

even by distinguished persons. The text of paragraph 3 of Article 12 would cause every objection to disappear on this point. Lord Reay asked of the Institute to announce for ships of commerce the right of legitimate defense in the conditions contemplated. The article was adopted as written in the *projet* by a large majority and is now published as a part of the Manual in the *Annuaire* of the Institute. The whole Manual was adopted by 53 out of 54 members present, one (an Italian delegate) abstaining.

In the discussion, Dr. Niemeyer, a delegate from Germany, said that the right of self-defense against an act of force goes without saying, and he proposed to suppress the last paragraph of Article 12 (13 of the *projet*), for the reason that the fact of inserting a provision of that kind was equivalent to a concession that a contrary opinion was possible. It is thus seen that the delegates from Germany were not in accord among themselves, and in view of the large majority in favor of Article 12 and of the final almost unanimous approval of the total Manual, it appears that very recent and very intelligent opinion supports the view that the arming of merchant ships for defense is entirely proper, and that such an armament may be used properly for defense.

Considering that the right of a belligerent merchant vessel to arm itself for defensive purposes is in accordance with the practice and the law of nations, and that it was as laid down by the Supreme Court of the United States, and considering also that the right has been carefully considered and examined by an unofficial but scientific body, whose views have influenced, and rightly, the actions of governments, the question naturally arises, if the belligerent can capture private property of the enemy upon the high seas, what are the conditions, if any, which must regulate the exercise of the right of capture? The statement of Chief Justice Marshall in the case of the *Nereide* is sufficient authority for the right of a belligerent to capture the private property of the enemy, if authority were needed, but the point is so well admitted that a quotation of authority for this universally acknowledged right would be a waste of time. It should be said, however, in this connection, that the immunity of private property on the high seas has been the traditional policy advocated by the United States, formulated by this Government before the existence of the present Constitution, and this Government therefore would not be justified in relaxing the rules relating to capture.

Universal practice permits the capture of private property of the enemy upon the high seas. The fact, however, that neutrals may be interested in property on board of a captured ship has resulted in the