

I have already pointed out that, in existing conditions, a ship destroyed by a belligerent would only be the subject of compensation if she were found not to have been liable to condemnation. The fact of destruction would of itself give no such right in Foreign Prize Courts, and the question whether destruction were justifiable would not be a matter for the Prize Court at all.

Under the Rules in the Declaration, Prize Courts and the International Prize Court would order compensation unless—

- (A.) The belligerent could satisfy the Prize Court that the destruction was justifiable by actual danger to the ship or military necessity. If not, compensation would be ordered whether the ship was in fact liable to condemnation or not.
- (B.) If the Court held the destruction to be justifiable compensation would still be ordered if the captor could not show that the ship was liable to condemnation. This it would be very difficult and in bad weather almost impossible to establish by examination at sea before destruction, having regard to the provisions as to the proportion of contraband requisite to justify condemnation.

The rules therefore very nearly result in establishing our own practice—destruction only in cases of military necessity—and compensation in nearly every case.

It is to me surprising that these provisions should be attacked, as they are an advance towards our own rule, and in practice would almost always produce the same result. They limit by rules destruction that would now be exercised by belligerents without fixed rules, and relieve us of the disadvantages under which we now suffer, by putting us on an equal footing with other nations.

I have pointed out that under existing conditions Great Britain is at a distinct disadvantage. Under the Declaration she, at any rate, will enjoy equal rights with other nations. If she had refused all compromise on the ground that her final and unalterable position was that in no circumstances and under no conditions was the destruction of a neutral vessel permissible, or, if on that ground she now refuses to ratify the Declaration, what will be her position in future?

She, having denied altogether the right to destroy a neutral prize, will fail in faith and honour if she permits her commanders in any circumstances to do so. Her adversaries in war will be free to act towards neutrals on such rules as they deem to be in accord with maritime law, and, on the same rules, against the merchant ships of Great Britain when she is neutral—and there will be no International Court to revise the decisions of the belligerents's own Courts acting on its national rules.

However vital to the interests of the nation it may be to prevent a neutral carrier of contraband proceeding to the enemy's fleet or enemy's country when she cannot be brought in, those interests must be sacrificed. On the other hand, our opponents similarly situated would be free to safeguard their position.

The fact must be recognised that there are exceptional circumstances in which the vital interests of a belligerent may demand, as of necessity, the destruction of a neutral vessel—and the object of international agreement should be to limit as closely and regulate as reasonably as possible the exercise of this exceptional right, to make destruction onerous to the belligerents, opposed to his interests, inconvenient in operation, and an act requiring the fullest justification—while, so far as possible, securing ample compensation to the injured neutral.

This is what is sought by the provisions of the Declaration, and, as I have endeavoured to show, would be attained as nearly as is possible under the existing conditions of maritime war.

DESART.

May 1, 1911.

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