

CHAPTER V
RIGHT OF CAPTURE IN MARITIME WAR

I

WHEN RIGHT OF CAPTURE AND CONDEMNATION MAY BE
EXERCISED

Sec. 139. Right of Capture Exists Only During State of War. The right of capture can, of course, be legally exercised in respect to enemy property only when the captor State is actually in a state of war with the power whose vessels or other property are the object of seizure. Whether such a state of war exists is a matter for the political department of the government to determine and does not fall within the jurisdiction of the Prize Court; but if the former recognizes the existence of war, the Prize Court is bound by a declaration to that effect.¹

Sec. 140. Effect of Armistices and Treaties of Peace. In the absence of treaty stipulations to the contrary captures made after the conclusion of peace are null and void. The right of capture may be, and usually is, suspended by the conclusion of an armistice.² The armistice concluded on November 11, 1918, between the delegates of Germany and Marshal Foch, representing the allied and associated Powers, provided for an immediate cessation of hostilities at sea, but it expressly declared that the

¹ See the decision of the Roumanian Prize Court in the case of the *Nicolae*, a Bolshevik motor boat captured by a Roumanian war vessel in the Black Sea on July 2, 1919, cited by Verzijl, *op. cit.*, Sec. 132; also the decision of the French Prize Council condemning two Russian tugs flying the Red flag, captured in May, 1919, by the naval forces of France between whom and the Russian Bolsheviks the French government recognized a state of war. The *Volea* (or *Volia*) and the *Chalutier No. 20* (28 *Rev. Gén.*, 1920, *Jurispr.*, p. 10). As to whether Albania and Egypt were neutral states see Sec. 174 *infra*. In various other cases Prize Courts were called upon to decide whether a state of war existed in fact at the time particular captures were made. See, among others, the Austro-Hungarian cases of the *Mukhbiri-Sürur*, the *Halil* and the *Fiore Albania*; the Belgian cases of the *Elbing* and others, the *Feronia*, the *Zora* and various others and the French cases of the *Mahrousseh*, the *Kassed Kerim* and others.

² The Italian prize regulations of 1917 (Art. 6) direct that vessels captured after suspension of hostilities shall be released even when the master of the vessel making the capture is ignorant of the suspension.