



## **The Case of Captain Fryatt in the Great War.**

The British ultimatum to Germany had not yet expired when the first blow of the war fell upon the Eagle Oil Tanker fleet. The 9000 ton “San Wilfrido”, which had only been commissioned to the fleet four months earlier, struck a mine in the mouth of the River Elbe, on 3rd August 1914. She was on her way in ballast from Cuxhaven to a British port and had a German pilot on board. Fortunately, there was no loss of life, but the Master, Captain C H Williams and forty officers and crew were interned and had to suffer the ignominy and tedium of four long years in a German prison camp.

Doubts in my mind as to whether the mine had been laid by the German or the British Navy led to further thoughts about British Merchant Seamen interned by the enemy in both world wars, and to their position as prisoners of war - persons captured or interned by a belligerent power during war.

In the strictest sense the term is applied only to members of regularly organised armed forces, but by a broader definition it has also included guerrillas, civilians who take up arms against an enemy openly, or non-combatants associated with a military force.

In the early history of warfare there was no recognition of a status of a prisoner of war, for the defeated army was either killed or enslaved by the victor. The women, children and elders of a defeated tribe or nation were frequently disposed of in similar fashion. The captive, whether or not an active belligerent, was completely at the mercy of his captor. If permitted to live, the prisoner was considered by his captor to be merely a piece of moveable property, a chattel. During religious wars, it was generally considered a virtue to put non-believers to death, but in the campaigns of Julius Caesar, a captive could, under certain circumstances, become a freed man within the Roman Empire.

As warfare changed, so did the treatment afforded captives and members of defeated nations or tribes. Enslavement of enemy soldiers in Europe declined during the Middle Ages, but ransoming was widely practiced. Civilians in the defeated community were only infrequently taken prisoner, for as captives they were sometimes a burden upon the victors. Further, as they were non-combatants, it was considered neither just nor necessary to take them prisoner. The development of the use of a mercenary soldier also tended to create a slightly more tolerant climate for the prisoner, for the victor in battle knew he might be the vanquished in the next.

In the 16th and early 17th centuries, some European legal and political philosophers expressed their thoughts about improving the effect of capture upon prisoners. Hugo Grotius, for example, stated in “On the Law of War and Peace” (1625) that victors had the right to enslave their enemies, but he advocated exchange and ransom instead. The idea was taking hold that in war no destruction of life or property beyond that necessary to decide the conflict was sanctioned. The treaty of Westphalia (1648), which released prisoners without ransom, is generally thought to mark the end of the era of widespread enslavement of prisoners of war.

In the 18th century a new attitude of morality in the law of nations, or international law, had a profound effect on the problem of prisoners of war. The French political philosopher, Montesquieu, in “The Spirit of Laws” (1748) wrote that the only right in war a captor had over a prisoner was to prevent him from doing harm. The captive was no longer to be treated as a piece of property to be disposed of at the whim of the victor, but was merely to be removed from the fight. Rousseau expanded on the main theme and developed what might be called the “quarantine theory for the disposition of prisoners”, and from this point on the treatment of prisoners generally improved.

By the mid-19th century it was clear that a definite body of principles for the treatment of war prisoners was being generally recognised in the western world. But the observance of the principles in the American Civil War (1861-65) and the Franco German War (1870-71) left much to be desired, and numerous attempts were made in the latter half of the century to improve the lot of wounded soldiers and of prisoners. In 1874 a conference at Brussels prepared a declaration relative to prisoners of war, but it was not ratified. Between 1864 and 1907 a series of treaties were concluded in Geneva for the purpose of ameliorating the effects of war on soldiers and civilians, the history of the conventions being closely associated with that of the Red Cross, whose founder, Henri Dunant, initiated international negotiation in 1864 to provide for:

- (1) the immunity from capture and destruction of all establishments for the treatment of wounded and sick soldiers and their personnel;
- (2) the impartial reception and treatment of all combatants;
- (3) the protection of civilians rendering aid to the wounded and

(4) the recognition of the Red Cross symbol as a means of identifying persons and equipment covered by the agreement.

The first convention was ratified within three years by all the European great powers, as well as by many lesser states. It was amended and extended by the second Geneva Convention in 1906. Also, and perhaps not before time, by the Hague Conventions of 1899 and 1907, its provisions being extended and applied to Maritime Warfare.

Fewer men were engaged in Naval Warfare than in land battles, which could involve thousands of participants, and warships under sail would have experienced difficulties in actually capturing or rescuing enemy crews, leading to further problems in accommodating, feeding and guarding them while on board.

During the Great War of 1914-18, however, when prisoners of war were numbered in millions, there were many charges that the rules drawn up by the 1907 international conferences at The Hague were not being faithfully observed.

Two of the most interesting and controversial instances of this nature concerned British merchant ships and their non-combatant Masters; the Great Eastern Railway Company's steamer "Brussels" (Captain Charles Algernon Fryatt) and the Anchor Liner "Caledonia" (Captain James Blaikie). Both tried to ram U-boats, the first causing one of Germany's highest scoring U-boat aces to submerge, the second striking the U-65 a glancing blow.

The story of Captain Fryatt's capture, his unexpected trial on a charge of attacking a German warship on 28th March 1915, even though he was a civilian, his barbarous execution by firing squad on 27 July 1916, and his lavish State Funeral in London in 1919 are well known, but perhaps less well remembered than the execution of his fellow East Anglian, Nurse Edith Cavell. The privations of Captain Blaikie, who fortunately did not suffer the same treatment, are perhaps less well known.

It is no surprise that, in wartime, the execution of Captain Fryatt was exaggerated by propagandists on both sides. To the British he was more than a hero, more a martyr; to the Germans he was a criminal, no more than a pirate, and Dr Alan G Jamieson, Research Fellow at the University of Exeter, in a most interesting article entitled "*Martyr or Pirate. The case of Captain Fryatt in the Great War*" ("The Mariners' Mirror", Volume 85 No 2 (May 1999) 196-202 introduces and clarifies several aspects of history and International Law with a view towards reaching an answer to the question "Martyr or Pirate?". The following extracts from Dr Jamieson's research are reproduced with the kind permission of the Honorary Editor of The Mariners' Mirror.

*"During the 19th Century the so-called Pax Britannica brought peace of mind to most of the world's sea routes. Piracy was much reduced and merchant ships no longer required to carry guns for defence in peacetime. The Declaration of Paris (1856) banned privateering so the "private" ship of war disappeared and conflict at sea was left to the state navies of the world. It seemed that non naval ships had no reason to be armed in either peace or war and the question whether merchant ships had a right of self defence appeared irrelevant. Even the so-called armed merchant cruisers, which appeared from the 1880's did not alter this picture since such peacetime liners would only be armed in wartime after they had been commissioned into the navies of their countries."*

Thus it came as something of a surprise when Winston Churchill, First Lord of the Admiralty, proposed in March 1913 that in wartime British merchant ships should be armed in self-defence. The guns and gunners would be provided by the Navy, but the ships would retain their status as civilian vessels. German Naval Authorities took a hostile view of Churchill's proposal. In August 1913, the Institute of International Law held a Conference at Oxford aimed at drawing up a Manual of Law aimed at Maritime Warfare. The German delegates denounced the proposed arming of merchant ships in wartime and claimed that merchant ships had no right to self-defence. However, the majority of delegates supported the British and American view that merchant ships had an inherent right to self-defence, which had been recognised for centuries, and the Germans reluctantly gave way.

The Conference's resolutions were embodied in the Oxford Manual of Naval Law (1913), but this work was not officially adopted by any country.

Since the Franco-Prussian War (1870-71) the German Army had been bitterly opposed to all forms of "unofficial" warfare. French civilian sharpshooters (franc-tireurs) had been a substantial nuisance to the Germans, who had responded with summary executions. Of course, all nations were agreed that attacks by armed civilians on land were illegal since they undermined the distinction between combatant and non-combatants that was fundamental in the laws of war. The German Army took the distinction very seriously and the new German Navy sought to apply the rule of land warfare to wars at sea. Maritime conflict was to be between state navies and merchant ships were to take no part in it. Merchant ships which defended themselves against German warships were the same as franc-tireurs on land in the German view, and their Captains would receive similar punishment.

The Germans were, however, not consistent in their approach to this problem. When the First World War broke out, the prize regulations issued by the German Navy specifically provided that resistance by armed belligerent merchant ships was legitimate and the crews of such vessels would be treated as prisoners-of-war if captured. The prize regulations applied to cruiser warfare and none of the pre-war discussions of self-defence by merchant ships had mentioned submarines. However, by the end of 1914 Germany's cruisers had been driven from the world's oceans and her Battle Fleet had been bottled up in home ports. Only the submarines appeared to offer the Germans a way of doing serious damage to the British Merchant Fleet.

On 4th February 1915 Germany opened her first unrestricted U-boat campaign against Britain by declaring the merchant shipping around the British Isles would be attacked indiscriminately, with little regard to the prize regulations for cruiser warfare. U-boats could remain submerged and torpedo merchant ships without warning. The early U-boats carried few torpedoes, so to maximise their impact, most attacks were made on the surface, using the submarine's gun, or putting bombs on board the enemy ship in order to sink it. Surface attack naturally left the U-boat in a vulnerable position, not only to attack by warships. Even an unarmed merchant ship could sink a U-boat on the surface by ramming. It is hardly surprising that the Germans continued to insist that merchant ships had no right of self-defence, since the exercise of such a right would endanger their U-boats.

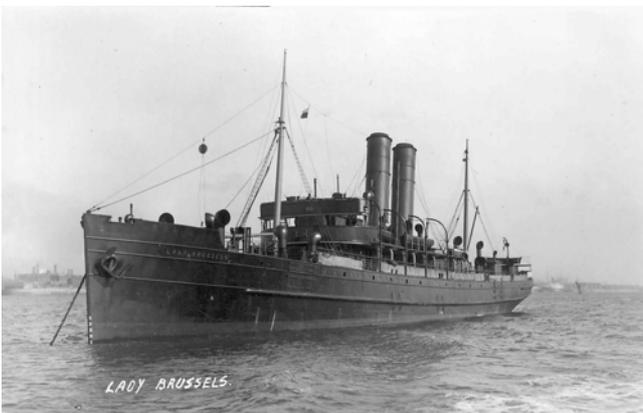
The British hoped to arm their merchant ships for defence, but the supply of guns was limited in 1915 and the process proceeded slowly. Thus the Admiralty's order of 15th February 1915 to British merchant ships on what to do if they met a U-boat stressed other methods of self defence. The Admiralty said that "*no British merchant vessel should ever tamely surrender to a submarine, but do her utmost to escape*". Most U-boat attacks would be on the surface, so if a submarine was seen at a distance, course should be altered to put the U-boat astern and the merchant ship should then move away at full speed. If the U-boat appeared suddenly close ahead, the merchant ship was to "*steer straight for her at your utmost speed*", and the submarine "*will probably then dive.*" This order soon became known as the "ramming order", but the Admiralty had been careful to avoid the word "ram" in the order because of its connotations of attack rather than defence.

One of the merchant ship Masters who received the Admiralty order of 10th February was Captain Fryatt of the Great Eastern Railway Company. He served in the Company's passenger ships that ran a regular service across the Southern North Sea between Harwich and Rotterdam in the Netherlands. Fryatt encountered his first U-boat on 2 March 1915 when he was Master of the unarmed steamer "Wrexham". The U-boat attempted to stop him near the Dutch coast, but he ordered full speed and soon escaped.

On 25th March 1915, Fryatt was Master of the unarmed steamer "Brussels" following the usual route, when the U-33 appeared on the surface close to his track. Fryatt ignored the signal to stop and directed his ship at full speed towards the U-boat, forcing it to submerge. By the time U-33 returned to the surface, "Brussels" had escaped.

The British armed more merchant ships and by 1916 such vessels were becoming a nuisance to U-boats, often driving them away during surface attacks. In February 1916 the German government declared that armed merchant ships were legitimate targets for unrestricted U-boat attack. This provoked a protest from the US government, which followed the British in claiming that merchant ships retained that status whether armed or not. This view seemed to be generally accepted since most neutral states treated armed merchant ships as civilian vessels rather than warships. The exception was The Netherlands, which since the start of the war had refused to let armed merchant ships use her ports.

Thus Captain Fryatt, still working on the Harwich-Rotterdam service, could not mount a gun on his ship. The lack of such defence became increasingly worrying when the U-boats intensified their attacks, particularly in the Southern North Sea, with many allied and neutral ships being lost on routes to The Netherlands. Following further American protests the Germans reduced the U-Boat effort, but turned to attacks by other warships on the Dutch routes. On 23rd June 1916 Captain Fryatt and the "Brussels" were captured by German destroyers off the Dutch coast and taken to Zeebrugge in occupied Belgium. On 6th July another British ship, the "Lestris" was captured in similar circumstances. Since British merchant ships on voyages to The Netherlands could not be armed, the Admiralty had to provide some other defence and on 26th July 1916 British warships took a convoy of merchant ships from England to The Netherlands, the first British convoy, other than troopships, of the Great War, and primarily a response to destroyer attacks rather than U-boats.



The "Brussels" was later renamed "Lady Brussels" under the B&I Line

Fryatt's trial and execution on 27 July 1916, on a charge of attacking a German warship, even though he was a civilian, contrary to the laws of war, took the British completely by surprise. Asquith, the Prime Minister, promised that those involved in the trial and execution would be punished after the war, and that more immediate retaliation would be considered.

The most obvious retaliation would be that the British would shoot a captured U-boat Commander, but the execution of prisoners was a sensitive subject for the British. The greatest benefit of the U-boat campaign for the British was that it infuriated the Americans. The British blockade hit American trade, but German submarines killed American citizens. The execution of Fryatt could be portrayed as further German frightfulness and was generally condemned in the United States. However, if the British carried out retaliatory executions, they might lose American sympathy, especially as the shooting of Irish rebel commanders after the Easter Rising earlier in the year had not been forgotten in the United States. Instead the British proposed to confiscate all German property in the British Empire and not return it until those responsible for the "judicial murder" of Fryatt and other war crimes were punished. This proposal was put to the Allies, only to be withdrawn after the French raised objections. They feared that in retaliation the Germans would seize all French property in occupied zones. In the end, although public outrage in Britain at Fryatt's death was considerable, the British Government restricted itself to written protests over Fryatt's execution and to vague promises to bring to justice those responsible for it after the war.

Only a few months later, however, on 4th December 1916, the Anchor liner "Caledonia" serving as an armed troopship, was torpedoed by U-65 near Malta. Although his ship was sinking, Captain James Blaikie tried to ram the U-boat and struck her a glancing blow. After the "Caledonia" sank, the submarine picked up Captain Blaikie and he was eventually taken to Germany, where it was feared he would receive the same treatment as Captain Fryatt. The British Government asked the US Embassy in Berlin to do all it could to protect Captain Blaikie.

In London, it was once again suggested that a captured U-boat Commander might be shot, but this would offend neutrals, particularly the United States, and might trigger a series of executions in Britain and Germany.

Then news was received from the Americans that their diplomats in Berlin had been assured by the German Foreign Office that Blaikie was not in danger of court martial and execution. The Germans were prepared to regard the "Caledonia" as an "armed cruiser" which had a right of action against the U-boat. Although Blaikie was safe, the Cabinet wanted to make plain its general policy on threats to British combatant and non-combatant in sea-warfare disappeared for the rest of the Great War. A number of U-boat Commanders were named as war criminals by the British, but after the war only a few were prosecuted in Germany. Despite Asquith's promises, no German was ever tried for his part in the "judicial murder" of Fryatt.

Captain Fryatt, says Dr Jamieson, was neither a martyr, nor a pirate. His death was the result of a fundamental disagreement about the status of merchant ships in wartime. The Germans felt that merchant ships, armed or not, should have no right of self-defence. The Anglo-American view was that for centuries merchant ships had possessed that right. In both world wars, the Anglo-American view prevailed, but recent developments in international law seem to have altered the position. In the late 1980's the International Institute of Humanitarian Law began to prepare the first manual of legal rules for sea warfare since the Oxford Manual of 1913. This finally appeared as the "*San Remo Manual of International Law Applicable to Armed Conflicts at Sea*" in 1995 and contained a new approach to the position of merchant ships in wartime.

As a general rule, merchant ships in wartime should be immune to attack unless they become a definite military objective. A merchant ship may carry small arms for anti-piracy defence, and a chaff protector to confuse missiles, but any other armament will make a merchant ship a military objective because it is said to be impossible to distinguish between offensive and defensive weapons.

Dr Jamieson concludes by mentioning that the ghost of Captain Fryatt may take comfort in the pronouncement that a merchant ship's bow, which could be used to ram a submarine, is "not considered to be a weapon".

Soon after the end of the war in 1918, the nations of the world gathered at Geneva to devise the Convention of 1929, which before the outbreak of World War II was ratified by France, Germany, Great Britain, the United States, and many other nations, but not by Japan or the Soviet Union.

Hamish Roberts