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International Law Discussions

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again take part in the military operations. The expense of entertainment and detention shall be borne by the state to which the wounded, shipwrecked, or sick shall belong. (Holls, Peace Conference at The Hague, p. 127.)

As this appears as "excluded" in the Convention to which the United States is a party, it should not be made a part of the United States Naval War Code until there is international agreement upon its terms.

(f) Would it not be best to insert The Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention in place of Section IV of the code?

As the United States has formally adopted the provisions of The Hague Convention bearing on Section IV, and as those provisions are therefore in effect for the officers of the United States Navy, it would seem better not to have two sets of rules upon the same subject, but rather to have actual rules with such supplementary statements as may seem essential. Therefore The Hague Rules as named should be inserted in place of Section IV.

(g) The provisions of the above-mentioned Hague Convention are binding only upon contracting powers. Would it not be better to thus limit the provisions of the code?

The provisions of the code should follow those of The Hague Convention.

SECTION V.—THE EXERCISE OF THE RIGHT OF SEARCH.

Article 30.

The exercise of the right of search during war shall be confined to properly commissioned and authorized vessels of war. Convoys of neutral merchant vessels, under escort of vessels of war of their own State, are exempt from the right of search upon proper assurances, based on thorough examination, from the commander of the convoy.

(a) Should the right of convoy be restricted to states with which the United States has treaties allowing this right, or should it remain general?

Great Britain alone has not yet acknowledged the right of neutral convoy as generally binding. The recognition is therefore so nearly universal that there is no reason for restriction upon the rule.

The reasons for neutral convoy are steadily growing less with the change in the methods of commercial intercourse. The French rules, issued during the Franco-Prussian war, indicate the general position of civilized states:

14. CONVOIS.—Vous ne visiterez point les bâtiments qui se trouveront sous le convoi d'un navire de guerre neutre, et vous vous bornerez à réclamer du commandant du convoi une liste des bâtiments placés sous sa direction, avec la déclaration écrite qu'ils n'appartiennent pas à l'ennemi et ne sont engagés dans aucun commerce illicite. Si cependant vous aviez lieu de soupçonner que la religion du commandant du convoi a été surprise, vous communiqueriez vos soupçons à cet officier, qui procéderait seul à la visite des bâtiments suspectés. (Duboc, Droit de Visite, p. 128.)

(b) What should be considered "proper assurance"?

"Proper assurance," according to Article 30, should cover:

1. Establishment of identity of war vessels.
2. Declaration by commander of the convoying vessel that the private vessels, giving names, with him are neutral vessels of his own state.
3. Declaration by the commander that he has made a thorough examination of these vessels and that he considers them exempt from search.

In some instances treaty provisions set forth what is "proper assurance:" "The verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and when bound to an enemy's port, that they have no contraband goods on board shall be sufficient." (Art. XIX, Treaty U. S. and Italy, Feb. 26, 1871.)

It might be held by the "favored nation" clause that this would be in general "proper assurance."

Article 31.

The object of the visit or search of a vessel is:

- (1) To determine its nationality.

(2) To ascertain whether contraband of war is on board.

(3) To ascertain whether a breach of blockade is intended or has been committed.

(4) To ascertain whether the vessel is engaged in any capacity in the service of the enemy.

The right of search must be exercised in strict conformity with treaty provisions existing between the United States and other States and with proper consideration for the vessel boarded.

(a) Is there a difference between visit and search?

The words "visit" and "search" are usually coupled at the present time and it is customary to regard visit and search as a single act. (See Duboc, *Le Droit de Visite*, Chap. II, Part I.)

Lawrence says, "This is called indifferently the Right of Search or the Right of Visit and Search." (*Principles of International Law*, p. 392.) Some writers mention the act by one name and some writers mention it by the other, while other writers use both names. There was a distinction, however, in the earlier practice, and there were numerous controversies centering upon the distinguishing of the two terms in the first half of the nineteenth century. It was not till 1843 that Mr. Everett was able to write to Mr. Webster of Lord Aberdeen representing the English point of view, "he concurred with you in the proposition that there is no such distinction as that between a right of search and a right of visit."

(b) In line 8, after the words "service of the enemy," should the words "or guilty of unneutral service" be inserted?

In view of the increasing range of unneutral service it would be advisable to have some provision in regard to such service at this point in the code. This could be inserted properly after the word "vessel" in the seventh line of Article 31. The clause would then read: "To ascertain whether the vessel is guilty of unneutral service or is engaged in any capacity in the service of the enemy."

Article 32.

The following mode of procedure, subject to any special treaty stipulations, is to be followed by the boarding vessel, whose colors must be displayed at the time:

The vessel is brought to by firing a gun with blank charge. If this is not sufficient to cause her to lie to, a shot is fired across the bows, and in case of flight or resistance force can be used to compel the vessel to surrender.

The boarding vessel should then send one of its smaller boats alongside, with an officer in charge wearing side arms, to conduct the search. Arms may be carried in the boat, but not upon the persons of the men. When the officer goes on board of the vessel he may be accompanied by not more than two men, unarmed, and he should at first examine the vessel's papers to ascertain her nationality, the nature of the cargo, and the ports of departure and destination. If the papers show contra-brand, an offense in respect of blockade, or enemy service, the vessel should be seized; otherwise she should be released, unless suspicious circumstances justify a further search. If the vessel be released, an entry in the log book to that effect should be made by the boarding officer.

(a) Should Article 32 be changed in any respect?

Article 32 seems to be sufficiently full and explicit. Many countries allow more than two men to accompany the boarding officer. This is not an important provision, however.

(b) Under this article can search be extended to a suspected person on board the ship visited?

By Article 31 the object of visit and search is distinctly stated. The right of visit and search is thus confined to the vessel's papers and cargo. The clause "unless suspicious circumstances justify a further search" applies to the vessel only.

Risley, "The Law of War," p. 267, says: "The lawful exercise of the right extends to ships and property, but not to persons on board ship."

If there is suspicion of enemy service, as in the transportation of troops, the vessel may be seized and sent into port for adjudication.

Article 33.

Irrespective of the character of her cargo, or her purported destination, a neutral vessel should be seized if she:

- (1) Attempts to avoid search by escape; but this must be clearly evident.
- (2) Resists search with violence.
- (3) Presents fraudulent papers.
- (4) Is not supplied with the necessary papers to establish the objects of search.
- (5) Destroys, defaces, or conceals papers.

The papers generally expected to be on board of a vessel are:

- (1) The register.
- (2) The crew and passenger list.
- (3) The log book.
- (4) A bill of health.
- (5) The manifest of cargo.
- (6) A charter party, if the vessel is chartered.
- (7) Invoices and bills of lading.

(a) What would be the effect if a vessel were found to have double papers?

Double papers would involve a violation of (3) under Article 33, and the presence of fraudulent papers is sufficient to justify seizure. One set of papers must be fraudulent, as the vessel can not at the same time be fully documented from two states. An officer would be allowed, however, to exercise some discretion in such a case, as he would in the opposite case, when it is held that "The want of some of these papers (required under Article 33) is strong presumptive evidence against a ship's neutrality, yet the want of any one of them is not absolutely conclusive."

(b) What would be the effect if a vessel were found to have an enemy pass?

The possession of an enemy pass would usually imply that the use of the pass by the vessel would be of service to the enemy; consequently, unless there were good evidence and reason to the contrary the vessel should be seized.