

II

THE "NATIONALITY" OF A SHIP

THE PURPOSE of this work is to find an explanation of the phraseology that refers to a vessel as having the nationality of a State. Such an undertaking involves an inquiry concerning the state of facts which are acknowledged to create between State and vessel that relationship which entitles the State to regard the ship as its own, and excludes the claims of all other States. The terminology of official documents gives evidence that States recognize that a legal connection exists between themselves and the ships which they respectively consider as peculiarly their own. There has been criticism of the use of the word "nationality" to describe this connection. Some have thought that its special meaning with regard to the relationship between a State and a person precludes its application to vessels. It is in the practice of States,¹ therefore, that authority must be found for the use of the words: "the nationality of a vessel."

ACCEPTED TERMINOLOGY

A Convention for the Protection of Submarine Cables signed by twenty-six States on March 14, 1884, in Article X calls for "furnishing evidence of the *nationality* of the said vessel."² Scores of bilateral treaties, like that between Japan and Poland of December 7, 1922, provide

¹ "The law of nations is deduced from the actual practice of nations . . ." WHEATON, *INTERNATIONAL LAW*, (ed. 1863) 217, 218.

² U.S. TREATY SERIES, no. 380; 2 MALLOY 1949.

that ships must be in a position "to prove their *nationality*."³ The French-Czechoslovakian treaty of 1923 tells how "la nationalité des navires sera reconnue";⁴ Italian treaties explain how "la nazionalità delle navi sarà constatata";⁵ the Denmark-Finland treaty of 1923 gives the means whereby "Skibes Nationalitet skal gensidig anerkendes. . . ."⁶ Strikingly, the German Government, in preference to Staatsangehörigkeit, consistently refers in its treaties to "die Nationalität der Schiffe."⁷ Thus do treaties in other languages commonly employ the equivalent of the English term "nationality." It is, moreover, not only the recent treaties but also those dating back over the space of a century which show that States are in the habit universally of referring to the "nationality" of vessels.

Several States grant to their vessels what they call "Certificates of *nationality*";⁸ and others, though they may call the document by another name, regard it as such. The "Acte de Francisation" delivered to French vessels is so considered. Article 4 of the French-Monacan Treaty of 1912,⁹ accordingly provides that "la nationalité monégasque d'un navire se déterminera" in accordance with the same rules under which an "Acte de Francisation" is granted.

Prize regulations, too, invariably make some mention

³ *Traité de commerce et de navigation*, Art. 14, 32 L. OF N. TREATY SER. 63, no. 806.

⁴ *Convention commerciale*, 17 août 1923, Art. 28, 24 NOUVEAU RECUEIL (1931) 699.

⁵ *Trattato di amicizia, commercio e navigazione concluso fra l'Italia ed il Siam e Protocollo . . . 9 maggio 1926*, Art. 21, 36 TRATTATI E CONVENZIONI FRA IL REGNO D'ITALIA E GLI ALTRI STATI (1933) 157.

⁶ *Traité de commerce*, 3 août 1923, Art. 15, 22 NOUVEAU RECUEIL (trois. sér. 1930) 114.

⁷ *E.g.*, *Traité concernant les relations économiques . . . Allemagne et Russie*, 12 octobre 1925, Art. 4, 15 NOUVEAU RECUEIL (1926) 385.

⁸ See, for instance, sec. 7, Law of May 4, 1901 (Norway), on registration of ships.

⁹ 10 avril 1912, 10 NOUVEAU RECUEIL (1921) 181.

of the "nationality" of vessels. Those of Prussia in 1864,¹⁰ as well as those of Germany in 1915,¹¹ are concerned with the determination of such *nationality*. "Proof of the vessel's *nationality*" is insisted upon in the Danish Regulations of 1864,¹² as well as in the Neutrality Proclamation of Denmark during the World War.¹³ The same term is used by Godfrey Lushington in his *Manual of Naval Prize Law* drawn up for the use of British Naval Officers.¹⁴ Indeed, allusions to the nationality of a vessel are found in practically all prize regulations,¹⁵ and a reflection of this practice is seen in Articles 24 and 25 of the prize rules adopted by the Institute of International Law at its session at Turin in 1882, in which attention is given to the means of showing the *nationality* of vessels.¹⁶

Diplomatic correspondence is replete with instances of the use of the expression "nationality of vessels."¹⁷ Just a few may here be selected. Secretary Webster discussed in 1843 the subject of "the verification of the *nationality* of the vessel."¹⁸ The phrase found a place in Secretary Fish's

¹⁰ Art. IV, Regulations of the Prussian Government, Berlin, March 12, 1864, 54 B. & F. ST. PAP. (1863-64), 556.

¹¹ Art. 11. HUBERICH & KING, THE GERMAN PRIZE CODE (1915), 10-11. See also sec. 14, German Seaman's Act of 1902, Int. Labor Office, Studies and Reports, Series P (Seamen) no. 1, SEAMEN'S ARTICLES OF AGREEMENT (1926).

¹² "Regulations Respecting the Blockade of Enemy's Harbours, etc.," Feb. 16, 1864, Art. 3. 54 B. & F. ST. PAP. (1863-64) 549-50.

¹³ "Rules which during war between foreign powers have to be followed etc.," Aug. 6, 1914, Art. 1. NAVAL WAR COLLEGE, INT. LAW DOC. (1916) 53.

¹⁴ London, 1866, ch. IX, sec. 131, pp. 25-26.

¹⁵ Cf. Appendix B, Art. 20, 2 HURST & BRAY 425; Art. 7, "du règlement russe sur les prises du 27 mars 1895," FAUCHILLE, 2 TRAITÉ DE DROIT INTERNATIONAL PUBLIC 464.

¹⁶ 6 ANNUAIRE 177, 213.

¹⁷ Cf. Response to note of Manuel Irogoyen, Minister of Foreign Affairs of Peru by the British Legation, 7 April 1879. CLUNET (1879), 215; Mr. J. Watson Webb to the Marquis d'Abrantes, Aug. 20, 1862, FOR. REL. (1862), 724-726; Mr. Dichman to Mr. Roldan, Nov. 5, 1878, FOR. REL. (1879), 262; Mr. Sullivan to Mr. Hanaberg, June 7, 1867, 2 MESSAGE OF THE PRESIDENT (FOR. REL., 1867) 1011.

¹⁸ To Mr. Everett, Mar. 28, 1843, (quoting a note of Lord Aberdeen

communication concerning the *Virginus*.¹⁹ Mr. Bayard, when holder of the same office, made inquiry on the matter of "the American *nationality* of the vessels."²⁰ During the World War, too, a protest was entered with the German Government by Mr. Lansing over the "indiscriminate pursuit and destruction of merchantmen of all kinds and *nationalities*."²¹ The subject of the nationality of vessels was discussed at some length in a legal sense by the Minister for Foreign Affairs of Belgium in 1888,²² and was given much attention by the Netherland Government in a protest to Great Britain dated in 1915.²³ In presenting its case to the tribunal in the Geneva Arbitration, counsel for Great Britain alluded to a change in the "nationality of the vessel."²⁴

The term "nationality of vessels" also has found a ready acceptance in the decisions of foreign prize courts,²⁵ and of the United States Supreme Court.²⁶ In 1923, for in-

to Mr. Everett of Dec. 20, 1842), MSS. Inst., G. B. Printed with some formal alterations in 6 WEBSTER'S WORKS, 331ff.; 3 WHARTON'S DIGEST 136.

¹⁹ To Mr. Sickles, Nov. 7, 1873, MSS. Inst., Spain, 3 WHARTON'S DIGEST 152. See also, Admiral Polo de Bernabe to Mr. Fish, Feb. 2, 1874, 2 FOR. REL. (1875-76) 1161.

²⁰ Mr. Bayard, Sec. of State to Mr. Hood, July 6, 1885, 156 MS. Dom. Let. 184, 2 MOORE'S DIGEST 1074-75.

²¹ American Note of April 18, 1916, on the "Sussex," FOR. REL. SUPP. (1916) 234.

²² Mr. Van Eetvelde to Mr. Tree, Jan. 28, 1888, FOR. REL. (1888) 37f.

²³ Note du Gouvernement Néerlandais au Gouvernement Britannique, décembre 1915, 24 REV. GÉN. DR. INT. PUB. (1917) Doc. 77-78. A note from the Spanish Insurgents to the British Government on Nov. 17, 1936, protesting the "scandalous traffic in arms" to the port of Barcelona (Loyalist) says in part: "All this material is being transported to this port in ships flying different flags whose real *nationality* in its greater part is Russian or Spanish." N. Y. Times, Nov. 21, 1936.

²⁴ CASE OF GREAT BRITAIN BEFORE THE GENEVA ARBITRATION TRIBUNAL (1872) 279.

²⁵ The Davanger, Conseil suprême des prises de Berlin, 26 janvier 1917, FAUCHILLE ET DE VISSCHER, 1 JURISPRUDENCE ALLEMANDE, Doc. no. 59.

²⁶ The Mohawk (Dec. 1865), 3 WALL. 566; The Merritt (Nov. 17, 1873), 17 WALL. 582ff; Providence & N.Y. SS. Co. v. Hill Mfg. Co. (1883) 109 U.S.

stance, the Supreme Court referred, in *Cunard SS. Co. v. Mellon*²⁷ to the jurisdiction which "arises out of the *nationality* of the ship." International tribunals have employed the expression.²⁸ Attorney-General Cushing in 1854²⁹ and Attorney-General Griggs in 1899³⁰ spoke of the nationality of vessels, and the Secretary of the Treasury with the concurrence of the Secretary of State, in 1872, promoted a bill in Congress which dealt with that very subject.³¹

The sanction of practical administration is given to the use of the word "nationality" with respect to vessels in Article 166 of the Customs Regulations of the United States, which has to do with the verification of the "nationality and tonnage of a vessel."³² Scholars as well, among them Judge John Bassett Moore, have employed the term.³³

To what does this widely used phrase—"nationality of a ship"—refer in international law? It is evidently descriptive of a relationship existing between a State and a ship, a relationship more intimate than that between the same ship and any other State. What is the character of the connection between a State and a ship such as to justify the claim that the latter possesses the nationality of the former? By what token or tokens, by what act or acts, does this legal relationship come into being? What tests are applied, in practice, in determining whether a ship has the so-called nationality of a State?

578, 589; *St. Clair v. United States* (May 26, 1894), 154 U.S. 134; *Wynne v. United States* (1909), 217 U.S. 234. Cf. *Thomas Cushing v. United States*, 22 COURT OF CLAIMS REP. 1; *The Alta* (Feb. 6, 1909), 136 Fed. 513; *The Chiquita* (1927), 19 F. (2d) 417. ²⁷ 262 U.S. 100. *Italics mine.*

²⁸ *The S.S. Wimbledon* (1923), JUDGMENTS OF PERM. CT. OF INT. JUSTICE, Ser. A, Judg. no. 1, p. 25. ²⁹ 6 OP. ATTY. GEN. 642. ³⁰ 22 OP. ATTY. GEN. 578.

³¹ HOUSE EXEC. DOC. NO. 194, 42d Cong., 2d sess. (March 13, 1872), p. 3.

³² 1931. See also Art. 15, on "evidence of nationality."

³³ See sec. 323 of 2 MOORE'S DIGEST.

A NECESSARY RELATIONSHIP

So essential to the well-being of a vessel is its nationality that it is axiomatic that every vessel must be in a position to establish such a connection.³⁴ "The Law of nations and common sense combine to require that every ship shall have a nationality, defined and evidenced in each case . . ." ³⁵ It was with the acceptance of this proposition that the Institute of International Law at its session in Venice in 1896 initiated its deliberations on the legal status of merchant vessels.³⁶ The entire legal system which States have evolved for the regulation of the use of the high seas is predicated on the possession by each vessel of a connection with a State having a recognized maritime flag.³⁷

³⁴ It is axiomatic in that the ship's legal existence is dependent thereon. "Nach den Grundsätzen des Völkerrechts ist daher für jedes Schiff, welches Seehandel betreiben will, die Zugehörigkeit zu einem bestimmten Staatswesen die nothwendige Voraussetzung seiner rechtlichen Existenz, seiner juristischen Person." Stoerk, *Das Offene Meer*, in 2 HOLTZENDORFF, HANDBUCH DES VÖLKERRECHTS (1887) 520.

³⁵ CUSHING, 6 OP. ATTY. GEN. (Aug. 3, 1854) 640. At a more recent date a German writer holds: "Die Notwendigkeit einer Nationalität eines jeden Schiffes auf hoher See ist demnach implicite in jenen Grundsätzen enthalten." Rudolf Mueller, *Das Flaggenrecht von Schiffen und Luftfahrzeugen nach Völkerrecht und Landesrecht*, ZEITSCHRIFT FÜR VÖLKERRECHT (1927) 252.

³⁶ "Les propositions qu'il a formulées à ce sujet commencent par poser en principe que chaque navire de commerce a une nationalité et n'en a qu'une seule." A. Pearce Higgins, *Le régime juridique*. . . 30 RECUEIL DES COURS, (1929) 22.

³⁷ " . . . Unless men be grouped into political societies, there can be no guaranty of law, nor assurance of positive and effective authority. Such a pretension is least of all admissible in regard to the navigation of the ocean, the extent of which, and the inherent difficulty of subjecting it to a continuous and complete *surveillance* create a peculiar exigency for bringing all ships and those owning or navigating them within the scope of some nationality, with a consequent responsibility to law, both public and municipal, which are unattainable without such nationality. (ORTOLAN, 1 DIPLOMATIE DE LA MER, 178)," CUSHING, *loc. cit.*, 638.

J. M. Spaight's "conditional nationality" of an airship coming into being when the ship flies over the seas is cited with approbation by Mueller who points out that so long as vehicles traverse nationalized paths they have no nationality—that it is the internationalization or free-

This connection has been commonly called nationality.³⁸

The lack of nationality, which might better be termed "statelessness," robs a ship of privileges, and deprives it of a State to espouse its cause when it suffers injustice at the hands of another State. Even the privilege of clearing port may be denied the stateless vessel. Section 68 of the British Merchant Shipping Act of 1894 provides:

(1) An officer of customs shall not grant a clearance or transire for any ship until the master of such ship has declared to that officer the name of the nation to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance or transire.

(2) If a ship attempts to proceed to sea without such clearance or transire she may be detained until the declaration is made.³⁹

In the United States, as well, clearance from port is given only those vessels which can verify their nationalities.⁴⁰ It

dom of the seas on which nationality is founded. *Op. cit.* 248. See also p. 251.

"Tout navire," says H. Bonfils, "pour jouir de la liberté des mers, pour y pratiquer un libre parcours, pour ne pas encourir le soupçon de se livrer à la piraterie, doit avoir une nationalité et être en mesure de la prouver." MANUEL DE DROIT INTERNATIONAL PUBLIC (Droit des gens) 2^me éd. 316, quoted by Nys, 2 LE DROIT INTERNATIONAL (nouv. éd.) 179. Fauchille concurs.

In substantial accord: OPPENHEIM, 1 INTERNATIONAL LAW (1905) 316; FENWICK, INTERNATIONAL LAW 217; FIORE, INTERNATIONAL LAW CODIFIED (transl. from 5th Ital. ed. by Borchard, 1918) sec. 1014, p. 407; CALVO, 1 DROIT INTERNATIONAL, sec. 388, p. 521; COBBETT, 1 CASES ON INTERNATIONAL LAW (5th ed.) sec. 128; DESPAGNET, *op. cit.* 649.

³⁸ In protesting against an alleged fraudulent sale for debt of the "four rebel vessels," Minister Webb wrote to the Marquis d'Abrantes, Sec. of State for Foreign Affairs of Brazil, to the effect that United States law forbade such sale. Only United States law could apply, he remarked, since "the vessels could not be here, because they would be without a nationality, but that they possess American registers, and are enrolled under and protected by the United States flag." Communication dated Aug. 20, 1862, enclosure No. 1 in Mr. Webb to Mr. Seward, Aug. 23, 1862, No. 22, FOR. REL. (1862) 724-26.

³⁹ TEMPERLEY, MERCHANT SHIPPING ACTS (4th ed., 1932).

⁴⁰ Art. 166, CUSTOMS REGULATIONS, Treas. Dept. (1931) 118.

is by this control of their ports that States, in practice, clear the high seas of nondescript vessels. The universal recognition of the principle that every ship must maintain a connection with some State has made discussion of the stateless ship of purely academic value. Practically, stateless ships are unknown, except under the most unusual circumstances, and then for but a short period.⁴¹

GRANTING NATIONALITY

A pertinent inquiry to make at this point is: How does a vessel become endowed with this attribute? Who invests it with a nationality? Neither the method of "nationalization" nor the restrictions which may be imposed on a vessel seeking to be "nationalized" are absolutely germane to the major problem under consideration. That issue—by what token or tokens may a State demand respect for its claim that a vessel belongs to itself—is approached from another angle. Nevertheless, this digressive excursion into the modes of "nationalization" has some importance as background for the broader inquiry of the succeeding chapters.

A study of the navigation codes of the maritime States will serve to inform one that they themselves, individu-

⁴¹ LLOYD'S REGISTER, Table of World's Tonnage, lists the world's 31,700 vessels of 67,920,185 gross tons by "countries," of which 47 vessels of 110,104 gross tons come under the heading "Country not stated." But it cannot be inferred that these 47 are without a nationality, since a note explains: "Under the heading 'Country not stated' are included all vessels entered in Lloyd's Register without record of flag because definite information had not been received at the time of going to press. . . ." BUR. OF NAVIG., MERCHANT MARINE STATISTICS, 1933, 94-95. Likewise, Bureau Veritas for 1932-33 records out of a comparable total 48,121 gross tons under "Flag Unknown." (BUR. OF NAVIG., *op. cit.* 96.) United States tonnage tax reports for the year ending June 30, 1933, show that no ship was entered that did not claim a nationality. (*Ibid.* 71). THE REGULATIONS OF NAVIGATION AND POLICE APPLICABLE TO THE DANUBE BETWEEN GALATZ AND THE MOUTHS, drawn up by the European Commission of the Danube, May 19, 1881, provides: "Every vessel arriving in the Sulina roads from seaward must hoist her national colors." Part I, ch. I, Art. VIII. Practically, the ship without a flag is non-existent.

ally, regulate the admission of vessels to their merchant marines, that is, authorize them to claim their nationalities.⁴² The stringency or leniency of the conditions which a State imposes are largely a domestic matter. A State is not free, of course, to impinge on the prior rights of other States, nor may it offer its nationality as a shield to one bent on harming a friendly State lest it take the responsibility therefor.⁴³ It was in recognition of the inherent right of States to modify the conditions for admission of vessels into their national merchant marines that the United States Commissioner of Navigation warned Congress:

The proposition to restrict trade from southern countries to the United States to American and national vessels would practically restrict the trade to American vessels, unless those countries extend their registers of shipping so as to bring a large amount of European tonnage under their respective flags. *Their present registry laws are not material in the con-*

⁴² WESTLAKE, 1 INTERNATIONAL LAW (1910) 168-69: "The conditions on which different states admit ships to their register, or otherwise grant them the right to carry their mercantile flag, are very various . . . but . . . it suffices that, for whatever reasons, a state accepts the authority and responsibility which result from the ship's nationality." LISZT, DAS VÖLKERRECHT (12^{te} auflage, 1925) 301: "Die Voraussetzungen der Befugnis wie der Verpflichtung zur Führung der nationalen Flagge bestimmen sich nach der Gesetzgebung des Staates, dem das Schiff seiner Flagge nach angehört." CALVO, 1 *op. cit.*, sec. 391, p. 522: "Chaque État est libre de fixer les conditions auxquelles il confère sa nationalité aux navires, leur donne le droit de porter son pavillon et leur accorde sa protection." FENWICK, *op. cit.* 190: "International law has no rules regulating the conditions under which vessels are entitled to fly the flag of a particular state and are accordingly invested with a degree of the national character possessed by citizens of the state. Each individual state fixes its own conditions."

In accord: W. E. HALL, A TREATISE ON INTERNATIONAL LAW, Higgins, ed. (8th ed., 1924) 215; FAUCHILLE, *op. cit.*, sec. 603, p. 906; BORCHARD transl. note to sec. 1724 of FIORE, INTERNATIONAL LAW CODIFIED 625; FIORE, *op. cit.*, sec. 1200, p. 459; PINHEIRO-FERREIRA, COURS DE DROIT PUBLIC INTERNE ET EXTERNE (1830-38) Art. 8, sec. 41; BLUNTSCHLI, DAS MODERNE VÖLKERRECHT (1878) sec. 524; P. Fedozzi, *La Condition juridique des navires de commerce*, 10 RECUEIL DES COURS (1925) 49-50.

⁴³ An application of this principle will be found *infra*, ch. IX.

*sideration of our policy, for they would necessarily be changed to meet the new situation.*⁴⁴

The Commissioner here gives clear official recognition of the right of these South and Central American States to revise the requirements for the assumption of their nationalities at will. Secretary Fish once observed:

The shipping-laws of the United States are municipal regulations which it prescribes for itself, and to its own citizens, and the administration of which it intrusts to its own officers. It judges of the requirements and of the formalities to be observed to give its national character to private trading-vessels, and reserves to itself the punishment of evasions or omissions of those requirements or formalities.⁴⁵

Judicial substantiation of the point under discussion is offered by the opinion in the *Muscat Dhows* case. The Permanent Court of Arbitration at The Hague had before it here the problem of deciding upon the right of France to grant to certain dhows owned by subjects of the Sultan of Muscat, the right to fly the French flag. Great Britain had contended that France was restricted in this matter by certain treaty obligations. Before, however, the Court turned its attention to the treaty problem involved, it passed upon the issue concerning the right of a State to invest a vessel with its nationality where no treaty provisions obtained,⁴⁶ in the following words:

Whereas, generally speaking it belongs to every sovereign to decide to whom he will accord the right to fly his flag and

⁴⁴ ANN. REP. COMM. NAVIG. (1904) 43. Italics mine.

⁴⁵ Mr. Fish to Admiral Polo de Bernabe, April 18, 1874, in the case of the *Virginus*, 2 FOR. REL. (1875-76) 1207-8.

⁴⁶ The treaty later found applicable and in which many States had voluntarily restricted the grant of their nationality to native vessels is the General Act for the Repression of African Slave Trade, July 2, 1890, 27 STAT. L. 886. See in this regard *Projet de règlement sur la police des navires négriers*, L'INSTITUT DE DROIT INTERNATIONAL (30 mars, 1894) SCOTT. TABLEAU GÉNÉRAL DE TRAVAUX 1873-1913, 175-76. For further self-imposed restrictions note Art. 14 *Convention relative aux armes et munitions*, Paris, le 10 sept. 1919, 14 NOUVEAU RECUEIL (1926) 25.

to prescribe the rules governing such grants, and whereas, therefore, the granting of the French flag to subjects of His Highness the Sultan of Muscat in itself constitutes no attack on the independence of the Sultan. . . . For these reasons decides and pronounces as follows:

1. Before the second of January, 1892, France was entitled to authorize vessels belonging to subjects of His Highness the Sultan of Muscat to fly the French flag, only bound by her own legislation and administrative rules . . .⁴⁷

Prize regulations generally provide that "The question as to whether the conditions as to nationality are fulfilled is decided in accordance with the law of the State to which the vessel belongs."⁴⁸ On several occasions Dr. Lushington flatly denied his competence to challenge such statutory conditions as neutral States might see fit to impose upon ships acquiring a right to their nationalities. "I am of opinion," he said, "that it is no part of my duty to examine minutely into the municipal laws of Denmark."⁴⁹

By their treaties it is evident that States have been given to zealous guarding of their prerogatives in the matter of establishing this vital connection with vessels. Thus, with

⁴⁷ Muscat Dhows Case, Award of the Tribunal, The Hague, Aug. 8, 1905, HAGUE COURT REPORTS (1916) 96. Italics mine.

⁴⁸ INSTITUTE OF INTERNATIONAL LAW (Plenary Session at Turin, Sept. 13, 1882) 6 ANNUAIRE, 177, 213. See the German Naval Prize Regulations, Sept. 30, 1909, 27 HERTSLET'S 180. Also the Russian Regulations as to Naval Prize, July 14, 1895, c. I, sec. 1:

"7. The nationality of a vessel is to be decided in accordance with the laws of the country under the flag of which she is sailing, or to the fleet of which she claims to belong." 23 HERTSLET'S 869, or Kazansky, *Code russe des lois de la guerre maritime*, in CLUNET (1904) 275. This Russian rule was applied in full vigor in the *Thea* by the Russian Supreme Prize Court, 1 HURST & BRAY 96, in which the court released the vessel as German since it retained its right to the German flag under German law despite its prior lease to Japanese interests. Cf. Statement of views expressed by the memoranda, SCOTT, THE DECLARATION OF LONDON 104-11, and the GENERAL REPORT OF THE DRAFTING COMMITTEE, International Naval Conference, *ibid.* 175.

⁴⁹ The *Otto and Olaf*, July 12, 1855, SPINKS 260-61.

more or less elaboration, the treaties of the United States on the subject are similar to Article VII of the Paraguayan treaty of February 4, 1859:

All vessels which, according to the laws of the United States of America, are to be deemed vessels of the United States of America, and all vessels which according to the laws of Paraguay, are to be deemed Paraguayan vessels, shall, for the purposes of this treaty, be deemed vessels of the United States of America and Paraguayan vessels, respectively.⁵⁰

While the American treaties may deviate from the exact wording quoted above, the British treaties since 1851 follow almost exactly the following phraseology:

All vessels which, according to the laws of Great Britain are to be deemed British vessels; and all vessels which, according to the laws of the Kingdom of Sardinia, are to be deemed Sardinian vessels, shall for the purposes of this Convention, and of the said Treaty of the 6th of September, 1841, be deemed British vessels and Sardinian vessels respectively.⁵¹

⁵⁰ U.S. and Netherlands, Jan. 19, 1839, Art. IV; U.S. and Belgium, Nov. 10, 1845, Art. XII; U.S. and Argentine, July 27, 1853; U.S. and Two Sicilies, October 1, 1855, Art. IX; U.S. and Belgium, June 17, 1858, Art. X; U.S. and Ottoman Empire, Feb. 25, 1862, Art. X; U.S. and Italy, Feb. 26, 1871, Art. XVII; U.S. and Belgium, March 8, 1875, Art. IX; U.S. and the Congo, Jan. 24, 1891, Art. VI; U.S. and Japan, Feb. 21, 1911, Art. X; U.S. and Germany, Dec. 8, 1923, Art. X; U.S. and Estonia, Dec. 23, 1925, Art. X; U.S. and Honduras, Dec. 7, 1927, Art. X; U.S. and Salvador, Feb. 13/22, 1926, Art. X. Sources: U.S. TREATY SER; MALLOY; COMPILATION OF TREATIES IN FORCE, 1904.

⁵¹ Great Britain and the following: Sardinia, Jan. 23, 1851, Art. II (quoted in text); Sardinia, Feb. 27, 1851, Art. VI; Netherlands, Mar. 27, 1851, Art. II; Belgium, Oct. 27, 1851, Art. XIII; Paraguay, Mar. 4, 1853, Art. VII; Papal States, Nov. 17, 1853, Art. IV; Chile, Oct. 4, 1854, Art. VI; Honduras, August 27, 1856, Art. VIII; Russia, January 12, 1859, Art. IX; Nicaragua, Feb. 11, 1860, Art. VIII; Turkey, April 29, 1861, Art. X; Belgium, July 23, 1862, Art. IV; Salvador, Oct. 24, 1862, Art. IX; Italy, Aug. 6, 1863, Art. IX; Colombia, Feb. 16, 1866, Art. X; Ecuador, Oct. 18, 1880, Art. XII; Servia, Feb. 7, 1880, Art. XII; Roumania, Mar. 24/Apr. 5, 1880, Art. VII; Montenegro, Jan. 21, 1882, Art. XII; Italy, June 15, 1883, Art. X; Paraguay, Oct. 16, 1884, Art. IV par. 4; Greece, Nov. 10, 1886, Art. IX; Honduras, Jan. 21, 1887, Art. IV; Mexico, Nov. 27, 1888, Art. IV clause 4; Egypt, Oct. 29, 1889, Art. V clause 3; Japan, July 16, 1894, Art. XIII; Nicaragua, July 28, 1905, Art. X; Roumania, Oct. 31,

In the treaties of other maritime States, the Law of Nations is expressed in some variation of the stated principle: "La nationalité des navires doit être constatée d'après les lois de l'État auquel le navire en question appartient . . ." ⁵² The test by which the parties agree to

1905, Art. XIV; Bulgaria, Dec. 9, 1905, Art. IX; Honduras, May 5, 1910, Art. XVI; Japan, April 3, 1911, Art. XVIII; Portugal, Aug. 12, 1914, Art. XVI; Spain, October 31, 1922, Art. XIX; Latvia, June 22, 1923, Art. XIX; Poland, Nov. 26, 1923, Art. IV; Siam, July 14, 1925, Art. XXVI; Estonia, January 13/18, 1926, Art. XIX; Greece, July 16, 1926, Art. XXI; Kingdom of the Serbs, Croats and Slovenes, May 12, 1927, Art. XXII. Sources: HERTSLET'S; NOUVEAU RECUEIL; L. OF N. TREATY SER.

⁵³ "Article 26. The nationality of the vessels of each of the High Contracting Parties shall be determined in accordance with the laws and regulations of the State to which the vessels belong."—Italy and Czechoslovak Rep., March 23, 1921.

Similarly: Italy and—Austria, April 28, 1923, Art. XXVII; Spain, Nov. 15, 1923, Art. XIII; Albania, Jan. 20, 1924, Art. XV; Siam, May 9, 1926, Art. II; Guatemala, Sept. 15, 1926, Art. XIV. Fedozzi lists the following additional Italian treaties: Belgium, Art. 6; Egypt, Art. 5; Finland, Art. 29; Mexico, Art. 20; Nicaragua, Art. 12; Roumania, Art. 17; Czechoslovakia, Art. 26; Union of Socialist Soviet Republics, Art. 28. *Loc. cit.* p. 52.

Norway and—the Netherlands, May 20, 1912, Art. IV; Latvia, Aug. 14, 1924, Art. XXI; Union of Socialist Soviet Republics, Dec. 15, 1925, Art. XXIII; Finland, Dec. 19, 1925, Art. I; Poland, Dec. 22, 1926, Art. XII; Greece, June 29, 1927, Art. IX.

Sweden and—Finland, May 26, 1923, Art. II; Greece, Sept. 10, 1926, Art. IX; Poland, Dec. 2, 1924, Art. XV; Turkey, Feb. 4, 1928, Art. XX.

Germany and—Lithuania, June 1, 1923, Art. XXV; Belgium-Luxemburg, April 4, 1925, Art. XI; Russia, Oct. 12, 1925, Art. IV; Italy, October 31, 1925, Art. XXVII; Sweden, May 14, 1926, Art. XVII; Japan, July 20, 1927, Art. XVI; France, Aug. 17, 1927, Art. XXXVI; Kingdom of Serbs, Croats, and Slovenes, Oct. 6, 1927, Art. XXV; Siam, April 7, 1928, Art. XIII.

Japan and—Chile, Sept. 25, 1897, Art. IX; Colombian Republic, Dec. 12, 1908, Art. IX; Spain, May 15, 1911, Art. XI; Ecuador, Aug. 26, 1918, Art. X; Poland, Dec. 7, 1922, Art. XIV; Kingdom of Serbs, Croats, and Slovenes, Nov. 16, 1923, Art. XIV; Finland, June 7, 1924, Art. XIV; Belgium-Luxemburg, June 27, 1924, Art. X; Mexico, Oct. 8, 1924, Art. XVI; Latvia, July 4, 1925, Art. XVIII.

See also the following miscellaneous treaties: France and Czechoslovakia, Aug. 17, 1923, Art. XXVIII; France and Greece, Sept. 8, 1926, Art. XXVI; Austria-Hungary and German Empire, Dec. 16, 1878, Art. XI; Austria and Latvia, Aug. 9, 1924, Art. XVIII; Austria and Kingdom of Serbs, Croats, and Slovenes, Sept. 3, 1925, Art. XXII; Austria and Denmark, April 6, 1928, Art. X; Belgium-Luxemburg and Guatemala, Nov. 7, 1924, Art. XI; Belgium-Lux. and Latvia, July 7, 1925, Art. XVII; Belgium-Lux.

permit a State to prove that its conditions have been complied with, to establish that the vessel belongs to itself, is also often incorporated in the same treaties, but the fact remains that States recognize the rights of each other to restrict as vigorously as suits their purposes the admission of vessels to their respective merchant marines.⁵³

These diverse purposes to which each State molds its requirements for the investiture of nationality have been a potent factor in the development of the different codes on the subject. All maritime States are, of course, prompted to build up their merchant marines for use in the event of war.⁵⁴ Some see in them the means of developing lucrative trade routes. Whether it be one or the other of these ends towards which a State's maritime policy is directed, differing resources and potentialities inspire distinctive policies.⁵⁵ Thus, Great Britain, with

and Turkey, Aug. 28, 1927, Art. XIII; Bulgaria and Turkey, Feb. 12, 1928, Art. XIV; Cuba and Italy, Jan. 9, 1904, Art. XX; Denmark and Finland, Aug. 3, 1923, Art. XV; Denmark and Lithuania, Nov. 3, 1924, Art. XXXI; Estonia and Belgium-Luxemburg, Sept. 28, 1926, Art. XV; Estonia and Greece, Jan. 4, 1927, Art. XV; Estonia and Poland, Feb. 19, 1927, Art. XVI; Finland and Poland, Nov. 10, 1923, Art. XVII; Finland and Great Britain, Dec. 14, 1923, Art. XVII; Greece and Albania, Oct. 13, 1926, Art. XIX; Greece and Finland, Dec. 18, 1926, Art. XVII; Greece and Latvia, Feb. 25, 1927, Art. XIII; Netherlands and Poland, May 30, 1924, Art. XII; Netherlands and Siam, June 8, 1925, Art. X; Poland and Denmark, Mar. 22, 1924, Art. XI; Poland and Latvia, Feb. 12, 1929, Art. XV; Serbs, Croats, and Slovenes and Albania, June 22, 1926, Art. XXVI; Serbs, Croats, and Slovenes and Hungary, July 24, 1926, Art. XVIII; Spain and Japan, May 15, 1911, Art. XI. Sources for the above treaties are: L. OF N. TREATY SER.; NOUVEAU RECUEIL; FOR. REL.

⁵³ There would appear to be no limit to the *restrictions* which a State is permitted to set up. On the other hand, international practice indicates, and reasonably, that a State cannot "nationalize" ships of other States in an irresponsible fashion. Cf. Rudolf Mueller, *loc. cit.* 387, note. See *infra* ch. X, p. 219.

⁵⁴ See, for instance, the impassioned account of the service of the merchant marine in war in HOUSE REP. NO. 1210, 51st Cong., 1st sess. (1889-90) vol. 4, pp. 10-11.

⁵⁵ For an interesting discussion of the motivation of the navigation acts, see Wm. Scott (for His Majesty) v. David A'Chez, Trinity Term, 16 & 17

ample capital but with threat of a dearth of sailors, permits its British-owned marine to be navigated by foreigners. France, as Ripert points out, has sufficient capital but is forced to admit foreign investment in its shipping industry because of the timidity of the French citizenry in commercial matters. Defense of the coasts of France prompts encouragement of the employment of national mariners who form a valuable part of its reserve.⁵⁶ A new country offering inviting opportunities for investment on land will usually not close the ownership of its national vessels to foreigners. Navigation codes are built on national policy.⁵⁷ It is well to recognize this as one seeks for the legal test by which, under international law, a State may lay claim to a vessel as belonging to itself.

There is agreement that the State which is in a position to claim a vessel as its own, as having its nationality, by that fact alone gains a certain legislative, administrative, and judicial competence over her that no other State can challenge.⁵⁸

It has been said that this jurisdictional authority "partakes more of the characteristics of personal than of territorial sovereignty."⁵⁹ There is no doubt that a ship differs from an ordinary chattel,⁶⁰ and it has been added that she "acquires a personality of her own."⁶¹ There are

Geo. 2, 1743, REPORT OF CASES IN COURT OF EXCHEQUER, 1743-1767, by Sir Thomas Parker, 1776, pp. 23-31.

⁵⁶ RIPERT, DROIT MARITIME sec. 350, p. 419.

⁵⁷ Part of the policy of the United States is explained in the Statute of June 5, 1920, c. 250, sec. 1, 41 STAT. L. 988 (U.S.C.A., vol. 46, sec. 861).

⁵⁸ *Supra* ch. I.

⁵⁹ *Cunard SS. Co. v. Mellon*, 262 U.S. (1923) 100.

⁶⁰ "A ship is not like an ordinary personal chattel; it does not pass by delivery; nor does the possession of it prove the title to it; there is no market overt for ships." Turner, L.J., in *Hooper v. Gumm* (1867), L. R. 2 CH. 282, 290.

⁶¹ *Tucker v. Alexandroff*, 183 U.S. 424, 438. Cf. Cameron, *The Canada Shipping Act*, 7 CANADIAN BAR REVIEW (1929) 112.

these two complementary concepts with regard to a ship: under maritime law it has a personality; under international law it acquires a standing referred to as its nationality.

The special position given ships under maritime law may have influenced the development of the idea that they might also possess a nationality. At least the latter concept flows from it somewhat naturally. Whether or not a ship's nationality really does arise from its maritime "personality" is a point of no great importance. It suffices to observe that States recognize the propriety of regarding a vessel as of a certain nationality. The object of this study is then clear and precise: Is there some test, some one or more factors demanded and accepted, in common, by all the States of the world as conclusive evidence of that nationality? ⁶²

The criteria frequently advanced as tests of a vessel's nationality will be discussed in the following several chapters, and the validity of those criteria analyzed in the light of the practice of States.

⁶² "Although certain principles seem to have been generally accepted by the courts, yet there are still many possibilities of complications because of lack of uniformity in regard to the method of establishing the nationality of a vessel." NAVAL WAR COLLEGE, INTERNATIONAL LAW TOPICS, (1906) 29.