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It may be said that as a general rule the belligerent does not drive out of his jurisdiction subjects of his opponent. Many treaties specifically provide for their sojourn. The treaty of the United States with Italy in 1871 reads as follows:

ART. XXI. If by any fatality which can not be expected, and which may God avert, the two contracting parties should be engaged in a war with each other, they have agreed, and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business and transport their effects wherever they please with the safe conduct necessary to protect them and their property, until they arrive at the ports designated for their embarkation. And all women and children, scholars of every faculty, cultivators of the earth, artisans, mechanics, manufacturers and fishermen, unarmed and inhabiting the unfortified towns, villages, or places, and, in general, all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt, or otherwise destroyed, nor their fields wasted by the armed force of the belligerent in whose power, by the events of war, they may happen to fall; but if it be necessary that anything should be taken from them for the use of such belligerent, the same shall be paid for at a reasonable price.

And it is declared that neither the pretence that war dissolves treaties, nor any other whatever, shall be considered as annulling or suspending this article; but on the contrary, that the state of war is precisely that for which it is provided, and during which its provisions are to be sacredly observed, as the most acknowledged obligations in the law of nations.

Later practice as to vessels.—The French declaration of March 27, 1854, states:

ART. I. Six weeks from the present date are granted to Russian ships of commerce to quit the ports of France. Those Russian ships which are not actually in our ports, or which may have left the ports of Russia previously to the declaration of war, may enter into French ports, and remain there for the completion of their cargoes, until the 9th of May, inclusive.

The British order in council of March 29, 1854, stated that—

Her Majesty, being compelled to declare war against His Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof, is pleased, by and

with the advice of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels, in any ports or places within Her Majesty's dominions, shall be allowed until the 10th day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places; and that such Russian merchant vessels, if met at sea by any of Her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term: *Provided*, That nothing herein contained shall extend to or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any dispatch of or to the Russian Government.

And it is hereby further ordered by Her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in Her Majesty's dominions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation, and that any such vessel, if met at sea by any of Her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

On April 7, 1854, it was ordered that Russian merchant vessels then in port should be allowed thirty days in which to load and depart. Such vessels were not to be molested at sea provided their papers showed that they had sailed within the period.

On April 15 it was ordered that this principle should extend to Russian merchant vessels which, before May 15, had sailed from a Russian port of the Baltic Sea or White Sea for a British destination.

Days of grace in Spanish-American war.—By Article II of the Spanish decree of April 23, 1898, it was stated that—

A term of five days from the date of the publication of the present royal decree in the Madrid Gazette is allowed to all United States ships anchored in Spanish ports, during which they are at liberty to depart.

By the President's proclamation of April 25, 1898, war between the United States and Spain was declared to date from April 21, 1898, and it was declared that—

4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for

loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; *Provided*, That nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government.

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

The fourth clause of the above proclamation has received full judicial consideration from the Supreme Court of the United States in the case of the *Buena Ventura*. Mr. Justice Peckham, rendering the opinion of the court, says:

What is included by the words "Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places"? At what time must these Spanish vessels be "in any ports or places within the United States" in order to be exempt from capture? The time is not stated in the proclamation, and therefore the intention of the Executive as to the time must be inferred. It is a case for construction or interpretation of the language employed.

The language is open to several possible constructions. It might be said that in describing Spanish merchant vessels in any ports, etc., it was meant to include only those which were in such ports on the day when the proclamation was issued, April 26. Or it might be held (in accordance with the decision of the district court) to include those that were in such ports on the 21st of April, the day that war commenced, as Congress declared. Or it might be construed so as to include not alone those vessels that were in port on that day, but also those that had sailed therefrom on any day up to and including the 21st of May, the last day of exemption, and were, when captured, continuing their voyage, without regard to the particular date of their departure from port, whether immediately before or subsequently to the commencement of the war or the issuing of the proclamation.

The district judge, before whom several cases were tried together, held that the date of the commencement of the war

(April 21) was the date intended by the Executive; that as the proclamation of the 22d of April gave thirty days to neutral vessels found in blockaded ports, it was but reasonable to consider that the same number of days, commencing at the outbreak of the war, should be allowed so as to bring it to the 21st of May, the day named; that although a retrospective effect is not usually given to statutes, yet the question always is, what was the intention of the legislature?

He also said that "the intention of the Executive was to fully recognize the recent practice of civilized nations, and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of the war, or to permit them to escape from ports to be seized immediately upon entering upon the high seas." (See preamble to proclamation.)

In the *Buena Ventura*, the case at bar, the district judge held that her case "clearly does not come within the language of the proclamation."

It is true the proclamation did not in so many words provide that vessels which had loaded in a port of the United States and sailed therefrom before the commencement of the war should be entitled to continue their voyage, but we think that those vessels are clearly within the intention of the proclamation under the liberal construction we are bound to give to that document.

An intention to include vessels of this class in the exemption from capture seems to us a necessary consequence of the language used in the proclamation when interpreted according to the known views of this Government on the subject and which it is to be presumed were the views of the Executive. The vessel when captured had violated no law, she had sailed from Ship Island after having obtained written permission, in accordance with the laws of the United States, to proceed to Norfolk in Virginia, and the permission had been signed by the deputy collector of the port and the fees therefor paid by the ship. She had a cargo of lumber, loaded but a short time before the commencement of the war, and she left the port but forty-eight hours prior to that event. The language of the proclamation certainly does not preclude the exemption of this vessel, and it is not an unnatural or forced construction of the fourth clause to say that it includes this case.

The omission of any date in this clause, upon which the vessel must be in a port of the United States, and prior to which the exemption would not be allowed, is certainly very strong evidence that such a date was not material, so long as the loading and departure from our ports were accomplished before the expiration of May 21. It is also evident from the language used that the material concern was to fix a time in the future, prior to the expiration of which vessels of the character named might sail

from our ports and be exempt from capture. The particular time at which the loading of cargoes and sailing from our ports should be accomplished was obviously unimportant, provided it was prior to the time specified. Whether it was before or after the commencement of the war, would be entirely immaterial. This seems to us to be the intention of the Executive, derived from reading the fourth clause with reference to the general rules of interpretation already spoken of, and we think there is no language in the proclamation which precludes the giving effect to such intention. Its purpose was to protect innocent merchantmen of the enemy who had been trading in our ports from capture, provided they sailed from such ports before a certain named time in the future, and that purpose would be wholly unaffected by the fact of a sailing prior to the war. That fact was immaterial to the scheme of the proclamation, gathered from all its language.

We do not assert that the clause would apply to a vessel which had left a port of the United States prior to the commencement of the war and had arrived at a foreign port and there discharged her cargo, and had then left for another foreign port prior to May 21. The instructions to United States ships, contained in the fourth clause, to permit the vessels "to continue their voyage" would limit the operation of the clause to those vessels that were still on their original voyage from the United States, and had taken on board their cargo (if any they had) at a port of the United States before the expiration of the term mentioned. The exemption would probably not apply to such a case as *The Phœnix* (Spink's Prize Cases, 1). That case arose out of the English order in council, made at the commencement of the Crimean war. The vessel had sailed from an English port in the middle of February, 1854, with a cargo, bound for Copenhagen, and having reached that port and discharged her cargo by the middle of March, she had sailed therefrom on the 10th of April, bound to a foreign port, and was captured on the 12th of April while proceeding on such voyage. The order in council was dated the 29th of March, 1854, and provided that "Russian merchant vessels, in any ports or places within Her Majesty's dominions, shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places," etc. The claim of exemption was made on the ground that the vessel had been in an English port, and although she sailed therefrom in the middle of February to Copenhagen and had there discharged her cargo, before the order in council was promulgated, yet it was still urged that she was entitled to exemption from capture. The court held the claim was not well founded, and that it could not by any latitude of construction hold a vessel to have been in an English port on the 29th of March, which on that day was lying in the port of Copenhagen, having at that time discharged the cargo which she had taken

from the English port. It is true the court took the view that the vessel must at all events have been in an English port on the 29th of March in order to obtain exemption, and if not there on that day, the vessel did not come within the terms of the order and was not exempt from capture. From the language of the opinion in that case it would seem not only that a vessel departing the day before the 29th of March would not come within the exemption, but that a vessel arriving the day after the 29th, and departing before the 10th of May following, would also fail to do so; that the vessel must have been in an English port on the very day named, and if it departed the day before or arrived the day after, it was not covered by the order.

The French Government also, on the outbreak of the Crimean war, decreed a delay of six weeks, beginning on the date of the decree, to Russian merchant vessels in which to leave French ports. Russia issued the same kind of a decree, and other nations have at times made the same provisions. It is claimed that they confine the exemption to vessels that are actually within the ports of the nation at the date of issuing the decree or order.

We are not inclined to put so narrow a construction upon the language used in this proclamation. The interpretation which we have given to it, while it may be more liberal than the other, is still one which may properly be indulged in.

If this vessel, instead of sailing on the 19th, had not sailed until the 21st of April, the court below says she would have been exempt from capture. In truth, she was from her character and her actual employment just as much the subject of liberal treatment, and was as equitably entitled to an exemption when sailing on the 19th, as she would have been had she waited until the 21st. No fact had occurred since her sailing which altered her case in principle from the case of a vessel which had been in port on, though sailing after, the 21st. To attribute an intention on the part of the Executive to exempt a vessel if she sailed on or after the 21st of April, and before the 21st of May, and to refuse such exemption to a vessel in precisely the same situation, only sailing before the 21st, would as we think, be without reasonable justification. It may safely be affirmed that he never had any such distinction in mind and never intended it to exist. There is nothing in the nature of the two cases calling for a difference in their treatment. They both alike called for precisely the same rule, and if there be language in the clause or proclamation from which an inference can be drawn favorable to the exemption, and none which precludes it, we are bound to hold that the exception is given. We think the language of the proclamation does permit the inference and that there is none which precludes it.

We are aware of no adjudications of our own court as to the meaning to be given to words similar to those contained in the

proclamation, and it may be that a step in advance is now taken upon this subject. Where, however, the words are reasonably capable of an interpretation which shall include a vessel of this description in the exemption from capture, we are not averse to adopting it, even though this court may be the first to do so. If the Executive should hereafter be inclined to take the other view, the language of his proclamation could be so altered as to leave no doubt of that intention, and it would be the duty of this court to be guided and controlled by it. (175 U. S. Supreme Court Reports, 384.)

Days of grace in Russo-Japanese war.—The wars of the latter half of the nineteenth century were in the main land wars. In such wars the rights of neutrals being ordinarily little involved, tended to become established. Maritime rights also tended to become fixed and liberal and assimilated to land rights. In the Spanish-American and in the South African wars, neutrals were not much involved nor were maritime rights largely involved. The Russo-Japanese war of 1904–5, however, being to a considerable extent a naval war, has brought questions of neutral and maritime rights into prominence. Much more deliberation and forbearance has been shown by all parties in dealing with questions raised during the Russo-Japanese war, because the states involved as neutrals are states having and relying on naval power. These states therefore realize that positions which they may assume in the early days of the twentieth century may later be quoted against them. There has consequently been a tendency to look with tolerance on the extension of belligerent activities.

The Japanese ordinance relating to the exemption of Russian merchant vessels from seizure was published February 9. It provided—

ART. I. Russian merchant ships which happen to be moored in any Japanese port at the time of the issue of the present rules may discharge or load their cargo and leave the country not later than February 16.

ART. II. Russian merchant ships which have left Japan in accordance with the foregoing article and which are provided with a special certificate from the Japanese authorities shall not be captured if they can prove that they are steaming back direct to the nearest Russian port, or a leased port, or to their original destination; this measure shall, however, not apply in case such

the days of grace down to a minimum, is almost certain to do so, especially if its own sea-borne commerce is so small that little is to be feared from retaliatory measures. But, quite apart from purely mercantile considerations, we must reckon here, as in many other questions, with the changed conditions of modern warfare. If a sea-going fleet is to be effective for long together, it must be followed by a train of colliers, supply ships, repairing vessels, and hosts of others, carrying all the numerous requirements of a navy which is a mass of complicated machinery, and is afflicted with an insatiable hunger for coal. If, on a sudden outbreak of war, a belligerent finds his ports full of merchantmen belonging to enemy owners, and well adapted for the purposes I have described, he may capture them all, dispensing with days of grace entirely, and taking full advantage of the opportunity which fortune has placed in his hands. In such a case it would be curious to see whether the desire to injure the enemy would prevail over the fear of offending neutrals, by causing a great dislocation of trade in which some of them are sure to be interested. Certainly it will be wise for British shipowners to read the signs of the times, and not calculate upon a continuance in future of the indulgences which have been accorded in recent years on the outbreak of hostilities to the merchantmen of the belligerent states. There is one class of vessel against which the full rights of war will almost certainly be exercised. I refer to swift liners, built on designs which make them easily adaptable for warlike purposes, and liable to be taken over by their governments in the event of hostilities. It would be criminal folly for a state to permit the departure of any such ships of enemy nationality which happened to be in its ports at the outbreak of a great war. (War and Neutrality in the Far East, 2d ed., p. 53.)

Treatment of vessels adapted for use in war.—One of the most difficult questions in the conduct of maritime warfare in modern times is the determination of the method of treatment of vessels which though in time of peace are commercial vessels, yet in time of war are easily converted into vessels of war. If such vessels are in or come into port of one of the belligerents and belong to the other belligerent it is hardly reasonable to expect that they will be allowed freely to depart to augment the military forces of the other belligerent. It is very difficult to draw the line between vessels which may and which may not be converted to usefulness in war. Fast steamers may be of service as scouts even though not fitted for carrying heavy guns, slow steamers of large capacity may be of service as colliers, indeed at the present

Russian merchant ships have once touched at a Russian port or a leased port.

ART. III. Russian steamers which may have left for a Japanese port before February 18 may enter our ports, discharge their cargo at once, and leave the country. The Russian steamers coming under the above category shall be treated in accordance with Article II.

ART. IV. Russian steamers carrying contraband of war of any kind whatever shall be excluded from the above rules.

Thus Japan allowed seven days of grace.

On February 14, 1904, the Russian Government issued the following rules:

I. Japanese subjects are allowed to continue, under the protection of the Russian laws, their sojourn and the exercise of peaceful occupations in the Russian Empire excepting in the territories which are under the control of the imperial viceroy in the Far East.

II. Japanese trading vessels which were in Russian ports or havens at the time of the declaration of the war are authorized to remain at such ports before putting out to sea with goods which do not constitute articles of contraband during the delay required in proportion to the cargo of the vessel, but which in any case must not exceed forty-eight hours from the time of the publication of the present declaration by the local authorities.

Thus a limit of time not to exceed forty-eight hours from the publication of the imperial order was allowed.

Speaking of the days of grace allowed by Russia and Japan in 1904, Professor Lawrence says:

The sea-borne trade of Russia in the northern Pacific is not large in extent or enormous in value. She can afford to see it suffer with equanimity. Japan, on the other hand, has much to lose. Of late the increase of her mercantile marine has been as remarkable as the growth of her fighting navy. She has taken over a large number of its best vessels to act as transports. It is impossible to exaggerate the value of such service to a state which must attack its foe with armies sent across the seas. Perhaps it was the consciousness of this which caused Russia to cut down her days of grace to a minimum. The incident should be a warning to us of what we may expect if we should be engaged in war with a maritime power. In this matter, when belligerents are bound by no definite rules of universal acceptance, they will naturally consult their own interests, though we may hope that cases will sometimes occur in which other considerations will be present to their minds. A power which sees a chance of striking a severe blow at its enemy's trade by cutting

time nearly all vessels aside from sailing vessels are easily converted to some war use. A belligerent having or receiving in its ports such vessels of the opponent would be using only reasonable precaution in making sure that they should not go forth to his injury. Still more necessary would it be to provide for cases of vessels subsidized or otherwise wholly or partly controlled by the enemy's government. That such vessels are liable to treatment as war vessels is shown in the decision of the Supreme Court of the United States in 1900 in the case of the *Panama*. The résumé of the case as given by the court is as follows:

The *Panama* was a steamship of 1,432 tons register, carrying a crew of 71 men all told, owned by a Spanish corporation, sailing under the Spanish flag, having a commission as a royal mail ship from the Government of Spain, and plying from and to New York and Havana and various Mexican ports, with general cargoes, passengers, and mails. At the time of her capture, she was on a voyage from New York to Havana, and had on board two breech-loading Hontoria guns of 9-centimeter bore, one mounted on each side of the ship, one Maxim rapid-firing gun on the bridge, 20 Remington rifles and 10 Mauser rifles, with ammunition for all the guns and rifles, and 30 or 40 cutlasses. The guns had been put on board three years before, and the small arms and ammunition had been on board a year or more. Her whole armament had been put on board by the company in compliance with its mail contract with the Spanish Government (made more than eleven years before and still in force), which specifically required every mail steamship of the company to "take on board, for her own defense," such an armament, with the exception of the Maxim gun and the Mauser rifles.

That contract contains many provisions looking to the use of the company's steamships by the Spanish Government as vessels of war. Among other things, it requires that each vessel shall have the capacity to carry 500 enlisted men; that that Government, upon inspection of her plans as prepared for commercial and postal purposes, may order her deck and sides to be strengthened so as to support additional artillery; and that, in case of the suspension of the mail service by a naval war, or by hostilities in any of the seas or ports visited by the company's vessels, the Government may take possession of them with their equipment and supplies, at a valuation to be made by a commission; and shall, at the termination of the war return them to the company, paying 5 per cent on the valuation while it has them in its service, as well as an indemnity for any diminution in their value.

The *Panama* was not a neutral vessel, but she was enemy property, and as such, even if she carried no arms (either as part of her equipment or as cargo), would be liable to capture, unless protected by the President's proclamation.

It may be assumed that a primary object of her armament, and, in time of peace, its only object, was for purposes of defense. But that armament was not of itself inconsiderable, as appears, not only from the undisputed facts of the case, but from the action of the district court, upon the application of the commodore commanding at the port where the court was held, and on the recommendation of the prize commissioners, directing her arms and ammunition to be delivered to the commodore for the use of the Navy Department. And the contract of her owner with the Spanish Government, pursuant to which the armament had been put on board, expressly provided that, in case of war, that Government might take possession of the vessel with her equipment, increase her armament, and use her as a war vessel; and, in these and other provisions, evidently contemplated her use for hostile purposes in time of war.

She was, then, enemy property, bound for an enemy port, carrying an armament susceptible of use for hostile purposes, and herself liable, upon arrival in that port, to be appropriated by the enemy to such purposes.

The intent of the fourth clause of the President's proclamation was to exempt for a time from capture peaceful commercial vessels; not to assist the enemy in obtaining weapons of war. This clause exempts "Spanish merchant vessels" only; and expressly declares that it shall not apply to "Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government."

Upon full consideration of this case, this court is of opinion that the proclamation, expressly declaring that the exemption shall not apply to any Spanish vessel having on board any article prohibited or contraband of war, or a single military or naval officer, or even a dispatch, of the enemy, can not reasonably be construed as including, in the description of "Spanish merchant vessels" which are to be temporarily exempt from capture, a Spanish vessel owned by a subject of the enemy; having an armament fit for hostile use; intended, in the event of war, to be used as a war vessel; destined to a port of the enemy; and liable, on arriving there, to be taken possession of by the enemy, and employed as an auxiliary cruiser of the enemy's navy, in the war with this country.

The result is, that the *Panama* was lawfully captured and condemned, and that the decree of the district court must be affirmed. (176 U. S. Supreme Court Reports, 535.)

From the decision of the court it is evident that vessels liable to be employed as auxiliary cruisers and under contract with the enemy government are liable to treatment as war vessels. The presence of a contract may not, however, materially alter the actual results, as a vessel of such character as may be readily converted into a vessel of use in war may on arriving in its own country be appropriated by its government for such use. If such vessels of one belligerent are to be allowed to leave the ports of the other there must be therefore some agreement which shall be binding on the two belligerents under which they shall be allowed to leave. The essential part of such agreement would be that they should not be used for warlike purposes if allowed to depart. The aim of the regulation is not to interfere with commerce but to prevent the increase of the war resources of the enemy, thus giving to commerce greater freedom without introducing complications consequent upon the possession of a doubtful character by the vessel.

Lieutenant Bellairs, writing from a British point of view, in August, 1905, says of Great Britain:

In any case, she has considerable reasons for extending the period of grace for merchant vessels after the declaration of war, as was done by the United States in the war with Spain. A special exception would have to be made in the case of enemy's vessels suitable for war purposes as mercantile cruisers. A good example is not enough, for neither Russia nor Japan has followed the United States in the present war. There is no reason under international law at present why British vessels on the sea, or in her opponent's ports when war breaks out, should obtain any days of grace whatever. The contention might be advanced that every vessel is suitable for collier, transport, or some form of auxiliary for war purposes. (181 North American Review, p. 170.)

Rule of Institute of International Law.—At the session of the Institute of International Law in 1898 the following rule was adopted:

ART. 40. Les navires de commerce qui, au début des hostilités ou hors de la déclaration de guerre, se trouvent dans un port ennemi, ne sont pas sujets à saisie, dans le délai déterminé par les autorités. Pendant ce délai ils peuvent y décharger leur cargaison et en prendre une autre. (Annuaire, 1898, p. 284.)

Conditions modifying restrictions.—Certain proclamations have allowed longer or shorter periods to the enemy merchant vessels according as they sailed from remote or from neighboring ports. Sometimes allowance has been made according to the character of the vessel, a longer time for sailing vessels and a shorter time for steam vessels.

At the present time it is evident that the object of war is not the destruction of private property on land or sea. The restriction of the movements of commerce particularly to and from its own ports may be a greater damage to a belligerent thus acting than to the opposing belligerent. There seems to be no sufficient reason why the innocent trade between states that may possibly be at war should be destroyed a long time before war actually exists simply because merchants anticipate seizure of vessels immediately on the outbreak of hostilities. It would seem better for both belligerents that the effects of the war should so far as possible be confined to the period of the war. In order that this may be accomplished there must be reasonable assurance that vessels sailing on commercial undertakings before the outbreak of war will be allowed to complete their undertakings so far as these do not interfere with the conduct of the war. It would not be reasonable to demand that a vessel be permitted to sail with a permit to enter a blockaded port merely because the original plan of the voyage had contemplated such a course. It would not be necessary to allow a vessel to load with contraband because this had been the cargo which she had originally planned to take. It would not be necessary to allow a sojourn of a period which the vessel had originally in the schedule of its voyage. Reasonable treatment of such character as would not affect the conduct of the hostilities should be accorded. Such a course seems to be in harmony with recent practice. It can safely be said that ordinary merchant vessels of one belligerent in the port of the other belligerent at the outbreak of war should be allowed time to load and depart.

Vessels of one belligerent bound for or within the ports of the other belligerent may be of different classes.

Public vessels adapted for warlike purposes would hardly be allowed to leave port. Of course such vessels would rarely be in an enemy port at the outbreak of war.

Public vessels engaged in purely philanthropic or scientific undertakings would be permitted to depart. Such vessels would include hospital ships and ships engaged in exploration.

It is now becoming very difficult to determine exactly what constitutes a merchant vessel, but if there is satisfactory evidence that a private vessel of a belligerent is a merchant vessel then she should be allowed the fullest freedom consistent with military expediency. Many reasons might make it necessary to delay or altogether prevent the departure of such a vessel, e. g., if the vessel were in a port used as a base of military operations which it was deemed necessary to keep secret, or if the merchantman might naturally be supposed to have obtained military information which should not be disclosed to the enemy, even though no guilt might attach to the merchantman.

The movement of yachts, pleasure vessels, and other new forms of transportation may need to be regulated as well as those of merchant vessels. It is therefore necessary that the regulations be more general than heretofore and be made to apply to private vessels in distinction from public vessels; yachts and pleasure vessels ordinarily need little time for loading necessary supplies and departure. The sojourn of such vessels may have all the consequences of the sojourn of a merchant vessel.

It seems to be evident that it might be necessary or expedient to deny the right to depart to certain vessels, possibly to seize and hold some, and to regulate the movements of all, because even though a hospital ship might be innocent in character its crew might possess such knowledge of a belligerent's plans as to make it necessary to detain the ship for a time.

Summary.—From the above discussion it would seem proper to draw certain conclusions in regard to the treatment of vessels of one belligerent bound for or within the port of the other belligerent.

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(a) Under supervision of government exercising jurisdiction over the port, a reasonable and limited period should be allowed for innocent enemy vessels to depart.

(b) This period will vary according as the government may deem expedient.

(c) The period should be determined by the government giving due consideration to the rights of commerce and to military necessities.

(d) Vessels which are by nature closely connected with the military service of the other belligerent may be detained or seized.

(e) Vessels of a character easily converted into vessels of use in war may be detained or placed under guarantee not to enter military service.

The regulations which would bring about the proper practice in regard to the days of grace allowed to vessels of one belligerent bound for or within the port of the other belligerent at the outbreak of war apparently can not fix a definite number of days because of the varying conditions under which war may arise and the uncertainty which frequently prevails as to the date of its commencement. The government having jurisdiction over the port alone can establish the regulations for its use. Not all classes of vessels are entitled to the same exemptions from capture on the high seas or to the same exemptions in the ports of the other belligerent. Some period should be allowed for innocent belligerent vessels to load and depart from opponent's ports after war has begun. There should be an international agreement upon the principles in accord with which governments should act, as there has been so great diversity in practice hitherto that the burden of war has been made unnecessarily heavy in many instances. The burden thus placed on commerce does not affect belligerents alone, but in case of war between two or more great powers would rest upon other states not parties to the contest, which is manifestly unjust and leads to unfortunate complications and sometimes to attempts to make up by burdensome measures for losses sustained.

The time allowed for loading and departure of a private vessel of one belligerent in the port of the other belligerent

at the outbreak of war has varied greatly according to circumstances. Six weeks were allowed in certain cases in the Crimean war. Thirty days were allowed by the United States in the Spanish-American war and five days by Spain. In the Russo-Japanese war, Russia allowed forty-eight hours from the local publication of the Russian decree; Japan allowed seven days from February 9, 1904. It seems to be evident that there is no uniform practice in regard to the period to be allowed. Further, the conditions and circumstances of different wars are so varied that any period which might be fixed for all wars would be too long in case of certain wars and too short in case of others. New methods and means of warfare would need consideration from time to time, as would also new developments in commerce. It would therefore seem impossible to fix upon any exact period which should be allowed in all cases.

One state may regard it as of advantage to itself to allow a short period for loading and departure even after another state has allowed a longer period. The state allowing the longer period should be permitted to take such action as would not make its liberality a cause of injury to itself. Accordingly it must be permitted to reduce the period to that of the other belligerent.

There are in addition to merchant vessels many other innocent vessels which are not merchant vessels which may belong to one belligerent and be in the ports of the other at the outbreak of war. Such a vessel as a private yacht is of this class. It may be as necessary to regulate the sojourn and general conduct of a yacht as of a merchant vessel. The regulation therefore should be general to apply to all innocent private vessels.

There may be special military reasons making it important that vessels in a belligerent port shall not have unlimited freedom. It would not be reasonable to expect that in time of war the freedom in all respects would not be much more restricted than in time of peace. Certain ports from military reasons may be closed or enemy vessels may be sent out if deemed expedient. The course in such matters must be left to each state to determine.

Many private vessels may easily be adapted for use in war. It would hardly seem reasonable to allow such a vessel to return to a home port where it might be seized or turned over for war use. Such a vessel belonging to one belligerent and being within the jurisdiction of the other is liable to such reasonable treatment as the belligerent having authority over the vessel may determine, provided it is not contrary to the principles of international law. Certainly such a vessel should not be allowed to depart to strengthen the war resources of the enemy. It would be reasonable to detain such a vessel if its innocent use could not be guaranteed.

As it is not the purpose to interfere with commerce but merely to guard against the increase of the war resources of the enemy, it would be sufficient to bring about an agreement which would guarantee the belligerent in whose ports the vessel may be against any war use of the vessel if it should be allowed to depart. A guaranty of this kind would not interfere with commerce and would give to the belligerent desirous of extending liberal treatment to his opponent security against the abuse of his liberality.

To bring about fair treatment of merchant vessels of one belligerent by the authorities of the other belligerent and at the same time to prevent the use of such vessels for hostile purposes the following regulations are suggested:

Conclusion.—1. Each state entering upon a war shall announce a date before which enemy vessels bound for or within its ports at the outbreak of war shall under ordinary conditions be allowed to enter, to discharge cargo, to load cargo and to depart, without liability to capture while sailing directly to a permitted destination. If one belligerent state allows a shorter period than the other, the other state may, as a matter of right, reduce its period to correspond therewith.

2. Each belligerent state may make such regulations in regard to sojourn, conduct, cargo, destination, and movements after departure of the innocent enemy vessels as may be deemed necessary to protect its military interests.

3. A private vessel suitable for warlike use, belonging to one belligerent and bound for or within ports of the other belligerent at the outbreak of war, is liable to be detained unless the government of the vessel's flag makes a satisfactory agreement that it shall not be put to any warlike use, in which case it may be accorded the same treatment as innocent enemy vessels.