EDITORIAL COMMENT

ARMED MERCHANT VESSELS AND SUBMARINES

The problem of dealing with armed merchant vessels in time of war naturally recurs when the limitation of the use of submarines is considered. The use of armed merchant vessels in early times was somewhat comparable to the employment of other means of private defense before the maintenance of safety was regarded as a public function. The resort to privateering and the existence of piracy, slave trading, smuggling, etc., were given as justification for arming private vessels. Self-protection in time of peace and in time of war was necessary. The Declaration of Paris, 1856, by which "Privateering is and remains abolished," was hailed as an act putting an end to arming of merchant vessels.

The laws of the United States from June 25, 1798, had provided for defense against aggression, search, etc., by a vessel "not being a public armed vessel of some nation in amity with the United States." In the days of filibustering expeditions armed vessels were required to give bonds to double their value, as arming was not regarded as essential to safety.

Mr. Churchill on March 26, 1913, in the British Parliament advocated arming of merchant vessels as a measure necessary to meet the possibility of conversion of merchant vessels by other states into cruisers. In reply to a question on June 11, 1913, as to whether the vessels were "equipped for defense only and not for attack," Mr. Churchill said: "Surely these ships will be quite valueless for the purposes of attacking armed vessels of any kind. What they are serviceable for is to defend themselves against the attack of other vessels of their own standing." And later in March, 1914, he said: "They are not allowed to fight with any ships of war."

The status of armed merchant vessels arose immediately at the outbreak of the World War. On August 4, 1914, the day of the British declaration of war against Germany, the British *Chargé* at Washington called the attention of the American Secretary of State to the rules of the Treaty of Washington, 1871, and to the obligations of a neutral state under the Hague conventions particularly in regard to conversion of merchant vessels. This was further elaborated in a note of August 9th among other positions asserting that "the German Government have consistently claimed the right of conversion on the high seas, and His Majesty's Government therefore maintain their claim that vessels which are adapted for conversion and under German rules may be converted into men-of-war on the high seas should be interned in the absence of binding assurances, the responsibility for which must be assumed by the neutral Government concerned, that they shall not be so converted." The United States did not admit this responsibility.

On September 19, 1914, the State Department issued a memorandum making known certain physical bases for determining the intent of arming merchant vessels. Correspondence with belligerents followed and many differences of opinion were disclosed.

The Netherlands prohibited the entrance of armed merchant vessels as "vessels of a belligerent assimilated to warships," and in spite of British protests maintained its position. Other states, particularly South American states, took restrictive action. In 1917 in the House of Commons, Mr. Churchill definitely stated that "The object of putting guns on a merchant ship is to compel the submarine to submerge."

That arming merchant vessels is not regarded as a practice to be discontinued is evident from Article XIV of the Washington 1922 Treaty Limiting Naval Armament, which provides:

> No preparations shall be made in merchant ships in time of peace for the installation of warlike armaments for the purpose of converting such ships into vessels of war, other than the necessary stiffening of decks for the mounting of guns not exceeding 6-inch (152 millimetres) calibre.

The use of state owned vessels in commerce in the time of peace and the custom of granting subsidies and establishing auxiliary transport and other fleets further complicates distinctions among vessels. It is impossible in time of war to set up standards which would satisfactorily define acts of defense and acts of offense upon the part of an armed merchant vessel, and if such standards were agreed upon their correct interpretation by irresponsible merchant masters would be problematical. The obligations of neutrals in regard to the treatment of armed merchant vessels are also open to many differences of opinion and these differences were evident in the World War. When the arming of merchant vessels, which Mr. Churchill viewed as a "period of retrogression," is prohibited, then one fertile source of misunderstandings both on the part of belligerents and of neutrals is removed. A further complication in determining status would be introduced if Mr. Churchill's statement in the House of Commons on June 10, 1913, is admitted. He makes the following distinctions on the ground that misconceptions existed even in England.

> Merchant vessels carrying guns may belong to one or other of two totally different classes. The first class is that of armed merchant cruisers which on the outbreak of war would be commissioned under the white ensign and would then be indistinguishable in status and control from men-of-war. In this class belong the *Mauretania* and *Lusitania*. The second class consists of merchant vessels, which would (unless specially taken up by the Admiralty for any purpose) remain merchant vessels in war, without any change of status, but have been equipped by their owners, with Admiralty assistance, with a defensive armament in order to exercise their right of beating off attack.

The only sound position seems to be that a vessel entitled to be treated as a merchant vessel both by neutral and belligerent shall have an unequivocal

status. This can be based only upon a prohibition of armament, and then aircraft, submarines or other vessels of war in dealing with merchant vessels can find no justification for failure to observe the laws of war. It may be wise to revert to the position of the United States of January 18, 1916, summarized from a long argument as follows:

> It would, therefore, appear to be a reasonable and reciprocally just arrangement if it could be agreed by the opposing belligerents that submarines should be caused to adhere strictly to the rules of international law in the matter of stopping and searching merchant vessels, determining their belligerent nationality, and removing the crews and passengers to places of safety before sinking the vessels as prizes of war, and that merchant vessels of belligerent nationality should be prohibited and prevented from carrying any armament whatsoever.

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THE SETTLEMENT OF THE REPARATION PROBLEM

On March 13, 1930, President von Hindenburg placed the final approval of the German Government on what is known as the "New Plan" to take the place of the Dawes Plan for the payment of reparations due under the Treaty of Versailles of June 28, 1919. The New Plan is composed of a series of documents and agreements beginning with the report of the Committee of Experts of June 7, 1929, with annexes, known as the Young Plan, the political instruments drawn up at The Hague conference in August, 1929, and the series of agreements signed at The Hague on January 20, 1930. By an agreement of January 20th between Germany and the creditor Powers the New Plan is "definitely accepted as a complete and final settlement, so far as Germany is concerned, of the financial questions resulting from the war" and by their acceptance "the signatory Powers undertake the obligations and acquire the rights resulting for them respectively from the New Plan."

Agreements were also signed at The Hague on January 20, 1930, for the discharge or final settlement of the reparations obligations of Austria, Hungary, and Bulgaria, and of the claims and liabilities of the Succession States of the former Austro-Hungarian Monarchy. The creditor Powers also signed agreements regarding the distribution among them of the German and non-German reparations. Letters exchanged on August 30, 1929, had already provided for the evacuation of the Rhineland.

Thus, it has taken more than a decade after hostilities ended and the signature of the Peace Treaty, for the former enemies to come to an agreement that purports to be a final settlement of the financial questions between them growing out of the war. In the Armistice of November 11, 1918, Germany agreed to the cryptic condition "Reparation for damage done." The condition had been previously interpreted by the Allied Governments in a memorandum to President Wilson with which he agreed and communicated