

PREFACE TO PART IX-C

In my foreword to volumes IX, X and XI of the present publication, preceding its volume IX, I have explained the reason why I have split up my systematic Part IX into three separate volumes, each containing a subdivision of that systematic Part IX, namely, Part IX-A, dealing with the Laws of War, Part IX-B with the Law of Neutrality, and Part IX-C with the Law of Maritime Prize. After dealing with the laws of war in Part IX-A and the law of neutrality in Part IX-B, I will now proceed to describe in the present Part IX-C (vol. XI) the law of maritime prize.

PERSONAL PREFACE

“On revient toujours à ses premiers amours”. While harbouring certain doubts as to whether this assertion has universal validity as applied to human relationships, it has proved undoubtedly true as regards the present volume and its author.

After receiving my first doctorate in law more than seventy-four years ago (1910) and as I was looking for a subject for my second doctoral thesis, this time in the field of political science, World War I broke out (1914) and my choice fell on the law of maritime prize. This thesis of mine, prepared under the supervision of my teacher and friend Jan de Louter, author of a two-volume Dutch manual *Het stellig volkenrecht* (1910), which was later (1920) republished in Oxford in a French version, *Le droit international public positif*, in a series of the Carnegie Foundation, dates from sixty-seven years ago (1917). It ran to 340 pages and had three basic limitations: it dealt only with prize court decisions pronounced during Word War I; it was of necessity confined to the judgments available to me when finalizing my text, and it was only concerned with the impact of that war on the position of neutrals. Hence its Dutch title *Het prijsrecht tegenover neutralen in den wereldoorlog van 1914 en volgende jaren* (*Prize law in its impact on neutrals during the world war of 1914 and ensuing years*).

It was followed in 1918 by a retrospective survey of how the international

law of prize had actually developed during World War I, looked at especially from the point of view of its impact on Dutch interests, which was contributed to the then existing Netherlands *Annuaire Grotius* for the year 1917 (pp. 50-127) in French, entitled “La jurisprudence des prises et le droit des gens”.

When, seven years later (1924), at the invitation of the *Institut Intermédiaire International* at The Hague, I produced an enlarged, entirely differently conceived, and amply documented systematic survey in French and various other languages of the case law of 1914-1919 of the prize courts of almost all the belligerent States, the first limitation remained, the second could mainly be remedied by the inclusion of a great deal of additional material, and the third was completely omitted: the survey was no longer confined to the impact of the war on neutrals but also extended to prizes taken from enemies and allies. Hence its title *Le droit des prises de la Grande Guerre* (1924). This new work on prize law burdened me so heavily, and not only by reason of its bulk (about 1500 pages), combined as it was with my new academic duties since 1919 as a young professor of public international law and diplomatic history at the University of Utrecht, that I firmly abjured the subject and vowed never to return to it; this was to be my swan song.

But no one is master of his fate and I felt that I could not refuse the request of the editors of the *Nederlands Juristenblad*, on the outbreak of World War II in 1938, to contribute a series of articles on the state of modern prize law and the resulting prognostication of what was in store for the Netherlands, which were at the time still neutral. This was what I undertook in 1939-1940.

Shortly afterwards fate intervened once more and in a wholly unexpected manner. In May 1940, the Netherlands were invaded by Nazi Germany and in the following month of October I was seized in my bed by servants of the Occupant and transported, together with a group of other opponents of National Socialism, to the German concentration camp of Buchenwald, where we were interned as hostages for the treatment of German nationals in the then Netherlands East Indies. During my stay there I realized that, if I were vouchsafed the mercy of coming out of that place of diabolic horror alive, Seyss-Inquart would dismiss me from my academic post in Holland—a prospect which made me think for the first time of the possibility of filling my prospectively empty days in collecting material for the writing of a broad historical series on the development of international law.

When, after surviving a serious attack of pneumonia, I was suddenly released from Buchenwald in June 1941—by whose intervention I have never been able to discover—things developed as I had foreseen. Just as I was about to resume my lectures in October 1941, at that juncture at the University of Amsterdam, General Rauter's staff stepped in and summarily dismissed me from my University post, obviously on the grounds of my earlier condemnation of the Nuremberg Nazi Race Laws of 1933, my severe censure of the German U-boat practices (though this was paralleled by not

less severe criticism of the illegal Allied Reprisals Orders) and my indignation over the surrender by France and England, under the combined blackmail of Hitler and Mussolini, of Czechoslovakia at Munich in 1938, to which I gave vent in my second inaugural speech at Amsterdam on 17 October 1938 (*Naden storm*), which was later inserted in an English version in vol. I of the present publication at pp. 550-556. We all know now from hindsight how that surrender resulted in the ensuing fatal development and acted as a prelude or catalyst to the German holocaust that followed and ended by affecting all mankind.

My dismissal created for me a situation that lasted for three and a half years, during which my Buchenwald plan to write an historical work on the law of nations slowly matured, and I had ample time to engage in the preparatory work of perusing the vast indispensable treaty and other source material and arranging it provisionally into a scientific defensible system.

It was this series of coherent events which led me to undertake the present historical work and it was as a direct consequence of World War II that it has finally seen the light of day.

This short account justifies the paradox that this historical work would probably, and its present Part IX-C would certainly, not have been conceived and published if Germany had not twice in my life-time flouted international law by her major crimes of assaulting her peaceful European neighbours, on the latter occasion including my own country.

After Holland's liberation from the Nazi yoke in May 1945 I had a very busy life, carrying out a variety of functions. At first restored to my academic chair in Amsterdam, thereupon elected to a professorship at the Law Faculty of Leiden, re-appointed to my original chair in Utrecht; engaged in the semi-diplomatic work of the Preparatory Commission for the United Nations and its first session in London in 1945-46 as a representative of the Netherlands; later in charge of the task of a Netherlands State Commission for the extirpation from our national legal system of the scores of Nazi intrusions into that system during five years of Nazi occupation through the channel of spurious German *Verordnungsblätter*, and finally appointed by the Government to serve for several years as Vice-President of the Special Court of Cassation for the Trial of German War Criminals in Holland, I simply lacked the time to start the enormous work involved in writing my planned historical review, especially when I had also to find enough leisure in the meantime to continue and complete a two-volume work on the case law produced by the Permanent Court of International Justice and the International Court of Justice, which I had undertaken from the very beginning of their juridical activity in 1922, and had ever since continued to analyse in an uninterrupted series of articles. I disliked the idea of abandoning this work in its unfinished state after so many years of assiduous study of their case law, even though I realized that its completion would put a heavy additional stress on all my other occupations. But I had the satisfaction of seeing the

entire collection after more than forty years work finally printed in book form in 1965 (concerning the old Court) and in 1966 (concerning the new Court).

However, owing to this accumulation of functions following the liberation of our country and the further complications referred to above, it was not until 1967 that I could finally undertake my planned broader historical study, of which ten volumes (I to IX-B) have meanwhile appeared between 1968 and 1979.

My first confrontation with the oldest British judgments in cases of maritime prize dates from a period when I was still unable to lay hands on certain works the existence of which was known to me from literary sources and from the catalogues of the Peace Palace Library at The Hague. So I started the job there. But I soon realized, in particular in respect of the British sources, that that would be wholly insufficient. The result was that I decided to transfer my exploratory work to London, especially in the marvellously rich collection of books and manuscripts kept in the British Museum, complemented by further research in the Record Room of the Guild Hall and the Public Record Office, and later by a visit to the Bodleian Library in Oxford.

But with this decision my real research misery began, in particular due to two different causes.

The first cause, of relatively minor importance, was my discovery at my first visit at the end of 1945 to the vast circular Reading Room of the British Museum of the frequent occurrence of a capital letter D on the sheets of the General Catalogue there. As this letter D seemed to be particularly attached to a number of entries related to the old British books on prize law for which I was seeking, I asked for and got the information that the D meant that the work concerned had been destroyed by a fire caused by an incendiary bomb attack by German aeroplanes during the Blitz of 1939-1940 on a depository where rarely demanded books were being kept. I checked that report as regards my own 1500 page book of 1924 which, of course, I had on account of its weight not carried with me to England for consultation if need be. I learned of its destruction also and was happy to be able to replace it at a subsequent visit with the last duplicate copy which I happened still to have at home.

The second cause of the mounting and far more serious difficulties of my research in loco consisted of the many lacunae in the documentation and the general chaotic state in which the reporting of prize cases in older periods of British legal history proved to have left the subject-matter. I dare to express this criticism because I must acknowledge the same chaos in different variations, with respect to the state of affairs in my own country, in France and in Flemish Malines (Mechelen), once the seat of the appellate *Grand Conseil*, created in 1463 by the then common Sovereign of the Low Countries.

This situation was in part attributable to the same cause as that first

mentioned, viz., the destruction of a work that intrigued me in particular, entitled *Law of Contraband of War* (by Frederic Thomas Pratt, London, 1856), one of the richest sources of old customary and judicial law of prize, according to the English tradition. I have sought for it wherever I could expect to track it down, but for years without success. See on this work *infra*, pp. 74-76. The same could also be said of the disappearance of Pratt-Lee-Lloyd's volume of 1854, *Notes on the principles and practice of prize courts*, concerning the War of the Austrian Succession of a century earlier and the references in Sir George Lee's Ms. Notes dating back to again a century earlier, which made it almost impossible for a long time for me to round off my survey of old British case law. Only recently one of my collaborators, Mr Wybo P. Heere, discovered the "Scarlet Pimpernels" in the Peace Palace Library at The Hague, where unfortunately I had missed them by sheer oversight. On the last-mentioned work see *infra*, pp. 74-76.

Before finally quitting the scene, I must once again offer my most sincere and grateful thanks to all those who have supported and helped me and without whose aid this work, with whatever remaining imperfections there may be, could not possibly have been achieved.

There is first Miss Mary M. Sibthorp, O.B.E., who most effectively guided my initially somewhat stumbling steps in English through the legendary maze of facts and illusions which together constitute the history of international law, and who, at the outset of my journey, had to cut away the many linguistic lianas which entangled my feet.

Then there are my two loyal collaborators at the Institute of Public International Law of the University of Utrecht, Mr Wybo P. Heere and Mrs Polona Offerhaus-Stoop, who accompanied me during more than twenty years on my progress, rendering me a great variety of services, drawing my attention to legal sources which I might have overlooked, to repetitions in my text which would have escaped me, to flaws in the system of my exposé, to errors in the dating of treaties and other literary sources quoted, suggesting the filling of certain lacunae which they had discovered and, in the final stage, double-checking the proofs which I have always also controlled myself and indexing all the volumes of this series.

There are further many others, named and unnamed in earlier prefaces, who have given me valuable technical assistance in typing and retyping my drafts.

And there is, last but not least, the publishing house and the printers who performed their part of the job most perfectly.

To all of them I express my heartfelt gratitude for the various ways in which they have enabled me to continue and finish the carrying out of my somewhat rashly undertaken plan.