

THE STATUS OF ARMED MERCHANT VESSELS

A circular issued by the Department of State on September 19, 1914,¹ relates to the status of armed merchant vessels. The visit to the ports of the United States since the outbreak of the European war of armed vessels ordinarily engaged in peaceful pursuits has made it necessary that their exact status either as vessels of war or of commerce be determined, in order that the United States authorities may know exactly what their duties are with respect to the treatment to be accorded to such vessels. If they are to be regarded as merchant vessels, the usual privileges of such vessels in a friendly port will be accorded to them, and they will be entitled in addition to protection from hostile war craft in the same port by detaining the latter until twenty-four hours after the departure of the former. If, on the other hand, such vessels be regarded as ships of war, they will be restricted in their stay in the port, in the use which they may make of neutral waters, in the extent of the repairs which they may make here, and in the amount and character of the supplies which they will be allowed to take on board. The number of such vessels which might be present in one port at the same time would also be limited and their right to the subsequent use of American ports would be considerably curtailed. Again, if the modification of the character of such a vessel from that of a ship of commerce to an armed ship takes place within United States jurisdiction or acts are done within that jurisdiction, such as fitting it out for warlike purposes or the taking on of armament or munitions of war, with the intention of converting it into an armed vessel after it gets beyond American jurisdiction, the United States, by failing to prevent the departure of such a vessel, might lay itself open to the charge of allowing the fitting out and arming of vessels within its jurisdiction which it has reason to believe are intended to cruise or engage in hostile operations against a Power with which it is at peace, with a resultant claim for damages.²

Many of the large merchant vessels of modern construction are built so as to be easily adapted to warlike purposes, and arrangements between the owners of such vessels and their governments make them to all intents and purposes auxiliaries to the fighting fleet upon the outbreak

¹ Printed in SUPPLEMENT, p. 121.

² For a full discussion of this phase of the law of neutrality, see preceding editorial on the purchase of vessels of war in neutral countries by belligerents, p. 177.

of war. The status of such vessels under the rules of international law remains still to be settled and, in the meantime, their presence in neutral ports may raise difficult and intricate questions for the neutral governments to decide.³ It is worth while to note in this connection that the Hague Convention of 1907 extending certain privileges to merchant vessels belonging to a belligerent which are found in an enemy port or encountered upon the high seas upon the outbreak of war expressly excludes from its benefits ships whose build shows that they are intended for conversion into warships.

The Department's circular recognizes a distinction between an armament for defensive purposes and an armament for offensive operations, and it holds that a merchant vessel may carry an armament and ammunition for the sole purpose of defense without acquiring the character of a ship of war. The presence of such armament and ammunition, however, raises a presumption that they are for offensive purposes and puts upon the owners or agents the burden to prove that the armament is intended solely for defense. Each case is to be decided independently at an official investigation, which must show conclusively that the armament is not intended for and will not be used in offensive operations.

The Department indicates that the proof to overcome the presumption should include evidence as to the number and caliber of the guns carried and their location on the vessel, the number of small guns and the quantity of ammunition on board. Information is also required concerning the crew which mans the vessel and the officers in charge, the trade in which it intends to engage, the quantity of fuel and supplies shipped, the character of the cargo and passenger list, none of which should be unusual, and the speed of the ship. Upon the arrival of an armed merchant vessel at a port of the United States, the authorities are required immediately to investigate and report to Washington on the foregoing points, and the clearance of the vessel will not be granted unless and until the authorities there determine that the evidence submitted is sufficient to remove the presumption that the vessel is intended for offensive operations.

A final section of the circular states that the conversion of a merchant vessel into a warship is a question of fact to be established by evidence of intention to use the vessel as a ship of war.

³ For a discussion of this question, see *International Law Situations, 1912*, Naval War College, pp. 159-195.