MERCHANT VESSELS SUSPECTED OF CARRYING SUPPLIES TO BELLIGERENT VESSELS

Another important circular issued by the Department of State on September 19, 1914,[1] covers the subject of merchant vessels suspected of carrying supplies to belligerent vessels. The circular defines what is a base of naval operations on neutral territory, the essential idea of which it states, in addition to the furnishing of supplies directly to a belligerent warship in port, is the repeated departure from such territory by a belligerent naval tender or merchant vessel employed in belligerent service laden with fuel or other naval supplies. A presumption that such a base exists arises when belligerent warships are furnished with supplies either directly or by means of naval tenders or merchant vessels more than once within three months. Common rumor or suspicion, unsupported by evidence, that a merchant vessel, not heretofore known to have engaged in supplying a belligerent warship, intends to deliver its cargo to such a ship on the high seas, imposes no duty on a neutral government to detain such vessel even for investigation. If the rumor or suspicion be supported by evidence, the vessel should be detained for investigation, when a belligerent warship is known or strongly presumed to be off the port at which the merchant vessel is taking on supplies, when the vessel and the warship are of the same nationality, when a vessel which has shipped a cargo of naval supplies to a neutral port and failed to have them on board upon arrival there seeks to take on board a similar cargo, when coal or other supplies are purchased by an agent of a belligerent government and shipped on a merchant vessel to a neighboring neutral port, or when a merchant vessel with a cargo of fuel or other supplies clears for a neighboring neutral port and takes on board an agent of the belligerent.

Conversely, the circular states that it is not sufficient ground to warrant detention if in an isolated case, where neither the vessel nor the warship has within three months taken on board naval supplies, a merchant vessel laden with such supplies seeks clearance under strong suspicion that it intends to carry them to a belligerent warship. Likewise, a merchant vessel which ships naval supplies from an American port to another neutral port and actually lands them there should not be detained if it attempts to make a second voyage of the same kind,

[1] Printed in SUPPLEMENT, p. 122.

and this even although it is notorious that the neutral port to which the shipments are being made is used as a base of naval operations by a belligerent. In such a case, the unneutral act is done within the jurisdiction of the other neutral state, which it and not the Government of the United States is bound to prevent. Furthermore, the circular states that a neutral government is not bound to limit shipments of supplies made directly to a naval base established in territory under the control of a belligerent or to detain vessels engaged in such trade.

The circular concludes that the foregoing propositions do not apply to the furnishing of munitions of war included in absolute contraband, which in no event may be supplied to belligerent warships, either directly in neutral waters or indirectly by means of tenders or merchant vessels.

SOME TECHNICAL POINTS REGARDING THE HAGUE CONVENTIONS

In more than one of the discussions which have recently appeared upon the obligations of the belligerent Powers under the Hague conventions some confusion seems to exist as to the *modus operandi* which the Conferences have prescribed in order to make the conventions adopted by them binding upon the governments. A reason for this confusion no doubt lies in the common unfamiliarity with matters relating to the Hague Conferences, due to a general lack of interest in them in ordinary times, and probably also to an insufficiency in dealing with this subject of the available treatises on the Hague Conferences. A less excusable reason, however, is obviously evident, namely, the failure carefully to read and note the final articles contained in all of the conventions, which set out in detail the steps necessary to be taken by the governments before the conventions become legally in effect.

The principal error arises from the failure to note the distinction between the signature of a treaty and its ratification. Such a misunderstanding on the part of Americans seems somewhat surprising, in view of the emphasis laid upon this distinction in the constitutional practice of the United States, which requires that treaties may not be ratified except by and with the advice and consent of the Senate. The requirement of the ratification of treaties is not peculiar to the practice of the United States, however, although the branch of the government which is vested with the ratifying power may be different according to the form of the government. "Ratification is now a universally recognized customary rule of international law," says Oppenheim, "even if it is