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ENGLISH AND GERMAN PRIZE COURTS
AND PRIZE LAW

By reason of the failure of the nations to set up an international prize court,¹ the belligerent governments have found it necessary to continue the practice of employing municipal courts for the hearing and determination of prize cases. The organization and procedure of these courts differ materially in the several countries.²

According to the ancient practice in England, jurisdiction in all matters of prize was conferred upon the High Court of Admiralty by virtue of a special commission issued by the Crown under the great seal, at the outbreak of war.³ The issuance of a special commission, however, did not affect in the slightest the legal character of the court as one of the regular tribunals of the country. By the Naval Prize Act of 1864,⁴ the Court of Admiralty was constituted a permanent court of prize, independent of any commission issued under the great seal. A slight change was effected in the reorganization of the judicial system under the Supreme Court of Judicature Acts of 1873 and 1891.⁵ The High Court of Justice was now substituted for the Court of Admiralty as a permanent prize court. In other words, the old Court of Admiralty was constituted a division of the High Court of Justice, with-

¹ The Hague Convention of 1907 made provision for the erection of an international prize court, but owing to the differences among the nations in regard to the constitution of the court and the law to be applied therein, the court has never been called into existence.

The Declaration of London, 1909, was an unsuccessful attempt to formulate a uniform body of rules for the international prize court. Stowell and Munro, *International Cases, War and Neutrality*, II, p. 488.

² For a general outline of the procedure of these courts, see Phillimore, *International Law*, III, pp. 658-74.

³ A brief historical statement of the evolution of the English Prize Court may be found in the introductory remarks of the Attorney General, Sir John Simon, at the opening of the Prize Court in 1914. *The Chile*, (1914) 31 T. L. R. 3 (4), 1 Trehern, *British and Colonial Prize Cases*, I.

⁴ L. R. Statutes 27 & 28 Vict. Chap. 25.

⁵ Anson, *Law and Custom of the English Constitution*, II, p. 424.

out in any way affecting its jurisdiction. From the High Court an appeal lay to the Judicial Committee of the Privy Council.⁶

This organization and procedure is of the greatest significance to neutrals, inasmuch as their chief protection against the arbitrary action of the political and naval officers of the belligerents depends upon the existence and maintenance of the judicial standing, traditions, and independence of the courts. If the prize courts are under the control of the executive department, the decisions of the courts are apt to reflect the policy of the government, rather than the principles of justice. In England, fortunately, the independence of the judiciary extends to international as well as civil and constitutional questions. It can scarcely be expected that a national court, no matter how high-minded its members may be, will be entirely indifferent in time of war to the interests of its own nation; but so far as possible English law has endeavored to guarantee to the neutral a fair and impartial consideration of his rights of person and property. In a word, the neutral is put upon the same footing with the citizen of the country and is entitled to appeal to the highest court of the empire for the vindication of his rights.

As a prize court is a national court, the question naturally arises: what law does it apply, municipal or international?⁷ The decisions of the English courts upon this point are clear and emphatic. The commission of the ancient Court of Admiralty expressly provided that the court should "proceed upon all and all manner of captures, seizures, prizes, and reprisals of all ships and goods that are or shall be taken and to hear and determine according to the course of admiralty and the law of nations."⁸ The report of the Royal Commission upon the Silesian claims in 1753⁹ emphatically announced that:

⁶ For the history and jurisdiction of the Judicial Committee of the Privy Council, see Anson, *Law and Custom of the English Constitution*, II. p. 442. The Judicial Committee is the final court of appeal for admiralty, ecclesiastical and colonial cases, and for such other matters as the Crown may choose to refer to it for hearing and consideration. The House of Lords is, with a few exceptions, the court of final jurisdiction in all other cases.

⁷ For a detailed discussion of this question, see Picciotto, *The Relation of International Law to the Law of England and the United States*.

⁸ *The Chile*, (1914) 31 T. L. R. 3, 1 Trehern 1.

⁹ De Martens, *Causes Célèbres*, II, 97.

"All captures at sea as prize in time of war must be judged of in a court of admiralty according to the law of nations and particular treaties, where there are any. There never existed a case where a court, judging according to the laws of England only, took cognizance of prize. . . . It never was imagined that the property of a foreign subject taken as prize in the high seas could be affected by the laws peculiar to England."

In the case of *The Maria*,¹⁰ Sir William Scott declared:

"The seat of judicial authority is, indeed, locally here, in the belligerent country, according to the known law and practice of nations; but the law itself has no locality."

And in the subsequent case of *The Recovery*,¹¹ he reasserted the same fundamental principle:

"In the first place it is to be recollected this is a court of the law of nations, though sitting here under the authority of the king of Great Britain. It belongs to other nations as well as to our own, and what foreigners have a right to demand from it is the administration of the law of nations simply and exclusively from our own municipal jurisprudence."

Likewise, during the course of the Boer war, in the case of *West Rand Central Gold Mining Company v. The King*,¹² Lord Alverstone concurred in the general proposition that international law was a part of the law of England and as such would be recognized in all English courts:

"It is quite true that whatever has received the common assent of civilized nations must have received the assent of our country, and that to which we have assented along with other nations in general can properly be called international law and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of international law may be relevant."

The same principle has been enunciated by the prize courts during the present war. In *The Marie Glaeser*,¹³ Sir Samuel Evans took occasion to pass upon this question incidentally in the course of a discussion of the legal character of the Declaration of Paris:

"This court accordingly ought to, and will, regard the Declaration of Paris not only in the light of rules binding in the conduct of war, but as a recognized and acknowledged part of

¹⁰ (1799) 1 C. Rob. 340, 1 Roscoe, Prize Cases 152.

¹¹ (1807) 6 C. Rob. 341.

¹² [1905] 2 K. B. 391, 93 L. T. R. 207, 21 T. L. R. 562.

¹³ [1914] P. 218 (233), 31 T. L. R. 8 (10), 1 Trehern 38 (55).

the law of nations, which alone is the law this court has to administer."

And in the case of *The Zamora*,¹⁴ on appeal to the Judicial Committee of the Privy Council, Lord Parker laid down:

"The law which the prize court is to administer is not the national, or, as it is sometimes called, the municipal law, but the law of nations; in other words, international law. It is worth while dwelling for a moment on this distinction. Of course the prize court is a municipal court and its decrees and orders owe their validity to municipal law. The law which it enforces may, therefore, in a sense, be considered a branch of municipal law. Nevertheless, the distinction between municipal and international law is well defined. A court which administers municipal law is bound by and gives effect to the law as laid down by the sovereign state which calls it into being. It need inquire only what that law is; but a court which administers international law must ascertain and give effect to a law which is not laid down by any particular state, but originates in practice and usage long observed by civilized nations in their relations towards each other, or in express international agreement."

But a further question arises. Suppose that the principles of international law should come into conflict with an Order in Council or an act of Parliament; which then would prevail? In other words, admitting that the courts will enforce the rules of international law as a general proposition, will they do so when those rules run counter to municipal ordinances or legislation? This question has been a thorn in the flesh for the English prize courts. As a general rule, they have endeavored to avoid the difficulty by denying an actual or possible conflict between the two, or by adopting a rule of construction which would reconcile the municipal act or ordinance with the principle of international law. In the case of *The Fox and others*,¹⁵ Sir William Scott observed:

"These two propositions, that the court is bound to administer the law of nations and that it is bound to enforce the King's orders, are not at all inconsistent with each other, because these orders and instructions are presumed to conform themselves under the given circumstances to the principles of its unwritten law."

In this particular instance the court endeavored to get around the conflict by holding that the Orders in Council, con-

¹⁴ [1916] 2 A. C. 77, 114 L. T. R. 626, 2 Trehern 1 (12).

¹⁵ (1811) Edw. 311, 2 Roscoe, Prize Cases 61.

sidered as a retaliatory measure were in strict conformity with international law. This question was again raised in more acute form by the English Orders in Council at the outbreak of the present European war. It was impossible this time to evade the issue. In the case of *The Zamora*,¹⁶ the Privy Council settled the matter by clearly recognizing the sovereign power of Parliament to set aside any rule of international law.¹⁷

"It cannot, of course, be disputed that a Prize Court, like any other court, is bound by the legislative enactments of its own sovereign State. A British Prize Court would certainly be bound by acts of the Imperial Legislature. It is none the less true that if the Imperial Legislature passed an act the provisions of which were inconsistent with the law of nations, the Prize Court in giving effect to such provisions would no longer be administering international law. It would, in the field covered by such provisions, be deprived of its proper function as a Prize Court. Even if the provisions of the act were merely declaratory of the international law, the authority of the court as an interpreter of the law of nations would be thereby materially weakened, for no one could say whether its decisions were based on a due consideration of international obligations, or on the binding nature of the act itself."

But Orders in Council stand upon a different legal basis, in the judgment of the Privy Council. From the fact that the prize courts are under a legal obligation to recognize the superior authority of acts of Parliament, it does not follow that they are bound by the administrative actions of the King in Council:

"The idea that the King in Council, or indeed any branch of the Executive, has power to prescribe or alter the law to be administered by courts of law in this country is out of harmony with the principles of our constitution. It is true that, under a number of modern statutes, various branches of the Executive have power to make rules having the force of statutes, but all such rules derive their validity from the

¹⁶ See note 13, *supra*.

¹⁷ In the original hearing before the Prize Court, Sir Samuel Evans recognized the binding force of Orders in Council, but at the same time added, "I am not called upon to declare what this Court would or ought to do in an extreme case, if an Order in Council directed something to be done which was clearly repugnant to and subversive of an acknowledged principle of the law of nations." [1916] P. 27 (47), 31 T. L. R. 513 (519), 1 Trehern 309 (331), 9 Am. J. Int. Law 1014.

statute which creates the power, and not from the executive body by which they are made. No one would contend that the prerogative involves any power to prescribe or alter the law administered in courts of common law or equity."

The same principle was clearly applicable in courts of prize. "The Attorney General," Lord Parker declared, "was unable to cite any case in which an Order in Council had as to matters of law been held to be binding on a court of prize." Under the terms of the Naval Prize Act of 1864, a limited power of making rules as to the practice or procedure of prize courts had been conferred upon the King in Council, but this grant "did not extend to prescribing or altering the law to be administered by the court, but merely to give such executive directions as might from time to time have been necessary." The conclusion, therefore, in *The Zamora case*¹⁸ was that a British Order in Council authorizing the requisition of certain contraband articles, pending a decision of the prize court, was not binding upon the court. According to the express terms of its commission, the court was required to administer the rules of international law, and that requirement could not be waived by the court at the instance of the executive in the absence of express legislative authorization.

The decision in this case is significant, both from a constitutional and international standpoint, though its constitutional value is undoubtedly the greater. The Judicial Committee has reasserted the well-known constitutional principle of the rule of the ordinary law.¹⁹ It has placed a salutary restriction upon the tendency of the executive to extend the ordinance making power in time of war. The rights of neutrals and citizens alike have been protected against arbitrary action on the part of the Crown. At the same time the court has unmistakably accepted the complementary principle of parliamentary sovereignty.²⁰ An act of Parliament is the supreme law in England. The neutral may appeal to the courts against any invasion of his rights by the Crown, but he has no legal protection against the arbitrary legislation of Parliament. In the latter eventuality he must look to his

¹⁸ See note 13, *supra*.

¹⁹ Dicey, *Law of the Constitution*, Chap. IV.

²⁰ *Ibid.* Chap. I.

own government to support his just claims by diplomatic representations, or, if necessary, by force. Parliament, it is true, as a deliberative body, is much less likely to encroach upon neutral rights than is an executive department, but this is small satisfaction to the neutral in case of an actual invasion of his rights.²¹ He is not interested in the constitutional aspect of the question; the distinction between acts of Parliament and ordinances is of no concern to him. What he demands is the vindication of his rights as established by international law; but at present this right may be legally denied by act of Parliament and that denial will be upheld by the courts.

By the Prize Act of 1884²² the constitution of the German prize courts is left to the determination of the Imperial Government. The organization thus provided is essentially different from that of the English courts. Preliminary proceedings are conducted before a prize board. There are two prize courts, located at the chief naval centers, Hamburg and Kiel. Each of the courts consists of five judges, of whom the president and one member are chosen from the legal profession. Of the remaining members one is a naval officer, and the other two are laymen representing the shipping and mercantile interests respectively. The Imperial Government is represented by a special commissioner. Cases are carried, on appeal, to the Supreme Court of Prize at Berlin. This court is made up of seven judges, three of whom are lawyers, one a naval officer, one a representative of the Ministry for Foreign Affairs, and the other two are lay judges.²³

In this elaborate organization may be seen a typical example of a German administrative court. According to continental usage, courts are divided into two branches,—ordinary and administrative courts,—each with its own organization, jurisdiction, and principles of law. Private controversies are heard in the ordinary courts, but questions of a public nature, or those in any way affecting the bureaucracy, are reserved for the determination of the administrative courts.²⁴ The

²¹ Scott, *British Orders in Council and International Law*. 10 *Am. J. Int. Law* 560.

²² Huberich and King, *German Prize Code*, Introduction, p. xiv.

²³ *Ibid.* p. xvi.

²⁴ Dicey, *Law of the Constitution*, 315.

prize courts, as might be expected, belong to the system of administrative courts. One of the characteristic features of these courts is the important role which is played by the non-professional members. To the Anglo-Saxon jurist there is a strange incompatibility of functions in the presence of naval and political officers upon the bench. In theory, at least, the courts are free from governmental control, and in actual practice it must be admitted that they have manifested a marked degree of independence;²⁵ but war conditions are exceptional. National patriotic feeling runs high. The members of the prize court are put to the severest test of judicial impartiality. In such circumstances it would be surprising indeed if the bureaucratic traditions of the members did not reassert themselves. Some of the recent decisions²⁶ of the German prize courts tend to confirm this suspicion of strong national feeling. The Prussian official, rather than the international jurist has been in evidence.²⁷

The procedure in the German prize courts is simple and exceptionally favorable to enemy interests. The owner of a ship or cargo and any other persons interested in the same have the right to appear as claimants, either in person or by attorney.²⁸

"Alien enemies have the same right to appear or be represented as other persons. If no claim is interposed, the court proceeds to a determination of the case on the basis of the

²⁵ Ashley, *Local and Central Government*, 309.

²⁶ See notes, 39, 40, 41.

²⁷ A recent article by Dr. Joseph Kohler on *The New Law of Nations* brings out the bitterness of national feeling of one of the greatest international jurists. He denies the very possibility of a re-establishment of legal relations with the chief enemies of Germany. "An International Law based on international treaties can no longer be. International association can only lead to forms of law if the people are actuated by legal endeavors. Treaties with liars and falsifiers cannot form sources of law; only those peoples can co-operate in the development of law who have a living conscience." International law in his opinion can only be developed by German scholars through a rational conception of "an historical Law of Nature." "Of course International Law is not a conceptual science in the sense of a speculation wholly divorced from actualities which we wish to en-throne, but a science which draws its guiding principles from the observation of life and its rational culture-aims, forms them into conceptions, and out of the conceptions constructs the particulars of law. This is German science, for German science alone has been able to work in systematic fashion." *Zeitschrift für Völkerrecht*, September, 1915. Translated in 14 *Mich. L. Rev.* 631 (635).

²⁸ Huberich and King, *German Prize Code*, Introduction, p. xvi.

claims submitted by the Imperial commissioner. . . . Proceedings in all the courts are public."

The most striking feature of this procedure is the liberality of the treatment extended to alien enemies. According to German law, the mere outbreak of war does not entail a cessation of all legal or commercial relations. Neither does an alien enemy lose his standing in a German court. It has even been held that a member of the armed forces of the enemy can proceed with the prosecution of his claims as in time of peace. Some express action on the part of the executive or legislative departments is required to deprive the alien of his privileged status.

The liberality of this procedure stands out in marked contrast to the narrow tenet of the English courts. By common law an alien enemy was practically an outlaw.²⁹ Even though domiciled in England, he could not sue unless protected by some act of public authority that discharged him from the character of an enemy and put him within the King's peace *pro hac vice*.³⁰ So severe, indeed, was the rule, that in the case of ransom contracts the alien enemy was not permitted to sue in his own name, but payment was enforced by an action brought by the imprisoned hostage, or his relatives, in his own home court for the recovery of his freedom.³¹ In the case of *The Troija*,³² during the Crimean war, Dr. Lushington laid down the same hard and fast principle of the common law:

"I entertain no doubt as to the correct practice in such cases: it is that when an alien enemy claims, he must show a *persona standi in judicio*, the law being that an alien enemy is not entitled in any way to sue in this or any other court."

But the severity of the common law has been gradually relaxed in the interests of international commerce and good faith. As early as the seventeenth century it was held that a license to an alien enemy to reside in England conferred

²⁹ In *Sylvester's Case*, (1701) 7 Mod. 150, the court held: "If an alien enemy come into England without the Queen's protection, he shall be seized and imprisoned by the law of England and he shall have no advantage of the law of England nor for any wrong done to him here."

³⁰ *The Hoop*, (1799) 1 C. Rob. 196, 1 Roscoe, Prize Cases 104.

³¹ *Ibid.* *The Charming Nancy*, (1761) Marsden's Adm. Cases 398.

³² (1854) 1 Spinks E. & A. 342.

upon such alien the rights and status of an alien friend.³³ This concession has been extended during the present war to cover all aliens who have duly registered under the Aliens' Registration Act.³⁴ but the common law courts have refused to remove the disability in the case of alien enemies resident abroad.³⁵ The prize court, on the other hand, has been much more broad-minded in its treatment of the claims of alien enemies. In the case of *The Moewe*,³⁶ soon after the outbreak of war, Sir Samuel Evans frankly admitted the necessity of relaxing the ancient procedure of the court regarding aliens in order to bring English practice more nearly into line with the more liberal principles laid down by the prize courts of the United States, Japan, and Russia during the course of the Spanish-American and Russo-Japanese wars:

"I will now consider whether the owners of an enemy vessel have a right, or should be given the right, to appear to put forward a claim under the conventions, assuming, as was done during the argument, that they are operative. Dealing with the Hague Conventions as a whole, the court is faced with the problem of deciding whether a uniform rule as to the right of an enemy owner to appear ought to prevail in all cases of claimants who may be entitled to protection or relief, whether partial or otherwise. Mr. Holland argued that this is a matter not of international law, but of the practice of this court. That view is correct. I think that this court has the inherent power of regulating and prescribing its own practice, unless fettered by enactment. Lord Stowell from time to time made rules of practice, and his power to do so was not questioned. Moreover, by Order XLV of the Prize Court Rules, 1914, it is laid down that in all cases not provided for by those rules the practice of the late High Court of Admiralty of England in prize proceedings should be followed, or such other practice as the president may direct. The rules do not provide for the case now arising. I therefore assume that as president of this court I can give directions as to the practice in such cases as that with which the court is now dealing.

"The practice should conform to sound ideas of what is fair and just. A merchant who is a citizen of an enemy country would not unnaturally expect that when the state

³³ *Wells v. Williams*, (1698) 1 Ld. Raymond 282, 1 Salk. 46.

³⁴ *Princess of Thurn and Taxis v. Moffit*, (1914) 112 L. T. R. 114.

³⁵ *Porter v. Freudenberg*, [1915] 1 K. B. 857, 112 L. T. R. 313, 31 T. L. R. 162.

³⁶ [1915] P. 1, 31 T. L. R. 46, 9 Am. J. Int. Law 547.

to which he belongs, and other states with which it may unhappily be at war, have bound themselves by formal and solemn conventions dealing with a state of war like those formulated at the Hague in 1907, he should have the benefit of the provisions of such international compacts. He might equally naturally expect that he would be heard in cases where his property or interests were affected as to the effect and results of such compacts upon his individual position. It is to be remembered also that in the international commerce of our day the ramifications of the shipping business are manifold; and others concerned, like underwriters or insurers, would feel a greater sense of fairness and security if, through an owner (though he be an enemy), the case for a seized or captured vessel were permitted to be independently placed before the court.

“From the considerations to which I have adverted, I deem it fitting, pursuant to powers which I think the court possesses, to direct that the practice of the court shall be that whenever an alien enemy conceives that he is entitled to any protection, privilege, or relief under any of the Hague Conventions of 1907, he shall be entitled to appear as a claimant, and to argue his claim before this court. The grounds of his claim would be stated in the affidavit before appearance which is required to be filed by Order III, Rule 5, of the Prize Court Rules, 1914.”

But even this concession falls far short of the liberality of the German law in this respect. The arbitrary procedure of the old common law, it must be admitted, is an anachronism in this day and generation. An alien enemy is no longer considered an outlaw. Both custom and convention have guaranteed to him certain immunities for his property captured on the high seas. A like immunity should be extended to him in the courts of the belligerent country.

“It is doubtful,” says Mr. Norman Bentwick,³⁷ “whether the old common law rule excluding alien enemies from suing in the King’s courts during the war might not be completely abrogated in our day without any injury to the public weal. The change would require legislation, but it is submitted that legislation with this aim would bring our law into more complete accord with the progressive ideas of international law. There may be circumstances under which the denial of the right of action involves loss of property, and the spirit of the modern law of war is that proprietary rights of enemies in the belligerent country are to be preserved during the war. What the interests of the belligerent state demand is

³⁷ Bentwick, *Treatment of Alien Enemies*, 9 Am. J. Int. Law 642.

that no wealth should be sent to any person in the enemy territory, and it would therefore be necessary to require any sum awarded by judgment of an alien enemy to be paid into court. But it would be possible to secure this condition while leaving the courts open in war as in peace to do justice between all persons who have rights to assert or defend."

The liberality of German procedure in respect to alien enemies is, however, more than offset by the attitude of the German prize courts towards the principles of international law. According to recent decisions, the primary function of the prize court is to enforce the laws and ordinances of the empire in respect to the conduct of naval operations. The prize courts look to their own government for legal guidance and not to the principles of international law.³⁸ In short, the courts are not only administrative courts, but they also apply administrative law. In the case of *The Batavia V.*,³⁹ the prize court at Hamburg lays down:

"A part of the claimants have in the oral proceedings given expression to the view that prize courts have to apply international, not national, law and especially not the contents of the German Prize Ordinance of September 13, 1909, since this does not have the character of a rule of law.

"This is not the case.

"The prize courts are national courts. They are established by their state to determine whether the legal standards to which the naval organs should adhere according to their instructions are observed or not, and to declare their conclusions thereon. From their purpose it follows that they have to judge according to the law established by their state, whether or not it agrees with the principles of international law. Whether this is the case is not the affair of prize courts to judge, but of the belligerent states, which alone are answerable therefor, to other states. The principle sustained by statements of the older literature, that prize courts have to apply international law even if it does not agree with their national law is then thrown out on fundamental principles. . . . They (prize courts) would also be unable practically to carry such principles into operation, for the content of so-called principles of international law is in many cases uncertain and not determined. So far as this is not the case, they might have lost their applicability as a consequence of the relations of the belliger-

³⁸ Wright, *Destruction of Neutral Property on Enemy Vessels*, 11 Am. J. Int. Law 362.

³⁹ Preisengericht Hamburg, June 1, 1915, Dutch Orange Book, Oct. 1, 1915, p. 106.

ents or through the alteration of their actual provisions. It cannot be expected, for instance, of a belligerent party, whose opponent has broken an international agreement although it was concluded expressly for the event of war, to hold to it and to prescribe a further observance of it to his prize courts. And it needs no proof that certain principles previously valid as customary international law may become obsolete through the development of new forms of naval procedure, such as the submarine."

The law which the courts must apply is, then, municipal law as set forth in the Imperial Prize Ordinance of September 13, 1909.

"It is not true," the court continues, "that this is exclusively an instruction for the naval commanders. The introduction ('I approved the following prize ordinance and decree...') and especially a part of its contents which can relate not to the acts of commanders, but only to those of prize courts, as that concerning the guarantee of compensation, (Articles 8, 121, paragraph 3) and that concerning condemnation, (Articles 17, 41, 42) prove the contrary."

The same principle is affirmed by the Supreme Prize Court at Berlin in the case of *The Elida*:⁴⁰

"The prize regulations contain the principles laid down by the Kaiser as commander-in-chief within his imperial jurisdiction for the practice of prize law pertaining to naval warfare and are, therefore, primarily law not only for the navy but also for the inland authorities, particularly prize courts in so far as they have to pass upon the legality of the action of commanders at sea falling within the prize law.

"International law only lays down rights and duties as between different states. The prize courts, when judging of the legality of prize actions, can take general international principles only into account when the prize regulations contain no instructions and, therefore, tacitly refer to the principles of international law. Therefore, the question whether an instruction of the prize regulations agrees with general international law is not for the prize court to decide. If a contradiction in this connection is asserted, the point in controversy is to be settled in another manner."

The same doctrine has been maintained in subsequent cases,⁴¹ with some slight modifications. According to these decisions, the German prize courts accept the supremacy of an

⁴⁰ Oberpreisengericht Berlin, May 18, 1915, 9 *Zeitschrift für Völkerrecht* 109, 10 *Am. J. Int. Law* 916.

⁴¹ *The Glitra*, (1915) 10 *Am. J. Int. Law* 921; *The Maria*, (1915) *ibid.* 927; *The Indian Prince*, (1916) *ibid.* 930.

imperial ordinance without question. The principles of international law only come in for secondary consideration, in case the imperial government fails to lay down a rule covering the particular matter. In short, a rescript of the Kaiser or the Bundesrath is more authoritative than all the rules of international law. The prize courts do not consider themselves, as in England, an independent and co-ordinating branch of the government. They are but humble agents for the execution of the national law. They are not the guardians of neutral rights, but the champions of German interest. Under such conditions, neutral rights exist only by sufferance. In a word, international law has likewise been reduced to a mere "scrap of paper" and in this case not by the armies of Germany, but by the courts.⁴² Should such a doctrine prevail, the German prize courts may become a more dangerous foe of world-wide liberty than the lawless submarine or the faithful legions of Von Hindenburg. The courts, in truth, would lend their legal sanction to those acts which an imperial chancellor could only defend on the ground of national necessity.

Against this condition of international lawlessness the world must present a united protest. The national prize courts have failed to afford adequate protection to neutral interests or the just claims of the hostile belligerents. Some means must be found of restricting both the national sovereignty of Parliament and the despotic authority of the Kaiser in international relations. Here is a question of world organization; it affects all nations alike. The tenets of national sovereignty must be qualified in the interests of world peace and justice. The principles of international law must be more clearly and firmly established, and henceforth these principles must have an international sanction and interpretation. The erection of an international court of prize was a feeble recognition of the need for an impartial world tribunal. Unfortunately, the court has only existed on paper. The nations should see to it that a real and effective international tribunal is called into existence to which neutrals and belligerents can appeal with equal confidence of a fair and dispassionate hearing. When that day comes we may look forward to the gradual development of a

⁴² Reeves, *The New Law of Nations*, (Foreword) 14 Mich. L. Rev. 631.

uniform body of international prize law in place of the conflicting decisions and discriminatory practice of the existing national courts.⁴³

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⁴³ Scott, *British Orders in Council and International Law*, 10 *Am. J. Int. Law* 568.