

enlightened practice obtaining before the outbreak of the war of 1914, to preserve the property captured, and to pass it before a prize court in order to determine the validity of the prize by a court of justice passing upon the evidence in the case, instead of virtually allowing a naval commander to set up a prize court upon the quarterdeck to determine the enemy character and to take such action as might occur to him in the premises. The practice of nations before the outbreak of the present war was for a belligerent vessel having to make capture to summon the vessel suspected of being an enemy ship to lie to. If it did not do so, the belligerent war vessel was authorized to proceed to the use of force necessary to complete surrender. If the enemy vessel attempted to escape it was the right of the belligerent man-of-war to give pursuit and to use such force as was at its disposal to compel the ship to halt, even although the vessel should be sunk in the conflict. The practice which crystallized into law on the question was that, as the enemy vessel had the right and the duty, as Chief Justice Marshall said, to avoid capture, either by resisting attack or by escaping if it were able, the vessel so exercising its right and performing its duty was not subjected to punishment therefor; and enlightened practice at the outbreak of the current war required that the vessel should not be sunk if it could be taken into port, or, if it was sunk, that this should not be done until the persons on board and, if possible, the property, had been saved. This was the procedure prescribed in the Imperial German Prize Ordinance, issued on the 3d day of August, 1914.

The right of a submarine to carry on hostile operations is not questioned. It is a public vessel, built for a military purpose, duly commissioned, under command of commissioned naval officers, with a crew subjected to military discipline. It therefore is a man-of-war and entitled to exercise the rights thereof in so far as her structure and personnel permit such exercise in accordance with international law. It is likewise bound by all the obligations resting upon a man-of-war. It does not have any greater rights than a man-of-war would have, and is not relieved of any duties of a man-of-war which operates upon the surface. It may summon a merchant vessel to lie to. It can, however, exercise the right of visit and search under exceptional circumstances only. Its limited personnel does not admit of furnishing prize crews. On the other hand, it cannot take on board the personnel of captured ships to insure their safety if the destruction of the prize is intended. Its commander can rarely, if ever, secure the papers on board a prize. In fact, it is a vessel which was originally designed for military action against military vessels, where