

THE BATTLE OF THE SOUTH ATLANTIC

Written for "The Listener" by PAUL KAVANAGH, Editor of the "New Zealand Law Journal"

NEW ZEALAND'S first hundred years end on a high note of national pride. The naval action off the Uruguayan coast, in which New Zealanders played a gallant part, has stirred our hearts. But, behind the news of that prideful story, and all the brave and skilful manoeuvring of the British naval units engaged, and, indeed, behind the aftermath of their fight, there is a carefully-drawn background of law. International law (or the law of nations, as it is sometimes termed), applied impartially both to the victor and the vanquished.

War, which is an abnormal condition of national life, is not inconsistent with international law, which has slowly taken shape over the past five hundred years, in general, from the accepted customary practice of warring nations; or, in detail, from definition in international treaties and conventions signed in peace-time by civilised States. War, as a nation's remedy of self-help to obtain satisfaction for an international wrong, is not illegal. Even the creation of the League of Nations leaves war, in most cases, legal; though there is now on record the unanimous Assembly condemnation of aggressive war. The rules of international law apply to war from whatever cause it has begun.

Once war commences between two or more members of the family of nations, the relationship of all States with them becomes affected. International law regulates the conduct of the warring nations as between themselves; and it also defines the rights and obligations of all the remaining nations in their capacity as neutrals towards the belligerents, and, in some cases, towards other neutrals. Thus, a war between two Powers, or groups of Powers, places all other nations on a war-footing that is subject to the international rules of war.

Limits on Raiding

The *Admiral Graf Spee* was admittedly engaged in raiding merchant shipping. Now, any belligerent may sink at sight a war-vessel of its enemy. It may capture and turn to its own account any enemy merchant vessel belonging to its enemy, and, subject to certain rules of war, it may sink such merchantmen. (We must leave the position of neutral merchant ships for another occasion).

International law, binding on all present belligerents, provides that, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship — whether surface vessel or submarine — may not sink or render incapable of navigation a merchant vessel, without having first placed passengers, crew,

and ship's papers in a place of safety. For this purpose, the ship's boats are not regarded as places of safety unless the safety of passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or by the presence of another vessel which is in a position to take them on board.

This is the rule of sea-warfare that spared the *Bremen* the other day, since the British submarine commander, who was within



Spencer Digby, photograph

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effective striking distance, observed the traditional British practice of strict adherence to international law.

Nothing Illegal Last Week

The purpose of warfare at sea, and on land, and in the air, is the same: the overpowering of the enemy. In the heat of the recent battle, since no illegal weapons were used, the rules of warfare were not infringed by either side. Hard-pressed, the *Admiral Graf Spee* ran for sanctuary in neutral waters.

Territorial Waters

According to the law of nations, the high seas are free and common to all mankind for navigation and innocent use, and form an international highway that no nation can claim as its own. From the end of the sixteenth century, international law has provided that each seagirt nation may have around it, within its own control, a maritime belt that all other States respect as its territorial waters. This is a sea-area that extends to a distance of three nautical miles from the low-water mark of its coastline. In wartime no belligerent may attack its enemy, or carry out any hostile act of any kind, within the territorial waters of a neutral State, which may resist any such action by all means within its power.

The last Hague Convention lays it down that the duty of impartiality does not require a neutral State to forbid the peaceful passage of belligerent warships through its territorial waters; though any State may, if it wishes, declare a general prohibition of the passage of any ship of war through its maritime belt in time of peace or in war time, as Norway and Holland did during the last war. Once the *Admiral Graf Spee* entered the neutral maritime belt of Uruguay, our ships had to cease fire and end their pursuit, or they would have committed a breach of Uruguayan neutrality.

Why Prisoners Were Released

The effect of the German battleship's entry into neutral waters was twofold. In the first place, any captured subjects of the Allied Powers had their liberty restored to them, as their detention on the *Admiral Graf Spee* would have been the continuance of a hostile act, and, as such, forbidden in neutral territory. The release of the crew of the *City of Flint* is a recent example of the application of this rule. Secondly, duties were automatically imposed on the neutral Uruguayan Government, and upon the German warship.

What Help May Be Given

The duty of the Government of Uruguay was to prevent the belligerent warship from taking in a quantity of provisions and fuel in excess of her requirements to enable her to reach the nearest German port. If, in accordance with the law of Uruguay, the warship was not supplied with fuel within twenty-four hours of her arrival, she might be permitted an extension of another twenty-four hours; but, within the following three months, her fuel supply might not again be replenished in any Uruguayan port. No ammunition or armaments could be taken aboard, either from the shore or from transport vessels, as otherwise the neutral Uruguay would be indirectly assisting preparation for hostilities. The *Admiral Graf Spee* was damaged. According to the Hague Convention, she was entitled only to effect such repairs as were absolutely necessary to render her seaworthy. No distinction is made in international law between repairs arising from damage by weather, and that caused in battle.

The decision lay with the authorities of Uruguay as to the length of time required by the Germans to effect the necessary repairs to their ship with the least possible delay, and it was for the Uruguayan Government to state the extent of such repairs that were allowable. They gave the *Admiral Graf Spee* seventy-two hours to do these specific repairs. In other words, in a neutral port or territorial waters, a belligerent war-vessel is allowed a limited time to become seaworthy, but nothing may there be done to make her "fightworthy."

Why Graf Spee Was Detained

Under another article of the Hague Convention, 1907, a belligerent warship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant ship flying the flag of its adversary. As reported, the *Admiral Graf Spee* was detained until that interval had elapsed after the departure from Montevideo of two British merchant ships.

Internment is the penalty for the breach in neutral territorial waters by a belligerent ship of war of the Hague Convention defining the rules of international law affecting hostilities at sea.