of a neutral Power to make the demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction."

THE INTERNMENT OF GERMAN VESSELS IN THE UNITED STATES

It is of interest to refer to the number of German war vessels which have been interned in the United States since the outbreak of the war on August 1, 1914, and to explain the consequences of internment. As far as is known to the JOURNAL, the following is a list of the interned vessels:

The *Geier* entered the port of Honolulu on October 15, 1914, and interned November 8, 1914. Its tender, the *Locksun*, entered Honolulu on October 16, 1914, and interned November 7, 1914.

The *Cormoran* arrived at Guam on December 14, 1914, and interned December 15, 1914.

The *Prinz Eitel Friedrich* entered the port of Newport News on March 10, 1915, and interned April 7, 1915.

The *Kronprinz Wilhelm* arrived at Newport News on April 11, 1915, and interned April 26, 1915.

The vessels of the Hamburg American Line and the North German Lloyd Line, lying in the port of New York, are merchant vessels, not ships of war, and they are not to be considered as interned, as internment is applied solely to ships of war.

Internment of ships is a recent comer in international law and made its formal, if not its first, appearance during the Russo-Japanese war. It was, however, well-recognized in land warfare, the most striking example being that of the disarmament of the French Army of the East, numbering 84,000 men, which, hard pressed by the victorious Germans, crossed the Swiss frontier early in 1871. The responsibility for the maintenance of the interned troops was not definitely settled at that time, and Hall, in commenting upon the incident, while pointing out the burden to neutrals which the support of these men involved, thought it would be unfair to tax their governments with the cost of their support, since such action would relieve its enemy of the expense of keeping them and the trouble of guarding them, while he was as safe from further danger from them as if they were prisoners of war. Hall suggested that such fugitives be released under a convention between the neutral and belligerent states, by which the latter should undertake not to employ

them during the continuance of the war.[1] The practice was regularized by the First Hague Peace Conference, which provided that belligerent troops which are received in neutral states shall be interned, and, unless there is a special convention on the subject, the neutral shall supply them with food, clothing, etc., the expenses of which shall be reimbursed at the conclusion of peace.[2] These articles were carried over as Articles 11 and 12 of the convention respecting the rights and duties of neutral Powers and persons in war on land, adopted by the Second Hague Peace Conference in 1907. The indirect aid to the enemy pointed out by Mr. Hall, has, it will be seen, not been prevented by the provisions of the conference.

In the question of ships, the matter came up, as previously stated, in the Russo-Japanese war, primarily in connection with the right of vessels which had been injured in battle to remain and to repair in neutral ports the damage which they had received. The United States refused to allow the *Lena*, which put into San Francisco in 1904, to make repairs which would require months, even although they were not necessitated by injury in battle, because such extensive repairs amounted to a renovation of the vessel, which was inconsistent with neutrality. The *Lena* was therefore interned. Other Russian vessels which had entered American ports and sought to repair damages were refused permission and also interned, following the precedent of the *Lena*.[3] At the conclusion of war, the vessels were allowed to depart.

It was natural, therefore, that the question of the internment of vessels of war should come up at the Second Hague Conference, which met within two or three years after this incident. This question was not quite so simple a matter, however, as the question of the internment of troops on land. For obvious reasons, a belligerent war ship could not be forbidden to enter neutral ports under penalty of immediate internment. It was necessary, therefore, first to agree upon the conditions and restrictions under which belligerent vessels might properly enter and remain in neutral ports.

The convention concerning the rights and duties of neutral Powers in naval war, adopted at the Second Hague Conference and ratified by many Powers, including Germany (November 27, 1909), and adhered

[1] Hall, International Law, 4th Ed., p. 650.

[2] Articles 57 and 58 of the annex to the convention respecting the laws and customs of war on land adopted by the First Hague Peace Conference on July 29, 1899.

[3] Moore's International Law Digest, Vol. VII, pp. 992–994, 999–1000.

to by the United States (December 3, 1909), contains the following provisions on this question: Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries (Article 5), and their war ships are not permitted to remain in neutral ports or territorial waters for more than 24 hours (Article 12), except for making, with the least possible delay, such repairs as are absolutely necessary to render them seaworthy, to be determined by the neutral authorities. They may not, in neutral ports, add to their fighting force or crew or replenish or increase their supplies of war material or armament (Articles 17 and 18). They may only revictual to bring their supplies up to the peace standard and ship sufficient fuel to enable them to reach the nearest port in their own country (Article 19). Belligerent war ships which have shipped fuel in a neutral port may not within the succeeding three months replenish their supply in a port of the same Power (Article 20).

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, either because it has entered in defiance of a prohibition, or, if regularly entered, because it stays longer than permitted, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of putting to sea during the war, the execution of which the commander of the ship must facilitate. The officers and crew shall be detained, either in their ship or on another vessel or on land, and may be subjected to such restrictions as it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must be left on board and the officers may be liberated on parole not to quit the neutral territory without permission (Article 24).

Article 25 requires a neutral Power to exercise such surveillance as the means at its disposal allow, to prevent any violation of the foregoing provisions, which action, according to Article 26, can, under no circumstances, be considered as an unfriendly act.

Concerning the position of the officers and crew in such cases, the distinguished French publicist M. Renault, makes the following observations in his report on this convention:

> We say that they are likewise *detained*, which is an expression rather vague. It has been substituted for *interned*, which seemed to indicate too strictly that the officers and crew should be placed within the neutral country. Their real position is regulated by a special provision to which we shall return. In law their position is analogous to that of troops of a belligerent who seek refuge in neutral territory, and

it has been agreed that the two cases should be controlled by one and the same rule. The regulations annexed to the Convention of July 29, 1899, on the laws and customs of war on land provide for the case in its Article 57; after having said that a neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war, it adds (paragraph 3): "It shall decide whether officers may be left at liberty on giving their parole not to leave the neutral territory without permission."

Nothing is said with respect to the conditions upon which this permission shall be based. The delegation of Japan had proposed in order to fill this gap to say that the men interned could not be liberated or permitted to reënter their own country except with the consent of the enemy. The Second Commission thought it best not to modify the text of the regulations, considering the permission given to one interned to reënter temporarily his own country as too exceptional a case to require regulation in express terms. It added that the Japanese proposal, conformably to recent precedents, contained a useful suggestion for a neutral State that is desirous of remaining entirely free from any liability. His Excellency Mr. Tsudzuki declared himself satisfied with this declaration. In these circumstances, in order to treat the interned belonging to land forces and those belonging to sea forces alike, we should adopt the foregoing ideas and regulate accordingly the position of officers and crews. Doubtless, in principle, a neutral government, to be free from responsibility, will not permit officers thus detained to return to their own country without being sure of the consent of the other belligerent. But it was not deemed necessary to lay down a rule for these very exceptional cases.

There has been a great deal of discussion as to what should be the fate of the officers and crew. The opinion that prevailed is that all depends upon the circumstances, and that it is necessary to leave it to the neutral to settle the matter. We have therefore mentioned several possible solutions without indicating any preference, as desired by certain delegations which thought that, as a rule, the crew ought to be left on board their ship. There has been accepted, however, an amendment moved by the Italian delegation, according to which a sufficient number of men for looking after the vessel must be left on board. To the objection that there were no analogous provisions in the regulations of land warfare, it was replied that cannon or other arms are not so valuable as ships, which for want of upkeep may easily deteriorate and even become useless. The amendment was carried by 11 votes (Germany, United States, Brazil, Denmark, Spain, France, Italy, Netherlands, Russia, Sweden, Turkey) against 2 (Great Britain, Japan), and 1 abstention (Norway).

Apropos of the cases regulated by this Article 24, there was mentioned the case of a warship wishing to go to sea too soon, before the expiration of the twenty-four hours provided by Article 16; no question then arises of disarming the ship but only of preventing its departure, which is easier to do.[4]

It will be noted that no mention is made of the expenses of maintaining the ship, its officers and crew during the period of internment, it evidently being assumed that the government to which the ship belongs will

[4] Deuxième Conférence Internationale de la Paix, Vol. 1, p. 322.

always be willing to defray such expenses in order to preserve its valuable property in the ship.

THE JOINT RESOLUTION OF CONGRESS TO EMPOWER THE PRESIDENT TO BETTER ENFORCE AND MAINTAIN THE NEUTRALITY OF THE UNITED STATES

The late Mr. W. E. Hall was no lover of the United States, as appears from many passages from his treatise on international law. It is therefore consoling at the present time to recall his commendation of our neutral policy when that policy is being questioned by a belligerent better known for its efficiency in war than for its contributions to neutrality. In the first edition of his International Law, published in 1880, Mr. Hall said, and the passage has been retained in the subsequent editions of his work:

> The policy of the United States in 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative international custom has up to the present time advanced. In the main however it is identical with the standard of conduct which is now adopted by the community of nations. (Hall, 4th Ed., p. 616.)

Admitting this statement to be substantially true, it is a fact that the United States has, by reason of its domestic law and procedure, found it very difficult to comply with those neutral duties which have recently made their appearance in international law. This is, in a way, surprising when it is borne in mind that international law has, since the beginning of our country, been regarded as a part of our municipal law, enforceable in and binding upon our courts. Thus, in a comparatively recent decision, the Supreme Court stated that "foreign municipal laws must indeed be proved as facts, but it is not so with the law of nations." (*The Scotia*, 14 Wallace, 170.) That is to say, the court takes judicial notice of international law. In a still more recent case the Supreme Court held that "international law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." (*The Paquete Habana*, 1899, 175 U. S. 677.) The court next proceeded to enumerate the sources of international law, or rather, the authorities by which it would be bound. "For this purpose, where