a constituent portion of the British dominions. Even so, there would be no right to interfere with navigation and surface fishing beyond the three-mile limit.

If the doctrine of *terra nullius*, supported by Oppenheim and Fenn, is invoked, then physical occupation of the bed of the sea is necessary to acquire title and presumably to keep others off. What would constitute "effective occupation," *e.g.*, the building of platforms or the drilling of wells, may be debatable. Very recently Great Britain and Venezuela agreed to divide between them the exploitation of the petroleum resources of the Gulf of Paria which lies between Trinidad and Venezuela, about 35 miles long and 70 miles wide, practically entirely surrounded by land with the exception of two gaps, one at either end, six and ten miles wide respectively.[11] The configuration of the Gulf of Paria might well justify this claim. A similar but less sustainable claim has been advanced by Louisiana asserting title to "full and complete ownership" of the waters of the Gulf of Mexico and of the arms, beds and shores of the Gulf "including all lands covered by the waters of the Gulf within the boundaries of Louisiana, as fixed in the statute," to a distance of 24 miles beyond the three-mile limit. Although the federal Government appears once to have fixed the boundaries of Louisiana at nine miles from shore, it remains to be seen whether any economic development by Louisiana, *e.g.*, petroleum exploitation, at a distance of 27 miles, will be allowed to go unchallenged.[12]

The Florida claim to control the manner of taking sponges at a distance up to nine miles from the shore could therefore be justified on the theories of historical assertion of jurisdiction and acquiescence therein, protective jurisdiction for the preservation of a natural resource, and possibly occupation. The Florida statute escapes the more debatable but not necessarily unsustainable claims of licensing a national monopoly in the nine-mile zone or effective occupation of the bed of the sea. In any event, the Florida statute seems invulnerable to attack even if State sovereignty over the bed of the sea beyond three miles be denied.

EDWIN BORCHARD

ESCAPED PRISONERS OF WAR IN NEUTRAL JURISDICTION

One of the questions arising during the neutrality of the United States in the course of the current European War is that of the status of prisoners of war who make their escape and enter the United States. Probably the most publicized person within this description has been Baron Franz von Werra, leader of a German air squadron, reputed to have brought down fourteen British planes before he was captured and taken to Canada. At a point about one hundred miles north of Quebec, he escaped from his

[11] Message to Congress by President of Venezuela, April 19, 1941, and simultaneous statement published same day in Caracas and London.

[12] Comment in 39 Columbia L. Rev. 317 (1939).

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guards. Having a speaking knowledge of both French and English, he was able to make his way to the frontier and eventually crossed to the United States in a rowboat which he appropriated on the north shore. Late in January, 1941, police in Ogdenburg, New York, arrested him for entering the United States without reporting to immigration officers, and held him for immigration authorities. Pending further proceedings, von Werra was released on bond in care of the German Consul at New York. Some three months later it was reported that the German aviator had sailed for Peru on a Swiss passport, had proceeded to Bolivia, and had then travelled on a German passport to Rio de Janeiro, from which point an Italian plane had taken him across the Atlantic and a German airliner had carried him to Berlin.[1]

It would of course be possible to argue that by reason of her aggressions Germany is not entitled to claim from the United States the treatment that a belligerent may normally claim for its combatants who enter neutral jurisdiction.[2] For the purpose of the present comment, it will be assumed that the existing rules of international law on the matters involved were in force between the respective belligerents and the United States as a neutral at the time the incidents occurred. The inquiry may then be directed to (1) what the United States was obliged to do as a matter of neutral duty, (2) what discretion the United States had, under international law, in the choice of a policy, and (3) what municipal enactments might possibly assist in the discharge of the obligations of the United States and in the execution of its policy. Of the various possible situations, *e.g.*, the bringing of prisoners by their belligerent captors, entry into neutral ports on warships or prizes or cartel ships, the reception of sick and wounded prisoners into neutral jurisdiction, etc., only the case of able-bodied escaped prisoners voluntarily entering neutral jurisdiction in order to escape recapture will be here considered.[3]

The principle has long obtained that a prisoner of war who escapes from his captors and enters a neutral country is free, the theory being that the jurisdiction of a sovereign is exclusive and upon the sovereign's will depends the liberty of any person within that jurisdiction.[4] A frequently mentioned historical incident is that involving several hundred Turkish and Barbary captives who escaped from a galley of the Spanish Armada wrecked off the French coast in 1588; France refused the request of the Spanish Am-

[1] This brief statement of facts is based principally upon accounts in the New York Times, particularly the issues of January 25, 26, May 1, 3, 1941.

[2] *Cf.* the statement of Mr. Secretary Hull before the Foreign Affairs Committee of the House of Representatives, as reproduced in Department of State Bulletin, Jan. 18, 1941, at p. 90, and in this JOURNAL, *infra*, p. 540.

[3] This leaves out of consideration the status of such a person as von Werra in South American countries to which he may have gone after leaving the United States.

[4] Vattel, *Droit des gens*, liv. iii, ch. vii; Hall, International Law (7th ed.), p. 659.

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bassador for their return and sent them to Constantinople.[5] That there was sometimes doubt as to the precise extent of the neutral state's obligation will appear from a case in the appellate court in Brussels in 1871. A French noncommissioned officer who had been a prisoner of war of the Germans had made his way to Belgium, where he was detained by military order and prevented from returning to France to rejoin the French army. An action having been begun in civil court to secure the Frenchman's release, the Court of Appeals refused to admit the competence of civil courts, under the Belgian Constitution, to overturn the decision of the military authorities concerning this "*militaire étranger.*" [6] However sound the policy followed, the judgment itself seems open to valid criticism as being narrowly based on municipal law and not meeting the essential point of the Belgian state's obligation under international law.[7]

In the 19th century there was effort to incorporate the principle in a multilateral treaty. The Declaration of Brussels of 1874 was apparently formulated with the understanding that escaped prisoners of war who entered neutral territory ceased to be prisoners.[8] In a resolution of 1906, the Institute of International Law approved the rule that "Les prisonniers de guerre deviennent libres par le seul fait de se trouver sur le territoire neutre." [9] Hague Convention V of 1907 contains, as the first paragraph of Article 13, the following: "A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence." [10]

This paragraph seems to embody elements of preëxisting customary law.[11]

[5] Cayet, *Chronologie Novenaire, Introduction*, in Petitot, *Mémoires* (1823), Vol. XXXVIII, Pt. 1, pp. 407–409.

[6] *Revue de droit internatinal et de législation comparée*, Vol. III (1871), pp. 357–358.

[7] *Cf.* Bluntschli, *Das moderne Völkerrecht* (1872), p. 433: "Mir scheint, es kommen weniger noch die militärischen Anordnungen, als vielmehr die völkerrechtlichen Pflichten in Betracht."

[8] *Actes de la conférence de Bruxelles* (1874), pp. 314, 318.

[9] *Annuaire*, t. XXI, pp. 380, 382.

[10] 36 *Stat.*, Pt. 2, pp. 2310, 2324–2325. Five delegations at The Hague had submitted proposals on the point, as follows: (French) "Les prisonniers qui, s'étant échappés du territoire du belligérant qui les retenait, arrivent dans un pays neutre, doivent y être laissés libres;" (British) "Les prisonniers qui, s'étant échappés du territoire du belligérant qui les retenait *ou du territoire ennemi occupé par un belligérant*, arrivent dans un pays neutre, doivent y être laissés libres;" (Swiss) "Les prisonniers qui, s'étant échappés du territoire du belligérant qui les retenait, arrivent dans un pays neutre, doivent y être laissés libre, *si l'Etat neutre les reçoit et tolère leur séjour, ce qu'il n'est pas tenu de faire;*" (Netherlands) "Les prisonniers qui, s'étant échappés du territoire du belligérant qui les retenait, arrivent dans un pays neutre, *et ceux qui y arrivent comme prisonniers de guerre d'une force armée qui se réfugie sur le territoire neutre*, doivent y être laissés libres;" (Belgian) "*L'Etat neutre qui reçoit des prisonniers évadés ou amenés par des troupes se réfugiant sur son territoire, peut les laisser en liberté ou leur assigner une résidence.*" *Deuxième Conférence de la Paix*, III, 262–263.

[11] The United States and Germany are parties to Hague Convention V, but Great Britain

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There has not been complete agreement on its meaning. An authoritative writer on the general subject soon after the Hague Conference concluded that a neutral state into which prisoners had escaped *might* legally intern them,[12] but the authors of some leading treatises apparently interpret the rule to mean that prisoners *coming* on neutral territory (without reference to whether the neutral state "receives" them in the sense of permitting entry) are *ipso facto* at liberty, and make no suggestion as to discretion resting solely with the neutral state.[13] At least one publicist has made an attempt to classify escaped prisoners entering, *e.g.*, into those who have engaged in hostilities since their escape and those who have not, and has advocated a distinction in the treatment to be accorded.[14] It was natural that states which were neutral during the World War of 1914–1918 should have proceeded upon the assumption that there was at least no duty to punish escaped prisoners entering their territories,[15] but this does not settle the question of whether it would be a violation of international law for the asylum states to intern, since internment is not considered punishment.[16]

A fair construction of the 1907 convention, and one which is not inconsistent with customary rules or with practice in the World War of 1914–1918, would seem to leave four alternatives open to the neutral state: (1) to refuse admission to its territory to escaped prisoners; (2) if it receives them, to expel them under the same conditions as it might expel any ordinary alien; (3) if it receives them, to leave them "at liberty" in the sense of permitting them to return to their homeland; (4) to detain them for the duration of the war and assign them a place of residence without necessarily "interning" them in the ordinary manner.[17] A special case would be that of a prisoner who had committed an offense against ordinary criminal law in the course of his escape. In general, the commission of a minor offense in the state of former captivity would not change the person's status in

and Canada are not. By Art. 20 of the instrument, it is not to apply unless all belligerents in a particular war are parties.

[12] Armand du Payrat, *Le prisonnier de guerre dans la guerre continentale* (1910), pp. 437–438.

[13] *Cf.* G. G. Wilson, Handbook (2nd ed., 1927), p. 270.

[14] Kleen, *Lois et usages de la neutralité* (1898–1900), Vol. II, p. 26. *Cf.* Paul Heilborn, *Rechte und Pflichten der neutralen Staaten* (1888), pp. 32–34.

[15] See, for example, *Consultation no. 250 du dep. de just. et pol., du 9 février 1917, Droit Fedéral Suisse* (ed. Walther Burckhardt, 1930), Vol. I, p. 69.

[16] G. Sauser-Hall, "De l'internement des prisonniers de guerre," *Revue générale de droit international public*, Vol. XIX (1912), pp. 40, 47.

[17] Fauchille, *Traité de droit international public*, Vol. II (1921), p. 684; Oppenheim, International Law (6th ed., 1940), Vol. II, pp. 580–581.

The British Manual of Military Law, 1914, contains the following provision at p. 311: "Prisoners of war who succeed in escaping into neutral territory regain their liberty, but they cannot claim to remain there. It rests with the neutral State whether it will grant or refuse them admission, and in the latter case, whether or not it will allow them to remain on its territory. If they are allowed to remain, the neutral State may compel them to make their residence in a specified locality."

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the neutral state of asylum.[18] The commission of an ordinary crime falling within the terms of an extradition treaty between the belligerent state of former captivity and the neutral state of asylum would seem to justify rendition for trial on this charge without the demanding state's obtaining the right to make the accused again a prisoner of war.

In view of the considerable discretion left to each neutral state as to its treatment of escaped prisoners, the state's legislative policy and administrative execution of it are obviously of practical importance. Statutory provision for internment of any person who has been a prisoner of war in a belligerent state and who has escaped to the United States would appear to be a reasonable procedure. It would recognize the fact, brought out in the Franco-Belgian incident of 1871 referred to above, that such a person has come to be "at liberty" in the sense of having ceased to be a prisoner of war with all of the disabilities attaching to that status, but it would also recognize that he has not ceased to be a combatant of his own country. It would avoid the absurdity of setting aside all municipal laws concerning entry and transit because of some imaginary special privileges of persons who have been war prisoners.[19] Certainly ex-prisoners who are still under the orders of their own government should not have a status which, under the broadest possible definition of "liberty" as used in the Hague Convention, might place them in a very favored position as compared with even American citizens, who are expected to comply with ordinary municipal law concerning entry into and departure from the country. Finally, if there were a policy of internment, persons assisting those interned to leave the country would, unless enjoying jurisdictional immunity, come automatically under the existing provisions of the criminal code on this subject.[20]

ROBERT R. WILSON

[18] In the *Catherine Elizabeth*, 5 C. Rob. 232 (1804), Sir William Scott said that a ship's master, being a prisoner of war, "had a perfect right to attempt to emancipate himself by seizing his own vessel." In this instance the prisoner had seized the ship of the captor.

It is pertinent to note that by U. S. General Order No. 207 (July 3, 1863) "it is the duty of the prisoner to escape if able to do so."

For references in this note the writer is indebted to Dr. W. E. S. Flory, whose dissertation on the subject of the development of international law relating to prisoners of war is in course of publication.

[19] It is realized that there might be valid reasons for distinguishing those prisoners coming into neutral jurisdiction of their own accord from those who might be brought in by their captors, but even in the case of the latter internment would not seem to work undue hardship. *Cf.* du Payrat, *op. cit.*, p. 437.

[20] 18 U. S. C. A. Sec. 37 (40 Stat. 223): ". . . Whoever, within the jurisdiction of the United States and subject thereto, shall aid or entice any interned person to escape or attempt to escape from the jurisdiction of the United States, or from the limits of internment prescribed, shall be fined not more than $1,000 or imprisoned not more than one year, or both." By the same section, the internment referred to is that "in accordance with the law of nations."

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