

Whatever may be the ultimate issue of the particular controversy raised by the treaty under discussion, we may be confident that the United States, in its championship of generous, progressive principles in international affairs, will not fail to stand always for a liberal interpretation and development of the law of nations on this continent.

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THE RIGHT TO ATTACK UNARMED SUBMARINE MERCHANTMEN

THE arrival at Baltimore, in July last, of the *S. S. Deutschland*, an unarmed submarine merchantman, with a valuable cargo for sale in the United States, and the subsequent departure of the vessel from that port for Bremen, raised inquiry whether principles established for the regulation of attacks upon surface craft of a belligerent could be applied with equal justice with respect to merchantmen capable of taking refuge within the depths of the sea.

The unarmed submersible merchantman, like that which is obliged to remain on the surface, obviously cannot open fire upon an enemy ship. It serves also a useful purpose as a carrier of persons and property. It is unique, however, with respect to its mode of and facility in eluding pursuit as well as signals to surrender. It may be doubted whether this circumstance alone suffices to place the submarine in a less favorable position. A surface craft of extraordinary speed, enabling it to outdistance every pursuer and to keep beyond the range of signals, would not for that sole reason be exposed to attack at sight. Refusal to obey a reasonable signal to come to should doubtless subject an undersea vessel to the same penalties as a surface craft. The peculiar ability of the former to disregard such a signal with impunity does not, however, justify the failure to make one, unless it can be shown that the right of capture is an absolute one unfettered by the dictates of humanity. Such is not the case in the normal situation where the merchantman is not primarily devoted to the public service, or until guilty of reprehensible conduct.

At the present time an unarmed enemy surface craft, such as a trans-Atlantic liner, of great tonnage and high speed, although designed and employed primarily for the transportation of passengers and mail, is still capable of rendering incidentally substantial military service as a carrier of war material. Its speed may enable the vessel to outdistance any pursuer and to keep beyond range of a

signal to lie to. Wireless telegraphic equipment may offer means of summoning aid whenever needed. The instant destruction of the ship without warning may thus offer the sole means of preventing its escape and the delivery of contraband articles at their destination. Doubtless the success of the voyage, despite its principal purpose, serves to prolong the war by adding to the resources of the state to which the vessel belongs. It is not believed, however, that the indirect harm to be wrought in consequence of escape equals that to be anticipated from the deliberate destruction of the lives of the occupants of the ship by an opposing war vessel. Claims of military necessity fail to turn the scales of justice.

The submersible merchantman when observed on the surface, if its harmless character is then ascertainable, would seem to be entitled to such a warning as it might justly claim if it could not submerge. Greater excuse for attack at sight may exist when an enemy warship upon first encountering a submarine is in fact unable to distinguish it from an armed undersea vessel known to be employed as a weapon of offense. To remove occasion for such mistakes, it is believed that the unarmed submersible should undertake the burden of exhibiting some distinctive token or proof of its peaceful character, which by general convention maritime Powers should agree both to respect and refrain from abusing.

It may be urged that the sheer ability of a craft to submerge betokens such special adaptability for engagement in hostile operations that the military necessity to the enemy to destroy or capture it should be recognized as paramount to every other consideration. The treatment of surface craft affords perhaps a parallel. An unarmed passenger liner, built with special reference to its use in time of war as a transport or as a scout cruiser, with decks constructed so as to admit of the easy addition of armament, does not lose its quality as a merchantman, if designed primarily as a carrier of persons and property, and while employed in fact as a vehicle of commerce. To justify attack at sight upon an unarmed submarine merchantman, the fact should be known, not merely that the vessel is readily capable of transformation in port into a warship, but also that it is either designed primarily for use as such, or that when encountered it is a direct participant in the prosecution of the war.

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