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David D. Ring S. Ed.
University of Michigan Law School

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INTERNATIONAL LAW—PRIZE LAW—SEIZURE OF PORT AS EFFECTING CAPTURE OF SHIPS IN PORT—When the Italian port of Tripoli was captured by the British in January, 1943, two privately owned Italian vessels were lying aground in the harbor. Though the Italian armistice was signed in September, 1943, and British naval authorities early in 1944 ordered the seizure in prize of all salvable vessels, nothing was done with respect to these vessels until February 3, 1947. At that time they were placed under the jurisdiction of the Prize Court of England. On February 10, 1947, the Treaty of Peace with Italy¹ was signed and became effective on September 15, 1947. By act of Parliament,² implemented by Treaty of Peace (Italy) Order, 1948, it became the law of Great Britain. Meanwhile, in May, writs in prize had been issued for the condemnation of the two vessels. In 1948, the Italian owners appeared as claimants and sought their release. Article 76 of the treaty provides that "Italy waives all claims of any description against the Allied and Associated Powers on behalf of the Italian government or Italian nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939 . . . including . . . (d) claims arising out of the exercise or purported exercise of belligerent rights. 2. The provisions of this article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. . . ." It was the owners' contention that capture was not effected until after the armistice, and was therefore neither an actual nor purported exercise of belligerent rights within the meaning of the treaty. *Held*, condemnation ordered. Assuming that the armistice terminated the right to make captures, capture was purportedly and actually accomplished by the seizure of the port, so the treaty operates to bar the owners' claims. *The Bellaman*, [1948] 2 All Eng. L. Rep. 679.

Vessels belonging to nationals of warring states are, with exceptions irrelevant

¹ Treaty of Peace, Allied and Associated Powers and Italy, 1947, T.I.A.S. 1648, also in 42 AM. J. INT. L. OFFICIAL DOCUMENTS, 47 (1948).

² 10 & 11 Geo. 6, c. 23 (1947).

here,³ subject to capture by the enemy during the period of belligerency.⁴ As long as capture is effected during this period, subsequent termination of hostilities does not terminate the right of the capturing nation to proceed to condemn the vessels in prize.⁵ Since the owner of the captured vessel is not divested of his property until it is condemned by a prize court, he has a right to appear in the condemnation proceeding and assert his claim of ownership.⁶ But the law to be applied by the prize court is the municipal law of the country in which it sits.⁷ Hence, the governing law of the principal case includes the Treaty of Peace with Italy. The clear purpose of article 76 is to preclude the litigation of "all claims of any description" when the acts giving rise to the claims can in any reasonable way be explained as an exercise of belligerent rights.⁸ Since the facts indicated that there might have been a capture of the ships when the port was seized, this would have been sufficient ground alone for bringing the claim within the provisions of the treaty. But, to meet the argument that the owners were "claimants" in prize court nomenclature only and not within the meaning of the treaty, and that their claims were therefore not barred by the treaty, the court proceeds to determine whether capture of the vessels was actually effected by seizure of the port. When a manned vessel is captured, there must be a power and intent by the captor to control, as well as an intent by the captured vessel to submit to control.⁹ However, where vessels are lying in port and unmanned, capture has been found to occur with seizure of the port.¹⁰ It is not clear that the requirement of intent to capture is abrogated, but the intent that is necessary is found in the intent to control the port.¹¹ The inability of the vessels to resist or escape removes the requirement of intent to submit. It thus appears that the court properly finds an actual capture at the time of the seizure of the port, even though there was a subsequent violation of the Naval Prize Act requirement that captured vessels be brought "forthwith" before a prize court.¹²

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³ See GARNER, PRIZE LAW, c. 6 § 7 (1927).

⁴ *Id.*, § 139.

⁵ *Id.*, § 141; COLOMBOS, LAW OF PRIZE, 2d ed., 167 (1940).

⁶ COLOMBOS, LAW OF PRIZE, 2d ed., 312 (1940).

⁷ 2 OPPENHEIM, INTERNATIONAL LAW, 6th ed., 378 (1940); Allin, "English and German Prize Courts," 2 MINN. L. REV. 22 (1917); cf. 7 HACKWORTH, DIGEST OF INTERNATIONAL LAW 289-294 (1943).

⁸ All treaties executed by the Allied and Associated Powers after World War II contain a provision identical to article 76 of the treaty with Italy. Cf. phraseology of treaties after World War I to the effect that "[n]o claim . . . shall be made . . . in respect of any act . . . with regard to property . . . during the war. . . ." See, e.g., Allied and Associate Powers and Hungary, sec. IV, art. 232, annex § 2 (1920) in 15 AM. J. INT. L. SUPP. 1 at 98 (1923); and Turkey, art. 300 (1920), in 15 AM. J. INT. L. 179 at 262 (1923).

⁹ The Pellworm, [1922] 1 A.C. 292, 9 Ll. P.C. 147; COLOMBOS, LAW OF PRIZE, 2d ed., 276 (1940).

¹⁰ The Anichab, [1919] P. 329, 9 Ll. P.C. 118; see H. M. Procurator in Egypt v. Deutsches Kohlen Depot Gesellschaft, [1919] A.C. 291, 8 Ll. P.C. 138.

¹¹ The Progress, 1 Edw. 210, 211, 165 Eng. Rep. 1085 (1810).

¹² 27 & 28 Vict., c. 25, § 16 (1864).