

very idea of law itself, and that, therefore, all who make the rule are responsible for its observance, it is a matter of relatively little consequence what the rules may be.

If this be a just conclusion, it remains to be considered on what ground any nation that denies the right of neutral co-signatories to inquire into alleged violations of a convention, or to remonstrate concerning them, protest against them, or insist upon conformity to the rules agreed upon, may, until these rights are conceded, justly claim a part in the formation of any future convention for the establishment of rules of law.

DAVID J. HILL

SUBMARINE REFLECTIONS

Norway alone of neutral Powers, so far as we are informed, has put the submarine in a class by itself in her treatment of both the military and merchant types. The former is debarred the passage of Norwegian waters except in case of necessity; the latter may approach only by day; both are forbidden to submerge within the state's territorial limits. Doubtless the position and character of the Norwegian coast line have exposed Norway to much annoyance in the performance of her neutral duties. Long, intricate, fringed with islands, near the scene of battle, blockade and visitation, sparsely settled, it cannot be adequately guarded or patrolled. That this difficulty should be increased by the approach and passage of U-boats submerged is unendurable; they must seek hospitality openly and undisguised. Granting this, however, is it just or reasonable to treat them differently from other vessels? While viewing Norway's action sympathetically, I would suggest that it lends sanction to the open or covert belligerent contention that the submarine is to be classed apart from other cruisers or other merchantmen and entitled to special treatment. Perhaps this claim is worth a brief examination.

Look first at what appears to be the German claim. Germany's U-boat campaign against Great Britain began with the declaration of a war zone and a so-called blockade. Now the first requisite of a valid blockade under the old system was that it must be effective, *i.e.*, so continuous, so strict, as to make the breach of it highly dangerous. The sporadic appearance of a submarine with an occasional chase or a semi-occasional capture does not answer this requirement. Again as our State Department has said over and over, to constitute

a valid capture, whether for breach of blockade, for carrying contraband or as enemy's property, cruiser warfare demands such stoppage, visit and search as will show nationality, destination and cargo. Moreover, the crew's and still more the passengers' lives must be safeguarded. The German practice of torpedoing without warning does not meet these requirements, and this Germany has admitted. And thirdly, in view of the extreme fragility of submarine construction, German policy demands that the old accepted usage of defensive armament for the merchantman be held illegal. Very likely timidity or nervousness arising from the consciousness that a touch of the prow or a single small calibre shell from a trader may end his ship's career, is responsible for a portion of the submarine captain's barbarities. On account of the U-boat's lack of carrying capacity also, the German practice is to sink a neutral ship carrying contraband which they may capture. Except for a few isolated and much protested instances in the Russo-Japanese War, this is a new, unjust, and cruel thing. In all these departures from the old law we see an inclination to change the rules to suit the peculiar nature of the submarine. As a cruiser, a ship of war, she must enjoy all the rights of a warship, but owing to her fragile build and other limitations, she must have privileges beyond those of a warship. This is not consistent.

Take now the British contention. U-boats are called pirates, which they are not even when they commit murder. At one time their captured crews were segregated as if for special treatment, until retaliation was threatened. On account of the U-boat menace, the blockading zone or line applied to the German coast, is wider far than any precedent warranted. This makes the old usage of a raised blockade and a new notification, in case of successful though temporary attack, quite inapplicable. Moreover, we gather that visit and search of a submarine merchant ship at British hands is highly improbable. In these cases too, though to a less degree, we see a tendency to change the rules to suit the peculiar nature of the submarine, to hold it to cruiser warfare rules but to claim special privileges against it.

This inclination to apply other than old rules to this new thing crops out even in our own case, for when the Bethlehem Steel Co. contemplated shipping submarines in parts, distributed if desired between several ships, the administration early in the war forbade its doing so as being not a mere trade in contraband. Barring this exception and

Norway's action, all neutrals appear to have regarded the U-boat as a cruiser with no other privileges and no other obligations than have been heretofore applicable to the cruiser. In judging of these inconsistencies, we may say, in the first place, that no party to a war can be allowed to determine the laws which shall govern it according to his own special interests. The law of nations has grown up out of the general agreement of many states, not through the insistence and self-interest of one. Again, and in view of the just mentioned principle, the presumption is in favor of the rules accepted prior to a war, for the simple reason that any change will be dictated by the desire and for the benefit of one, whereas all must be consulted. So introduced, a new usage does not become law, it is not law, it is merely the exercise of force.

By the close of the nineteenth century the neutral interest had become dominant; belligerency was regarded as a nuisance, almost an anachronism. It was, that is, an abnormal, exceptional status, with a presumption against any enlargement of its rights. In case of doubt, neutrality rather than belligerency was to be favored, in any new definition of the law. At the present moment, alas! the belligerent world is so powerful that neutrality has grave difficulty in asserting its rights. But this fact does not lessen those rights. If this is the theory with which we approach a study of the submarine status, I think there can be no doubt that the U-boat is to be regarded as a surface cruiser with no additional rights and privileges and with the same duties and liabilities. Hence in neutral waters it should not submerge. Submergence imperils neutrality by making the performance of neutral duties more arduous and the evasion of neutral rights easier.

THEODORE S. WOOLSEY

POLAND

FROM time to time statements have appeared in the press that a kingdom of Poland will emerge from the war. Sometimes it is the Czar of all the Russias who is to create Poland as an autonomous kingdom, presumably to be made up of Russian Poland, to which will be added Prussian and Austrian Poland. At other times, the press attributes to the Central European Powers the intention to establish a kingdom of Poland, and quite recently the statement has appeared in the press that the Central European Powers intend to create a