carry on hostilities against an enemy it would seem proper that the enemy, regarding always the laws of war, should be at liberty to take such measures as would reduce his opponent to submission, otherwise the very end for which the war is undertaken is defeated and the period of the war would naturally be lengthened.
It may, therefore, be concluded that ships of war are subject to such treatment as is not contrary to the laws of war and as military necessity permits.

*Hospital ships.*—The provisions in regard to the treatment of hospital ships are fully set forth in the convention for the adaptation of the principles of the Geneva convention to maritime warfare.

*Institute of International Law, 1913.*—Article 47 of the Manuel des lois de la guerre maritime, sanctioned by the Institute of International Law in 1913, provided that—

Boats engaged exclusively in the coast fishery and small boats engaged in local trade, including those engaged in pilot and lighthouse service, as well as the boats built to navigate principally on rivers, canals, and lakes, are exempt from seizure, as well as their fittings, sails, equipment and cargo. It is forbidden to take advantage of the innocent character of such boats to employ them for any warlike purpose while preserving their peaceful appearance.

*Cartel ships.*—As cartel ships are commissioned for the performance of special services recognized as of mutual advantage to both belligerents these ships should be allowed to perform these services. The cartel, being an agreement between enemies, should be strictly interpreted and has always been thus interpreted.

Cartel ships lose their exemption if they violate the terms of the cartel. They must confine their action within its provisions—i.e., the agreement for the exchange of prisoners does not permit trade, the carriage of passengers or dispatches. Such ships are not to carry arms, though a cannon for firing signals may be allowed. The exemption ceases with the performance of the function, but in the case of exchange of prisoners the direct voyage to the place of embarkation and the direct voyage home may be regarded as within the period of service. Such ships must also comply with any special obligations imposed upon them. These vessels may therefore be regarded as exempt only when conforming very strictly to the letter of the provisions of the cartel.

*Vessels engaged in scientific, philanthropic, religious work, or in exploration.*—Among the earliest exemptions of vessels from capture by an enemy was the exemption
extended to vessels engaged in exploration and discovery. It was considered as of advantage to all States that those navigators who were risking their lives and ships upon voyages of exploration should not be liable to capture in order that they might proceed freely. This exemption developed more particularly in the eighteenth century, when there was commonly joint agreement to exempt from interference certain vessels whose status had previously been made known by notification. Often these vessels were granted safe-conducts by foreign States. With the decline of such undertakings this form of exemption has become less important, though occasionally met, and the reasons for exemption seem as valid now as formerly, and such vessels would now probably be classed with those engaged in scientific missions.

As exploration and discovery was an early form of scientific mission upon which vessels ventured, the exemption established for such undertakings was later extended to other analogous undertakings. Voyages for special scientific investigations were protected by general exemptions on the ground that the advance in scientific knowledge of the sea would be of benefit to all, and the exemption was accordingly made general.

Until comparatively recent years vessels have not engaged in strictly philanthropic and religious missions. There was no doctrine of exemption. At the Second Hague Conference in 1907 the Italian delegate proposed the exemption of such vessels, and it was included as article 4 of the convention relative to certain restrictions on the exercise of the right of capture in maritime war.

**ARTICLE 4.** Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

While it is understood that this immunity is dependent upon innocent employment, as stated in regard to coast fishing vessels and small boats employed in the local trade, as specified in the preceding article, it might be advantageous in a subsequent draft of the convention to rearrange the clauses so that it should be entirely clear that this exemption is conditioned upon innocent conduct. There is also ample reason why such vessels
Lighthouse vessels. — As the lighthouse vessels are so closely related to the conduct of the hostilities, and as such vessels may at times be used and have been used for warlike purposes, these vessels should not be granted exemptions, except when innocently employed, by special agreement or by grace without obligation or liability.

In case exemption is granted by conventional agreement, the means and method of effective control should be provided. As this has not thus far been provided, lighthouse vessels serving the lighthouses of the enemy should be regarded as enemy vessels and should be treated as vessels engaged in the public service of the enemy. The fact that such vessels are engaged in the lighthouse service need not be notified, but some exemption may as occasion arises be granted unless there is reason to suspect that they are not innocently employed.

Revenue vessels. — Vessels engaged in the revenue service being in most States closely related to the naval control should not be granted any exemption unless under special and definite agreement. Under ordinary circumstances there would be no reason making necessary the notification of the names of such vessels. As the revenue service is usually strictly national and has as its purpose to enforce the collection of the national revenue and thus increase the national resources, there might seem to be a legitimate reason for the treatment of such
vessels as vessels clearly engaged in the enemy service and liable to the full consequences of war.

Other vessels.—In addition to lighthouse and revenue vessels, there may be other vessels which are engaged in public or quasi-public service, which are easily convertible into vessels for use in war. Such vessels will, like lighthouse and revenue vessels, be liable to capture unless exempt by special agreement and conforming to the provisions of the agreement. Thus the exemption as to public vessels would be confined, except under special arrangement, to hospital and cartel ships, and to vessels engaged exclusively in scientific, philanthropic, and exploration service, and all others would be liable to capture.

Conclusion.—Even though there have been propositions to include other vessels under the classes granted exemptions, considering the present tendencies of international opinion and practice, the following general classification seems to be approved for public vessels:

Classification of public vessels.

1. Vessels of war, all vessels under public control for military or hostile purposes.
2. Hospital ships under X Hague convention for the adaptation to maritime war of the principles of the Geneva convention.
3. Cartel ships.
4. Vessels engaged exclusively in scientific or philanthropic work or in exploration.
5. Other vessels.

Treatment of public vessels.

1. Vessels of class 1 may, according to the rules of war, be captured or destroyed.
2. Vessels of class 2 are exempt from capture when conforming to X Hague Convention.
3. Vessels of class 3 are exempt from capture when conforming strictly to the terms of the cartel agreement.
4. Vessels of class 4 are exempt from capture when their status has been made known by notification and when innocently employed.
5. Other vessels are liable to capture.