

of the Fourth Commission and of the plenary session of the Hague Conference, that the reservations of the German delegation—confirmed expressly by the act by which Germany ratified the Sixth Convention—had, whatever may have been the motives, been directed against the Article as a whole; that it could not have been otherwise, since the provisions of the Article formed an indivisible whole and was not therefore susceptible of piecemeal ratification and application; and that in making the reservations, and this appeared from the declarations contained in the *procès-verbaux*, the German delegates intended to maintain in force the preexisting and uncontested right of captors to confiscate, and even destroy, without indemnity, enemy ships encountered at sea in the circumstances specified in Article 3. The same arguments were put forward and the same decisions reached by the French Prize Council in the cases of the *Barmbek*,¹ the *Frieda Mahn*,² the *Martha Bockhahn*,³ the *Czar-Nicolai II*,⁴ and the *Walküre*.⁵ The decisions were sustained, on appeal, by the Council of State.⁶

Sec. 234. Strict Interpretation of Article 3. In a number of cases the Prize Courts were called upon to decide whether particular captures actually took place "at sea" in the circumstances mentioned in Article 3 of the Convention or "in port" in the circumstances mentioned in Article 1. As has already been pointed out⁷ the British Prize Court in the case of the *Möwe*⁸ held that the word "port" as used in Article 1 did not mean a fiscal port but must be construed in the usual popular and commercial sense as a place where ships load and unload, embark and disembark their cargoes, and therefore a German vessel captured at a place which although in the fiscal port was not in the port in the popular or commercial sense was held to have been "encountered at sea" in the sense of Article 3. Germany not having ratified this Article the vessel was not entitled to the benefit thereof. This restrictive interpretation, as has been pointed out, was affirmed by the Judicial Committee in the case of the *Belgia*.⁹ It was adopted equally by the French Prize Council and upon appeal by the Council of State¹⁰ and also by the German Supreme Prize Court.¹¹

¹ Fauchille, *Jurispr. Franc.*, 3. ² *Ibid.*, p. 6. ³ *Ibid.*, p. 8.

⁴ *Ibid.*, p. 10.

⁵ See Sec. 210, *supra*.

⁶ *IV, Lloyd*, 132; *II, Br. & Col. Pr. Cas.*, 60.

⁷ *Erymanthos*, I *Br. & Col. Pr. Cas.* 339.

⁸ *The Walküre*; Fauchille, *Jurispr. Franc.*, 303.

⁹ The *Fenix* and the *Primula* (*supra*).