EDITORIAL COMMENT

THE SUBMARINE AND PLACE OF SAFETY

The disposition of the personnel of a vessel which was about to be sunk is not a new question but had become particularly acute during the World War, 1914–1918, and had received attention at the Washington Conference on the Limitation of Armament, 1921–1922. It had also been admitted by the United States in 1916 that the arming of merchant vessels placed the submarine under restrictions which "did not seem just or reasonable." [1]

The London Naval Treaty of 1930, signed by representatives of the United States, the French Republic, the British Commonwealth of Nations, the Kingdom of Italy and the Empire of Japan, had among its objects to carry forward "the work begun at the Washington Naval Conference," 1921–1922. Article 22 of this treaty of 1930 was stated in these words:

> The following are accepted as established rules of international law:
>
> (1) In their action with regard to merchant ships, submarines must conform to the rules of international law to which surface vessels are subject.
>
> (2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board.
>
> The high contracting parties invite all other Powers to express their assent to the above rules.

When the London Naval Treaty of 1930 was about to expire on December 31, 1936, except Part IV containing Article 22 above quoted which remains in force without limit of time, the signatories, that is, the United States, France, Great Britain, Italy, and Japan, signed a protocol at London on November 6, 1936, confirming their acceptance of the rules of submarine warfare set forth in Article 22 and inviting as great a number of Powers as possible to accept them as established rules of international law. Germany was the first to accept this invitation as she adhered to the Protocol of London on November 23, 1936. Following her action, 34 other states adhered to the Protocol within a year or two, including all the maritime Powers involved in the present hostilities.[2]

[1] Foreign Relations of the United States, 1916, Supp., pp. 146, 252.

[2] The Protocol of London of 1936 is printed in this JOURNAL, Supplement, Vol. 31 (1937), p. 137.

The discussions leading to the adoption of this article showed the opposition to the use of the submarine as an instrument of war.[3] Admiral Takarabe, of the Japanese delegation, said, "Japan heartily associates herself with the proposal" to put "an end once and for all, to the recurrence of the appalling experiences of the World War." The submarine is now, however, unquestionably admitted to be a legitimate instrument of naval warfare, but it must conform to reasonable regulations. These seem to be those long accepted as applying to destruction by surface vessels. The attacks of submarines during the "Spanish conflict" of 1937, were said in the Nyon Arrangement, adopted by nine states, September 14, 1937, to "constitute acts contrary to the most elementary dictates of humanity, which should be justly treated as acts of piracy." [4]

The deck of a destroying surface war vessel would manifestly not be a place of safety. A submarine belonging to the naval forces would scarcely be so regarded. Even lifeboats, save in exceptional circumstances, might involve danger. On the other hand, it could not be demanded that a belligerent, rightfully destroying a merchant vessel, place the passengers and crew in greater security than they had on board the destroyed vessel. Safety commensurate with that enjoyed by passengers and crew before the destruction of their vessel would seem to be the measure demanded. This does not imply the same comforts or conveniences, but the same absence of risk to life.

GEORGE GRAFTON WILSON

THE TAKING OF FOREIGN SHIPS IN AMERICAN PORTS

The law for the acquisition of foreign vessels in American ports, signed by the President on June 6, 1941,[1] is an extraordinary measure in many respects. It is without precedent in our peace-time history. The Act was initiated by a message of the President, dated April 10, 1941, pointing out that while there was provision for the requisition of American vessels, there was no "comparable provision with respect to foreign-owned vessels lying idle in our ports." The President enclosed a draft of a bill, which, after hearings by the House and Senate committees, was redrafted and extended.

The Act provides that, whereas the commerce of the United States is interrupted, the general welfare is threatened, and an emergency has been declared,[2] the President is authorized, for the purpose of national defense [3] and

[3] Proceedings, London Naval Conference, 1930, p. 82 *et seq.*

[4] This JOURNAL, Vol. 31 (1937), p. 179.

[1] On the same day the President issued an Executive Order authorizing the United States Maritime Commission to carry out the provisions of the Act. It especially ordered that "no vessel shall be transferred, chartered or leased to any belligerent government without the approval of the President."

[2] A "limited emergency" was proclaimed on Sept. 8, 1939, to safeguard our neutrality and strengthen our defense. An "unlimited emergency" was proclaimed on May 27, 1941.

[3] This phrase is used repeatedly in the committee reports and in the debates on H. R. 4466.