by the issue early in the year 1916 by the French Government of a decree promulgating instructions to naval officers in regard to the operation of international law in war.

A comparison of the French instructions of 1912, drawn up in time of peace, and those of 1916, drawn up in time of war, shows elaboration and definition of several articles of the instructions of 1912. This is not in the nature of change in principle or practice. In general, also, it may be said that there is no tendency toward greater exemption of enemy private property at sea from capture. The list of contraband both absolute and conditional has been greatly enlarged, now even including soap, and ultimate destination of the goods is made the criterion regardless of intervening transportation. In consignments of goods to order, consignments to enemy or occupied territory, and when consignee is not stated, the burden of proof of innocence is placed upon the owners. Neutral vessels whose papers show neutral destination are liable to capture till the end of the voyage if, in spite of the papers, they make an enemy port. It is made clear that the use of radio apparatus may be regarded as unneutral service.

Even granting these modifications, the one hundred and sixty-six articles of the instructions of 1916 are so nearly identical with the like instructions of 1912 as to show that, except in case of the wide extension of the list of contraband, there has been little change other than of an explanatory nature. Such a fact, which is likewise evident in the rules of some other countries, is testimony to the sound basis of maritime international law and significantly hopeful for its future development.

George Grafton Wilson.

THE RIGHT OF NEUTRALS TO PROTEST AGAINST VIOLATIONS OF INTERNATIONAL LAW

It is frequently stated that a neutral nation does not have the right to protest or to make a representation to a belligerent if an act of the latter in violation of neutral rights only affects another neutral of the society of nations and does not affect the persons or property of the neutral whose right to protest or to make a representation is questioned. It is true that a neutral may not have the duty to protest or to make representations unless the life or property of its citizens be affected by the unlawful act of the belligerent, but it is believed that the right so to protest exists.

https://doi.org/10.2307/2187529 Published online by Cambridge University Press

Confusion seems to arise because of the difference in the nature and application of municipal law, on the one hand, and international law on the other, and the failure to appreciate that what might be forbidden under one system may be required under another. Municipal law is determined by a particular country; it may be wise or unwise, it may be good or bad, but it is the affair of the particular country whose law it is.

The case is wholly different with international law, which is a thing of usage and custom and convention of the nations which, taken together, form the loose union, but nevertheless the union, which we call the society of nations. As Chief Justice Marshall said in 1825, in deciding the case of the *Antelope* (10 Wheaton, 66, 122):

> No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another. Each legislates for itself and its legislation can operate on itself alone. * * * As no nation can prescribe a rule for others, none can make a law of nations.

It follows necessarily, therefore, that it is not the usage or custom of one nation or practice or law of any one nation that can make a law of nations, and if international law, as is the fact, is in large measure usage, custom and practice extending over a long period of time, and such usage and practice is not and cannot be the usage, custom and practice of any one nation, it follows that each nation must either cooperate in the process or must accept the results of the process in order that the law of nations thus formed shall bind it. Lest the practice of a nation, claimed by that nation to be in accordance with international law, may seem to be accepted by silence of the nations and thus become international law, it behooves a nation objecting to that practice to state its objection and to make it clear that it will not be bound by it.

In the case of municipal law a protest might not be justified by the mere presence of a law upon the statute book, because it may not appear that, however formal in terms, it would be applied in such a way as to violate the rights of other nations under international law. It would no doubt be proper to suggest the possibility and to point out the conflict between the municipal statute and international law, but until the statute had been applied in such a way as to violate the rights of foreign countries under international law it could not definitely be said that it would be so interpreted and applied.

In international law, on the other hand, the mere claim to exercise

https://doi.org/10.2307/2187529 Published online by Cambridge University Press

a right denied by or inconsistent with international law lays, it is believed, the right to protest, and the right to protest is not postponed until the neutral has been injured. The very moment that the act of a belligerent violates the neutral right of any nation, it becomes, it is believed, the right of every neutral nation to protest, even although it may not be considered its duty to protest—although the undersigned believes that it is the duty of the neutral to protest in such a case—because the violation of the right of any neutral nation is the violation of a right common to every neutral, and a claim to violate the right of one is in effect a claim to violate the right of any or all if the belligerent shall believe it to be to its advantage so to do. The material injury is, it is believed, the violation of the principle of law, not merely the injury to the life or property of the citizen of the neutral nation, because life and property depend upon the principle of law, and when this is withdrawn the guarantee of life and property falls with it.

The classic example of the protest of neutral nations whose rights were menaced, although the persons and property of their subjects were not injured, is the protest of France, Austria and Prussia in the case of the *Trent*. This well known case arose during the American Civil War. The *Trent*, a British and therefore neutral, vessel, was proceeding from Havana, Cuba, a neutral port, to London, England, a neutral port, and had on board Messrs. Mason and Slidell, Commissioners of the Confederacy to European countries. On November 8, 1861, the *Trent* was stopped by the American Man of War *San Jacinto*, under the command of Captain Wilkes, and Messrs. Mason and Slidell were taken off the steamer, which was allowed to proceed to its neutral destination. President Lincoln admitted that Captain Wilkes did not have the right to remove the Confederate Commissioners from the *Trent*, and returned Messrs. Mason and Slidell to British custody.

The case was, superficially at least, between the United States and Great Britain, but the admission by neutrals of the right of the United States to violate international law in the case of Great Britain was an admission that the United States could violate international law as regards other members of the society of nations. This admission Prussia, Austria and France were unwilling to make, and each of the three powers protested to the Government of the United States. The text of these protests is printed in full in the Supplement to this Journal, pp. 67–72.

James Brown Scott.

https://doi.org/10.2307/2187529 Published online by Cambridge University Press