

JURISDICTION OVER PERSONS ON BOARD INTERNED BELLIGERENT VESSELS

A belligerent war vessel is, under ordinary circumstances, allowed to remain twenty-four hours and to enjoy but a limited hospitality in a neutral port. If the war vessel refuses to leave at the expiration of twenty-four hours, provided that the twenty-four hour rule be the law of the neutral country, as is the case with the United States, the vessel becomes a trespasser and the neutral government is authorized either to escort it to the high seas or to deprive it of its power to conduct hostilities; that is to say, to intern it, to use the technical phrase.

The practice of the United States in this matter was formed during the Russo-Japanese War in the cases of the Russian war vessels *Aurora*, *Oleg* and *Zemtchug*, which took refuge in American jurisdiction in 1905, and more especially in the case of the Russian transport or auxiliary cruiser *Lena*, which entered San Francisco harbor in 1904. In reply to the request of the Russian Ambassador that the vessel "might receive all aid compatible with neutrality," the Ambassador was advised, as stated by Professor Moore in his Digest, "that if the vessel was repaired, only such bare repairs could be allowed as might be necessary to render the vessel seaworthy and enable her to reach the nearest home port, and that even such repairs could be permitted only on condition that they should not prove to be too extensive." As the repairs required to make the *Lena* seaworthy would have amounted "to a renovation of the vessel," its captain yielded to the inevitable that his ship should be disarmed and be interned in American waters as a condition of being made seaworthy. The further action of the United States in this case, which may be said to have made the law on the subject, is thus stated by Professor Moore in his Digest:

The President, on the afternoon of the 15th of September, issued an order directing that the *Lena* be taken into custody by the naval authorities of the United States and disarmed under the following conditions: (1) That the vessel be taken to the Mare Island Navy-Yard and there disarmed by removal of small guns, breechblocks, small arms, ammunition, and ordnance stores, and such other dismantlement as might be prescribed by the commandant of the navy-yard; (2) that the captain of the *Lena* should give a written guarantee that she should not leave San Francisco till peace had been concluded, and that the officers and crew should be paroled not to leave San Francisco till some other understanding as to their disposal might be reached between the United States and both belligerents; (3) that, after disarmament, the vessel might be removed to a private dock for such reasonable repairs as would make her seaworthy and preserve her in good condition during detention, or be so repaired at the navy-yard, should the Russian commander so elect, and that

while at the private dock the commandant of the navy-yard should have the custody of the ship, and that the repairs should be overseen by an engineer officer to be detailed by him; (4) that the cost of repairs, of private docking, and of maintenance of the ship, officers, and crew while in custody should be borne by the Russian Government, but the berthing at Mare Island and the custody and surveillance of the vessel by the United States; (5) that the vessel, when repaired, if peace had not then been concluded, should be taken back to Mare Island and there held in custody till the end of the war. The Russian Ambassador expressed the adherence of his government to these conditions, but asked that the officers and crew of the vessel, except 5 officers and 100 seamen, who were necessary for her care, might be permitted to leave the United States. The Japanese Government, on the other hand, asked that all the officers and crew be detained in the United States till the termination of hostilities. The President decided that it would not be consistent with neutrality to grant the request for the repatriation of any of the officers or crew of the *Lena*, unless both the belligerents agreed to it. Without such an agreement he regarded the position of the men as being identical in principle with that of a military force entering neutral territory and there necessarily held by the neutral.

December 10, 1904, the Russian Ambassador asked that the captain and crew of the *Lena* might be permitted to celebrate the name day of the Emperor on the 19th of the month, by hoisting the national flag over the vessel, dressing the ship, and firing the imperial salute. The United States assented to the display of the national standard and the dressing of the ship, but found it impracticable to agree to the firing of the salute, in view of the fact that, as the *Lena* was not in commission, but was lying in a friendly port completely disarmed and in the custody of the United States till the end of the war, her character as a warship, including the function of saluting and the right to receive salutes, was in abeyance.¹

It is to be borne in mind that this action of the United States took place in 1904-5, before the meeting of the Second Hague Peace Conference, and therefore before the drafting of Convention No. 13 of the Second Conference, concerning the rights and duties of neutral Powers in naval war, Article 24 of which reads:

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

¹ 7 Moore's International Law Digest, pp. 999-1000.

It will be observed that Article 24 prescribes to all intents and purposes the action already taken by the United States, so that the article may be regarded as declaratory, not amendatory, of international law in so far as the United States is concerned.

From the action of the United States in the case of the *Lena*, and from the provisions of Article 24 of Convention 13, it is clear that the effect of internment is to withdraw from the vessel so treated the immunity from local laws which by custom men-of-war enjoy. The United States allowed the *Lena* to display the Russian flag and to dress the ship on the name day of the Russian Emperor, but denied the vessel "the function of saluting and the right to receive salutes" because its "character as a warship * * * was in abeyance." According to the official commentary upon Convention 13, which was prepared by the distinguished French publicist, Professor Louis Renault, Article 24 is intended to assimilate the officers and crew of the interned ship to the officers and men of a belligerent army taking refuge in a neutral territory. He states: "In law their position is analogous to that of troops of a belligerent who seek refuge in neutral territory, and it has been agreed that the two cases should be controlled by one and the same rule."²

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THE RECOGNITION OF THE DE FACTO GOVERNMENT IN MEXICO¹

In the October, 1914, number of the JOURNAL (page 860), we concluded a series of editorial narratives of events in Mexico during the revolutionary period which started with the overthrow of Diaz by Madero in 1911. The recognition by the United States on October 19, 1915, of the *de facto* government presided over by General Venustiano Carranza as the chief executive makes it appropriate to set out the important events which have taken place since our last comment, which ended with the overthrow of General Huerta on July 20, 1914, and the occupation of Mexico City by the Constitutionalist Army on August 19, 1914. At that time Vera Cruz was still occupied by American troops

² The full text of Mr. Renault's report on Article 24 of Convention 13 is printed in a comment in this JOURNAL for April, 1915, pp. 488-489.

¹ The correspondence and documents referred to in this comment were transmitted by the President of the United States to the Senate in response to a resolution of January 6, 1916, requesting certain information relative to affairs in Mexico. They are printed as Senate Document No. 324, 64th Congress, 1st Session.