

International Law Studies – Volume 22

International Law Decisions and Notes

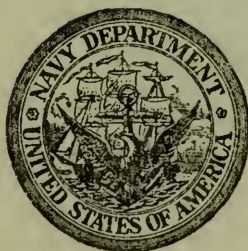
U.S. Naval War College (Editor)

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NOTES

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PREFACE.

The discussions on international law in 1922 were, as in recent years, conducted by George Grafton Wilson, LL. D., professor of international law in Harvard University. These discussions particularly called to the attention of the officers of the Navy the wide departure from earlier precedents which the prize courts of some of the belligerents had made during the World War.

For convenience a few from many cases, mainly from foreign courts, have been selected and the decisions are printed in this volume as illustrative.

It is necessary to emphasize the fact that some of these decisions were considered too extreme to serve as safe precedents.

C. S. WILLIAMS,
Rear Admiral, U. S. Navy,
President, Naval War College.

DECEMBER 26, 1922.

INTERNATIONAL LAW: DECISIONS AND NOTES.

PRELIMINARY NOTE.—Very many cases relating to maritime warfare were decided by the courts of different States during the World War. Some of these cases have received consideration at the Naval War College. Not all the decisions have been approved as worthy precedents, but the decisions show the attitude of the courts at the time when they were rendered. In spite of the fact that some of the decisions of foreign States may not accord with the opinions handed down by American courts, or with some authorities upon international law, these decisions will have weight when similar cases arise.

The prize cases and related cases of the World War fill many volumes. A few only of these cases can be included in this volume. Decisions of the French *Conseil des Prises* have been printed in French. German decisions have been printed in translation. American and British opinions are from the official reports.

Some of these cases and many others will necessarily receive further attention at the Naval War College, because, accepted as precedents, changes in international practice will be involved. It is advantageous to naval officers to know that the decisions of courts during the World War gave evidence of departure from earlier precedents somewhat comparable to the changes in the conduct of hostilities.

The cases decided during the earlier period of the World War show greater evidence of respect for accepted and conventional principles of international law. The strain of hostilities seems to have influenced later decisions favorably to belligerents. The issuance of retaliatory orders led the prize court into new fields wherein the court declares itself ill qualified and "Still less would it be proper for such a court to inquire into the reasons of policy, military or other, which have been the cause and are to be the justification for resorting to retaliation for that misconduct," page 180. Yet it is maintained that "Disregard of a valid measure of retaliation is as against

neutrals just as justiciable in a court of prize as is breach of blockade or the carriage of contraband of war," page 189.

The neutrals in the World War were in many cases weak or timid and belligerent disregard of neutral rights was the natural consequence. This has not been the case in wars of the later nineteenth century, and if wars subsequently occur it may not then be the case. It seems to be evident that the area of war is not limited nor its end hastened by meek submission on the part of neutrals to disregard of those rights which have been obtained after long years of struggle.

THE "BERLIN."¹

HIGH COURT OF JUSTICE.
PROBATE, DIVORCE, AND ADMIRALTY DIVISION.
ADMIRALTY.

[IN PRIZE.]

October 7. 26, 29, 1914.

[1914] P. 265.

October 29. SIR SAMUEL EVANS, president. In this case the Crown asks for the condemnation of the sailing ship, the *Berlin*, and her cargo as enemy property. No claim has been made in respect thereof; but it is, nevertheless, necessary to investigate the facts, and particularly to ascertain whether by international law the ship is immune from capture as a fishing vessel.

Statement of the case.

The *Berlin*, as appeared from the ship's papers, was a German fishing cutter of 110 metric tons, built in 1892, and manned by a crew of 15 hands. She belonged to the port of Emden, and was owned by the Emden Herring Fishing Co. She had on board 350 empty barrels, 100 barrels of salt, 50 barrels of cured herrings, and ship's stores in 15 barrels. She carried one boat and had two drifts of nets, consisting of 42 and 43 nets each drift, 2 bush ropes, and a small steam boiler and capstan. The vessel, as appeared from her log, had been on a fishing

¹ Note as to sources of decisions.—The single American decision, the *Appam*, involving American, British, and German rights, is from the Supreme Court Reports of the United States. The British decisions are from different sources as indicated in each case. The French decisions are from the Decisions du Conseil des Prises. The German decisions are translated from the Entscheidungen des Oberprisengerichts in Berlin.

The decisions are arranged in chronological order as in the volume published by the Naval War College in 1904, Recent Supreme Court Decisions and Other Opinions and Precedents.