REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

United States, Garland Steamship Corporation, and Others (United States) v. Germany

25 March 1924

VOLUME VII pp. 73-91

NATIONS UNIES - UNITED NATIONS

These questions are put simply to illustrate the far-reaching application of the contention earnestly pressed by American counsel.

The proximate result of Germany's act complained of by claimant was the damaging of the tug *Perth Amboy* belonging to the Lehigh Valley Railroad and the destruction of the barges which it had in tow. One of the incidental results of Germany's offensive operations off the coast of her then enemy was to create in the mind of the president of the claimant corporation a fear of danger to its property, to partially protect against which the claimant incurred the expenses here sought to be recovered in procuring insurance against losses which were threatened but which in fact never occurred. Because of this fear, claimant's president, acting on his own volition and in the exercise of what, it is assumed, was business prudence, bought and paid for insurance against these threatened losses. The procuring of this insurance was not Germany's act but that of the claimant. The resulting expense was incurred not to repair a loss caused by Germany's act but to provide against what claimant's president feared Germany might do resulting in loss to it, although these fears were never realized. Such expenses are losses to claimant incident to the existence of a state of war, but they are not losses for which Germany is obligated to pay under the terms of the Treaty of Berlin, as construed by Administrative Decisions Nos. I and II and the Opinion in War-Risk Insurance Premium Claims, all handed down by this Commission on November 1, 1923.

It results from the foregoing that this claim must be dismissed and it is hereby so ordered.

Done at Washington March 11, 1924.

Edwin B. PARKER
Umpire

Concurring in the conclusions:

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

UNITED STATES, GARLAND STEAMSHIP CORPORATION, AND OTHERS (UNITED STATES) *v.* GERMANY

(March 25, 1924, pp. 75-101; dissenting opinion of American Commissioner, undated, p. 101.)

SEA WARFARE: DESTRUCTION OF VESSELS, RESPONSIBILITY UNDER GENERAL INTERNATIONAL LAWS, TREATY OF BERLIN. Destruction of thirteen vessels by Germany or allies during period of belligerency. Claims presented for loss of hulls. *Held* that Commission not concerned with question of conformity to laws of war of destruction of vessels: Germany's obligation to pay fixed and limited by Treaty of Berlin.

WAR: NAVAL AND MILITARY WORKS AND MATERIALS AS DISTINCT FROM MERCHANT VESSELS; REQUISITION OF AMERICAN AND FOREIGN MERCHANT VESSELS, PUBLIC SHIPS; CONVOYS.—UNITED STATES SHIPPING BOARD AND —EMERGENCY FLEET CORPORATION.—INTERPRETATION OF TREATIES: (1) INTERPRETATION BY FRAMERS, BENEFICIARIES, (2) RELATED PROVISIONS, (3) DICTIONARIES, (4) EQUALLY AUTHENTIC TEXTS, (5) TECHNICAL LEGAL AND

ORDINARY POPULAR SENSE, (6) MUNICIPAL LAW ANALOGIES.—INTERPRETATION OF MUNICIPAL LAW.—EVIDENCE: *prima facie*, CONCLUSIVE EVIDENCE, PRESUMPTIONS. Interpretation of phrase "naval and military works or materials" in Treaty of Versailles, Part VIII, Section I, Annex I, para. 9, as carried into Treaty of Berlin. Construction by Reparation Commission not binding either on Mixed Claims Commission or on Germany, but considered as early *ex parte* construction by European Allies who participated in drafting and are principal beneficiaries. *Held* (1) that phrase, understood in context of principal reparation provisions (Treaty of Versailles, Article 232 and Annex I) read as a whole, relates solely, in so far as present claims are concerned, to vessels operated at time of destruction by United States, not as merchantmen, but directly in furtherance of military operation against Germany or her allies (impossibility for vessel privately operated for private profit to be impressed with military character, since only government can lawfully engage in direct warlike activities; interpretation of terms "works" and "materials": dictionaries, reading of equally authentic English and French texts together); (2) that neither mobilization of shipping for war, nor its control, by United States (through "United States Shipping Board" and "United States Shipping Board Emergency Fleet Corporation", created under United States "Shipping Act, 1916"), whether vessels owned or requisitioned by United States, raises presumption that vessels must be classed as "naval and military works or materials" (interpretation of "Shipping Act, 1916", taken in its entirety, together with reparation provisions) (the *Pinar del Rio*, the *Alamance*, the *Tyler*, the *Santa Maria*, the *Marak*, the *Texel*); (3) that operation of vessel (owned or requisitioned by United States) by agent of United States other than established government agency does not, but that operation (as a "public ship") by United States Navy or War Department does raise presumption (*prima facie* but not conclusive evidence) of naval or military character (the *John G. McCullough*, the *Joseph Cudahy*, the *A. A. Ravens*); and (4) that merchant vessel not converted into "naval and military .... materials" when (*a*) armed for defensive purposes and guns manned by United States Navy gun crew (the *Rockingham*, the *Motano*, the *Rochester*, the *Moreni*, the *Alamance*, the *Tyler*, the *Santa Maria*), (*b*) operated in accordance with routing and defense instructions given by United States Navy Department or British Government (the *Rockingham*, the *Motano*), or (*c*) convoyed by fighting forces of belligerent power (the *Motano*, the *Alamance*, the *Tyler*, the *Santa Maria*). *Held* also that phrase "property .... belonging to" in Treaty of Versailles, Part VIII, Section I, Annex I, para. 9, as carried into Treaty of Berlin, includes special or qualified property, tantamount to absolute ownership for the time being, resulting from requisition by United States on March 20, 1918, in accordance with international law and practice, of vessels of Netherlands registry, belonging to Netherlands nationals, and lying in American ports (the *Merak*, the *Texel*); "belonging to" should be understood not as a technical legal term, but in ordinary popular sense (see French text and analogies in United States and British maritime law; see also reparation provisions as a whole requiring Germany to pay all losses sustained by Allied and Associate States or their nationals resulting from "damage in respect of all property wherever situated" of a non-military character).

INTERLOCUTORY JUDGMENTS: EVIDENCE AGAINST—. Agents may file further evidence bearing on points decided in present interlocutory decisions, which in absence of such evidence, will become final.

Cross-references: A.J.I.L., Vol. 18 (1924), pp. 614-634; Annual Digest, 1923-24, pp. 405-410, 420-421; Kiesselbach, *Probleme*, pp. 231-250 (German text); Witenberg, Vol. I, pp. 82-101 (French text).

Bibliography: Borchard, pp. 140-142; Kersting, p. 1845; Kiesselbach, *Probleme*, pp. 11, 123-140; Prossinagg, pp. 13-14.

PARKER, *Umpire*, delivered the opinion of the Commission, the German Commissioner concurring in the conclusions, and the American Commissioner concurring save as his dissent is indicated:

There is here presented a group of thirteen typical cases in which the United States, in some instances on its own behalf and in others on behalf of certain of its nationals, is seeking compensation for losses suffered through the destruction of ships by Germany or her allies during the period of belligerency. These claims do not embrace damages resulting from loss of life, injuries to persons, or destruction of cargoes but are limited to losses of the ships themselves, sometimes hereinafter designated "hull losses".[1]

With the exception of the construction and the application to requisitioned Dutch ships of the phrase "property * * * belonging to" as found in paragraph 9 of Annex I to Section I of Part VIII of the Treaty of Versailles as carried by reference into the Treaty of Berlin, the sole question considered and decided in this opinion is: Were any or all of the thirteen hulls in question when destroyed "naval and military works or materials" within the meaning of that phrase as used in that paragraph?

The cases in which an affirmative answer to this question is given must, on final submission, be dismissed on the ground that Germany is not obligated to pay such losses under the Treaty of Berlin. The cases in which a negative answer is given will be reserved by the Commission for further consideration of the other issues raised.

The Commission is not here concerned with the quality of the act causing the damage. The terms of the Treaty fix and limit Germany's obligations to pay, and the Commission is not concerned with enquiring whether the act for which she has accepted responsibility was legal or illegal as measured by rules of international law. It is probable that a large percentage of the financial obligations imposed by said paragraph 9 would not arise under the rules of international law but are terms imposed by the victor as one of the conditions of peace.

The phrase "naval and military works or materials" has no technical signification. It is not found in previous treaties. It has never been construed judicially or by any administrative authority save the Reparation Commission. The construction by that body is not binding on this Commission nor is it binding on Germany under the Treaty of Berlin. It will, however, be considered by this Commission as an early *ex parte* construction of this language of the Treaty by the victorious European Allies who participated in drafting it and are the principal beneficiaries thereunder.

The construction of this phrase is of first impression, and the Commission must, in construing and applying it, look to its context. It is found in the principal reparation provisions of the Treaty of Versailles as embraced in Article 232 and the Annex I expressly referred to therein. That article, after reciting that the "Allied and Associated Governments recognize that the resources of Germany are not adequate * * * to make complete reparation for all" losses and damages to which they and their nationals had been subjected as a consequence of the war, provides that:

[1] Reference is made to definition of terms contained in Administrative Decision No. I.

"The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by such aggression by land, by sea and from the air, and in general all damage as defined in Annex I hereto."

It is apparent that the controlling consideration in the minds of the draftsmen of this article was that Germany should be required to make *compensation* for all damages suffered by the *civilian population* of each of the Allied and Associated Powers during the period of its belligerency. It was the reparation of the private losses sustained by the *civilian population* that was uppermost in the minds of the makers of the Treaty rather than the public losses of the governments of the Allied and Associated Powers which represented the cost to them of prosecuting the war. [2]

Article 232 makes express reference to "Annex I hereto" as more particularly defining the damages for which Germany is obligated to make compensation. Annex I provides that "Compensation may be claimed from Germany under Article 232 above in respect of the total damage under the following categories". Then follows an enumeration of ten categories, of which Nos. 1, 2, 3, 4, 8, and 10 deal solely with damages suffered by the civilian populations of the Allied and Associated Powers. Categories 5, 6, and 7 deal with reimbursement to the governments of the Allied and Associated Powers as such of the cost to them of pension and separation allowances, rather than damages suffered by the "civilian population". The Government of the United States has expressly committed itself against presenting claims arising under these three categories. [3] There remains of the 10 categories enumerated in Annex I only category 9, which reads:

"(9) Damage in respect of all property wherever situated belonging to any of the Allied or Associated States or their nationals, with the exception of naval and military works or materials, which has been carried off, seized, injured or destroyed by the acts of Germany or her allies on land, on sea or from the air, or damage directly in consequence of hostilities or of any operations of war."

Under the terms of this paragraph arise Germany's financial obligations, if any, to pay the claims now before this Commission for the hulls destroyed during the period of belligerency.

It cannot be doubted that the language of this paragraph 9 so expands that used in Article 232 as to include certain property losses sustained by the governments of the Allied and Associated Powers as well as the losses sustained by their "civilian populations." It was found that property belonging to the victorious powers not designed or used for military purposes had been destroyed or damaged, so in addition to requiring that Germany compensate the civilian population for their property losses this paragraph requires that Germany shall also compensate those governments for government losses suffered through destruction or damage with respect to property of a non-military character.

---

[2] The reparations provided for in the exchange of notes between the United States and Germany culminating in the Armistice of November 11, 1918, executed by the military representatives of the belligerent powers, were limited to reparations for losses to the civilian population. The Lansing note of November 5, 1918, provides that the Allied Powers "understand that compensation will be made by Germany for all damage done *to the civilian population* of the Allies and their property by the aggression of Germany by land, by sea, and from the air".

Italics appearing throughout this opinion are, as a rule, added by the Commission.

[3] See Note 11 of Administrative Decision No. II, pages 14 and 15 of Decisions and Opinions of this Commission *(Note by the Secretariat,* this volume, p. 31 *supra.)*

Much property belonging to the governments of the victorious powers, especially to the governments of the European Allies, and not impressed by reason of its inherent nature or of its use with a military character, had been destroyed or damaged. Under this provision it is clear that Germany is obligated to compensate the governments suffering such losses. But, reading the reparation provisions as a whole, it is equally clear that the Allied and Associated Powers did not intend to require that Germany should compensate them, and that Germany is not obligated to compensate them, for losses suffered by them resulting from the destruction or damage of property impressed with a military character either by reason of its inherent nature or by the use to which it was devoted at the time of the loss. Property so impressed with a military character is embraced within the phrase "naval and military works or materials" as used in paragraph 9, which class described by this phrase will sometimes hereinafter be referred to as "excepted class".

This phrase, in so far as it applied to hulls for the loss of which claims are presented to this Commission, relates solely to ships operated by the United States, not as merchantmen, but directly in furtherance of a military operation against Germany or her allies. A ship privately operated for private profit cannot be impressed with a military character, for only the government can lawfully engage in direct warlike activities.

By the terms of the Treaty of Versailles, the French and English texts are both authentic. The French word *matériel*, in the singular, is used in the French text, against which the English word "materials," in the plural, is used in the English text. Littré, whose dictionary is accepted as an authority on the French language, defines *matériel* thus: "The articles of all kinds taken as a whole which are used for some public service in contradistinction to personnel," and he gives as an example *matériel* of an army, the baggage, ammunition, etc., as distinguished from the men.

The Century Dictionary defines this French word thus: "The assemblage or totality of things used or needed in carrying on any complex business or operation, in distinction from the *personnel*, or body of persons, employed in the same: applied more especially to military supplies and equipments, as arms, ammunition, baggage, provisions, horses, wagons, etc."

The English word "materials" means the constituent or component parts of a product or "that of or with which any corporeal thing is or may be constituted, made, or done" (Century Dictionary).

Reading the French and English texts together, it is apparent that the word "materials" is here used in a broad and all inclusive sense, with respect to all physical properties not attached to the soil, pertaining to either the naval or land forces and impressed with a military character; while the word "works" connotes physical properties attached to the soil, sometimes designated in military parlance as "installations," such as forts, naval coast defenses, arsenals, dry docks, barracks, cantonments, and similar structures. The term "materials" as here used includes raw products, semi-finished products, and finished products, implements, instruments, appliances, and equipment, embracing all movable property of a physical nature from the raw material to the completed implement, apparatus, equipment, or unit, whether it were an ordinary hand grenade or a completed and fully equipped warship, provided that it was used by either the naval or land forces of the United States in direct furtherance of a military operation against Germany or her allies.

While it is difficult if not impossible to so clearly define the phrase "naval and military works or materials" that the definition can be readily applied to the facts of every claim for the loss of a hull pending before this Commission, the true test stated in general terms is: Was the ship when destroyed being

operated by the United States for purposes directly in furtherance of a military operation against Germany or her allies? If it was so operated, then it is embraced within the excepted class and Germany is not obligated to pay the loss. If it was not so operated, it is not embraced within the excepted class and Germany is obligated to pay the loss.

The United States Shipping Board (sometimes hereinafter referred to as "Shipping Board") exerted such a far-reaching influence over American shipping both prior to and during the period of American belligerency that the scope and effect of its activities and powers must be clearly understood in order to reach sound conclusions with respect to the cases here under consideration.

The Shipping Board was established in pursuance of the act of the Congress of the United States of September 7, 1916 (39 Statutes at Large 728), entitled "An act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes." The act as amended provided that the members of the board should be appointed by the President subject to confirmation by the Senate; that they should be selected with due regard for the efficient discharge of the duties imposed on them by the act; that two should be appointed from States touching the Pacific Ocean, two from States touching the Atlantic Ocean, one from States touching the Gulf of Mexico, one from States touching the Great Lakes, and one from the interior, but that not more than one should be appointed from the same State and not more than four from the same political party. All employees of the board were selected from lists supplied by the Civil Service Commission and in accordance with the civil-service law. The board was authorized to have constructed and equipped, as well as "to purchase, lease, or charter, vessels *suitable, as far as the commercial requirements of the marine trade of the United States may permit*, for use as naval auxiliaries or Army transports, or for other naval or military purposes".

The President was authorized to transfer "either permanently or for limited periods to the board such vessels belonging to the War or Navy Department *as are suitable for commercial uses* and not required for military or naval use in time of peace".

Provision was made for the American registry and enrollment of vessels purchased, chartered, or leased from the board and it was provided that "Such vessels *while employed solely as merchant vessels* shall be subject to all laws, regulations, and liabilities governing merchant vessels, *whether the United States be interested therein as owner*, in whole or in part, or hold any mortgage, lien, or other interest therein".

The board was authorized to create a corporation with a capital stock of not to exceed $50,000,000 "for the purchase, construction, equipment, lease, charter, maintenance, and operation *of merchant vessels in the commerce of the United States*". In pursuance of this latter provision the United States Shipping Board Emergency Fleet Corporation (sometimes hereinafter referred to as "Fleet Corporation") was organized under the laws of the District of Columbia with a capital stock of $50,000,000, all fully paid and all held and owned by the United States save the qualifying shares of the trustees. Under the terms of the act, this corporation could not engage in the *operation* of vessels owned or controlled by it unless the board should be unable to contract with citizens of the United States for the purchase or operation thereof.

Then followed in the act numerous provisions clothing the board with broad powers with respect to transportation by water of passengers or property in interstate and foreign commerce, provisions for investigations and hearings, for the fixing of maximum rates, and for penalties for failure to observe the terms of the statutes and the orders of the board.

The act as amended provided that it "may be cited as 'Shipping Act, 1916' ". The board created by virtue of its terms possessed none of the indicia of a military tribunal. Its members, all civilians, were drawn from remote sections. that the board might represent the commercial and shipping interests of the entire Nation. The act taken in its entirety indicates that the controlling purpose of the Congress was to promote the development of an American merchant marine and also "*as far as the commercial requirements of the marine trade of the United States may permit*" provide vessels susceptible of "use as naval auxiliaries or Army transports, or for other naval or military purposes". This act was approved September 7, 1916, during the period of American neutrality. The World War had found American nationals engaged in an extensive foreign commerce but without an adequate merchant marine to keep it afloat. The channels of American foreign commerce would have been choked but for the use of belligerent bottoms with the resultant risks. This situation, coupled with the possibility of the developments of the war forcing American participation therein, prompted the enactment of this statute for the creation of a merchant marine and setting up the machinery for the mobilization and control of all American shipping.

Following America's entrance into the war on April 6, 1917, Congress through the enactment of several statutes clothed the President of the United States with broad powers including the taking over of title or possession by purchase or requisition of constructed vessels or parts thereof or charters therein and the operation, management, and disposition of such vessels and all other vessels theretofore or thereafter acquired by the United States. From time to time through Executive Orders the President, being thereunto duly authorized, delegated these powers with respect to shipping to the Shipping Board, to be exercised directly by it or, in its discretion, by it through the Fleet Corporation.

Under these powers the Shipping Board and the Fleet Corporation proceeded to requisition the use of all power-driven steel cargo vessels of American registry of 2,500 tons dead weight or over and all passenger vessels of American registry of 2,500 tons gross registry or over, adapted to ocean service. Immediately upon the execution of these requisition orders a "requisition charter" was entered into between the Shipping Board and the owner, fixing the compensation to be paid by the United States to the owner for the use of the vessel and providing for the operation of the vessel on what was known as the "time-form" basis, the board reserving the right to change the charter to a "bare-boat" basis on giving five days' notice. The time-form basis provided for the operation of the vessel by the owner as agent of the United States and fixed the terms and conditions of such operation, stipulating among other things that the owner should pay all expenses of operation, including the wages and fees of the master, officers, and crew, and should assume all marine risks including collision liabilities, but that the United States should assume all war risks. The Shipping Board directed the owner as its agent to operate the vessel in its regular trade. The bare-boat basis provided that all the expenses of manning, victualling, and supplying the vessel and all other costs of operation should be borne by the United States. This latter form was used in requisitioning ships for service in the War Department, and also in some other instances where requisitioned ships were delivered by the Shipping Board to third parties to

operate as agents of the United States. When a ship was delivered by the Shipping Board to the War Department no formal agreement was entered into between these two Government agencies but the War Department recognized the agreement between the Shipping Board and the owner of the vessel and duly accounted to the Shipping Board under the terms and conditions of the requisition charter.

When the requisitioned vessel was redelivered to the owner for operation by him under a time-form requisition charter, an "operating agreement" was also entered into between the Fleet Corporation, acting for the United States, and the owner, whereby the owner as agent of the Fleet Corporation undertook the operation of the vessel including the procurement of cargoes and the physical control of the ship. For these services the owner as agent received stipulated fees and commissions in addition to the compensation which he received as owner for the use of the vessel as provided in the requisition charter.

When the vessel was requisitioned under a bare-boat form charter and delivered to a third party other than an established government agency to operate, a "managing agreement" was entered into between the Fleet Corporation and such third party whereby the latter as agent for the Fleet Corporation assumed physical control of the ship, receiving fees and commissions for such services.

It was not the practice of the Shipping Board or the Fleet Corporation to issue detailed and minute instructions to agents operating requisitioned vessels with respect to the conduct of the particular voyage or the particular cargoes which such vessels should carry. These operating or managing agents were selected because of their experience and ability in handling commercial shipping. While the United States reserved to itself full power and authority to exercise complete control over vessels requisitioned by it, such control was in practice delegated to the operating or managing agent, who exercised his sound discretion in the management of ships operated by him as agent, with a view to preventing any unnecessary dislocation of trade or disturbance in the established channels of commerce.

Thus the United States through the agencies of the Shipping Board and the Fleet Corporation effectively and speedily mobilized all American shipping, exercising such control over it that, as emergency required, it could be immediately utilized by the United States in the prosecution of its military operations against its enemies; but pending such emergency the requisitioned vessels were commercially operated, by their owners or by third parties, as agents of the United States, and these agents were given the greatest latitude and freedom of action in the management and control of vessels operated by them in order to prevent any unnecessary disturbance in the free movement of commerce. Under the requisition charter it was expressly stipulated that the vessel "*shall not have the status of a Public Ship*, and shall be subject to all laws and regulations *governing merchant vessels* * * *. When, however, the requisitioned vessel is *engaged in the service of the War or Navy Department, the vessel shall have the status of a Public Ship*, and * * * the master, officers, and crew shall become the immediate employees and agents of the United States, with all the rights and duties of such, the vessel passing completely into the possession and the master, officers, and crew absolutely under the control of the United States." At another point in the requisition charter it was stipulated that the master "shall be the agent of the owner in all matters respecting the management, handling, and navigation of the vessel, *except when the vessel becomes a Public Ship*".

The German Agent contends that presumptively the control by the Shipping Board thus exercised over vessels, whether owned by the United States or

held by the United States under requisition, was in furtherance of the conduct of the military effort of the United States against Germany, and hence—in the absence of satisfactory proof to the contrary, the burden being on the United States—all such vessels must be classed as "naval and military works or materials". The Commission has no hesitation in rejecting this contention. After America entered the war, its entire commerce and industry were in a broad sense mobilized for war. Because of the urgent war requirements, steel and numerous other products became government-controlled commodities, their uses being rigidly restricted to war purposes. Yet it cannot be contended that the fact that an American steel plant was operated 100% on war work raised a *prima facie* presumption of its conversion into "military works." The railroads of the United States were taken over and operated by the Government as a war measure, but this did not presumptively convert them into "military works or materials" within the meaning of that term as used in the Treaty of Versailles. Nor can the mobilization for war of American shipping through the agency of the Shipping Board create even a rebuttable presumption that the vessels so mobilized, whether owned or requisitioned by the United States, had a military character. Nothing short of *their operation by the United States directly in furtherance of a military operation against Germany* can have such an effect. So long as such vessels were performing the functions of merchant vessels, even though engaged in a service incident to the existence of a state of war, they will not fall within the excepted class.

Construing the Shipping Act, the Executive Orders of the President, and the provisions of an operating agreement similar to that hereinbefore described, the Supreme Court of the United States held a vessel *owned* by the Fleet Corporation but operated by an American national as an agent of the Shipping Board was a merchant vessel and subject to libel in admiralty for the consequences of a collision. [4] It is apparent that a vessel either owned or requisitioned by the Shipping Board or Fleet Corporation and operated by an agent of the United States under such an operating or managing agreement as hereinbefore described was a merchantman and in no sense impressed with a military character.

When, however, the Shipping Board delivered such vessels to either the War Department or the Navy Department of the United States their status at once changed and they became public ships, their masters, officers, and crews at once became employees and agents of the United States with all of the resultant rights and duties; and it will be presumed that such delivery was made to the military arms of the Government to enable them to be used (in the language of section 5 of the Shipping Act) "as naval auxiliaries or Army transports, *or for other naval or military purposes*". Such assignment of vessels to and their operation by the War Department or the Navy Department will be treated by the Commission as *prima facie* but not conclusive evidence of their military or naval character. The facts in each case will be carefully examined and weighed by the Commission in order to determine whether or not the particular ship, at the time of her destruction, was operated by the United States directly in furtherance of a military operation against Germany or her allies. If she was so operated, she will fall within the excepted class; otherwise she will not.

The application of this general rule to the facts as disclosed by the records in the thirteen typical cases preliminarily submitted will illustrate its scope and its limitations.

---

[4] The *Lake Monroe*, (1919) 250 U.S. 246.

Case No. 127. Steamship Rockingham

The Steamship *Rockingham*, owned and operated by the Garland Steamship Corporation, an American national, sailed on April 16, 1917, from Baltimore, Maryland, via Norfolk, Virginia, which she left April 19, bound for Liverpool, England, with a general cargo for numerous consignees. She was armed for defensive purposes with two 4-inch guns, one fore and one aft, manned by a civilian crew of 36, and in addition had a naval gun crew of 13 enlisted men. She was sunk by a German submarine on May 1, 1917, before reaching Liverpool. In the early part of the afternoon of May 1, the weather being hazy, two small objects were sighted by the *Rockingham* at a distance of approximately five miles, one on the starboard bow, the other on the port quarter, and assuming that they were German submarines the master steered a zig-zag course in accordance with instructions issued by the United States Navy Department designed to elude the operations of hostile submarines. The two objects were seen to submerge and thereafter were not sighted until after the sinking. The gun crew of the *Rockingham* had, therefore, no target to fire upon, and no effort was made at resistance. The attack was upon the starboard side, was made without warning, the torpedo entering the engine room, tearing a great hole in the ship and causing her to sink in 25 minutes.

The German Agent contends that the *Rockingham* at the time of her destruction had lost her status as a private peaceful trading ship and had become "naval and military * * * materials" as that term is used in the treaty because: (1) she was armed, (2) her guns were manned by a naval gun crew, (3) she was operated in accordance with instructions given by the Navy Department of the United States although by a civilian master with a civilian crew. The contention is that, notwithstanding such arming and manning and operation may have been entirely legal and justified, they nevertheless stripped the *Rockingham* of her character of a peaceful merchantman and impressed her with a military character.

This contention must be rejected. It is clear that the *Rockingham* was being privately operated by an American national for private profit. She was armed in pursuance of the policy adopted by the Government of the United States, of which all foreign missions in Washington were given formal notice on March 12, 1917, during the period of American neutrality, in the following language:

"In view of the announcement of the Imperial German Government on January 31, 1917, that all ships, those of neutrals included, met within certain zones of the high seas would be sunk without any precautions being taken for the safety of the persons on board, and without the exercise of visit and search, the Government of the United States has determined to place upon all American merchant vessels sailing through the barred areas an armed guard for the protection of the vessels and the lives of the persons on board."

The instructions given by the Navy Department of the United States to the masters of these merchant vessels and to the commanders of the naval gun crews clearly indicate that the purpose of so arming and operating such vessels was to *protect against* the offensive operations of German submarines and to elude or escape from them if possible, and not to initiate offensive operations against such submarines. The control in the nature of routing instructions which the civilian masters received from the Navy Department and followed was designed to avoid and to escape from the submarines, not to seek them out and destroy them.

The arming for defensive purposes of a merchantman and the manning of such armament by a naval gun crew, coupled with the routing of such ship by

the Navy Department of the United States for the purpose of avoiding the danger of submarines and the following by the civilian master of the ship of instructions given by the Navy Department for the defense of the ship when in danger of attack by submarines, certainly do not change the juridical status of the ship or convert it from a merchant ship to a war ship or make of it naval material.

The Commission holds that the *Rockingham* at the time of her destruction was being operated as a merchant vessel and that she does not fall within the excepted class.

Case No. 551. Steamship Motano—*oil tanker*

The Steamship *Motano*, owned and operated by the Standard Oil Company of New Jersey, an American national, sailed from New York on July 6, 1917, with a cargo of fuel oil for account of the British Ship Control for use of the British Admiralty. She left Plymouth with other vessels convoyed by three British destroyers for Portsmouth, England, as her final discharge port. She was armed for defensive purposes with two 3-inch guns, one fore and one aft, and had a civilian master and crew of 33 men and a gun crew of 13 enlisted men of the United States Navy. She was sunk on July 31, 1917, on her voyage between Plymouth and Portsmouth by a torpedo fired by a German submarine. The air was hazy, the sea choppy, the submarine had not been sighted, and no resistance was made by the naval gun crew. The *Motano* was insured with the British Government for $616,000, which sum has been paid to the claimant, and this claim is made for the difference between that amount and the true value of the vessel, which difference is placed at the sum of $594,000, plus interest and expenses.

The German Agent contends that the *Motano* at the time of her destruction constituted "naval * * * works or materials" because (1) she carried armament susceptible of use for hostile purposes and was manned by a naval gun crew, (2) she was convoyed by regular fighting forces of a belligerent power, and (3) she was controlled by the belligerent British Government and used for warlike purposes. The Commission rejects this contention because it is apparent that the *Motano* was privately owned and privately operated for private profit, was not employed or designed to be employed directly in furtherance of a military operation of the United States or its associated powers against Germany or her allies, and was not impressed with a military character.

We have heretofore examined the test of armament manned by a naval gun crew on a privately operated commercial ship and held that it did not have the effect of converting such ship into naval material.

The German Agent with great earnestness and ability insists that a ship associating itself with a belligerent convoy assumes the character of its associates and that when it becomes a part of the convoy flotilla, which is a military unit and subject to naval instructions and naval control, it participates in hostilities and must be classed as naval material. We have no quarrel with the contention that a vessel, whether neutral or belligerent, forming part of a convoy under belligerent escort may, through the methods prescribed by international law, be lawfully condemned and destroyed as a belligerent. But that is not the question before this Commission. If we assume that the *Motano*—a belligerent merchantman—was lawfully destroyed, this does not affect the result. The fact that the *Motano*, because of its helpless and non-military character, sought the protection of a convoy and voluntarily subjected itself to naval instructions as to routing and operation, for the purpose of avoiding the German submarines rather than seeking them out to engage them in combat, certainly

can not, by some mysterious and alchemic process, have the effect of transforming the ship from a merchantman into naval material. The control exercised by the British Government over the *Motano* was not such as to affect its status. Such control was limited to directions looking to the protection of the vessel and the furtherance of its commercial activities, and not directly in furtherance of any military operation against Germany or her allies.

The Commission therefore concludes that the *Motano* at the time of her destruction maintained her character as a peaceful commercial vessel and that she does not fall within the excepted class.

Case No. 29. Steamship Pinar del Rio

The Steamship *Pinar del Rio*, owned by the American and Cuban Steamship Line, Incorporated, an American national, was requisitioned by the United States through the Shipping Board, and a time-form requisition charter was entered into February 4, 1918. By the terms of this charter the owner became the agent of the Shipping Board and as such continued to operate the ship. She was unarmed and manned by a civilian crew. While en route from Cuba to Boston with a cargo of sugar she was sunk, on June 8, 1918, through gunfire by a German submarine.

It is apparent that at the time of her destruction she was being operated as a merchant vessel and in no sense impressed with a military character. She does not, therefore, fall within the excepted class.

Case No. 550. Steamship Rochester

The Steamship *Rochester*, owned and operated by the Rochester Navigation Corporation, an American national, after having discharged a general cargo at Manchester, England, sailed from that port in ballast October 26, 1917. She was armed for defensive purposes with two 3-inch guns, mounted one fore and one aft, and had a civilian crew of 36 men and a naval gun crew of 13 men. After leaving Manchester she with nine other merchantmen was convoyed for several days by five destroyers and one armed cruiser, and, after the convoying ships returned to their base, the *Rochester* was sunk on November 2, 1917, by a torpedo and shells fired from a German submarine.

It is apparent that the *Rochester* at the time of her destruction was being operated as a merchant vessel and was not in any sense impressed with a military character. The Commission, therefore, finds that the *Rochester* does not fall within the excepted class.

Case No. 555. Steamship Moreni—*oil tanker*

The Steamship *Moreni*, owned and operated by the Standard Oil Company of New Jersey, an American national, sailed from Baton Rouge, Louisiana, May 19, 1917, with a cargo of gasoline consigned to the Italian-American Oil Company at Savona, Italy, to call at Gibraltar for orders. She was armed for defensive purposes with two 4-inch guns, one fore and one aft, and manned with a civilian crew of 35 and a naval gun crew of 12. After calling at Gibraltar for orders she sailed from that port June 10, 1917, and on the morning of June 12 was fired upon and finally sunk by a German submarine after a running fight in which the *Moreni* endeavored to escape and in which 200 to 250 shots were fired by the submarine and about 150 shots by the *Moreni*.

It is apparent that the *Moreni* was at the time of her destruction being privately operated for private profit as a merchant vessel, and for the reasons heretofore given the Commission holds that she does not fall within the excepted class.

Case No. 549. Steamship Alamance

The Steamship *Alamance*, owned by the Garland Steamship Corporation, an American national, was requisitioned by the Shipping Board October 20, 1917, and at once redelivered to the Garland Steamship Corporation under a time-form requisition charter, executed December 28, 1917, by the terms of which the owner operated the vessel as agent of the Shipping Board. She was manned with a civilian crew of 38 men, armed for defensive purposes with two 4-inch guns, one fore and one aft, which were manned by a naval gun crew of 19 men. On February 5, 1918, while en route from Hampton Roads, Virginia, to Liverpool, England, with a cargo consisting principally of tobacco, cotton, zinc, and lumber, and while in a convoy of 15 ships escorted by naval vessels, she was torpedoed and sunk by a German submarine.

For the reasons heretofore given the Commission holds that at the time of her destruction the *Alamance* was a merchant vessel and that she does not fall within the excepted class.

Case No. 553. Steamship Tyler

The Steamship *Tyler*, owned by the Old Dominion Steamship Company, of New York, an American national, was requisitioned by the Shipping Board November 29, 1917, and a time-form requisition charter executed on January 4, 1918. On March 2, 1918, the Shipping Board entered into an operating agreement with Chase Leaveth and Company by the terms of which they operated the *Tyler* as agent of the Shipping Board, and she was being so operated at the time of her destruction. She was manned by a civilian crew, armed for defensive purposes with two 3-inch guns, one fore and one aft, which were manned by a naval gun crew of 19 men. On April 30, 1918, the *Tyler* left Genoa, Italy, in convoy, bound for New York in ballast. On May 2, 1918, she was sunk by torpedoes fired by a German submarine.

For the reasons hereinabove given the Commission holds that at the time of her destruction the *Tyler* was a merchantman in no sense impressed with a military character, and hence is not within the excepted class.

Case No. 554. Steamship Santa Maria—*oil tanker*

The Steamship *Santa Maria*, owned by the Sun Company, an American national, was requisitioned by the Shipping Board October 12, 1917, delivered on January 14, 1918, and on the same day redelivered to the owner, which operated her as agent of the Shipping Board under a requisition agreement constituting a part of the requisition charter. She sailed from Chester, Pennsylvania, the latter part of January, 1918, via Norfolk, Virginia, bound for Great Britain in convoy with a cargo of fuel oil. She was manned by a civilian crew of 39 men, armed with two 4-inch guns, one fore and one aft, and had a naval gun crew of 22 men. On February 25, while under convoy of British trawlers, she was sunk by a torpedo fired by a German submarine.

The Commission holds that at the time of her destruction the *Santa Maria* was a merchant vessel and that she does not fall within the excepted class.

Case No. 552. Steamship Merak

By virtue of a proclamation of the President of the United States of March 20, 1918, 87 vessels of Holland registry and belonging to her nationals, lying in American ports, were, in accordance with international law and practice, requisitioned by the United States, the President in his proclamation directing

that the Shipping Board "make to the owners thereof full compensation, in accordance with the principles of international law". Of these vessels 46, including the Steamships *Merak* and *Texel*, were delivered to the Shipping Board.

The *Merak* was operated as a merchantman by Wessel Du Val and Company, American nationals, as agents of the Shipping Board. She sailed under the American flag, was unarmed, and was manned by a civilian crew. While en route from Norfolk, Virginia, to Chile with a cargo of 4,000 tons of coal she was, on August 6, 1918, captured by a German submarine and sunk by bombs.

Case No. 556. Steamship Texel

As appears from the statement made in connection with the *Merak* case *supra*, the Steamship *Texel* was one of the Dutch ships requisitioned by the United States and assigned to the Shipping Board, after which she was operated by the New York and Porto Rico Steamship Company as agent for the Shipping Board. She was unarmed and manned by a civilian crew. She sailed under the American flag from Ponce, Porto Rico, on May 27, 1918, for New York with a cargo of sugar. On June 2 she was attacked by a German submarine, overhauled, and sunk by bombs.

It is apparent that the Steamships *Merak* and *Texel* were at the time of their destruction being operated as merchant vessels and in no sense impressed with a military character. For the reasons heretofore given the Commission holds that neither the Steamship *Merak* nor the Steamship *Texel* falls within the excepted class and that neither can in any sense be held to have constituted "naval and military works or materials" as that phrase is used in the treaty.

But notwithstanding this holding the German Agent contends that these claims do not fall within the terms of the Treaty of Berlin because these Dutch ships were not vessels "*belonging to*" the United States or its nationals as that term is used in the paragraph 9 here under consideration. That these ships were lawfully requisitioned, reduced to possession, and operated by the United States is conceded by Germany. It results that at the time of their destruction the right of the United States to possess and use them against all the world was absolute and superior to any possible contingent rights or interests of those Dutch nationals who owned them at the time they were requisitioned. That the United States had at least a special or qualified property in these ships there can be no doubt. They were lawfully in its possession, sailing under its flag, used as it saw fit without regard to the wishes of the former owners and during an emergency the duration of which the United States alone could determine. There never was a time when the Dutch nationals who owned the ships at the time they were requisitioned could, as a matter of right, demand their return or impose any limitation whatsoever upon their operation or control. As the United States had the absolute right against the whole world to possess these ships and use them as it saw fit, conditioned only upon the duty to make adequate compensation for their use and to return them, at a time to be determined by it or in the alternative to make adequate compensation, to the Dutch nationals who owned them at the time they were requisitioned, certain it is that this amounted to a special or qualified property in the ships tantamount to absolute ownership thereof for the time being. The possession of the United States was analagous to that of a grantee having an estate defeasible upon the happening of some event completely within his control.

Where under the terms of a trip or time charter the holder of the legal title delivers to the charterer the whole possession and control of the ship, the

charterer becomes the "owner" thereof during the term of the charter and is designated as such.[5] The British Merchant Shipping (Salvage) Act, 1916, provides that: "Where salvage services are rendered by any ship *belonging to His Majesty* * * * the Admiralty shall * * * be entitled to claim salvage * * * and shall have the same rights and remedies as if the ship * * * did not belong to His Majesty". The English courts have held that a ship requisitioned and operated by the government under requisition charter "belonged to" His Majesty within the terms of this act and hence was entitled to salvage.[6] These decisions while helpful are not controlling in construing the phrase "Damage in respect of all property wherever situated *belonging to*" the United States or its nationals. "Belonging to" as here used is not a term of art or a technical legal term. It must be construed in the popular sense in which the word is ordinarily used, as synonymous with appertaining to, connected with, having special relation to. That it was used in this sense is evidenced by reference to this clause of the French text of the Treaty of Versailles, which reads: "Dommages relatifs à toutes propriétés, en quelque lieu qu'elles soient situées, appartenant à". The use of the word "appartenant" is significant. The expression "belonging to" does not necessarily convey the idea that the indefeasible legal title to the property "in respect of" which the damage occurred must have vested in the United States or its nationals. It is sufficient that the United States or its nationals had such control over and interest, general or special, in such property as that injury or damage to it directly resulted in loss to them. Had the draftsmen of the treaty intended to restrict Germany's obligations to pay for damages to property in which the unconditional legal title was vested in the Allied or Associated States or their nationals, they would have used apt and well-recognized terms to express such limitation. On the contrary, it is evident from reading the reparation provisions as a whole that their purpose and intention was to require Germany to pay all losses sustained by the Allied or Associated States or their nationals resulting from "Damage in respect of all property wherever situated" of a non-military character.

While not controlling, it is interesting to note that the Reparation Commission has placed a similar construction on the language in question, and gone a step further than here indicated in holding that "Time chartered neutral vessels in respect of which compensation was paid by the claiming Power might also be included [in computing the amount of Germany's reparation payments under paragraph 9 of Annex 1], though not sailing under the flag of the Power in question."

It follows that the claims for losses resulting from the destruction of the Steamships *Merak* and *Texel* fall within the terms of the Treaty of Berlin and that Germany is obligated to compensate for their loss.

Case No. 546. Steamship John G. McCullough

The Steamship *John G. McCullough*, owned by the United States Steamship Company, an American national, was requisitioned by the United States

---

[5] Sandeman *v.* Scurr, (1866) L.R. 2 Q.B. 86; Marcardier *v.* Chesapeake Insurance Co., (1814) 8 Cranch 39, 49; Reed *v.* United States, (1871) 11 Wallace 591, 600; Leary *v.* United States, (1872) 14 Wallace 607, 610; Kent's Commentaries, 14th Edition, vol. III, page *138; Scrutton, Charterparties and Bills of Lading, 11th (1923) Edition, Article 2, pages 4-9.

[6] Admiralty Commissioners *v.* Page and Others, (1918) 2 K.B. 447, affirmed in (1919) 1 K.B. 299. See also The *Sarpen*, Court of Appeal, (1916) Probate Division, 306, 313; Master of Trinity-House *v.* Clark, (1815) 4 M. & S. 288.

through the Shipping Board November 6, 1917, under a bare-boat requisition charter. On the same day she was delivered she was turned over to the War Department of the United States and operated with a British civilian crew 32 in number, employed and paid by and in all things subject to the orders of the United States War Department. Under the requisition charter she thereupon became a public ship.

She was armed with one *French* 90 mm. gun, which was manned by *British* naval crew of two gunners. While en route, May 18, 1918, from London, England, in naval convoy to Rochefort, France, with a general cargo *for the Army of the United States*, she was destroyed, either by a torpedo from a German submarine, as claimed by the American Agent, or by a mine, which may or may not have been of German origin. The German Agent denies that she was torpedoed by a German submarine. The German Admiralty is without information with respect to her destruction. There is, however, evidence supporting the allegation that she was torpedoed; but in view of the disposition which the Commission will make of this case the cause of her destruction is *not* material.

At the time the *McCullough* was destroyed she was a public ship in the possession of and operated by the United States through its War Department, one of the military arms of the Government whose every effort was concentrated on mobilizing and hurling men and munitions against Germany. She had been requisitioned in European waters. America's associates in the war had assisted in manning and equipping her. France had supplied armament and Great Britain had supplied a naval gun crew. She was transporting from England to France supplies for the active fighting forces of the Army of the United States. She possessed every indicia of a military character save that she was not licensed to engage in *offensive* warfare against enemy ships. Offensive operation on the seas was not her function. The fact that the legal title to her had not vested in the United States is wholly immaterial. She was in the possession of the United States. It had the right against all the world to hold, use, and operate her and was in fact operating her through its War Department by a master and crew employed by and subject in every respect to the orders of the War Department. She was actively performing a service for the Army on the fighting front. She possessed none of the indicia of a merchant vessel. The very requisition charter under which she was operating took pains to declare her a "public ship" and not a merchant vessel subject to the laws, regulations, and liabilities as such as was the *Lake Monroe*.[7] She was at the time of her destruction being utilized for "other * * * military purposes" within the meaning of that phrase as used in section 5 of the Shipping Act. She was impressed with a military character.

The taxicabs privately owned and operated for profit in Paris during September, 1914, were in no sense military materials; but when these same taxicabs were requisitioned by the Military Governor of Paris and used to transport French reserves to meet and repel the oncoming German army, they became military materials, and so remained until redelivered to their owners. The automobile belonging to the United States assigned to its President and constitutional commander-in-chief of its Army for use in Washington is in no sense military materials. But had that same automobile been transported to the battle front in France or Belgium and used by the same President, it would have become a part of the military equipment of the Army and as such impressed with a military character. The steel rails used in the yards of a steel plant in Pittsburgh for shifting war materials from one part of the plant to

[7] The *Lake Monroe*, (1919) 250 U.S. 246.

another are not impressed with a military character, for they are privately operated for private profit. But if these same rails had been taken up and shipped to the American Army in France and laid by it as a part of its transportation system, used and operated by it for transporting munitions and supplied to the fighting front, they would then have become military materials.

So here the *McCullough*, by the terms of her requisition charter stamped a "public ship," actively engaged in transporting army supplies to the battle front, operated by the War Department of the United States through a crew employed and paid by it and subject in all things to its orders, was at the time of her destruction "military materials" and not property for which Germany is obligated to pay under the provisions of the Treaty of Berlin.

Case No. 547. Steamship Joseph Cudahy—*oil tanker*

The Steamship *Joseph Cudahy*, an oil tanker, owned by the American Italian Commercial Corporation, of New York, an American national, was requisitioned by the United States through the Shipping Board on October 3, 1917, and on the same day delivered to the War Department and operated by the United States Army Transport Service under a bare-boat charter by a civilian crew employed and paid by and in all things subject to the orders of the army authorities. She was armed with two 3-inch guns. Her armament was manned by a United States naval crew of 21 men. She had carried a cargo of gasoline and naphtha for the United States Army from Bayonne, New Jersey, calling first at La Pollice, France, and then to Le Verdon and discharged her cargo at Furt, Gironde River. She sailed from Le Verdon in ballast on her return trip to New York on August 14, 1918, in convoy with 28 other vessels. The convoy broke up during the night of August 15. She was torpedoed by a German submarine and sunk on the morning of August 17.

The fact that she was in ballast at the time of her destruction is immaterial. Being a tank ship operated by and for the exclusive use of the Army Transport Service of the United States, her return in ballast for additional supplies of gasoline and naphtha for the United States Army on the fighting front was an inseparable part of her military operations.

For the reasons set out in connection with the destruction of the *John G. McCullough* the Commission holds that the *Joseph Cudahy* at the time of her destruction was impressed with the character of "military materials" and that the loss suffered by the United States resulting from her destruction is not one for which Germany is obligated to pay under the terms of the Treaty of Berlin.

Case No. 548. Steamship A. A. Raven

The Steamship *A. A. Raven*, owned by the American Transportation Company, Inc., an American national, was requisitioned by the United States through the Shipping Board, and a bare-boat requisition charter was executed on February 19, 1918. She was delivered to and operated by the War Department with a civilian crew employed and paid by and in all respects subject to the orders of the War Department. She was armed with two 3-inch guns but had no armed guard at the time of her loss. While en route in convoy on March 14, 1918, from Barry, England, to Brest and thence to Bordeaux, France, she was sunk. The German Admiralty has no record of her having been torpedoed by a German submarine as claimed by the American Agent. As pointed out by the German Agent, she may possibly have struck a mine adrift from fields planted by the Netherlands Government along the Dutch coast not far from the point where the *A. A. Raven* was sunk. The evidence that

she was torpedoed, while far from satisfactory, is sufficient to support the allegation. However, in view of the disposition which the Commission will make of this case the cause of her destruction is immaterial.

At the time of her destruction she had a cargo of food, clothing, surgical instruments, hospital supplies, piping, and rails and 400 tons of explosives, all belonging to the United States and all designed for the use of the American Army in France.

For the reasons set forth in connection with the case involving the loss of the *John G. McCullough* the Commission holds that the Steamship *A. A. Raven* was at the time of her destruction impressed with a military character and that the resultant loss to the United States is not one for which Germany is obligated to pay under the terms of the Treaty of Berlin.

From the foregoing the Commission deduces the following general rules with respect to the tests to be applied in determining when hull losses fall within the excepted class of "naval and military works or materials" as that phrase is found in paragraph 9 of Annex I to Section I of Part VIII of the Treaty of Versailles as carried by reference into the Treaty of Berlin:

I. In order to bring a ship within the excepted class she must have been operated by the United States at the time of her destruction for purposes directly in furtherance of a military operation against Germany or her allies.

II. It is immaterial whether the ship was or was not owned by the United States; her possession, either actual or constructive, and her use by the United States in direct furtherance of a military operation against its then enemies constitute the controlling test.

III. So long as a ship is privately operated for private profit she cannot be impressed with a military character, for only the Government can lawfully engage in direct warlike activities.

IV. The fact that a ship was either owned or requisitioned by the Shipping Board or the Fleet Corporation and operated by one of them, either directly or through an agent, does not create even a rebuttable presumption that she was impressed with a military character.

V. When, however, a ship, either owned by or requisitioned by the United States during the period of belligerency, passed into the possession and under the operation of either the War Department or the Navy Department of the United States, thereby becoming a public ship, her master, officers, and crew all being employed and paid by and subject to the orders of the United States, it is to be presumed that such possession, control, and operation by a military arm of a government focusing all of its powers and energies on actively waging war, were directly in furtherance of a military operation. Such control and operation of a ship will be treated by the Commission as *prima facie*, but not conclusive, evidence of her military character.

VI. Neither (*a*) the arming for defensive purposes of a merchantman, nor (*b*) the manning of such armament by a naval gun crew, nor (*c*) her routing by the Navy Department of the United States for the purpose of avoiding the enemy, nor (*d*) the following by the civilian master of such merchantman of instructions given by the Navy Department for the defense of the ship when attacked by or when in danger of attack by the enemy, nor (*e*) her seeking the protection of a convoy and submitting herself to naval instructions as to route and operation for the purpose of avoiding the enemy, nor all of these combined, will suffice to impress such merchantman with a military character.

VII. The facts in each case will be carefully examined and weighed and the Commission will determine whether or not the particular ship at the time

of her destruction was operated by the United States directly in furtherance of a military operation against Germany or her allies. If she was so operated she will fall within the excepted class, otherwise she will not.

The preliminary submissions of the thirteen cases specifically dealt with in this opinion will not be held a waiver of the right of either the American Agent or the German Agent to file in any of them additional proofs bearing on the points decided. Such additional proofs if filed will be considered by the Commission on the final submission, when the principles and rules herein announced will be applied and final decisions rendered. In the absence of further evidence, the interlocutory decisions herein rendered in each of these thirteen cases will become final.

Done at Washington March 25, 1924.

Edwin B. PARKER
Umpire

Concurring in the conclusions:

W. KIESSELBACH
German Commissioner

DISSENTING OPINION OF AMERICAN COMMISSIONER

I concur in the conclusions generally, but not in the conclusion that on the facts stated with reference to the *Joseph Cudahy* she was impressed with the character of "military and naval works or materials" within the meaning of that phrase as used in the provisions of the Treaty of Versailles under consideration.

One of the conclusions concurred in is that the control and operation of a vessel by the War Department of the United States for army service, as was the case with the *Joseph Cudahy*, constitutes *prima facie* but not conclusive evidence of her military character.

Another conclusion concurred in is that in order to bring a vessel within the excepted class she must have been operated by the United States at the time of her destruction "for purposes directly in furtherance of a military operation against Germany or her allies."

On the facts stated, the *Joseph Cudahy* was returning home from France to the United States in ballast at the time of her destruction, so that she was not being operated at that time "for purposes directly in furtherance of a military operation against Germany or her allies." Accordingly the presumption arising from her control and operation by the War Department is completely rebutted by her actual use and situation at the time of her destruction.

Chandler P. ANDERSON
American Commissioner

PROVIDENT MUTUAL LIFE INSURANCE COMPANY AND OTHERS (UNITED STATES) *v.* GERMANY

(Life-Insurance Claims; September 18, 1924, pp. 121-140; Certificate of Disagreement by the Two National Commissioners, April 17, 1924, pp. 103-121.)

LIFE-INSURANCE.—INTERPRETATION OF CONTRACTS: (1) APPARENT MEANING, (2) TERMS.—LOSS, PROFIT TO LIFE-INSURANCE COMPANY: NO CAUSAL