International Law Studies – Volume 22

International Law Decisions and Notes

U.S. Naval War College (Editor)

trade, which was seized at Alexandria shortly after the outbreak of war between Great Britain and Turkey on November 5, 1914.

Hague Conventions VI and XI.

GRAIN, J.: I am of opinion that counsel who appears on behalf of the master and owner of this vessel, the sailing ship *Maria*, has not been able to show any cause why she should not be condemned. He admits that she does not come under Convention VI or XI of The Hague Conference, 1907, as although Turkey was a party to that conference, and the conventions were signed by her diplomatic representative, they were never ratified by the Sultan of Turkey. But he submits that she comes under an established rule of law that small coasting vessels are exempt from capture and confiscation, and he quotes the judgment of Sir Samuel Evans in The *Berlin* (ante, p. 29; [1914] p. 265), in which he states his opinion "that it has become a sufficiently settled doctrine and practice of the law of nations that fishing vessels plying their industry near or about the coast * * * are not properly subjects of capture in war so long as they confine themselves to the peaceful work which the industry properly involves."

Decision.

I am of opinion that this dictum applies merely to small fishing boats belonging to men who are earning their livelihood and supplying the food of the small communities on the coasts. The vessel now before me is a general trading vessel of 27 tons, carrying on the general trade of the country, and, as The Hague conventions do not apply, is liable to capture and confiscation. This ship is therefore an enemy ship lawfully captured, and the order of the court is that she be confiscated and sold.[23]

THE "PAKLAT."

Supreme Court of Hong-Kong. In prize, April 14, 15, 1915.

1 Trehern, British and Colonial Prize Cases, 515.

CAUSE FOR CONDEMNATION OF ENEMY SHIP AS PRIZE.

On August 21, 1914, the *Paklat*, a German steamship of 1,657 tons belonging to the Norddeutscher Lloyd Linie, whilst bound from Tsingtau to Tientsin with women and children refugees, was captured by H. M. S. *Yarmouth* and brought to Hong-Kong as prize. The blockade of

[23] See note, ante, p. 122.

Tsingtau was then imminent, and it was in fact besieged by the allied forces on August 27.

It was contended on behalf of the owners that the vessel, which, it was alleged, was going to be interned at Tientsin to be used for the housing of destitute refugees, was "employed on a philanthropic mission" within the meaning of article 4 of the Eleventh Hague Convention, which exempts from capture "vessels employed on religious, scientific, or philanthropic missions."

April 15.—REES-DAVIES, C. J.: This ship was taken and seized as prize by H. M. S. *Yarmouth* on August 21, 1914, off the Shalientau Island, and was brought to the port of Hongkong. It is now asked that she be condemned as prize.

The defense, as set up on affidavits of the master of the vessel, alleges that she was requisitioned by the government at Tsingtau on the outbreak of the war to carry women and children to Tientsin, as the train service was overcrowded, and the intention was to intern the ship at Tientsin until the end of the war, the ship to be used in the meantime to house such women and children as had insufficient means to live on land. It is also alleged that the ship was specially fitted for this purpose.

The master also states that he had express instructions from the Tsingtau government to fly the German flag and the parliamentary flag (white truce flag) at the foremast, and to carry all lights at night. It is also alleged that the ship was available for any women or children of any nationality, other than Chinese, who might wish to avail themselves of her use, and that no passage money was demanded or paid by the passengers in question.

Under these circumstances it is contended that she was on a "philanthropic mission" within the meaning of article 4 of the Eleventh Hague Convention, 1907, and is exempt from capture.

At the outset of the proceedings I expressed the strongest doubt as to whether it could be so regarded, and the Crown has since fortified me with an extract, under the hand and seal of the assistant undersecretary of state for foreign affairs, of the official report of the committee of the Deuxième Conférence Internationale de la Paix, La Haye, 1907 (Actes et Documents), which, I think, leaves no reasonable doubt as to the construction to be placed on the article in question. It reads (inter alia): "It is obvious that such a favor can only be granted under

the condition that there is no intermeddling (immiscer) in the war operation. In order to avoid all difficulties the power whose ship in question bears the colors must refrain from involving her in any war service." The favor granted to the said ship bestows upon her a sort of neutralization which must last until the end of (all) hostilities, and which must prevent her from having her destination altered."

Now, as to the construction which has to be placed on the foregoing language, I entirely agree with the attorney general's rendering, and will adopt the words which he used in argument. The word "neutralization" here means that the ship is placed entirely outside the pale of any warlike operations, and must in consequence keep herself entirely apart from any service in connection with the war or that may have any effect on the war.

It was contended on behalf of the owners that the intention to intern the refugees at Tientsin was a philanthropic mission, and the recent decision of Mr. Justice Gompertz in the *Hanametal*, (1 B. and C., P. C. 347), a neutral vessel, was relied upon; that the carrying of refugees was not intermeddling with warlike operations, and so was not a breach of neutrality law. I think that there is no real analogy between the reasoning adopted in that case and the present. There is a fundamental difference, as the attorney general contends, between the "neutralization" of an enemy ship within the meaning of the official report on the convention and the neutrality of a nonbelligerent ship. There are many things which the latter may be able to do which in some measure may affect the war without rendering herself liable for a breach of neutrality, and in such case it must be demonstrated to the court by the captor that some unneutral service has been performed. This onus, I understand, is what the Crown failed to discharge in the case of the *Hanametal* (1 B. and C., P. C. 347).

The fact that a neutral ship may carry refugees without being liable to capture does not imply the same power in an enemy ship, although given "une sorte de neutralisation" for the purpose of the philanthropic mission in question. To construe "philanthropic mission" as suggested might lead to serious consequences which clearly could not have been contemplated by the article, and it might enable an enemy vessel to escape to a neutral port under any similar professed act of philanthropy. If it were

intended to cover such an act as the conveyance of noncombatants under such conditions to a neutral port, the convention would not have left it in such vague and indefinite language; and some such system as safe conducts furnished in advance would presumably have been contemplated, as, I understand, has often been the custom in the case of expeditions dispatched for the purposes of science or religion, and in the case of cartel ships.

I may add that, assuming the blockade has existed at Tsingtau (which, I understand, in fact did not exist until August 27), no rule of law exists which obliges a besieging force to allow all noncombatants, or only women, children, the aged, the sick and wounded, or subjects of neutral powers, to leave the besieged locality unmolested. Although such permission is sometimes granted, it is in most cases refused, because the fact that noncombatants are besieged together with combatants, and that they have to endure the same hardships, may, and very often does, exercise pressure upon the authorities to surrender. (See Oppenheim's International Law, vol. 2, p. 193.) This being the case, if the convention ever contemplated such a "philanthropic mission," which in the case of a blockaded port would come directly in conflict with the custom I have stated, it would have provided for it in express and unequivocal language.

The decision I give is that the vessel was properly seized as a prize of war, and that she is subject to condemnation. There will be a decree of condemnation, the Crown to receive such costs as have been occasioned by the claim.

THE "SIMLA."

[Admiralty in prize.]

Sir Samuel Evans (the president). May 10, 1915.

1 Trehern, British and Colonial Prize Cases, 281.

CAUSE FOR THE CONDEMNATION OF GOODS SENT BY PARCEL POST.

Statement of case.

The subject-matter of this claim was a number of parcels of miscellaneous goods, consisting of elephant tusks, leopard and snake skins, and curios, sent by parcel post by German colonists in German East Africa, addressed to various persons resident in Germany. The goods were shipped on the German mail steamer *Emir*, which was