

Nationality of a Merchant Vessel (Book Review)

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whence the chosen stones may be selected. And candor demands that I confess that good can be found, even in a mass of treaties.⁵

FREDERIC ROCKWELL SANBORN.*

NATIONALITY OF A MERCHANT VESSEL. By Robert Rienow. New York: Columbia University Press, 1937, pp. i, 247.

A reader of this book certainly will be impressed with the fact that a ship is in a class all by itself due to the tradition of the sea, the special laws and the regulations which apply to it. He will likewise be impressed that the author devoted countless hours in preparation of a subject which, of necessity, required that an exhaustive study be made not only of the laws of this country but of the various maritime countries. This is reflected by the many supporting footnotes and references. A reference to these cases, statutes, official reports, records, opinions, documents and regulations, not only of this country but of the other maritime nations and also to books and articles appears in an exhaustive bibliography.

The author has chosen a subject with which the average attorney is not familiar. Those actively engaged in the practice of admiralty law will enjoy this scholarly presentation because it touches a branch of the admiralty law with which few come in contact.

The work contains ten chapters in six of which the words "nationality" and "national" are expressed. These chapters deal with the "significance of nationality", "the nationality of a ship", "national build", "national crew", "national ownership" and the concluding chapter "the test of nationality". The other four chapters deal with "enemy ownership", "the flag", "documents" and "criminal jurisdiction and nationality".

It is clearly shown that under international law a ship has a "nationality", which fact has long been recognized by the various maritime countries. Formerly these countries laid stress on whether a ship was constructed in its territory. Where it was constructed now plays no part in the "nationality" of the ship. The chapter on "national crew" deals with the position taken by the respective countries on this subject. Each country does as it sees fit. The book sets forth the various countries requiring and those not requiring that the crew be nationals. Those countries in the former class are in the minority. The United States requires that a proportion of the crew be nationals. The countries with this requirement have about one-third of the world tonnage.

⁵ When the Supreme Court of Bermuda, sitting in Admiralty, decided the *Cristobal Colon* case last autumn, it appears from the opinion of the Acting Chief Justice that a copy of the Brussels Convention of April 10, 1926, concerning the immunity of state-owned vessels, could not be found in the Islands: *The Royal Gazette and Colonist Daily*, Oct. 19, 1937, p. 10. Although this is one of the treaties that never went into effect (HUDSON, *op. cit. supra*, p. 537, note 20), I have already taken steps to supply Bermuda's deficiency by sending a copy of Professor Hudson's longer selection.

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There is nothing uniform with respect to those countries which require a national crew. The chapter on "National Ownership" is the fifth consecutive chapter dealing with the "national" phase of a ship. As in the previous chapter, "national crew", there is nothing uniform; as each country declares its requirements on what it regards as a "national owner". The United States and Great Britain are classed with those countries, consisting of about one-half of the maritime countries, which require entire national ownership, while other countries require that nationals own but a part of the ship. Due to the various divergent policies of the countries requiring only partial ownership, no uniformity exists as to their requirements. The present trend is toward partial ownership.

The chapter on "enemy ownership", a very interesting chapter, clearly depicts what an important matter the ownership of a vessel is in the event of hostilities. A country at war will seize a vessel of the enemy on the ground of enemy ownership. In so doing such country is sustained by Prize Courts. These courts determine whether the seized vessel is owned by the enemy and if this be found, the seizure is upheld. The first five pages, in particular, of this chapter are very interesting. Another engaging chapter is "the flag", the significance of which the author very succinctly states "is internationally recognized". He also points out that "it symbolizes nationality in actual practice". The ship by using a flag has certain duties and privileges. It may be restricted in the flag's use and held for the flag's abuse. The use of the flag is important in time of war as a ship is considered as "clothed with the national character of the flag she wears" and the enemy may act accordingly with impunity. There is an interesting discussion on the number of Dutch ships the "possession and use" of which we requisitioned during the World War while they were lying in our ports. Although they flew the U. S. flag our Bureau of Navigation still considered them to be Dutch ships. The author also discusses the use of false flags in time of war, showing its international sanction.

The chapter on "documents" shows that since time immemorial it has been the custom to document a vessel. All countries have documentation provisions. A great many treaties have been entered into providing that proper documents shown by the ship establish her nationality. This chapter shows a "unanimous acceptance of documents as the test of nationality". The test of measuring the merchant marine is documentation. An early Supreme Court decision is to the effect that the purpose of the register is to declare the nationality of a vessel and to enable her to assert that nationality wherever found.

The chapter on "criminal jurisdiction" shows the United States is in a class by itself in respect to its position. The author correctly questions whether our criminal statutes do not violate international law. Our criminal statutes assume jurisdiction because of "ownership of a vessel in whole or in part by citizens of the United States" while the other countries agree that criminal jurisdiction "rests with the country whose nationality the vessel possesses". The criminal jurisdiction of the various countries is set forth. In the concluding chapter the preceding chapters are to a large extent summarized.

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