

neutral if it was owned by persons of neutral nationality, and, reciprocally, if it was flying a neutral flag it would be treated as an enemy vessel if it was in fact owned by the nationals of an enemy country or by persons residing therein. Russia by a ukase of February 17, 1916, followed the example of her allies, and the Chinese prize regulations of 1917 (Art. 3) introduced the same principle in modified form, by proclaiming that ships flying a neutral flag but whose owners or some of whom were domiciled in an enemy country, should be regarded as enemy ships.¹ Germany, by way of reprisal against Great Britain and her allies, by an ordinance of July 16, 1917, proclaimed that neutral ships owned wholly or in preponderating part by enemy subjects, including corporations and companies having their seat in enemy territory, should be regarded as enemy ships. The Italian government by a decree of June 15, 1915, announced that the Declaration of London with certain modifications, none of which touched Article 57, would be applied during the existing war,² but by a decree of June 24,³ Article 57 was modified in the interest of owners of enemy ships, who were of Italian nationality (racial) and Italian sentiments (for example, owners who were of Austro-Hungarian political nationality but Italian by race and sympathy), when such ships were found in Italian ports at the outbreak of the war. The Italian Prize Commission declined however, to apply the rule in the case of captures, apart from those made of vessels found in port at the outbreak of the war.⁴

The action of Great Britain and her allies in withdrawing Article 57 was legally justified on the assumption that the Article was not declaratory of an existing binding rule of customary law, but an innovation, and hence they were free to apply the rules which they had formerly observed.⁵ At first the article

¹ Cheng, *Judgments of the High Prize Court of the Republic of China*, 136.

² Text in Fauchille et Basdevant, *Jurispr. Ital.*, Annexe, X.

³ *Ibid.*, XIII.

⁴ See, for example, the cases of the *Gorizia*, *ibid.*, 429, and the *Stamboul*, p. 445.

⁵ In the case of the *Hamborn* (VII Lloyd 73), Lord Sumner, speaking for the Judicial Committee of the Privy Council, referred to Article 57 as "varying the rule of international law" and stated that the Crown by adopting the Declaration of London, "had waived its right to rely on other criteria" than the flag, but that by the Order in Council of October 20, 1915, abrogating Article 57, "that waiver was withdrawn."

The French Prize Council also proceeded on the theory that the rule of Article 57 was an innovation upon the old rule and after the French decree withdrawing Article 57, the Council relied upon the ancient rule of French prize law in support of the view that ownership as a test of enemy character prevailed over the nationality of the flag.