

fulfill in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization. I have no need to tell you that I entirely recognize the importance of the codification of rules to be followed in war. But it would be a great mistake to issue rules the strict observation of which might be rendered impossible by the law of facts. It is of the first importance that the international maritime law which we desire to create should only contain clauses the execution of which is possible from a military point of view—is possible even in exceptional circumstances. Otherwise the respect for law would be lessened and its authority undermined. It would also seem to us to be preferable to maintain at present a certain reserve, in the expectation that seven years hence it will be easier to find a solution which will be acceptable to the whole world. As to the humanitarian sentiments of which the British delegate has spoken, I cannot admit that there is any country in the world which is superior to my country or my Government in the sentiment of humanity.¹⁰

THE USE OF NEUTRAL FLAGS ON MERCHANT VESSELS OF BELLIGERENTS

The United States took official notice of the declaration of the German Admiralty on February 4, 1915, that the British Government had on January 31, 1915, explicitly authorized the use of neutral flags on British merchant vessels for the purpose of avoiding recognition by the German naval forces, and on February 11, the American Ambassador at London, acting under instructions of the Department of State, addressed a communication to Great Britain, which, reserving for future consideration the legality and propriety of the deceptive use of the flag of a neutral Power in any case for the purpose of avoiding capture, pointed out the serious consequences which may result to American vessels if the practise be continued. The action of the captain of the *Lusitania*, who had recently raised the American flag as his vessel approached the British coast in order to escape anticipated attacks by German submarines, was called to the attention of the Foreign Office, and, in requesting Great Britain to restrain British vessels from the deceptive use of the flag of the United States in the sea area defined in the German declaration, Secretary Bryan said:

The occasional use of the flag of a neutral or an enemy under the stress of immediate pursuit and to deceive an approaching enemy, which appears by the press reports to be represented as the precedent and justification used to support this action, seems to this government a very different thing from an explicit sanction by a belligerent government for its merchant ships generally to fly the flag of a neutral Power within certain portions of the high seas which are presumed to be frequented with hostile warships. The formal declaration of such a policy of general misuse of a neutral's flag jeopardizes the vessels of the neutral visiting those waters in a peculiar

¹⁰ Scott, *The Hague Peace Conference of 1899 and 1907*, Vol. 1, pp. 586–587.

degree by raising the presumption that they are of belligerent nationality regardless of the flag which they may carry.

In view of the announced purpose of the German Admiralty to engage in active naval operations in certain delimited sea areas adjacent to the coasts of Great Britain and Ireland, the Government of the United States would view with anxious solicitude any general use of the flag of the United States by British vessels traversing those waters. A policy such as the one which His Majesty's Government is said to intend to adopt, would, if the declaration of the German Admiralty is put in force, it seems clear, afford no protection to British vessels, while it would be a serious and constant menace to the lives and vessels of American citizens.

A refusal to comply with the American request would, it was asserted "impose upon the Government of Great Britain a measure of responsibility for the loss of American lives and vessels in case of an attack by a German naval force."

Great Britain replied on February 19th, and with reference to the *Lusitania* explained that the American flag was raised by the captain upon the request of the American passengers on board, and without any advice from the British Government. Regarding the general question raised in Secretary Bryan's note, the British memorandum continued.

The British Merchant Shipping Act makes it clear that the use of the British flag by foreign merchant vessels is permitted in time of war for the purpose of escaping capture. It is believed that in the case of some other nations there is a similar recognition of the same practice with regard to their flags and that none have forbidden it. It would therefore be unreasonable to expect His Majesty's Government to pass legislation forbidding the use of foreign flags by British merchant vessels to avoid capture by the enemy. Now that the German Government have announced their intention to sink merchant vessels at sight with their non-combatant crews, cargoes and papers, a proceeding hitherto regarded by the opinion of the world not as war, but as piracy, it is felt that the United States Government could not fairly ask the British Government to order British merchant vessels to forego the means—always hitherto permitted—of escaping not only capture but the much worse fate of sinking and destruction. Great Britain has always when neutral accorded to the vessels of other states at war, liberty to use the British flag as a means of protection against capture and instances are on record when United States vessels availed themselves of this facility during the American Civil War. It would be contrary to fair expectation if now when the conditions are reversed the United States and neutral nations were to grudge to British ships liberty to take similar action. The British Government have no intention of advising their merchant shipping to use foreign flags as a general practice or to resort to them otherwise than for escaping capture or destruction.

The obligation upon a belligerent warship to ascertain definitely for itself the nationality and character of a merchant vessel before capturing it and *a fortiori* before sinking and destroying it has been universally recognized. If that obligation is ful-

filled, hoisting a neutral flag on board a British vessel can not possibly endanger neutral shipping and the British Government hold that if loss to neutrals is caused by disregard of this obligation it is upon the enemy vessel disregarding it and upon the government giving orders that it should be disregarded that the sole responsibility for injury to neutrals ought to rest.

POSTPONEMENT OF THE ANNUAL MEETING OF THE SOCIETY

The Executive Committee on March 13, 1915, held a meeting at No. 2 Jackson Place, Washington, D. C., to consider the program of the Ninth Annual Meeting of the Society, which had been referred to it because it was found to be inconvenient for a sufficient number of members of the Committee on the Ninth Annual Meeting to assemble for that purpose. There were present at the meeting the following members:

HONORABLE JOHN W. FOSTER, *Chairman*
HONORABLE CHANDLER P. ANDERSON,
MR. CHARLES HENRY BUTLER,
MR. JACKSON H. RALSTON,
MR. JAMES BROWN SCOTT.

Communications were received from the following members:

HONORABLE GEORGE GRAY,
HONORABLE ROBERT LANSING,
HONORABLE ELIHU ROOT,
PROFESSOR GEORGE G. WILSON.

At the meeting an invitation from the Chairman of the Section on International Law of the Second Pan-American Scientific Congress was laid before the Committee, inviting the Society to participate in the meeting of that Congress to be held in Washington from December 27, 1915, to January 8, 1916. The preliminary program of the Congress which has been sent to each member of the Society, enumerates the subjects to be discussed in the Section on International Law.

It will be noted from the program that it is expected that the first session of the American Institute of International Law will also be held in connection with the Congress. This newly organized Institute is made up of representatives of national societies of international law formed in the different Pan-American countries, of which a number are already in existence. It will be recalled that at the last meeting of the