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INTERNATIONAL LAW—MEANING OF THE TERM “DECLARATION OF WAR”
AS USED IN A TIME CHARTER—A time charter provided that either party should have a right to cancel “if war is declared against any present NATO countries. . . .” Respondent-owners, having invoked this clause shortly after the Suez crisis erupted into open warfare, contended that a speech delivered by Egyptian President Nasser constituted a declaration of war. The speech in question, which was delivered to a large public gathering in Cairo, broadcast throughout Egypt and subsequently published, declared in part, “We shall fight as we have always said in a total war.”¹ It urged the people to “fight and never surrender.”² In libels for breach of the charter, *held*, libels dismissed. The speech constituted a “declaration of war” within the intended meaning of the cancellation clause. *Navios Corporation v. The Ulysses II*, (D.C. Md. 1958) 161 F. Supp. 932.

This case appears to be the first in which the meaning of the term “declaration of war” has been considered. With the exception of the Third Hague Convention of 1907, no international agreement has attempted to define either the form or the function of a declaration of war.³ Thus any development and application of a formula to determine whether a particular utterance is a declaration of war must be based primarily upon a study of previous utterances generally considered to have functioned as such.

¹ Principal case at 935.

² *Ibid.*

³ STONE, *LEGAL CONTROLS OF INTERNATIONAL CONFLICT*, c. XI, §6 (1954). The rules developed by the Third Hague Convention, however, appear to have been formulated primarily for the purpose of inducing nations to declare war before the commencement of hostilities. See 36 Stat. 2259 (1907). The only form prescribed was that the declaration must be unmistakable and state the reason for the impending conflict.

During the past four centuries,⁴ declarations of war quite often have been issued at home after the commencement of hostilities and without formal delivery or communication to the enemy. Commonly, such declarations have served to notify non-participating powers of the status of the issuing sovereign, prepare the political structure and the populace for war, and place blame upon the other party by appropriate wording of the declaration.⁵ Thus the criteria used by the court here to determine the principal issue are consistent with the pattern set by recent declarations. These criteria include the fact that the utterance may be either written or oral, and no special form need be followed. It must, however, consist of a single statement and must (1) emanate from a proper authority, (2) be publicly announced and communicated to other governments, and (3) say that war exists or is intended to exist.⁶ The real controversy in the principal case lay in the application of this rule to the facts. In answer to plaintiff's contention that the speech was hortatory, the court replied that many declarations of war have taken this form,⁷ that the speech was adjusted to the people's level of understanding, and that it clearly implied that war existed or was intended to exist.⁸ It was also noted that the Egyptian government issued a statement through its embassies to the press that the speech had been intended as a declaration of war, and that Nasser had much to gain and little to lose by declaring war.⁹ Other factors, however, cast some doubt upon the correctness of the court's conclusion. Whether a state of war in a legal

⁴ Back in the Roman Era and the Middle Ages it was customary to notify the adversary of intended war by Letters of Defiance or by heralds at arms ceremoniously presented in the enemy camp. 2 PHILLIPSON, *INTERNATIONAL LAW AND CUSTOM OF ANCIENT GREECE AND ROME* 197-199 (1911).

⁵ See generally, Eagleton, "The Form and Function of the Declaration of War," 32 *AM. J. INT. L.* 19 at 32-34 (1938); MAURICE, *HOSTILITIES WITHOUT DECLARATION OF WAR* 9 (1883); GROB, *RELATIVITY OF WAR AND PEACE* 285 (1949); U.S. NAVAL WAR COLLEGE, *INTERNATIONAL LAW DOCUMENTS* 90, 103, 117-118, 225-226 (1917).

⁶ Principal case at 941. No single authority provides a test as comprehensive or concise as that given by the court. The test was formulated by the court principally upon the authority of two expert witnesses, Dr. Clyde Eagleton of New York University for the respondent and Dr. Phillip Jessup of Columbia University for the libellant. It is interesting to note that the opinions of these two experts were opposed as to whether the speech was a "declaration of war." See, generally, 3 HYDE, *INTERNATIONAL LAW*, 2d ed., 1694-1695 (1945); 2 OPPENHEIM, *INTERNATIONAL LAW*, 7th ed., 294, n. 1 (1952); Eagleton, "The Form and Function of the Declaration of War," 32 *AM. J. INT. L.* 19 at 23 (1938); 3 *A NEW ENGLISH DICTIONARY ON HISTORICAL PRINCIPLES* (Oxford) 98 (1897); U.S. NAVAL WAR COLLEGE, *INTERNATIONAL LAW DOCUMENTS* (1917); 4 *DEPT. OF STATE BUL.*, March 1, 1941, 224-227.

⁷ See Eagleton, "The Form and Function of the Declaration of War," 32 *AM. J. INT. L.* 19 at 33-34 (1938); MAURICE, *HOSTILITIES WITHOUT DECLARATION OF WAR* 9 (1883). There is no doubt that many declarations of war, in addition to making formal announcement of a state of war, were calculated to arouse the people. This fact, however, does not detract from the requirement that the declaration otherwise state that "a war exists or is intended to exist."

⁸ Principal case at 942.

⁹ Principal case at 942-943.

sense exists between nations is largely a question of intent.¹⁰ This intent may be left to inference gained from relevant facts and circumstances,¹¹ but when one nation declares war a state of war exists even in the absence of military conflict because the declarant has made known his intent and has put the matter beyond any question or doubt.¹² The essential function of a declaration, then, seems to be to furnish conclusive evidence that the declarant intends a state of war to exist between the nations specified.¹³ It would seem to follow that the purported declaration should contain words which *in themselves* "say that a war exists or is intended to exist;"¹⁴ otherwise the question of the declarant's intent would not be conclusively determined. Indeed, the operative portions of recent declarations of war have invariably been worded in formal, unequivocal language.¹⁵ Nasser's speech, therefore, seemingly should not have been classified as a declaration of war, since it is neither definite nor unequivocal. As noted by the court, Nasser was fighting for his political life.¹⁶ Further, Egypt had suffered serious damage in conflict precipitated by his government's policies. The speech was apparently no more than an attempt to rally the populace through an appeal to a spirit of nationalism. Nor is the decision beyond question in terms of the purpose of the clause in issue. In recent years, charter-parties and insurance policies have commonly contained a clause providing for cancellation or non-coverage in the event certain countries became engaged or involved in war.¹⁷ Interpretation of these terms has varied¹⁸ and the difficulty in determining when a state of war exists has become apparent. When actual aggression produces a sharp rise in rates, an owner might be wise to

¹⁰ LAWRENCE, *THE PRINCIPLES OF INTERNATIONAL LAW*, 7th ed., 309 (1923); Wright, "Changes in the Conception of War," 18 *AM. J. INT. L.* 755 at 758-759 (1924); McNair, "The Legal Meaning of War and the Relation of War to Reprisals," 11 *GROTIUS SOCIETY TRANSACTIONS* 29 at 45 (1926). But see KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* 27 (1952). The subject is discussed at length in McDougal and Feliciano, "The Initiation of Coercion," 52-*AM. J. INT. L.* 241 (1958).

¹¹ 3 HYDE, *INTERNATIONAL LAW*, 2d ed., 1693-1694 (1945); Wright, "Changes in the Conception of War," 18 *AM. J. INT. L.* 755 at 758-759 (1924); McNair, "The Legal Meaning of War, and the Relation of War to Reprisals," 11 *GROTIUS SOCIETY TRANSACTIONS* 29 at 45 (1925).

¹² 3 HYDE, *INTERNATIONAL LAW*, 2d ed., 1693-1694 (1945); Wright, "Changes in the Conception of War," 18 *AM. J. INT. L.* 755 at 758-759 (1924); 7 MOORE, *INTERNATIONAL LAW DIGEST* 153-154 (1906).

¹³ Eagleton, "The Form and Function of the Declaration of War," 32 *AM. J. INT. L.* 19 at 21-22 (1938). But see GROB, *RELATIVITY OF WAR AND PEACE* 290-302 (1949).

¹⁴ Principal case at 941.

¹⁵ See compilations in 4 *DEPT. OF STATE BUL.*, March 1, 1941, 224-227; U.S. NAVAL WAR COLLEGE, *INTERNATIONAL LAW DOCUMENTS* (1917).

¹⁶ Principal case at 943.

¹⁷ See, e.g., *Kawasaki Kisen v. Bantham SS Co.*, [1939] 2 K.B. 544; *Kawasaki Kisen v. Belships Co.*, 63 *LL. L. Rep.* 175 (1939); *Beley v. Pennsylvania Mutual Life Ins. Co.*, 373 *Pa.* 231, 95 *A.* (2d) 202 (1953); *Gudewicz v. John Hancock Mutual Life Ins. Co.*, 331 *Mass.* 752, 122 *N.E.* (2d) 900 (1954).

¹⁸ See, e.g., cases cited in note 17 *supra*.

invoke the cancellation clause and later take his chance in court. By restricting the right to cancel only "if war is declared," libelant apparently sought both to avoid loss of the charter due to mere aggression of a limited or informal nature, and to avoid interpretative uncertainties by establishing a test for the right to cancel more susceptible of precise definition than a "state of war" limitation. It does not appear that the court has allowed libelant the benefit of his bargain.

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